Case Negs M-R

Mann Act DDI

On case

Presumption Theory

Extra/FX T or T in General

Off case

Trafficking DA

By getting rid of section 2421 they are allowing the unfair acts of women to continue
Donna M. **Hughes** July 3, 200**4** (Professor & Carlson Endowed Chair in Women's Studies University of Rhode Island)

By tolerating or legalizing prostitution, the state, at least passively, is contributing to the demand for victims. The more states regulate prostitution and derive tax revenue from it, the more actively they become part of the demand for victims. If we consider that the demand is the driving force of trafficking, then it is important to analyze the destination countries' or cities' laws and policies. Officials in destination countries or cities do not want to admit responsibility for the problem of prostitution and sex trafficking or be held accountable for creating the demand. At this point to a great extent, the wealthier destination countries control the debate on how trafficking and prostitution will be addressed. Sending countries or regions are usually poorer, less powerful, and more likely to be influenced by corrupt officials and/or organized crime groups. They lack the power and the political will to insist that destination countries and cities stop their demand for women for prostitution. In destination places, strategies are devised to protect the sex industries that generate hundreds of millions of dollars per year for the state where prostitution is legal, or for organized crime groups and corrupt officials where the sex industry is illegal. Exploiters exert pressure on the lawmakers and officials to create conditions that allow them to operate. They use power and influence to shape laws and policies that maintain the flow of women to their sex industries. They do this through the normalization of prostitution and the corruption of civil society. 5 There has been a global movement to normalize and legalize the flow of women into sex industries. It involves a shift from opposing the exploitation of women in prostitution to only opposing the worst violence and criminality. It involves redefining prostitution as "sex work," a form of labor for poor and psychologically damaged women. It involves redefining the movement of women for prostitution as labor migration, called "migrant sex work." It involves legalizing prostitution, and changing the migration laws to allow a flow of women for prostitution from sending regions to sex industry centers. The normalization of prostitution is often recommended as a way to solve the problem of trafficking. States protect their sex industries by preventing resistance to the flow of women to their sex industry centers. They do this by silencing the voice of civil society. In many sending countries, civil society is weak and undeveloped. Governments of states with powerful sex industries fund non-governmental organizations (NGOs) to promote the permission and accommodating views of prostitution and the flow of women into sex industries. Authentic voices of citizens who do not want their daughters and sisters to become "sex workers" are replaced by the voice of the exploiters, which say that prostitution is good work for women. The result is a corruption of civil society. Many well-intentioned individual and groups start believing and promoting this supportive view of prostitution in the mistaken belief that they are helping women. In a number of countries, the largest anti-trafficking organizations are funded by states that have legalized prostitution. These funded NGOs often support legalized prostitution. They only speak about "forced prostitution" and movement of women by force, fraud, or coercion. They remain silent as thousands of victims leave their communities for "sex work." Effectively, these NGOs have abandoned the women and girls to the exploiters and men who purchase sex acts.

The Affs hopes to make prostitution better is wishful thinking they don't solve for anything they just make things worse

Donna M. **Hughes** July 3, 200**4** (Professor & Carlson Endowed Chair in Women's Studies University of Rhode Island)

Around the world today, there is a human rights crisis of sexual abuse of millions of women, children, and thousands of men in prostitution and other forms of sexual exploitation. There are regions of the world where prostitution has gone from being almost non-existent to a hundred million dollar moneymaking industry. I am going to talk about prostitution and sex trafficking. I don't believe you can talk about one without the other. They are inextricably linked. Those who favor legalized prostitution have led a 15-year campaign to delink them – to convince us that trafficking has nothing to do with prostitution. That is false. As countries and activists who favor legalization have tried to separate prostitution and trafficking, most of the global attention has focused on trafficking. I am happy that the conference organizers in Santiago have had the courage to address prostitution. Still, we should be clear that we have to talk about both prostitution and trafficking together. Sex trafficking is the process that delivers victims into prostitution. It includes the recruitment, harboring, movement, and methods by which victims are compelled to stay in prostitution, whether by violence, coercion, threat, debt, or cultural manipulation. Prostitution and sex trafficking are based on a balance between the supply of available victims and the demand for victims to provide the sex acts. Victims are recruited from marginalized, poor, and vulnerable populations. These potential victims may be from the same city or country as the exploiters, or they may be trafficked from other countries or continents. They may be women and girls who are poor, uneducated, and naïve, and therefore easy to control, or they may be educated, middle-class girls who have been sexually abused until their bodily integrity and identities are destroyed and they no longer know how to resist abuse and exploitation. Prostitution and trafficking begin with the demand for victims to be used in prostitution. It begins when men go in search of sex that can be purchased. In countries where prostitution is illegal, it begins when pimps place orders with their criminal networks for women and children. In 2 countries where prostitution is legal, it begins when brothels places job ads with government employment agencies. In places where buying sex acts is popular and profitable, pimps cannot recruit enough local women to fill up the brothels, so they have to bring in victims from other places. Let me give you the example of the Czech Republic. Ten to fifteen years ago, prostitution was rare, certainly, there wasn't a sex industry. Now, according to a study by the Czech Ministry of Interior, there are over 860 brothels in the Czech Republic, of which 200 are in Prague. The Czech Republic is a destination country for Western European sex tourists. By one estimate, 65 percent of men who buy sex acts there are foreigners. The capital city has the reputation of being a "stag party" capital of Europe, meaning it is a favorite beer and sex party spot for men, mainly Great Britain and Germany. There are almost 200 web sites on the Internet for prostitution services in the Czech Republic, up from 45 in 1997, that enable sex tourists to book their travel and appointments to buy sex acts before they leave home. The Czech police estimate that there are 15,000 women and children in prostitution in the Czech Republic. Thousands of them stand along the roads or wait in roadhouses along the German and Austrian borders. Mafias control most of the victims. The Czech-German border has become a well-known site for child prostitution. German men, in particular, cross the border to buy children for sex acts. All this expansion of the sex industry has occurred in the last decade. Over the past decade, the most popular proposed solutions to sex trafficking and "out of control" prostitution is legalization of prostitution. Prostitution has been legalized with the expectation that it would bring positive outcomes in Australia, the Netherlands, Germany, and recently, in New Zealand. Although legalization has resulted in big legal profits for a few, the other benefits have not materialized. Organized crime groups continue to traffic women and children and run illegal prostitution operations along-side the legal businesses. In Victoria, Australia, legalization of brothels was supposed to eliminate street prostitution. It did not; in fact, there are many more women on the street than before legalization. Last year, there were calls for legalizing street prostitution in order to "control it." Legalization does not reduce prostitution or trafficking; in fact, both activities increase because men can legally buy sex acts and pimps and brothel keepers can legally sell and profit from them. Cities develop reputations as sex tourist destinations. In the Netherlands, since legalization, there has been an increase in the use of children in prostitution. German lawmakers thought they were going to get hundreds of millions of euros in tax revenue when they legalized prostitution and brothels. But keeping with criminal nature of prostitution, the newly redefined "business owners" and "freelance staff" in brothels will not pay their taxes. Germany is suffering a budget deficit, and the Federal Audit Office estimates that the government has lost over two billion euros a year in unpaid tax revenue from the sex industry. Recently, lawmakers started to look for ways to increase collection of taxes from prostitutes. This has put the government into the traditional role of pimp – coercing prostitutes to give them more money. This predatory behavior of the government sharply contrasts to the promised benefits of legalization in Germany, such as government benefits and rights for women. Legalization was supposed to enable women to get health insurance and retirement benefits, and enable them to join unions The normalization of prostitution as work has not occurred in Germany, the Netherlands, or Australia. Following legalization, few women have signed up for benefits or for unions. The reason has to do with the basic nature of prostitution. It is not work; it is not a job like any other. It is abuse and exploitation that women only engage in if forced to or when they have no other options. Even where prostitution is legal, a significant proportion of women is trafficked. Women and children controlled by pimps and mafias cannot register with an authority or join a union. Women who are making a more or less free choice to be in prostitution do so out of immediate necessity – debt, unemployment, and poverty. They consider resorting to prostitution as a temporary means of making money, and assume as soon as a debt is paid or a certain sum of money is earned for poverty-stricken families, they will go home. They seldom tell friends or relatives what they are doing to earn money. They do not want to register with authorities and create a permanent record of being a prostitute. And unionization of "sex workers" is a fantasy; it is completely incompatible with the coercive and abusive nature of prostitution.

Politics or Elections DA

Answers to

Sex Work is empowering

Women and girls are not empowered from prostitution it is merely exploitation of the poor and those who are forced into prostitution

Donna M. **Hughes** July 3, 200**4** (Professor & Carlson Endowed Chair in Women's Studies University of Rhode Island)

The culture, particular mass media, is playing a large role in normalizing prostitution by portraying prostitution as glamorous or a way to make a lot of money quickly and easily. Of course, within the commercial world of entertainment, there are many connections between the film and publishing industries and pornography production, between tourist entertainment and sex tourism. Generally, the media is invested in supporting the expansion of the sex industry. Within academia, and to my great disappointment, the area of women's studies, prostitution is presented as "sex work." And "sex workers" are represented as being empowered, independent, liberated women. This is a false and destructive ideology that has invaded our courses in universities. We should be asking, "Who really benefits when we redefine prostitution as a legitimate form of work for women?" Do women and girls benefit? Where are these women and girls going to come from? Because as prostitution become legal and normal, more and more women and girls will be needed. Is this our solution to women's poverty and unemployment? Certainly, it will benefit the exploiters, and the state will easily solve the poverty and unemployment problem for one sector of society. Turn them into sex workers. Within the culture, churches are the voice of moral authority. Unfortunately, in the battle against prostitution, the voice of moral authority that condemns all forms of sexual exploitation and abuse is being lost. Some churches are compromising on their mission and their vision. In years past, they have been accused of being "moralistic," so they have retreated into "non-judgmental" 6 positions and ways of addressing prostitution. They need to reexamine their retreat from this issue and reengage in the debate. There is an important role for churches to play in describing the harm of prostitution to women, children, families, and communities. Religious communities, from the grassroots to the leadership, need to use their voice of authority to combat the increasing sexual exploitation of victims and its normalization.

Consumers shouldn't be criminalized

Consumers of sex are not just "lonely guys" but men who are just fine and often abuse prostitutes

Donna M. **Hughes** July 3, 200**4** (Professor & Carlson Endowed Chair in Women's Studies University of Rhode Island)

Their Matthew 08 Card talks about how we should criminalize consumers because theyre just "acting on impulses" and some stuff about how they're usually disabled or don't have good relationships with women. This card answers that.

The men, the buyers of commercial sex acts, are the ultimate consumers of trafficked and prostituted women and children. They use them for entertainment, sexual gratification, and acts of violence. It is men who create the demand, and women and children who are the supply. I

recently completed a report for the TIP Office, U.S. Department of State on the demand side of sex trafficking that focuses on the men who purchase sex acts. Typically, when prostitution and sex trafficking are discussed, the focus is on the women. The men who purchase the sex acts are faceless and nameless. We need to shine more light on these men, their behavior, and their choice and decision making to purchase sex acts. Research on men who purchase sex acts has found that many of the assumptions we make about them are myths. Seldom are the men lonely or have sexually unsatisfying relationships. In fact, men who purchase sex acts are more likely to have more sexual partners than those who do not purchase sex acts. They often report that they are satisfied with their wives or partners. They say that they are searching for more – sex acts that their wives will not do or excitement that comes with the hunt for a woman they can buy for a short time. They are seeking sex without relationship responsibilities. A significant number of men say that the sex and interaction with the prostitute were unrewarding and they did not get what they were seeking; yet they compulsively repeat the act of buying sex. Researchers conclude that men are purchasing sex acts to meet emotional needs, not physical needs Men who purchase sex acts do not respect women, nor do they want to respect women. They are seeking control and sex in contexts in which they are not required to be polite or nice, and where they can humiliate, degrade, and hurt the woman or child, if they want.

Medical Records JDI

Medical Records Misc Addendum

2AC – AT: T Substantial

1. We meet - even if medical records haven't always made up a huge portion of surveillance, the shift to electronic records has vastly increased their dissemination and ability to be surveilled

Zheng et. al 14

(Hongzhang, Holly Gaff, Gary Smith, and Sylvain DeLisle, NCIB, "Epidemic Surveillance Using an Electronic Medical Record: An Empiric Approach to Performance Improvement," 2014, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4090236/) /jdi-mm

Electronic data offer the opportunity for more timely and complete gathering of health information compared to what has historically been achieved through manual, paper-based reporting [8]. The increasingly rapid deployment of electronic medical records (EMR) [9] **broadens the array of data that could be recruited for surveillance purposes** [10], [11]. EMR-based surveillance could improve our response to a serious outbreak of ARI not only by allowing earlier recognition, but also by offering an efficient conduit for the information necessary to manage actual patients and to keep abreast of the evolving epidemic [12]–[14]. At present, however, the tantalizing potential of EMR-based surveillance remains in the making [15]–[18]. To gain insight on the conduct of surveillance in an EMR environment, we previously evaluated how EMR entries should be assembled to discover individuals with ARI [19]. We found that computerized free-text analyses aimed at uncovering ARI symptoms documented in outpatient clinical notes could complement diagnostic codes and other structured data to improve case detection. In this report, we asked if those EMR-enabled gains in case-detection could accelerate the discovery of ARI outbreaks. Using software to reconstitute a surveillance system operating prospectively on historical data sets, we compared alternative case-detection approaches for their ability to reduce the delay in detecting a modeled community outbreak of influenza. Our approach and results begin to chart how EMR-based information could be systematically organized to better serve public health surveillance.

2. And, counter-interpretation- the curtailment has to be substantial-

3. We meet our counter interpretation, drone courts are legal restrictions on the targeted killing activities of the president

Plan meets substantial curtailment- eliminates surveillance provisions in 1AC

Association of State and Territorial Health Care Officials, No Date

(Association of State and Territorial Health Care Officials, "Comparison of FERPA and HIPAA Privacy Rule for Accessing Student Health Data," http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Public-Health-and-Schools-Toolkit/Comparison-of-FERPA-and-HIPAA-Privacy-Rule/) /jdi-mm

HIPAA In general, a state law or regulation that conflicts with HIPAA and the Privacy Rule is preempted by the federal law. The Privacy Rule contains exceptions that allow differing state requirements to control if the state law: (1) relates to privacy of individually identifiable health information and provides greater protections or rights than the Privacy Rule; (2) requires the reporting of disease, injury, child abuse, birth, or death, and for public health surveillance, investigation, or intervention; or (3) requires certain reporting by health plans, such as for management or financial audits or evaluations. States can also request a determination that a conflicting state law will not be preempted by HIPAA if the state can demonstrate one of the conditions listed in the rule, including, but not limited to, that the conflicting provision serves a compelling public health, safety, or welfare interest, and, if the conflicting provision relates to a privacy right, that the intrusion into privacy is warranted given the public interest being served.

4. Prefer our interpretation

a. Education - having substantial modify "surveillance" means that only the NSA aff is topical, destroys aff innovation and potential for small aff ground, skirts most interesting lit bases, and dis-incentivizes research

b. Predictability— medical surveillance is the crux of the privacy debate, and there are links to enough to any of the topic DA's while maintaining aff flexibility

5. Prefer reasonability over competing interpretations- competing interpretations yields shallow standard debates- if the aff doesn't make debate impossible than you shouldn't vote against us

2AC – AT: Biosurveillance good

Biosurveillance shouldn't be the justification to erode privacy issues- privacy critical to resolving any bioterror attack- no turns

Hodge et al 03

(James, is an Assistant Public Health Professor, Johns Hopkins Bloomberg School of Public Health; Adjunct Professor of Law, Georgetown University Law Center; and Executive Director, Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities. Erin Fuse Brown is a J.D./M.P.H. candidate at Georgetown University Law Center and the Johns Hopkins Bloomberg School of Public Health, and a research assistant for the Center for Law and the Public's Health. Jessica P. O'Connell is a J.D./M.P.H. candidate at Georgetown University Law Center and the Johns Hopkins Bloomberg School of Public Health, and a research assistant for the Center for Law and the Public's Health, "The HIPAA Privacy Rule and Bioterrorism Planning, Prevention, and Response," 2003) //jdi-mm

While individual privacy interests should not trump societal needs for health data sharing during a bioterrorism event, **they cannot simply be dismissed. Protecting individual privacy and communal health and safety are synergistic. Maintaining some standard of privacy of identifiable health data even during a bioterrorism event may be essential to accomplishing public health and law enforcement objectives.** People will not tolerate objectionable privacy abuses by government or the private sector. Failing to respect the confidentiality of a person's health information leads individuals to avoid, or limit their participation in, public health programs, criminal investigations, research, and even clinical care.(3) Large-scale avoidance of these services or activities during a bioterrorism event would be **disastrous**. Conversely, **everyone benefits from governmental and societal efforts to control the spread of disease or other conditions resulting from a bioterrorism event.** Individuals alone cannot ensure their safety. They need to cooperate with public health and other authorities to protect their own and others' health and welfare. People must be willing to confidentially share their health data for public health or law enforcement purposes during a bioterrorism event.

2AC – AT: Informed Consent CP

Informed consent won't solve- people have no desire to share their information

National Research Council 08

(National Research Council, Committee on Technical and Privacy Dimensions of Information for Terrorism Prevention and Other National Goals Committee on Law and Justice and Committee on National Statistics Division on Behavioral and Social Sciences and Education Computer Science and Telecommunications Board Division on Engineering and Physical Sciences, Library of Congress Cataloging-in-Publication Data, "Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Assessment," 2008, https://epic.org/misc/nrc_rept_100708.pdf) //jdi-mm

The implications of these findings for public support of databases designed to monitor public health threats are threefold. First, **concerns about privacy make respondents hesitant about any online health database system.** Second, respondents expect to exert no small degree of control over how their medical information is used and to whom it is released. Third, when respondents perceive personal benefits, they are more willing to consider online storage and sharing of information, but they do not appear to be motivated to share information by broader concerns about social well-being or by any sense of civic duty. Thus, to the extent that members of the public regard disease outbreaks or bioterrorist attacks as remote possibilities that will probably not affect them directly, they are unlikely to wish to share medical information to help track such occurrences.

Informed Consent won't solve, efforts are autonomous

Sandip **Patel**, Feb 11 **2014** [Sandip Patel, MD, is an expert on cancer immunotherapy and early phase clinical trials involving immunotherapy across all types of cancer, "The Limits of Informed Consent", Feb 11 2014, https://scholarblogs.emory.edu/philosophy316/2014/02/11/the-limits-of-informed-consent/]

The autonomy of the patient has triumphed, in legal terms at least. Doctors and health care personnel are legally required to disclose information about treatments to patients, and patients have the legal right to say "yes" or "no" to any treatment. But how practical is informed consent? The legal implementation of informed consent seems to be mostly a matter of filling out extra paperwork. So **that seems practical enough. On the other hand, actually practicing the moral values behind informed consent is much more difficult.** We value the freedom to choose on so many levels. We have a right to choose as consumers, as voters, as citizens and as competent people in general – so then why not as patients? Of course **patients should have a right to consider multiple opinions, assess alternative treatments, and then make a choice on their own. But in reality, a patient's autonomy is highly limited. A lot of the limiting factors are neither inconsequential nor easily avoidable.** In Barriers to informed consent, Lidz et al. outline how patient trust, physician expertise, acute illnesses, and complex medical systems make true informed consent difficult to achieve. Are we morally obligated to try to overcome these obstacles? Or can they be viewed as the practical, real-world limits to our abstract ideals of patient autonomy? This question isn't really about obstacles like access to healthcare or the complexity of the healthcare system. There's no question that we should be trying to increase access to care and streamlining the system. The interesting obstacles are those that deal with the doctor-patient relationship. Should we be trying to change this relationship on a moral basis? Let's consider patient trust and physician expertise – both important obstacles to informed consent. **Patients often**

don't really want to make a decision based on what they know about their medical condition. They instead trust the physician enough to make such decisions for them. I see this as a clear act of autonomy. It's a very rational choice to trust a trained professional's informed decision over one's own, likely less-informed decision. Ah but that's where physicians have to make sure patients are fully and objectively informed, right? Well even if a physician explains the relevant diagnosis and treatment to the patient in an easily comprehendible way, most patients will not know the essential mechanisms and pathology behind the physician's decision. They'll instead be given a simplified picture of a complex system – one that is inevitably going to be biased towards the physician's decision anyway. We can't blame physicians for such simplified, biased explanations any more than we can blame scientists for being biased towards one particular theory or paradigm. In the words of Galileo, "**it is not within the power of the practitioners of demonstrative sciences to change opinion at will**," (p 125). **They are compelled to believe what they believe by the power of reason.**

Informed consent wouldn't solve the trust advantage- causes manipulation of research data- studies prove

Loftus and Fries 08

(Elizabeth, Distinguished Professor at the University of California - Irvine. She holds faculty positions in three departments (Psychology & Social Behavior; Criminology, Law & Society; and Cognitive Sciences), and in the School of Law, and is also a Fellow of the Center for the Neurobiology of Learning and Memory. She received her Ph.D. in Psychology from Stanford University, James, Professor of Medicine at Stanford University School of Medicine, Mcgill Journal of Medicine, "The Potential Perils of Informed Consent," 2008, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2582663/) /jdi-mm

At the time we were immersed in this issue, we conducted an unpublished pilot study with patients at Stanford University Medical School who had been diagnosed with scleroderma and were enrolled in an experiment testing the efficacy of a particular drug cocktail (propanolol and alpha-methyldopa). The known side effects of the drugs did include upset stomach, tearfulness, dizziness, and headache. Before beginning the clinical trial involving the drug or placebo, patients received either a standard informed consent message or a "special message." Both messages informed them of possible side effects of the drug, and listed the known side effects, plus some implausible made-up ones that had not been associated with the drug (e.g., ringing in ears, burning sensation in feet). Some of our subjects received a "special message" as part of their "informed consent." It read as follows: "You should keep in mind one important point about these possible side effects. Research has shown that simply mentioning possible annoying symptoms causes some people to experience these symptoms – even when no drug is taken at all. This happens because mention of the symptoms causes some people to expect that they will experience them, and a person's expectations can then lead to the actual experience. Very few people will actually have these problems and you can help yourself guard against these sorts of discomfort by keeping yourself optimistic and stopping yourself from expecting that side effects are going to happen to you." Our pilot study revealed, not surprisingly, that subjects experienced side effects, some of which were physiologically unlikely. The suggestion in the informed consent led even those given a placebo to this unpleasant fate. A special message that explained the powerful role that expectations can have in producing unlikely symptoms reduced the reported side effects, and also decreased somewhat the use of medications to treat those unlikely symptoms. Our hope is that future researchers will do a full scale study that tests the impact of variations in informed consent rituals. While our special message may not be the best message to accomplish these hoped-for benefits, and we did not study whether it will work with different kinds of drugs or patients, our preliminary result should pique the interest of future researchers in considering both the positive and negative impacts of information that they ply their subjects and patients with. One size is not likely to fit all. Flexibility in informed consent protocols might convey to patients and subjects their right to as little harm as possible.

Must prohibit all NSA authority to solve- only prior approval solves

TF '14 [Tech Freedom, April 1, 2014, TF, CDT, and 40 others tell Congress what real NSA reform should look like, http://techfreedom.org/post/81391689035/tf-cdt-and-40-others-tell-congress-what-real-nsa]

The White House has expressed support for reining in the NSA's bulk collection of Americans' phone records, but with multiple bills in Congress it's uncertain which specific reforms will be included in the debate moving forward. To ensure whichever NSA reform bill advances is as strong as possible, TechFreedom and 41 other nonprofits and businesses have sent a joint letter to key policymakers outlining what any bill aiming to reform bulk surveillance should include.

Read the text below, and see the full letter for the list of signatories and recipients:

We the undersigned are writing to express support for ending the government's bulk collection of data about individuals. We strongly urge swift markup and passage of the USA FREEDOM Act (H.R.3361), which would enact appropriate surveillance reforms without sacrificing national security. This letter focuses on bulk collection, but overbroad NSA surveillance raises many more privacy and security issues that Congress and the Administration should address.

We appreciate that Congress and the Administration are converging on consensus that the National Security Agency's (NSA) bulk collection of telephone records must end. Among other things, legislation on bulk collection should:

Prohibit bulk collection for all types of data, not just phone records. Section 215 of the PATRIOT Act applies broadly to business records, and the Department of Justice has claimed authority for bulk collection of any records that reveal relationships between individuals. Legislation that focuses only on phone records may still allow for the bulk collection of, for example, Internet metadata, location information, financial records, library records, and numerous other records that may help "identify unknown relationships among individuals."

Prohibit bulk collection under Section 214 as well as Section 215 of the PATRIOT Act, **or under any other authority**. While the NSA's bulk collection of telephone records under the purported authority of Section 215 has received considerable attention, the NSA engaged in the bulk collection of Internet metadata using the Pen/Trap authority under Section 214 until 2011. Legislation that focuses solely on Section 215 would still fail to prohibit the bulk collection of phone and Internet metadata using Section 214, the National Security Letter (NSL) statutes, or another authority.

Require prior court approval for each record request. Under current law, the government must obtain approval from the FISA court before it can force private entities to turn over records (in bulk or otherwise) under Sections 215 and 214 of the PATRIOT Act. In addition, President Obama, in his January 17th policy announcement, established that a judicial finding is required before the government can query the phone records that the NSA collected in bulk. Congress should leave this key safeguard in place. If there is concern that the FISA Court would move too slowly to authorize domestic surveillance beforehand, then **the solution should be to provide the FISA Court with sufficient resources**.

Impacts

Drug-Resistant Diseases

Drug-resistant diseases rising now—will cause an unstoppable epidemic

Sample 13 (Joseph, [Ian Sample is science editor of the Guardian. He has a PhD in biomedical materials from Queen Mary's, University of London], *The Guardian*, 1/23/13, http://www.theguardian.com/society/2013/jan/23/antibiotic-resistant-diseases-apocalyptic-threat)

Britain's most senior medical adviser has warned MPs that the **rise in drug-resistant diseases could trigger a national emergency comparable to a catastrophic terrorist attack, pandemic flu or major coastal flooding**. Dame Sally Davies, the chief medical officer, said the threat from infections that are resistant to frontline antibiotics was so serious that the issue should be added to the government's national risk register of civil emergencies. She described what she called an "**apocalyptic scenario**" where people going for simple operations in 20 years' time die of routine infections "because we have run out of antibiotics". The register was established in 2008 to advise the public and businesses on national emergencies that Britain could face in the next five years. The highest priority risks on the latest register include a deadly flu outbreak, catastrophic terrorist attacks, and major flooding on the scale of 1953, the last occasion on which a national emergency was declared in the UK. Speaking to MPs on the Commons science and technology committee, Davies said she would ask the Cabinet Office to add antibiotic resistance to the national risk register in the light of an annual report on infectious disease she will publish in March. Davies declined to elaborate on the report, but said its publication would coincide with a government strategy to promote more responsible use of antibiotics among doctors and the clinical professions. "We need to get our act together in this country," she told the committee. She told the Guardian: ""**There are few public health issues of potentially greater importance for society than antibiotic resistance**. It means we are at increasing risk of developing infections that cannot be treated – but resistance can be managed. Advertisement "That is why we will be publishing a new cross-government strategy and action plan to tackle this issue in early spring." The issue of drug resistance is as old as antibiotics themselves, and arises when drugs knock out susceptible infections, leaving hardier, resilient strains behind. The survivors then multiply, and over time can become unstoppable with frontline medicines. Some of the best known are so-called hospital superbugs such as MRSA that are at the root of outbreaks among patients. "In the past, most people haven't worried because we've always had new antibiotics to turn to," said Alan Johnson, consultant clinical scientist at theHealth Protection Agency. "What has changed is that the development pipeline is running dry. **We don't have new antibiotics that we can rely on** in the immediate future or in the longer term." Changes in modern medicine have exacerbated the problem by making patients more susceptible to infections. For example, cancer treatments weaken the immune system, and the use of catheters increases the chances of bugs entering the bloodstream. "We are becoming increasingly reliant on antibiotics in a whole range of areas of medicine. If we don't have new antibiotics to deal with the problems of resistance we see, we are going to be in serious trouble," Johnson added. The supply of new antibiotics has dried up for several reasons, but a major one is that drugs companies see greater profits in medicines that treat chronic conditions, such as heart disease, which patients must take for years or even decades. "There is a broken market model for making new antibiotics," Davies told the MPs. Davies has met senior officials at the World Health Organisation and her counterparts in other countries to develop a strategy to tackle antibiotic resistance globally. Drug resistance is emerging in diseases across the board. Davies said 80% of gonorrhea was now resistant to the frontline antibiotic tetracycline, and infections were rising in young and middle-aged people. Multi-drug resistant TB was also a major threat, she said. Another worrying trend is the rise in infections that are resistant to powerful antibiotics called carbapenems, which doctors rely on to tackle the most serious infections. Resistant bugs carry a gene variant that allows them to destroy the drug. What concerns some scientists is that **the gene variant can spread freely between different kinds of bacteria,** said Johnson.

A drug-resistant pandemic will destroy society and cause extinction

Scientific American 14 (Dina Maron, [associate editor for health and medicine], *Scientific American*, 4/30/14, http://www.scientificamerican.com/article/antibiotic-resistance-is-now-rife-across-the-globe/)

A first-ever World Health Organization assessment of the growing problem calls for rapid changes to avoid the misery and deaths of a potential "post-antibiotic era" Dangerous **antibiotic-resistant bacteria and other pathogens have now emerged in every part of the world and threaten to roll back a century of medical advances.** That's the message from the World Health Organization in its first global report on this growing problem, which draws on drug-resistance data in 114 countries. "A post antibiotic-era—in which **common infections and minor injuries can kill**—far from being an apocalyptic fantasy, is instead a **very real** possibility **for the 21st century**," wrote Keiji Fukuda, WHO's assistant director general for Health Security, in an introduction to the report. The crisis is the fruit of several decades of overreliance on the drugs and careless prescribing practices as well as routine use of the medicines in the rearing of livestock, the report noted. Antibiotic resistance is putting patients in peril in both developing and developed countries, as bacteria responsible for an array of dangerous infections evolve resistance to the drugs that once vanquished them. Gonorrhea, once well treated by antibiotics, is once again a major public health threat due to the emergence of new, resistant strains. Drugs that were once a last resort treatment for the sexually transmitted disease—which can lead to infertility, blindness and increased odds of HIV transmission if left untreated—are now the first-line treatment and are sometimes ineffective among patients in countries such as the U.K., Canada, Australia, France, Japan, Norway, South Africa, Slovenia and Sweden. Drugs to treat Klebsiella pneumoniae—a common intestinal bacteria that can cause life-threatening infections in intensive care unit patients and newborns—no longer work in more than half of patients in some countries. And fluoroquinolones, drugs used to treat urinary tract infections, are also ineffective in more than half of sufferers in many parts of the world. Efforts to limit the spread of multidrug-resistant tuberculosis, malaria and HIV are also all under threat due to increasing bacterial resistance. Although the development of resistance is to be expected over time, overuse of the drugs has accelerated the process by supplying additional selective pressure, noted the report, which was authored by an extensive team of researchers with WHO. And there are few drugs to replace the ones that are now ineffective: The last entirely new class of antibacterial drugs was discovered 27 years ago, according to the report. WHO warns that **the situation could have sweeping effects on global medicine, economics and societies unless global actions are taken swiftly.** A dearth of effective antibiotics will mean that **infected patients will need more extensive care, require longer hospital stays and die in greater numbers**. To tackle the problem, the report calls for global, coordinated actions on the scale of those that nations are taking to mitigate and adapt to climate change.

Impact UQ

Drug-resistance exists NOW—death tolls are massive and will just keep getting worse

McKenna 14 (Maryn McKenna, [Maryn McKenna is a journalist for national magazines and a Senior Fellow of the Schuster Institute at Brandeis University. She is the author of SUPERBUG and BEATING BACK THE DEVIL, and is writing a book about food for National Geographic.], *Wired*, "The Coming Cost of Superbugs: 10 Million Deaths per Year."

If you weren't taking antibiotic resistance seriously before, now would be a good time to start. A project commissioned by the British government has released estimates of the near-future global toll of antibiotic resistance that are jaw-dropping in their seriousness and scale: **10 million deaths per year**, more than cancer, **and at least $100 trillion in sacrificed gross national product.** The project, called the Review on Antimicrobial Resistance, was commissioned by UK Prime Minister David Cameron last summer, a follow-on to the dire report issued in 2013 by the UK's Chief Medical Officer, which ranked resistance as serious a threat to society as terrorism. To chair the effort, Cameron recruited Jim O'Neill, previously the head of economic research for Goldman Sachs (and the person credited with coining the acronym BRICs — Brazil, Russia, India, China — as part of forecasting that global economic power would shift south and east). The Review is envisioned as a two-year project that will publish periodically, ending in July 2016 with recommendations for actions to blunt the threat that antibiotic resistance poses worldwide. (The project is supported by the nonprofit Wellcome Trust.) Their first

paper, released late last week, is based on work by two consulting teams, from RAND and KPMG, examining just the effect of resistance in six pathogens: three commonly resistant bacterial infections, Klebsiella pneumoniae, E. coli and MRSA; and three globally important diseases: HIV, TB and malaria. It doesn't examine the effect of resistance in other pathogens; and it doesn't attempt to estimate either healthcare costs or secondary social costs (more on that below). So it is a conservative effort, several different ways. And yet, its baseline estimates of the size of the global problem are breathtaking. Among them: **Antibiotic resistance currently accounts for an estimated 50,000 deaths in the US and Europe**, which have surveillance to support those numbers. (The CDC puts the number for the US at 23,000.) But the project estimates that the actual current death toll is **700,000 worldwide**. If antibiotic resistance were allowed to grow unchecked — that is, if there were no successful efforts to curb it or no new drugs to combat it (the latter is very plausible) — the number of deaths per year would balloon to 10 million by 2050. For comparison, that is more than the 8.2 million per year who currently die of cancer and 1.5 million who die of diabetes, combined. Those deaths would cost the world up to 3.5 percent of its total gross domestic product, or up to $100 trillion by 2050. Moreover, the toll of deaths — and the cost of them — would fall unevenly across the world, with the global south and Asia suffering to a greater extent and losing greater amounts of income. In one example, they estimate that 25 percent of all deaths in Nigeria could be caused by resistance if trends continue unchecked. Notably, the project doesn't attempt to estimate what they call the secondary costs of resistance: that is, the **cost of having to forego routine medical procedures such as cancer care, joint and organ transplants and surgeries**, because without antibiotics, the danger of infection would be too great. (They estimate that C-sections alone contribute 2 percent to annual GDP.) It also doesn't try to estimate what the healthcare costs would be of caring for those additional resistance illnesses and deaths.

Internal

Trust Key

Lack of patient trust would make it impossible to treat diseases

AAOS 10 (S. Terry Canale, MD, *American Academy of Orthopedic Surgeons,* "Patient-Physician Trust," July 2010, http://www.aaos.org/news/aaosnow/jul10/youraaos1.asp)

The importance of trust Why is trust so important in the medical field? Because of one simple concept—"adherence." I am not going to let anyone put me to sleep—much less operate on me—if I don't trust the situation or the person performing the surgery. I'm not going to take my medication if I don't trust the person prescribing it. Even if you don't believe in trust, believe that adherence is vitally important for the well-being of our patients. Today in the United States, one third of all new prescriptions are not filled, one third are only partially taken, and one third are filled and taken as prescribed. Some of that may be due to economics, when a physician says "Take this," the trusting patient will speak up, ask for help, and bend over backwards to do what needs to be done. So how do we as physicians maintain the trust of our patients? By being honest with others and honest with ourselves. Rigorous honesty is the key to trust. Recently, medicine—orthopaedics in particular—has come under scrutiny from the Department of Justice. Device companies were hit hard. We should learn from this—transparency is extremely important and there is nothing wrong with being a consultant as long as the arrangement is legitimate and transparent, one you'd be proud to have featured on the front page of The Wall Street Journal.

New Drugs Key

Development and adoption of new drugs is key to halt the pandemic

Chambers 15 (Henry F, [Dr. Chambers clinical and research interests are antimicrobial drug resistance, staphylococcal infections, experimental therapeutics, and epidemiology and pathogenesis of disease caused by Staphylococcus aureus. He is editor for the Sanford Guide to Antimicrobial Therapy and he has over 200 original publications and textbook chapters in the areas of drug resistance, endocarditis, bacterial infections, and staphylococcal diseases.], *Healio*, "Drug Development Critical for Combating Drug Resistance," June 2015, http://www.healio.com/infectious-disease/vaccine-preventable-diseases/news/print/infectious-disease-news/%7Bec88f3ba-ee8d-4303-836b-ad0edf184133%7D/drug-development-critical-to-combating-antibiotic-resistance)

Since they were first discovered in 1928, antibiotics have saved countless lives from deadly infections. Continued antibiotic misuse, however, has contributed to antimicrobial resistance, a significant threat to human health that sickens more than 2 million people and kills at least 23,000 annually in the United States, according to the CDC. he global view is just as bleak. WHO has documented resistance worldwide to carbapenem antibiotics — the therapy of last resort in the treatment ofKlebsiella pneumoniae — and widespread resistance to fluoroquinolones. In some countries, fluoroquinolones are ineffective in more than half of treated patients. "The problem of **antibiotic resistance continues to grow**, and our inability to meet the challenge, in particular with antibiotics, is even greater than it was 5 years ago," Helen W. Boucher, MD, director of the Infectious Diseases Fellowship Program at Tufts Medical Center and associate professor at Tufts University School of Medicine, told Infectious Disease News. Return to a pre-antibiotic era What is more, there are few prospects in the antibiotic research and development pipeline, which could mean a return to the pre-antibiotic era, when simple infections were a death sentence. "We're coming dangerously close to a time when we have to tell our patients that we can't offer therapies that we really think they deserve, such as organ transplants, chemotherapy for cancer or neonatal intensive care," said Boucher, who also is a member of the Infectious Diseases Society of America's (IDSA) Antimicrobial Resistance Committee. "This is incredibly scary. We don't want to get to another pre-antibiotic era." **Combating antibiotic resistance is possible, however, with a multipronged approach that includes infection prevention, antibiotic stewardship and new drug development**. To encourage development of antibacterial agents, in 2010 the IDSA established its 10 x '20 initiative, a global call to develop 10 new antibiotics by 2020. This initiative is primarily focused on developing systemically administered antibiotics that target the ESKAPE pathogens:Enterococcus faecium, Staphylococcus aureus, Klebsiella pneumoniae,Acinetobacter baumanii, Pseudomonas aeruginosa, and Enterobacter species. "The 10 x '20 initiative is really just a rallying point to identify problems to get stakeholders thinking about what the issue is," Stephen B. Calderwood, MD,chief of the division of infectious diseases at Massachusetts General Hospital and president of the IDSA, said in an interview. At the midpoint of the initiative, Infectious Disease News spoke with experts about the success of the initiative so far, the federal response to antibiotic resistance and the challenges that remain in creating a more robust antibiotic pipeline.

Metadata Georgia

Congress CP

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The United States Congress should <insert plan's mandates> by enacting the Surveillance State Repeal Act.

The SSRA effectively curtails US domestic surveillance

Buttar 15 (Shahid, executive director @ Bill of Rights Defense Committee in its efforts to restore civil liberties, constitutional rights, and rule of law principles undermined by law enforcement and intelligence agencies within the United States, 4/18, "Can the Surveillance State Repeal Act Shift the Course on Spying?" http://www.occupy.com/article/can-surveillance-state-repeal-act-shift-course-spying)

This spring, Congress will consider whether to extend three provisions of the notoriously controversial PATRIOT Act set to expire in June. When it debates whether to allow mass surveillance, it will do so in the dark, with Members unaware of many crucial facts. How vast are government surveillance programs? Have they actually helped protect national security, or just the job security of the officials who have repeatedly lied to protect their powers and budgets? Is mass surveillance even constitutionally permissible in the first place, given our Founders' multiple attempts to restrain executive power run amok? Eager to reset the debate and anchor it in long overdue transparency, a bipartisan block of representatives have introduced a bill to **restore civil liberties, privacy, and freedom of thought**. The Surveillance State Repeal Act, HR 1466, would do this by repealing the twin pillars of the NSA dragnet: the PATRIOT Act (not only the three expiring provisions) and the 2008 FISA amendments. On multiple occasions, executive officials have lied under oath to congressional oversight committees about the scope of domestic surveillance. Yet the very same officials still appear in oversight hearings as if they maintained any credibility. It took whistleblowers resigning their careers to prove that senior government officials' blithe assurances to Congress were in fact self-serving lies. Some members of Congress paid attention: the authors of the PATRIOT Act moved to curtail their own legislative opus, and have encouraged their colleagues not to reauthorize the expiring provisions unless they are first curtailed. HR 1466 (the SSRA) **represents a profound challenge** by members of Congress from across the political spectrum fed up with the national security establishment and its continuing assault on our Constitution. By repealing the twin pillars of the surveillance dragnet, the SSRA would essentially shift the burden of proof, forcing intelligence agencies like the NSA and FBI to justify the expansion of their powers from a constitutional baseline, rather then the illegitimate status quo. Most policymakers forget the 9/11 commission's most crucial finding: the intelligence community's failures that enabled the 9/11 attacks were not failures of limited data collection, but rather failures of data sharing and analysis. Over the last 15 years, Congress has allowed the agencies to expand their collection capacities, solving an imaginary problem while creating a host of real threats to U.S. national security far worse than any act of rogue violence: the specter of state omniscience, immune from oversight and accountability, and thus vulnerable to politicization. This was among the fears of which President Eisenhower warned us in his last speech as President. Meanwhile, the SSRA would preserve what the PATRIOT Act's authors have said they meant to authorize: targeted investigations of particular people suspected by authorities to present potential threats. HR 1466 would also advance transparency, both by protecting conscientious whistleblowers from the corrupt retaliation of agencies and careerists, and by giving judges on the secret FISA court access to technical expertise they have been denied. Finally, the bill would directly address disturbing government duplicity, prohibiting agencies from hacking encryption hardware and software, and from using an executive order authorizing foreign surveillance as a basis to monitor Americans. Mass surveillance has never been popular in America. Hundreds of cities and multiple states have raised their voices seeking a restoration of constitutional limits on an increasingly imperial federal executive. Nor is mass surveillance constitutional. A 1979 case contorted by agency lawyers into providing a legal basis for surveillance stands for nothing of the sort: Smith v Maryland was a case addressing targeted surveillance of a particular person, based on reasonable suspicion, limited to a particular time. Intelligence agencies today monitor every American, without any basis for suspicion, all the time. Members of Congress who remember their oaths of office should support the

SSRA to force a **long overdue transparent debate**. And Americans who value privacy, checks and balances, or freedom of thought should take a moment to educate Members of Congress who might not.

SSRA Solves – 2nc

SSRA solves – transparency and strict limits on surveillance

Eddington 15 (Patrick, policy analyst in Civil Liberties and Homeland Security at the CATO Institute, "Legislators Move against Mass Surveillance," 3/24, http://www.cato.org/publications/commentary/legislate-move-against-mass-surveillance)

Nearly two years after Edward Snowden's sensational revelations about the scope of the National Security Agency's mass surveillance programs targeting the communications of Americans, Congress has yet to pass legislation to end those programs. Two House lawmakers have just offered a bill to do just that. Reps. Thomas Massie (R-Ky.) and Rep. Mark Pocan (D-Wis.) are the House sponsors of the Surveillance State Repeal Act, a bill which **would not only end the mass surveillance laws currently on the books** (the PATRIOT Act and the FISA Amendments Act), **but also prevent the federal government** from forcing tech companies to build NSA-exploitable flaws into smartphones, tablets, WiFi routers, and other devices. This so-called "back door" issue has become a major political controversy ever since FBI Director James Comey publicly criticized companies like Apple for building high-quality encryption into applications like iMessage. Privacy and security experts are in broad agreement that sound encryption is an essential privacy and online commerce tool, and the bill would prohibit the federal government from forcing companies to make products with defective encryption. The bill would **dramatically strengthen** whistleblower protections for federal intelligence agency employees and contractors. This portion of the bill was inspired by the searing experience of former NSA senior official Thomas Drake, who, a decade before Edward Snowden came on the scene, attempted to alert Congressional investigators and the Defense Department's own inspector general of waste, fraud and abuse. Despite complying with all laws and regulations for reporting such abuse, Drake was wrongfully prosecuted by the Justice Department. The bill would make this kind of retaliation a firing offence. **The SSRA would also improve congressional oversight** of surveillance activities by mandating Government Accountability Office compliance audits to ensure that previously collected data on Americans is destroyed unless an American is the subject of an ongoing federal investigation. The bill has the support of groups from across the political spectrum–from the libertarian-leaning FreedomWorks and Campaign for Liberty to progressive groups like CREDO Action, Demand Progress, and the Bill of Rights Defense Committee. In June 2014, portions of an earlier version of the SSRA were added as an amendment to the House version of the Fiscal Year 2015 Defense Department appropriations bill. The amendment, offered by Massie and Rep. Zoe Lofgren (D-Calif.) A), included a prohibition on searching the stored communications of Americans under Sec. 702 of the FISA Amendments Act, as well as a prohibition on government-mandated "back doors" in tech products. That amendment passed by a bipartisan, veto-override majority of 293–123, a victory made possible in part because of the announcement by FreedomWorks that it was scoring the amendment vote as a "key vote YES." It was the first time that an electorally active interest group had weighed in on a vote over NSA mass surveillance and the threat it represents to basic Fourth Amendment protections. FreedomWorks' support for a full repeal of the mass surveillance apparatus in place for nearly 14 years is a major political development. In renewing the fight to reform America's surveillance practices, Massie and Pocan have the clock on their side. Three existing provisions of the PATRIOT Act are due to expire on June 1st, and executive branch officials are once again fear mongering about the prospect, especially since Congress will adjourn on May 22 for a long Memorial Day recess that will run beyond the provisions' expiration date. Civil liberties advocates argue that all three provisions should be allowed to expire, especially Sec. 215 of the PATRIOT Act, which was the source of the metadata mass surveillance program exposed by Snowden. The pressure of that looming expiration date provides an opening for Massie, Pocan and other surveillance reformers **to force real changes** in surveillance law through Congress. In making the attempt, they will not only have to deal with reluctant colleagues in both chambers, but a U.S. intelligence community and federal law enforcement leadership that is even now still seeking to weaken basic internet security standards in the name of "national security". One of the most important public battles over the issue of security versus surveillance is about to begin.

SSRA solves – imposes MEANINGFUL limits on government surveillance

Wheeler 4/21/15 (Marcy, Columnist @ Salon + EmptyWheel.net, "The government's bogus PATRIOT games: Why latest spying "reforms" won't do much," http://www.salon.com/2015/04/21/the_governments_bogus_patriot_games_why_latest_spying_reforms_wont_do_much/)

Congress has just a month and a half left to decide what to do about a bunch of laws governing surveillance. Most of the attention on this time crunch has focused on one provision of the PATRIOT Act scheduled to expire on June 1: Section 215, which authorizes the NSA's domestic phone dragnet, which

aspires to collect all Americans' phone records. But Section 215 also authorizes a lot of other collection. Along with Section 215, the Lone Wolf provision (which for years the government claimed it had never used) and the Roving Wiretap provision (which the government secretly used in 2007 to conduct expansive surveillance) are also due to sunset. Congress will decide whether to reauthorize those provisions, permit them to lapse, or rush through a watered down version of USA Freedom Act (USAF), the bill reforming surveillance that failed to pass the Senate last year. As an alternative, Congressmen Tom Massie and Mark Pocan are offering the Surveillance State Repeal Act, which **would impose more meaningful limits on surveillance**, but which thus far has attracted little support. But the PATRIOT Act is not the only surveillance bill in play in the next few months. Even as Congress prepares to consider USAF, it will debate various versions of a cyber-information sharing bill. While all versions make it easier for government and private industry to share information related to cyber-attacks and require the government itself to disseminate information internally immediately, such sharing would do little to prevent most cyber-attacks, and are in no way the most important thing the government could do to rein in cyber-attacks. Plus, all these bills permit information collected in the name of cybersecurity to be used for a wide variety of other uses, including investigating a broad range of felonies. Because of the mismatch between the purported goal of preventing cyber-attacks and the lack of protections for Americans' privacy, Senator Ron Wyden called the Senate Intelligence Committee version of cyber-information sharing a surveillance bill earlier this month. "Any information-sharing legislation that lacks adequate privacy protections is not simply a cybersecurity bill, but a surveillance bill by another name." But like USAF, these cyber-information sharing bills would give corporations immunity to share data that would otherwise be protected from disclosure to the government, with varying limits on how much personal information may be shared along with evidence of cyber-threats. USAF — at least in its last incarnations — offered immunity (and compensation) even for information sharing that did not involve good faith compliance with orders. In other words, amid a general discussion of reforming surveillance, Congress is rushing to find new ways to give corporations less reason to challenge government information requests. That's important because – for much of this sharing – the government claims only the providers have standing to challenge an order in court. Each time the government grants corporations immunity for information sharing, then, it makes it far less likely they'll resist requests to share their customers' information. And the rush to give corporations expanded immunity comes at a time when the government has had problems getting what it wants. Take the phone dragnet, for example. While the court order to one subsidiary of Verizon, revealed by Edward Snowden almost two years ago, required the phone company to turn over all its phone records, for some reason the government has been unable to get all records of domestic cell calls in this manner, perhaps because Verizon doesn't keep what the government wants as business records (although parts of the government, including NSA, do access plenty of cell call data via other means). Immunity and compensation will give the government a way to expand the number of records potentially included in such surveillance. And at least in other programs where the telecoms keep records and perform analysis for the government — such as the Hemisphere program in which AT&T uses call records and location data to identify suspects for the DEA and other agencies — the companies access additional domestic data that would be unavailable for the government, which might happen under USAF as well. Or take Internet records. Just 5 of roughly 180 Section 215 orders last year authorized the phone dragnet. The majority of Section 215 orders collected Internet data, probably including data showing Internet traffic flows and URL searches and complete profiles of what people do online (it's unclear whether these orders get targeted at individuals or larger groups or entire companies). Until 2009, the FBI got this data using National Security Letters, orders that required no judicial review and imposed no limits on what the FBI could do with the data. Now, the FISA Court not only reviews the applications, but also orders minimization procedures that impose some limits on what the FBI can do with the extraneous data from this collection (and given that it has imposed such procedures, there is extraneous data collected), meaning Section 215 — reviled for its use with the phone dragnet — actually provides Americans more protections than what the FBI had used to obtain this Internet data before. Given FBI's recent claims that it relies on Section 215 for its cyber-security investigations, there's a good chance some of this production could be obtained without court review if the cyber sharing bills pass. If so, then FBI could go back to keeping it all, and even expand its dissemination within the government. That's not to say these bills offer Americans no benefit. The cyber-sharing bills might marginally improve protection against hackers. USAF would stop the government from holding onto a significant portion of all Americans' call records for five years, a really important benefit. Plus — in some incarnations though not in others — USAF would impose some limits on the volume of information the government can collect using Section 215, might expand transparency, and would take initial steps toward making the FISA Court more functional. But the bills, likely, also involve shifting surveillance under new shells, to get more information, to undergo less court oversight, to share more data more broadly. This is the Intelligence Community's idea of "reform:" new ways to achieve the same results that have never proven to fulfill their stated purpose. Nowhere in this reform process, for example, has Congress asked for a public accounting of the programs, not even with Section 215, which has never prevented a terrorist attack. Given that the cybersharing bills would do so little to prevent most hacks, it would be a good time to demand some evidence that the sharing will accomplish the goal ostensibly intended. Meanwhile, by far the bulk of NSA's surveillance — that collected under Executive Order 12333, which likely collects a great deal of Americans' Internet traffic and much of their international calls — continues with no court oversight. And the FBI can continue to read the contents of Americans' communications collected under Section 702 using back door searches without a warrant or even a reason to suspect someone of wrong-doing. The point is, the discussion of urgent efforts to reform surveillance — **short of passing something like the Surveillance State Repeal Act** — would do little to actually rein in surveillance. Not only is the Intelligence Community likely just shifting programs to hide them under new names. But no one is asking whether any of this spying does what it is supposed to do.

SSRA solves – effectively repeals governmental surveillance programs

Massie 5/1/15 (Thomas, US House of Reps - KY + MA in Mechanical Engineering @ MIT, "Repeal the Patriot Act," http://www.maysville-online.com/news/opinion/editorial/repeal-the-patriot-act/article_5430bbd2-8177-54f1-a43b-43e598295076.html)

Congress and the American people now know, thanks to whistleblower leaks, that federal agencies like the National Security Agency (NSA) regularly perform mass surveillance on Americans without bothering to obtain a warrant. As constitutional law scholar Randy Barnett wrote in the Wall Street Journal, "the National Security Agency has seized from private companies voluminous data on the phone and Internet usage of all U.S. citizens. . . . this dangerously violates the most fundamental principles of our republican form of government." He concludes that, "[s]uch indiscriminate data seizures are the epitome of 'unreasonable,' akin to the 'general warrants' issued by the Crown to authorize searches of Colonial Americans." One of the tools that enables this warrantless, mass harvesting of call information and data records—Section 215 of the Patriot Act—is one of the three provisions set to expire on June 1st of this year. This looming deadline presents the best opportunity we have in the foreseeable future to stop lawless surveillance. That is why Congressman Mark Pocan and I recently introduced the bipartisan "Surveillance State Repeal Act" (H.R. 1466). H.R. 1466

would repeal the entire Patriot Act, as well as its companion, the FISA Amendments Act of 2008. I believe **the best option is to repeal both of these bills and start over.** If congressmen believe that individual provisions of either the Patriot Act or the FISA Amendments Act are critical to our national security, then we should bring each separate provision to the floor, allow full debate, and schedule an up-or-down-vote on each provision. This process would also give the American people an opportunity to fully understand exactly what each section of each bill would supposedly accomplish. Some claim it's too late to roll back these surveillance programs. I disagree. **We can win this fight**, as recent legislative victories indicate. For example, in 2013, Rep. Justin Amash led the charge against Section 215 of the Patriot Act by offering an amendment to the Department of Defense Appropriations Act. His amendment would have ended the indiscriminate collection of Americans' telephone records. He came very close to victory. The Amash amendment lost by a mere handful of votes, and I believe he would have won if misinformation about his amendment had not been published on the eve of the vote. Rep. Amash's amendment set the groundwork for a subsequent legislative victory. Last year, my amendment to the Department of Defense Appropriations bill, co-sponsored with Rep. Zoe Lofgren and many others, passed the House of Representatives by an overwhelming bipartisan, veto-proof majority. The amendment, which passed by a vote of 293 to 123, would have banned warrantless surveillance currently performed via the authority of Section 702 of the Foreign Intelligence Surveillance Act (FISA). Although my amendment did not specifically address Section 215 of the Patriot Act, it would have put an end to surveillance that is arguably worse than the collection of records allowed under Section 215 (as bad as that is). Section 702 allows the government warrantless access to actual content of Americans' communications, including emails and phone calls. Sadly, despite my legislative victory, congressional leadership refused to include the amendment language in the final version of last year's government spending bill. The votes on both the Amash and Massie amendments demonstrate that there is overwhelming support for ending mass surveillance, despite what the establishment in both Congress and our federal intelligence agencies claim. The Founders of this great nation fought and died to stop the kind of warrantless spying and searches that the Patriot Act and the FISA Amendments Act authorize. What happens between now and June 1st depends on the American people. It is imperative that every freedom-loving American demand an end to these unconstitutional programs. At the very least, the expiring provisions of the Patriot Act should not be renewed on June 1st. After that, the entire Patriot Act should be repealed so we can start over and establish law enforcement programs that respect our Constitution.

A2 CP Links More to Terror/Intel DA

SSRA still allows for targeted surveillance – it ends mass surveillance by requiring a warrant to intercept Americans' communications

Kibbe 15 (Matt, President and CEO of FreedomWorks, previously worked as Chief of Staff to U.S. Representative Dan Miller (R-FL), Senior Economist at the Republican National Committee, Director of Federal Budget Policy at the U.S. Chamber of Commerce, and Managing Editor of Market Process, 3/24, "Letter in Support of the Surveillance State Repeal Act" http://www.freedomworks.org/content/letter-support-surveillance-state-repeal-act)

The Surveillance State Repeal Act would repeal the misguided USA PATRIOT Act and the FISA Amendments Act of 2008. The PATRIOT Act, passed in the panicked aftermath of the tragic September 11th attacks, gives the federal government an unprecedented amount of power to monitor the private communications of U.S. citizens without a warrant. The FISA Amendments Act of 2008 expanded the wiretapping program to grant the government more power. Both laws clearly violate our 4th Amendment right against unreasonable searches. The Surveillance State Repeal Act would prohibit the government from collecting information on U.S. citizens obtained through private communications without a warrant. It would mandate that the Government Accountability Office (GAO) regularly monitor domestic surveillance programs for compliance with the law and issue an annual report. A section of the bill explicitly forbids the government from mandating that electronic manufacturers install "back door" spy software into their products. This is a legitimate concern due to a recently released security report finding government spying software on hard drives in personal computers in the United States. It's important to note that the Surveillance State Repeal Act **saves anti-terrorism tools that are useful** to law enforcement. It retains the ability for government surveillance capabilities against targeted individuals, regardless of the type of communications methods or devices being used. It would also protect intelligence collection practices involving foreign targets for the purpose of investigating weapons of mass destruction.

A2 Can't Solve Signal

Process matters—legislation is comparatively more effective at achieving social change than is court action

Stoddard 97 (Thomas, Fmr Prof of Law @ NYU, 72 N.Y.U.L. Rev. 967, November, lexis)

Many of my colleagues seeking social justice have deliberately avoided legislatures in recent decades, both because of the difficulty of making change there and because of the perception that politicians will not be receptive to their claims. They have turned by and large to the courts. While applauding the changes these lawyer-activists have helped to bring about, and while acknowledging the shortcomings and frustrations of legislative change, I submit that **those of us in the business of "culture-shifting" should upend our traditional preference for judicial activity and embrace the special advantages of legislative change**. E.M. Forster appended to the title page of his novel Howard's End the enigmatic aphorism: "Only connect ..." n46 It is an apt injunction to lawyers like me. If we lawyer-activists truly seek deep, lasting change, we have to "connect" with the public. We have to accord as much attention to public attitudes as we do to the formal rules that purport to guide or mold those attitudes. **That means thinking as concertedly about process as we do about substance. Process matters. How a new rule comes about may, in the end, be as important as what it says.** Except on the most difficult racial questions, those of urban school and housing segregation, the simple fact that Congress has acted is itself a major force for change. **It is seen as a legitimate action, probably in a sense that executive action or court decisions never can be**. Lyndon Johnson had an acute sense of the importance of this fact, evident in his explanation of why he insisted on a law rather than an executive order on fair housing: Most of my advisers, black and white, argued for abandoning the legislative struggle in favor of an Executive order....[NAACP lobbyist Clarence Mitchell] knew how difficult it would be, even with legislation, to induce the people in the heartlands and the suburbs, the cities and the countryside, to change their deep-seated sense of individualism in buying and selling their homes.... **Without the moral force of congressional approval behind us, the struggle for open housing would be lost before it had ever begun**."

Congress solves signals BETTER than the court – history proves

Orfield 95 (Gary, Prof of Education + Social Policy @ Graduate School of Education—Harvard, African Americans and the Living Constitution, p. 156-8)

Once Congress acts, it is difficult to repeal an important law, as long as it retains any significant support. The same inertia and the same process of multiple vetoes requiring extraordinary majorities that long block enactment of the policy later make it very difficult to repeal a policy that has been written into the U.S. Code. It is far more difficult to reverse a principle that is embedded in law by Congress than it is to change an order issued by a president or even to change a Supreme Court decision under some circumstances. A new majority on the Supreme Court has the full authority to reverse or distinguish away a previous policy by a simple majority vote; it is constrained only by its own sense of respect for precedent. Changing a policy in Congress, on the other hand, requires much more than a majority in favor-a policy change can be blocked by a hostile committee or subcommittee in either house, by the Rules Committee, by the floor leadership, by a filibuster, or by a hostile majority in either house. Congressional policy has been far more consistent than that of the White House or the courts on some major areas of civil rights policy. This does not mean, of course, that the congressional policies were consistently enforced, but only that they remained in place for possible enforcement by the courts and by more sympathetic future administrations. In twenty-two years of political conflict from 1968 to 1990, most of it dominated by conservative opponents of civil rights, none of the basic civil rights laws of the 1960s have been weakened by Congress in a major way-with the single exception of the busing issue-and there have been significant strengthening provisions enacted in voting rights, fair employment, and open housing laws, as well as affirmative action and minority set-aside programs. In striking contrast, the body supposedly more independent and free of political control, the Supreme Court, narrowed its interpretation of many of the basic provisions of civil rights law during this period, particularly in its decisions on voting rights, affirmative action, and the nondiscrimination in institutions receiving federal aid. In each of these cases, a well-established civil rights policy was seriously limited by judicial decisions, some of them representing rather sudden changes of interpretation. The conservative movement never got firm control of Congress on racial issues, in part because Congress is so well insulated from any dramatic change in representation. During the last forty years, with recessions, wars, scandals of all sorts, and huge landslide presidential victories for both liberal and conservative presidents, nothing has changed the partisan control of the House of Representatives. With very few exceptions, 90 to 95 percent of the incumbents running for reelection win, regardless of the changes in the larger political issues. It may well be that Congress, particularly the House, is actually more insulated from sharp political change than is the Supreme Court. **Congressional action** is extremely

important for civil rights. It **is consequential-, legitimate, and long-lasting**. **The fact that Congress has debated and decided an issue has an effect on public behavior**. In contrast to the bitter debates over the legality and appropriateness of action by the courts, apart from the substantive merit of those actions, **there is little doubt about the legitimacy of Congress passing a law**. When Congress has written a major new statute, that policy is likely to remain on the books for a long time.

A2 Can't Solve Certainty

Congress has many comparative advantages vis-à-vis the Supreme Court in protecting liberty
--legislation = more flexible

--Congress = greater access to information/fact finding

--remedies are general in nature = more conducive to social change

--more room to experiment with rights protections

McCormick 4 (Marcia, Visiting Assistant Professor of Law, Chicago-Kent College of Law, 37 Ind. L. Rev. 345, lexis)

The Constitution is designed to limit the powers of the government in order to promote the rights of individuals. Therefore, it must set a minimum standard for equality and liberty, upon which no government can encroach. It makes no sense in most cases to think that the Constitution describes the mechanism by which equality and liberty can be maximized on a national scale. n147 The values of national citizenship, liberty, and equality are best served by recognizing that the Constitution establishes the minimum protection necessary for individuals and then by allowing Congress to legislate in a wide variety of areas and to provide private rights of action for money damages against states through that legislation. Congress should be allowed to experiment with ways to promote equality, liberty, and the benefits of national citizenship to the full extent of its enumerated powers as constrained by the amendments other than the Fourteenth, which is not a constraint on the federal power. As a part of its power, Congress must be able to enact the most effective remedy to accomplish its goals. Legislation rather than judicial action promotes these goals best for a number of reasons. **First, legislation is more flexible**. One of the reasons the Court hesitates to acknowledge that some classes should get protection or that some rights warrant protection is that once it does so, it cannot easily go back on its decision. n148 Congress, on the other hand, is **free to repeal legislation** so long as the rights it grants are not required by the Constitution. Second, the very reasons why Congress is the appropriate body to make policy and the Court is not, support that Congress should be given its full authority. The process of legislative factfinding and investigation allows a wider variety of information and views to be considered. Courts, on the other hand, are limited to the facts presented by particular cases before them and are allowed access to only certain types of information. Moreover, the wide access Congress has to more types of information make it easier for Congress to discern a pattern of troubling activity and work through the possible causes or potential ramifications of that activity. Courts can only hear cases, which must be presented in an adversarial setting, which must be brought under an already recognized cause of action, and which are brought only when the parties have resources sufficient to warrant the time, money, and energy it costs to litigate and appeal. **Thus, courts simply cannot see trends the way Congress can**. n149 **Finally, Congress can engineer more social change because the remedies it can provide are general in nature not limited to a particular party from a particular case**. **Not only is legislation the appropriate vehicle for experimenting with ways to maximize equality and liberty, but the federal legislature is in the best position to do so**. First, as argued above, the Constitution values national citizenship, which suggests that maximum equality should be shared by all national citizens, which individual

states cannot guarantee. Additionally, the Fourteenth Amendment tells us that the states cannot be trusted to maximize equality and liberty even for their own citizens. Moreover, because Congress is focused on the entire country, it has a much clearer view than the states can have of patterns of troubling activity. Finally, the interest of the states are adequately protected by the composition of Congress. While there might be some concern that since senators are popularly elected, rather than elected by the state legislature, they do not represent the states as states, the fact that each state has equal power within the Senate decreases the possibility that a tyrannical minority could completely eviscerate the power of the states. n150 This is not an argument that the states have no role in enhancing liberty or equality of the people, and it is not an argument that Congress' power to legislate should be unbridled. The argument is, instead, that analysis of civil rights legislation should focus on whether the legislation maximizes individual equality and liberty. Both the state legislatures and the federal legislature should be given the power to experiment with ways to maximize that equality and liberty. Moreover, the Supreme Court retains a role by declaring the minimum protection the Constitution requires. The federal legislature can enact protections above that minimum, whereby its enactments become the minimum protection of individuals. Above that, the states would be allowed to protect individuals to an extent further than Congress and the Federal Constitution both. This conception of power to enact civil rights laws comports with institutional competencies of each branch and type of government and ensures a wide variety of experimentation. **Additionally, it allows the widest latitude to experiment in protecting groups like gays and lesbians, or rights, like the right to die,** that may not qualify for strict scrutiny under the constitutional analysis, but nonetheless warrant protection. n151

Court lacks necessary expertise and tools to solve problems compared to Congress

Sunstein 91 (Cass Sunstein, Prof of Law @ Univ. of Chicago, California Law Review, MAY, 1991, SYMPOSIUM: CIVIL RIGHTS LEGISLATION IN THE 1990s: Three Civil Rights Fallacies, lexis)

Despite innovative theories and practices, n57 adjudication remains an extremely poor system for achieving social reform. Courts are rarely expert in the area before them. Moreover, the focus on the litigated case hampers judges' efforts to understand the complex systemic effects of legal intervention. A decision to require expenditures on school busing might, for example, divert resources from an area with an equal or greater claim to the public fisc. More fundamentally, legal thinking and legal procedures are most suited to ideas growing out of the tradition of compensatory justice, which is poorly adapted to the achievement of serious social reform. Adjudication is ill-suited to undertaking the necessary changes. Many of the most important problems in current civil rights policy are systemic and complex. The lack of adequate schools, job training, or jobs creates a cycle of poverty, vulnerability to drugs and to crime, teenage pregnancy, and single-parent households. n58 **Courts simply lack the tools to respond to these problems**. Of course, they might make things better [*769] rather than worse. But the legislative and executive branches must provide the principal initiative for the necessary programs. These criticisms of the judiciary are hardly novel. Though voiced most recently by conservatives during and after the period of the Warren Court, critics voiced analogous complaints during the New Deal period, when it would have seemed extremely peculiar to suggest that courts should shape social reform for the disadvantaged. Indeed, the rise of modern regulatory agencies was largely a product of a belief that the judiciary lacked the will, the means, and the democratic pedigree to create social reform on its own. n59 With respect to civil rights, we should see a similar constellation of ideas in the period we are now entering.

A2 CP Hurts Judicial Indy

Judicial acquiescence in the face of strong Congressional pressure ACTUALLY preserves judicial legitimacy by solving the perception of sustained obstructionism

Paisner 05 (Michael, J.D. Candidate 2005. Senior Editor, Columbia Law Review, March, 105 Colum. L. Rev. 537, lexis)

Of course, the difficult task confronting the Court is determining which challenges are indeed "impermissible." Ultimately, the Court must interpret both the separation of powers norm and the norm against pretextual uses of congressional power in light of the long-term relationship between Congress and the Court. This relationship develops through iterated interactions, sometimes, as in the case of the religion statutes, involving conflict over the scope of

congressional power and constitutional interpretation. In these interactions, the sustained will of the people as transmitted through Congress **must eventually win out** against the Court's resistance, but the seriousness of the challenge offered by Congress can help determine the extent to which the judiciary resists congressional demands for constitutional reinterpretation. n223 One does not have to accept that the religion statutes signal the arrival of a "constitutional moment" to recognize that sustained pressure from Congress on the religious freedom issue demands some judicial movement. **The relatively weak and unaccountable judiciary must be prepared to moderate its positions in the face of continued political pressure, lest it lose its legitimacy through sustained obstructionism**.

A2 Agent CPs Bad

Comparisons between the legislature and the judiciary are key to education

Koopmans 3 (Tim, Professor of Constitutional Law, University of Leiden, Former Professor of Constitutional Law, University of Leiden, Former judge of the Court of Justice of the European Communities, Former Advocate General of the Dutch Supreme Court, Courts and Political Institutions: A Comparative View, Cambridge University Press, P: 11-12)

My second assumption is that **you learn more** from studying the relationship between these three powers than from examining each of them individually. **The position of the judiciary can only be understood by contrast with the activities of the legislative and executive bodies**. The relationship between the legislative and the judicial power presents a striking example. We can develop two basic models: in the first, laws passed by the legislative bodies can never be challenged before the courts, because these laws are the very foundation of the constitutional system in question; in the second, the constitutional system is founded on a written constitution which defines or limits the powers of the legislature and allows the courts to check whether legislation tallies with constitutional provisions. The first model is very close to the British doctrine of the 'sovereignty of Parliament'; the second embodies systems characterized by judicial review of legislation, such as the American and the German. When elaborating and developing this comparison, we shall discover the existence of systems which do not conform to either of the models but must more or less be considered as mixed. This is particularly the case with France since 1958.

Court Stripping DA

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War on terror judicial restrictions spur massive court stripping

Reinhardt 6 (Stephen – Judge, U.S. Court of Appeals for the Ninth Circuit, "THE ROLE OF THE JUDGE IN THE TWENTY-FIRST CENTURY: THE JUDICIAL ROLE IN NATIONAL SECURITY", 2006, 86 B.U.L. Rev. 1309, lexis)

Archibald Cox - who knew a thing or two about the necessity of government actors being independent - emphasized that an essential element of judicial independence is that "there shall be no tampering with the organization or jurisdiction of the courts for the purposes of controlling their decisions upon constitutional questions." n2 Applying Professor Cox's precept to current events, we might question whether some recent actions and arguments advanced by the elected branches constitute **threats** to **judicial independence**. Congress, for instance, recently passed the Detainee Treatment Act. n3 The Graham-Levin Amendment, which is part of that legislation, **prohibits any court from hearing or considering** habeas petitions filed by aliens detained at Guantanamo Bay. n4 The Supreme Court has been asked to rule on whether the Act applies only prospectively, or whether it applies to pending habeas petitions as well. It is unclear at this time which interpretation will prevail. n5 But if the Act is ultimately construed as applying to pending appeals, one must ask whether it constitutes "tampering with the ... jurisdiction of the courts for the purposes of controlling their decisions," which Professor Cox identified as a key marker of a violation of judicial independence. All of this, of course, is wholly aside from the question of whether Congress and the President may **strip the courts** of such jurisdiction prospectively. And it is, of course, also wholly apart from the Padilla case, n6 in which many critics believe that the administration has played **fast** and **loose** with the **courts' jurisdiction** in order to **avoid a substantive decision** on a fundamental issue of great importance to all Americans. Another **possible threat** to judicial independence involves the position taken by the administration regarding the **scope of its war powers**. In challenging cases brought by individuals charged as enemy combatants or detained at Guantanamo, the administration has argued that the President has "**inherent powers**" as Commander in Chief under Article II and that actions he takes pursuant to those powers are essentially **not reviewable by courts** or subject to limitation by Congress. n7 The administration's position in the initial round of Guantanamo cases was that **no court anywhere had any jurisdiction** to consider [*1311] any claim, be it torture or pending execution, by any individual held on that American base, which is located on territory under American jurisdiction, for an indefinite period. n8 The executive branch has also relied on sweeping and often startling assertions of executive authority in defending the administration's domestic surveillance program, asserting at times as well a congressional resolution for the authorization of the use of military force. To some extent, such assertions carry with them a challenge to judicial independence, as they seem to rely on the proposition that a **broad range of cases** - those that in the administration's view **relate to the President's exercise of power** as Commander in Chief (and that is a broad range of cases indeed) - are, in effect, **beyond the reach of judicial review**. The full implications of the President's arguments are open to debate, especially since the scope of the inherent power appears, in the view of some current and former administration lawyers, to be limitless. What is clear, however, is that the administration's stance raises important questions about how the constitutionally imposed system of checks and balances should operate during periods of military conflict, questions judges should not shirk from resolving.

Stripping sends a signal that undermines global democracy

Gerhardt 5 (Michael J. Gerhardt, William & Mary School of Law Professor, Lewis & Clark Review, "THE CONSTITUTIONAL LIMITS TO COURT-STRIPPING," 9 Lewis & Clark L. Rev. 347, lexis)

Beyond the constitutional defects with the Act, n40 it may not be **good policy**. It may send **the wrong signals** to the **American people** and to people **around the world**. It expresses **hostility** to our Article III

courts, in spite of their special function in upholding constitutional rights and enforcing and interpreting federal law. If a branch of our government demonstrates a **lack of respect** for federal courts, our citizens and citizens **in other countries** may have a **hard time figuring** out why they should do otherwise. Rejecting proposals to exclude all federal jurisdiction or inferior court jurisdiction for some constitutional claims extends an admirable tradition within Congress and reminds the world of our hard-won, justifiable confidence in the special role performed by Article III courts throughout our history in **vindicating the rule of law.**

Democracy's on the brink --- consolidation solves global WMD conflict

Halperin 11 (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, "Unconventional Wisdom – Democracy is Still Worth Fighting For", Foreign Policy, January / February, http://www.foreignpolicy.com/articles/2011/01/02/unconventional_wisdom?page=0,11)

As the **U**nited **S**tates struggles to wind down two wars and recover from a humbling financial crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme- as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are **more likely** than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a **threat** to peace and security. Democratic states are more likely to develop and to avoid **famines** and **economic collapse**. They are also **less likely** to become **failed states** or suffer a **civil war**. Democratic states are also more likely to cooperate in dealing with security issues, such as **terrorism** and **proliferation** of **w**eapons of **m**ass **d**estruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an **enormous difference** in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much **in America's interest** to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

Link – War on Terror Rulings

Courts will be stripped – particularly on war on terror rulings

Katz 9 (Martin J. – Interim Dean and Associate Professor of Law, University of Denver College of Law; Yale Law School, J.D, "GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING: THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT", Constitutional Commentary, Summer, 25 Const. Commentary 377, lexis)

More likely, the Court may have been provoked on a macro level. Since the beginning of the **war on terror**, President Bush had claimed **extraordinary** - some might say imperious - powers. n164 In response, one might have expected, perhaps hoped, [*419] that the Court would step up and try to stop such exercises of an imperial presidency. n165 In this respect, one might even comment on the Court's restraint. The Court certainly had the opportunity to push back against an imperious President in earlier cases, such as Hamdi and Hamdan. But notably, in its earlier cases in the war on terror, the Court did not push back directly against the President. Instead, the Court looked to Congress to control any excesses of an imperial presidency. n166 For example, in Hamdi, the Court invited Congress to create a set of procedures for military tribunals to determine "enemy combatant" status. n167 And in Hamdan, the Court invited the President to ask Congress to pass a law authorizing him to use military commissions to try individuals accused of certain types of wrongdoing. n168 The idea seemed like a sound one. If the Court could stand back and let Congress act as a check on an imperial President, the problem might be solved - the imbalance redressed - with no need for the Court to seem imperious. n169 The problem is that, in the **climate of the war on terror**, Congress seemed only too happy to **comply with any request** from the President. n170 In fact, the Court might have come to view Congress not as a check on imperious presidential power, but as an enabler of such power. After the Court ruled against the President and held [*420] that the general habeas statute permitted review of aliens at Guantanamo, n171 Congress passed the Detainee Treatment Act (DTA), **precluding such review**. n172 And after the Court ruled against the President and held that the DTA was not retroactive (thereby permitting review of claims that were already pending) and that Congress had not authorized trials by military commissions, n173 Congress passed the Military Commissions Act, precluding pending claims and authorizing trial by military commissions. n174 So it may well have appeared to the Boumediene Court that Congress simply was not up to the task of counter-balancing an imperious executive. Thus, the Court may have decided to take that role upon itself.

Terrorism decisions invoke congressional backlash and stripping

Shay and Kalb 7 (Giovanna – Assistant Professor at Western New England College School of Law, and Johanna – Yale Law School, J.D. 2006, "MORE STORIES OF JURISDICTION-STRIPPING AND EXECUTIVE POWER: INTERPRETING THE PRISON LITIGATION REFORM ACT (PLRA)", 2007, 29 Cardozo L. Rev. 291, lexis)

Cases like Minix provide **sufficient cause** for concern, n39 but the significance of the PLRA decisions extends beyond their immediate impact on prison litigation. John Boston, the foremost practitioner expert on PLRA doctrine, has described the PLRA as "the new face of court stripping," because it limits review through **"new standards** and [*297] **... procedures**," rather than explicitly drawing "lines and erecting walls." n40 In so doing, the PLRA cases demonstrate yet **another form** of **jurisdiction-stripping**, contributing to the **overall shift** of power to the executive that we currently see in other contexts, including in **the "War on Terror" on all its fronts**. n41

Link – Striking Down Legislation
Courts set their agenda to defer to Congress – plan immediately starts a fight

Geyh 6 (Charles Gardner, Indiana University Law Professore Former American Judicature Society's Center for Judicial Independence Director and counsel to the House of Representatives Judiciary Committee, "When Courts and Congress Collide", p. 231-2)

There are very few cases that the Supreme Court is required by law to hear. In the vast majority of cases, the Supreme Court **picks** and **chooses** from among thousands of petitions for writs of certiorari and agrees to hear only those matters it wants to hear. As various scholars have argued, this gives the Court **the discretion** to set its agenda by selecting cases that will **further the justices' personal political goals**, meet the Court's institutional responsibilities to settle conflicts among the lower courts, and respond to external forces (e.g., the legal profession, interest groups, and the Department of Justice) that mobilize to pursue their causes

in the courts. It likewise provides the Court with the discretion to decide what will **not be on its agenda**—such as cases that would **provoke unwanted fights with Congress.**

That causes congressional retaliation

Geyh 6 (Charles Gardner, Indiana University Law Professore Former American Judicature Society's Center for Judicial Independence Director and counsel to the House of Representatives Judiciary Committee, "When Courts and Congress Collide", p. 223-4)

The **restraint** that Congress has **traditionally exhibited** toward the judiciary in most contexts has been **reciprocated** by the courts in three ways. First, the courts have developed myriad **conflict-avoidance** doctrines to sidestep controversies that could **provoke congressional retaliation**. Second, the courts have sometimes averted crises by **acquiescing to congressional will** in key cases when cycles of court-directed hostility have reached their peak. Third, the courts have traditionally exercised their powers of self-government in ways **deferential to and solicitous** of the desires of Congress.

Double bind –

If the Court overturns stripping – destroys legitimacy

Virelli III 12 (Louis J. – Associate Professor of Law, Stetson University College of Law, "Congress, the Constitution, and Supreme Court Recusal", Washington & Lee Law Review, 2012, 69 Wash & Lee L. Rev. 1535, lexis)

The remaining normative arguments against the Court striking the recusal statute are perfectly in line with the concerns expressed by proponents of recusal reform- protection of the Court's public reputation and, in turn, **its legitimacy** as the final expositor of constitutional law. As Justice O'Connor explained, "The Court's power lies, rather, in its legitimacy, a product of [*1586] substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands." n179 She went on to explain that "[t]he underlying substance of this legitimacy . . . is expressed in the Court's opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all." n180 Striking the portion of the recusal statute that governs the Justices invites criticism that the Court is aggrandizing power at the expense of at least one of the political Branches. This criticism, especially when combined with parallel critiques that the Court is becoming overly politicized, n181 could undermine public confidence in the institution and its fitness not only to adjudicate, but also to fulfill its role under the separation of powers as a check on the other Branches. The Court's legitimacy could be similarly imperiled by a decision striking regulations on Supreme Court recusal if such a decision appeared unprincipled. Particularly in an area such as Supreme Court recusal and the separation of powers, in which the constitutional text, history, and judicial precedent are at best sparse, a decision in which the Court favors its own authority over that of another branch-even in the face of a written opinion explaining the decision-could be seen as pretextual and thus democratically illegitimate. Finally, the Court's Exceptions Clause jurisprudence provides yet another reason why the Court should refrain from using its power of review in the debate over recusal. Whereas application of the recusal statute could harm litigants by precluding them from receiving an otherwise constitutionally-provided level of judicial review in a single case, n182 the application of a jurisdiction-stripping statute is **almost certainly** more likely to **bar review** in a wider array of [*1587] cases. Nevertheless, despite their potential for harm, the Court has been **extremely reluctant to strike jurisdiction-stripping statutes** under the Exceptions Clause. To the extent that the harmful impact on litigants of a jurisdiction stripping statute is greater than that of a recusal statute, there is even less reason for the Court to overturn the latter. Because the Court cannot remedy its impasse with Congress without doing **precisely the damage** to its **institutional reputation** and **legitimacy** that proponents of recusal reform seek to avoid, the task lies with Congress to employ the non- legislative tools at its disposal to alleviate the interbranch tension over recusal.

Takes out solvency

Hansford 6 (Thomas, Assistant Professor of Political Science – University of South Carolina and James Spriggs, Associate Professor of Political Science – University of California, Davis, The Politics of Precedent on the U.S. Supreme Court, p. 18-24)

Judges promote legitimacy because they recognize that it encourages **acceptance of** and **compliance with** their **decisions** (Gibson 1989; Mon¬dak 1990, 1994; Tyler and Mitchell 1994). In our view of Supreme Court decision making, the justices value legitimacy for instrumental reasons, namely, as a means to the end of producing efficacious policy (see Epstein and Knight 1998). As discussed more fully below, court decisions are not self-executing and thus third parties must implement them before they have any real effects. Since legitimacy encourages compliance, it enhances the power of courts and facilitates their ability to cause legal and political change. Landes and Posner (1976, 273) make this point when stating: "No matter how willful a judge is, he is likely to follow precedent to some extent, for if he did not the practice of decision according to precedent (stare decisis, the lawyers call it) would be undermined and the precedential significance of his own decisions thereby reduced." Justice Stevens (1983, 2) reiterates this point by noting that stare decisis "obvi¬ously enhances the institutional strength of the judiciary." The significance of institutional and decisional legitimacy follows from two well-known characteristics of the judiciary. While these features apply to all courts, we will discuss them in the context relevant for our purposes-the U.S. Supreme Court. First, unlike elected officials or bureaucrats, the justices are expected to provide neutral, legal justifica¬tions for their decisions (Friedman et al. 1981; Maltz 1988). One important element of this expectation is that the justices show respect for the Court's prior decisions (Powell 1990). A recent national survey, for instance, demonstrates that the American public expects the Court to decide based on legal factors (Scheb and Lyons 2001). Nearly eighty-five percent of respondents to this survey indicated that precedent should have some or a large impact on the justices' decisions. By contrast, over seventy-three percent of respondents thought that whether judges were Democrats or Republicans should have no influence on their decisions. As these data indicate, Americans overwhelmingly believe in the idea that judges should make decisions based on neutral, legal criteria. Second, the Court lacks significant implementation powers and thus relies on its external reputation to encourage implementation of and compliance with its decisions. Alexander Hamilton pointed this idea out in Federalist 78: "The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgments." The basic idea is that the Court must rely on third parties to implement its policies, and a central way to promote compliance is through fostering institutional and decisional legitimacy (see Knight and Epstein 1996). If the Court, or a particular majority opinion, is perceived as somewhat illegitimate, then the prospects for compliance may **decrease**. The power of the Court, that is, rests on its "prestige to persuade" (Ginsburg 2004, 199).

Link – Surveillance

Surveillance rulings embolden Congressional backlash – they'll double down on current law

Wittes 15 (Ben, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution, "A Few Thoughts on the Second Circuit's 215 Decision and Its Importance," 5/9, http://www.lawfareblog.com/2015/05/a-few-thoughts-on-the-second-circuits-215-decision-and-its-importance/)

There are a number of key variables still lurking out there. One of them is the DC Circuit, which could rule any time on its own 215 case and whose ruling **could easily embolden** those both in the intelligence community and in the Senate who want to **double down on current law**. Another is simple congressional dysfunction, which seems to prevent legislative movement even when everyone basically agrees. But I think there's a good chance that the Second Circuit here has been the catalyst for legislative action that was otherwise stalled. That would be a very happy outcome.

Link – International Law

Citing international law results in court stripping – turns case

Davis 6 (Martha – Associate Professor, Northeastern University School of Law, "REALIZING DOMESTIC SOCIAL JUSTICE THROUGH INTERNATIONAL HUMAN RIGHTS: PART I: THE SPIRIT OF OUR TIMES: STATE CONSTITUTIONS AND INTERNATIONAL HUMAN

RIGHTS", New York University Review of Law & Social Change, 2006, 30 N.Y.U. Rev. L. & Soc. Change 359, lexis)

Despite reference to transnational law in cases such as Roper and Lawrence, federal judicial reliance on transnational law has been the topic of **highly publicized debate** in recent years. U.S. Supreme Court Justices have argued regarding the merits of such reliance both in the pages of their opinions and in public speeches. Whereas a majority of the Rehnquist Court ascribed to the practice, members of Congress have introduced a series of proposals - none of which have been endorsed by the full body - designed to **discourage** **U**nited **S**tates judges from **looking abroad** for relevant support or authority. n79 Some of these proposals would go so far as to **bar citation** to **international and foreign law** in constitutional construction, to **strip** domestic cases **relying on foreign decisions** of precedential value, and to threaten impeachment of federal judges who rely on such foreign law. n80 However, as discussed below, the arguments offered to support this position on the federal level have much less traction in the state arena.

International law causes massive backlash

Ku and Yoo 6 (Julian – Associate Professor of Law, Hofstra University School of Law, and John – Professor of Law, University of California at Berkeley School of Law, "HAMDAN v. RUMSFELD: THE FUNCTIONAL CASE FOR FOREIGN AFFAIRS DEFERENCE TO THE EXECUTIVE BRANCH", 2006, 23 Const. Commentary 179, lexis)

The doctrines requiring judicial deference to executive interpretations of laws affecting foreign affairs, especially during wartime, have a **solid** and **undisputed** formal pedigree. But these doctrines also have a strong functional basis. The executive branch has strong institutional advantages over courts in the interpretation of laws relating to the conduct of war. Hamdan's refusal to give deference to the executive branch, if followed in the future, will further disrupt the traditional system of political cooperation between Congress and the President in wartime. It will raise the transaction costs for policymaking during war without any serious benefit and potentially at large cost. Congress expressed its displeasure with Hamden by **stripping federal courts** of jurisdiction and reducing their interpretive freedom over **foreign affairs statutes** and **international law**.

Link – Controversial Decisions

Controversial decisions spark court stripping initiatives

Katz 9 (Martin J. – Interim Dean and Associate Professor of Law, University of Denver College of Law; Yale Law School, J.D, "GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING: THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT", Constitutional Commentary, Summer, 25 Const. Commentary 377, lexis)

Ever since the Supreme Court declared that it had the power to review acts of Congress and the President for constitutionality more than 200 years ago, n5 legal thinkers have wondered whether Congress **could control this power** by **restricting the jurisdiction** of the federal courts. The question has tended to come up most visibly in two contexts. n6 First, in the wake of **controversial federal court decisions**, opponents have occasionally proposed laws to **strip the federal courts** of jurisdiction to **hear the type of case** that had been at issue (presumably with the idea that state courts will ignore or refuse to apply the controversial precedent). n7 For example, after the Supreme Court decided Roe v. Wade, providing constitutional protection for a right to abortion, some legislators proposed legislation that would strip the federal courts of jurisdiction to hear those cases. n8 Similar legislation has been proposed in [*380] response to decisions on school busing, loyalty oaths, school

prayer, reapportionment, and the pledge of allegiance. n9 Notably, in this context, while the constitutionality of such legislation has been hotly debated, such legislation has rarely if ever been passed - perhaps as a result of Congressional doubt regarding the constitutionality, or at least the wisdom, of such legislation. n10

A2 Court Stripping Now

Congress pushing court stripping measures - unlikely to succeed now

Benen 4/24/15 (Steve, Columnist @ MSNBC, "Steve King unveils radical court scheme," http://www.msnbc.com/rachel-maddow-show/steve-king-unveils-radical-court-scheme)

As we talked about at the time, it's "rarely invoked" because the approach – known as "court-stripping" or "jurisdiction-stripping" – is usually too bizarre for most policymakers to pursue. The idea isn't complicated: under this scheme, Congress would pass a federal law effectively telling the courts, "We've identified a part of the law that judges are no longer allowed to consider." To reiterate what we discussed two weeks ago, let's say you live in a state with a law that discriminates against same-sex couples. You decide to challenge the constitutionality of the law, get an attorney, and go to court. Under Steve King's bill, the judge would have no choice but to ignore the case – the courts would have no legal authority to even review lawsuits related to marriage equality because congressional Republicans say so. Whatever one thinks of marriage equality, this certainly isn't "constitutional conservatism." Indeed, it's effectively the congressional version of "legislating from the bench" – King and his cohorts want to adjudicate from the legislature.* To be sure, this isn't entirely new. Back in the 1980s, Sen. Jesse Helms (R-N.C.) repeatedly tried to prevent federal courts from hearing cases related to school prayer. About a decade ago, Sam Brownback and Todd Akin (remember him?) worked on similar measures related to the Pledge of Allegiance. Now, a handful of House Republicans are dipping their feet in the same radical waters. Looking ahead, if the GOP-led House tried to pursue this idea in 2015, there's simply no way it'd overcome a Democratic filibuster in the Senate or get President Obama's signature. But the fact that several members of Congress are pushing such a proposal – all while Ted Cruz expresses interest in the same idea – speaks to an ugly strain of radicalism among Republican lawmakers. Correction: I'd originally said Congress "never" passes court-stripping schemes, which isn't correct. **It's rare, but it has happened.** I've edited the above text accordingly.

A2 Court Stripping Won't Happen

Prefer specific evidence - YES stripping is possible on surveillance issues

Dorf 13 (Mike, Prof of Law @ Cornell, "EPIC's Mandamus Petition and the "Holy Grail" of Federal Jurisdiction," 7/15, http://webcache.googleusercontent.com/search?q=cache:vO1Q7h768ZUJ:www.dorfonlaw.org/2013/07/epics-mandamus-petition-and-holy-grail.html+&cd=7&hl=en&ct=clnk&gl=us)

My latest Verdict column addresses the procedural question raised by the Supreme Court mandamus petition of Electronic Privacy Information Center (EPIC) challenging the government's collection of Verizon customer "metadata." I explain why the Court is arguably without jurisdiction to grant the petition and, in any event, almost certainly won't grant it **as a matter of its equitable discretion**. For the latter point (spoiler alert!), I rely on the fact that EPIC has other options available: In particular, it can simply sue Verizon and/or government officials for injunctive relief in federal district court. Here I want to raise a question that my analysis in the column suggests. Suppose Congress thinks that federal district court litigation of FISA court orders should also be foreclosed and accordingly strips all courts, including the U.S. Supreme Court, of the authority to entertain challenges to NSA surveillance. Would that be permissible? Alumni of the federal courts class--which I regard as the most important course in law school for anyone who wants to litigate in the federal courts, but then, I teach it, so take that with a grain of salt--will instantly recognize the question as the "holy grail" of the subject area. In 1953, Henry Hart published a law review article that was styled as a Socratic dialogue, in which he raised a bewildering set of questions about federal jurisdiction, but the central question he asked was this: how much power does Congress have to control the jurisdiction of the federal courts? The text of the Constitution, standing alone, appears to give Congress near-complete control over federal court jurisdiction: (1) Pursuant to the so-called "Madisonian Compromise" at the Constitutional Convention between those who wanted there to be lower federal courts and those who thought such courts unnecessary, Article III gives Congress the power to create as many or as few federal courts as it wishes, and

thus, it is generally assumed, to vest in them as much or as little of the jurisdiction described in Article III as it wishes; and (2) Although the Constitution sets out the appellate jurisdiction of the Supreme Court, it also authorizes Congress to make "Exceptions" to that jurisdiction. Accordingly, under one fairly straightforward reading of Article III, Congress could strip both the lower federal courts and the Supreme Court of the power to adjudicate any or all cases. Yet a moment's reflection reveals that Congress may not draw any lines it wishes when it comes to jurisdiction. In particular, constitutional provisions outside of Article III--such as the Fifth Amendment Due Process Clause--impose limits on how Congress carves up jurisdiction, just as such provisions limit how Congress may exercise any of its other powers. For example, although Congress could completely eliminate the diversity jurisdiction of the federal district courts, it cannot restrict diversity jurisdiction to cases in which the plaintiff is a white person or a man, because such a restriction would violate the equal protection component of the Fifth Amendment's Due Process Clause. Nearly everyone agrees that Congress is bound by such "external" limits. The trickier questions are whether there are any limits that are "internal" to Article III and, if so, what they are. Hart himself thought that Congress could not use its power under the Exceptions Clause in such a way as to undermine the essential functions of the Supreme Court. More recently, Larry Sager argued that, at a minimum, that means preserving jurisdiction in constitutional cases. Another source of proposed limits can be traced to Justice Story, who elaborated a theory under which Congress was obligated to ensure that some federal forum was available for just about all categories of cases that are preceded by the word "all" in Article III. Akhil Amar revived and refined Story's theory some years ago. Finally, and to my mind most compellingly, Larry Tribe argued in the early 1980s that, whatever else Congress may do to control the jurisdiction of the federal courts, it may not engage in "jurisdictional gerrymandering"--i.e., it may not, in the guise of a jurisdictional statute, disfavor particular constitutional rights. Bills that would do just that--e.g., to strip the federal courts of the power to hear cases involving challenges to the Pledge of Allegiance or to abortion restrictions--have been floated from time to time, but rarely enacted. Perhaps the most notorious example of a jurisdictional gerrymander that did get enacted was the Portal-to-Portal Act of 1947. The substantive provisions of the Act deprived workers of certain overtime compensation that they had previously been held to be entitled under the Fair Labor Standards Act (FLSA). The procedural provisions stripped the federal courts of the power to enforce awards based on the more generous reading of the FLSA that the substantive provisions repudiated. The validity of the jurisdictional provision was never adjudicated by the Supreme Court but in Battaglia v. General Motors, the U.S. Court of Appeals for the Second Circuit upheld the jurisdiction-stripping; however, it did so (it said) only because it thought that the substantive provision was valid. If the substantive provision had been invalid--i.e., if the workers were constitutionally entitled to their remedy under the FLSA--then the court implied that Congress could not eliminate any forum for its enforcement. Battaglia's impact is unclear for multiple reasons: (1) The SCOTUS never affirmed it; (2) It suggests there are limits on jurisdiction-stripping but doesn't find any in the particular case; and (3) It appears to collapse the internal and external questions. In other cases in which Congress has appeared to engage in jurisdiction-stripping, the Supreme Court has bent over backwards to read the statutory language as preserving jurisdiction, and thus has studiously avoided deciding the precise scope of the general power of jurisdiction-stripping. (The Court has clearly limited the power of Congress to strip the federal courts of jurisdiction in habeas corpus cases, but it has done so pursuant to the Suspension Clause of Article I, not pursuant to Article III). The Portal-to-Portal Act was notable not only for stripping federal courts of jurisdiction but also stripping jurisdiction from state courts. Sometimes jurisdiction-stripping proposals leave the state courts available as a possible venue for bringing federal claims. That's problematic from a policy perspective, because with Supreme Court review eliminated, there's no body that can maintain the uniformity of federal law, but it's not clear that it would be unconstitutional for Congress to relegate some category of federal law claims to state courts only. That category is limited, however, by the fact that some of the most important cases would be ones in which the plaintiff seeks injunctive relief against a federal official, but the Supremacy Clause has generally been interpreted to bar such state-to-federal orders. So, to return to the framing question: Could Congress strip the courts of the power to entertain challenges to FISA orders by surveillance targets? **The answer is a resounding maybe.**

All their evidence assumes direct stripping – it can be done through various procedures – doesn't have to be explicit

Shay and Kalb 7 (Giovanna – Assistant Professor at Western New England College School of Law, and Johanna – Yale Law School, J.D. 2006, "MORE STORIES OF JURISDICTION-STRIPPING AND EXECUTIVE POWER: INTERPRETING THE PRISON LITIGATION REFORM ACT (PLRA)", 2007, 29 Cardozo L. Rev. 291, lexis)

Cases like Minix provide **sufficient cause** for concern, n39 but the significance of the PLRA decisions extends beyond their immediate impact on prison litigation. John Boston, the foremost practitioner expert on PLRA doctrine, has described the PLRA as "the new face of court stripping," because it limits review through **"new standards** and [*297] **... procedures,"** rather than explicitly drawing "lines and erecting walls." n40 In so doing, the PLRA cases demonstrate yet **another form** of **jurisdiction-stripping**, contributing to the **overall shift** of power to the executive that we currently see in other contexts, including in **the "War on Terror" on all its fronts**. n41

Controversy means it's more likely

Barrett 8 (Amy – Associate Professor of Law, Notre Dame Law School, "Stare Decisis And Nonjudicial Actors: Introduction", Notre Dame Law Review, May, 83 Notre Dame L. Rev. 1147, lexis)

V. Court Packing, Jurisdiction Stripping, and Other Indirect Attacks With some frequency, nonjudicial actors have registered disagreement with Supreme Court opinions indirectly, by launching an institutional attack on the Court. Jurisdiction-stripping legislation is a common instance of this kind of attack. When the Supreme Court hands down a **controversial decision**, opponents of it often respond with a proposal to **modify** the Court's jurisdiction so as to **remove future similar cases** from the Court's docket (and, for that matter, all federal dockets), typically leaving their resolution to the state courts. n98 Jurisdiction-stripping measures have been introduced on any number of topics, including school prayer, abortion, busing, and affirmative action. n99 Most of the time, these proposals die in Congress. n100 Very [*1166] occasionally, **they do become law** - as did the Detainee Treatment Act of 2005, n101 which, in response to the Court's decision in Rasul v. Bush, n102 forbids any federal court to hear a petition for a writ of habeas corpus filed by an enemy combatant held at Guantanamo Bay. n103

Shifting public perceptions encourage court stripping – their evidence doesn't assume recent shifts in attitude

Norton 6 (Helen – Visiting Assistant Professor of Law, University of Maryland School of Law, "RESHAPING FEDERAL JURISDICTION: CONGRESS'S LATEST CHALLENGE TO JUDICIAL REVIEW", Wake Forest Law Review, Winter, 41 Wake Forest L. Rev. 1003, lexis)

Not only are these efforts **increasingly successful**, they are likely to **reemerge in future proposals** to shape subject matter jurisdiction and thus the balance of judicial power. The House's passage of two separate court-stripping bills in the same Congress represents a high-water mark in the court-shaping movement, as does its passage of the Pledge Protection Act in successive Congresses. Indeed, some of the dynamics that helped thwart earlier court-stripping measures appear to have diminished or disappeared altogether. n97 In the past, for example, the courts - and especially the Supreme Court - may have survived congressional attack due to their comparatively strong public reputation. n98 **Shifting perceptions** of government institutions may **weaken that shield**, as one survey found that a majority of respondents agreed "that "judicial activism' [*1027] has reached **the crisis stage**, and that judges who ignore voters' values should be impeached. Nearly half agreed with a congressman who said judges are "arrogant, out-of-control and unaccountable.'" n99 Other recent polls also suggest a **drop in public support** for the courts, including the Supreme Court, at least in some quarters. n100 Changes in public opinion, accompanied by proponents' sheer political power, may **encourage further jurisdictional realignment**.

Even failed court stripping crushes legitimacy

Segal et. al, January **2011** (Jeffrey - chair of political science at Stony Brook University, Chad Westerland - associate professor of political science at the University of Arizona, and Stefanie Lindquist - professor of law at Texas, Congress, the Supreme Court, and Judicial Review, American Journal of Political Science, Vol. 55, No. 1, p. 91-92)

Rosenberg (1992) provides a list of 10 such mechanisms, all which he argues have been attempted by either Congress, the President, or both at some point in American history. This list includes withdrawal of the Court's appellate jurisdiction, slashing the budget, and altering the size of the Court (cf. George 2003). We would add holding up pay increases to the list. Note that each of these steps could be taken by means of ordinary legisla- tion. For Epstein, Knight, and Martin (2001), successful attempts to curb judicial authority are **extremely costly to the Court**, and they argue that **even unsuccessful attempts incur costs** to the Court by **damaging the Court's legitimacy**. Cross and Nelson (2001) concur, asserting that the only thing Congress can do to the Court in statu- tory cases is reverse the Court's decision, which leaves the Court no worse off—at least from an institutional standpoint—than if it had initially taken Congress's pre- ferred path. But in the constitutional realm, "the courts are more likely to be responsive to other sources of influ- ence, ranging from threats of impeachment to controls on jurisdiction to budgetary pressures to reluctance to implement the spirit or the letter of the courts' opin- ions. Cumulatively, these influences are potentially sig- nificant and may substantially impact judicial decision- making" (1437). As Segal

and Spaeth note, the Court can be expected to back down whenever Congress mounts a clear and imminent threat to the Court's authority (2002, 350).

A2 Social Costs Deter Stripping

Thesis of this argument makes no sense – they are in a double bind – either public pressure dictates congressional action, in which case congress should be enacting restrictions in the status quo or it proves that congressional action doesn't require public support

Public perception of courts is low – makes threat of stripping real

Geyh 6 (Charles Gardner, Indiana University Law Professore Former American Judicature Society's Center for Judicial Independence Director and counsel to the House of Representatives Judiciary Committee, "When Courts and Congress Collide", p. 263-4)

More recent data suggests that the public has become **increasingly critical** of the courts. An Associated Press poll conducted in April 2005 found that 43 percent thought that "judges rely mostly on **personal feelings** and **political views,**" while just over half thought that "judges make decision mostly on their interpretation of the law." Five months later, a poll conducted for the A.B.A. Journal found that **56 percent agreed** with the statement that "judicial activism . . . seems to have **reached a crisis**" because "judges routinely overrule the will of the people, invent new rights, and ignore traditional mortality." In that same poll, 56 percent believed that court opinions should be in line with voters' values and judges who repeatedly ignore those values should be impeached, while 46 percent believed that judges were "arrogant, out of control, and unaccountable," as compared to only 38 percent who disagreed. Against that backdrop, the recent **round of attacks on "judicial activism**" and "legislating from the bench" may signify more than just **another cycle of court-directed animus**.

Momentum is building – threat of "activist" judiciary is perceived

Hooper 5 (Alexander, "RECENT DEVELOPMENT: JURISDICTION-STRIPPING: THE PLEDGE PROTECTION ACT OF 2004", Harvard Journal on Legislation, Summer, 42 Harv. J. on Legis. 511, lexis)

The 108th Congress, however, brought **a resurgence of court-stripping proposals**. n37 Widespread **public** and **congressional** concerns about an "**activist" judiciary**, n38 engendered by high-profile constitutional decisions affecting [*515] social policy, n39 provided Congress with the impetus to "**rein in a renegade judiciary**." n40 In the 108th Congress, at least five court-stripping bills had been introduced in the House, two of which passed, and at least two court-stripping measures were introduced in the Senate. n41 Although none of these measures received a vote by both Houses of Congress, sponsors of some of the bills have stated their commitment to reintroduce them during the 109th Congress. n42 The political controversies that sparked the bills' introductions **will continue**, and therefore an analysis of the language and principles underlying the proposed court-stripping in the Pledge Protection Act remains informative.

Public desires presidential control of war powers

Devins and Fisher 2 (Neal – Goodrich Professor of Law and Professor of Government, College of William and Mary, and Louis – Senior Specialist in Separation of Powers, Congressional Research Service, "THE STEEL SEIZURE CASE: ONE OF A KIND?", 2002, 19 Const. Commentary 63, lexis)

When taking social and political forces into account, moreover, the Court is apt to "exercise the rights of governance that bring it prestige and to avoid exercising the rights of governance that may bring it harm." n87 For example, when Congress signals the Court that it has doubts about the constitutionality of its handiwork, the Court does not risk much political capital by striking down that law. n88 * * * * * Under **contemporary conditions**, courts have **little incentive** to involve themselves in **war powers disputes**. Unlike Youngstown, unilateral executive war-making is now **the norm**. Not only has Congress abandoned its traditional role, the **public** and the media also see the president as the "**sole organ**" of modern day war-making.

A2 Courts Will Strike Down

Courts are stripped if they make controversial detention ruling AND won't be struck down

Katz 9 (Martin J. – Interim Dean and Associate Professor of Law, University of Denver College of Law; Yale Law School, J.D, "GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING: THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT", Constitutional Commentary, Summer, 25 Const. Commentary 377, lexis)

A second context in which **jurisdiction-stripping** has been **proposed** - and actually passed - is during times of armed conflict. During such times, Congress has occasionally attempted to **restrict federal court jurisdiction** as a way to maximize the President's ability to wage war - for example, **permitting him to detain** those seen as an impediment to the war effort. n11 It was a statute such as this that was at issue in Boumediene. In the Detainee Treatment Act of 2004 and Military Commission Act of 2006, n12 Congress (1) created a non-judicial procedure for determining whether certain individuals are "enemy combatants," and thus subject to detention, and (2) limited the ability of the federal courts to review such determinations. Generally, when Congress has passed, or even proposed, jurisdiction-stripping legislation, it has spawned debate over whether such legislation is or would be constitutional. This debate has engaged the minds of many of the country's finest constitutional scholars. n13 [*381] It is beyond the scope of this Article to revisit the debates of these constitutional scholars. My purpose here is not to weigh in on the question of how courts should address jurisdiction-stripping statutes (though this Article does implicate that issue). Rather, my purpose here is to address how the Supreme Court - after centuries of largely avoiding the debate - has now suggested answers to certain fundamental questions in that debate. Accordingly, this Part will identify some of the fundamental questions in that debate. The primary question is when, if ever, Congress can strip jurisdiction from the federal courts. However, for Congress to be able to do this, it would need to exercise two distinct powers: (1) the power to strip jurisdiction from **the lower federal courts**, and (2) the power to strip **appellate jurisdiction** from the Supreme Court. So this section will begin by examining both of those powers before examining whether Congress can combine those powers in order to preclude all federal court jurisdiction. n14 [*382] This Part will also show how the Court has gone to great lengths to avoid providing definitive answers to these questions (particularly to the question of the ability of Congress to preclude all federal court jurisdiction). A. Stripping Jurisdiction from Lower Federal Courts The first question in the jurisdiction-stripping debate is whether Congress can restrict the jurisdiction of the lower federal courts (district courts and circuit courts) to hear a particular type of case. This question assumes that only the lower federal courts are closed - that the Supreme Court's original and appellate jurisdiction remains intact. n15 Proponents of allowing this form of jurisdiction-stripping point to the text of Article III, which gives Congress the power to "ordain and establish" lower federal courts. n16 The argument is that (1) the Ordain and Establish Clause gave Congress discretion over whether to create lower federal courts, and (2) if Congress could decline to create lower federal courts, then Congress can limit such courts' jurisdiction. n17 Most commentators today seem to accept the basic idea that the Ordain and Establish Clause permits Congress to **restrict** or **even eliminate** the jurisdiction of the lower federal courts. n18 [*383] Some of these commentators have also suggested that there might be limits on this power. For example, nearly all commentators have suggested that the "ordain and establish" power is limited by substantive provisions elsewhere in the Constitution, such as the Equal Protection Clause; so Congress could not, for example, preclude jurisdiction only over cases brought by African Americans or Catholics. n19 Also, as noted above, most of the commentators who believe Congress has the power to limit lower federal court jurisdiction assume that some alternative court would remain open to hear the cases in question - an assumption which is likely incorrect in a case like Boumediene. n20 But subject to these two potential limits, n21 the "traditional view" is that Congress can exercise its "ordain and establish" power to close lower federal courts. n22 The courts, too, n23 seem largely to accept the "traditional view" - that Congress **has the power** to restrict lower **federal court jurisdiction**. The Supreme Court has, on at least five occasions, suggested that

Congress can limit lower federal court jurisdiction pursuant to the Ordain and Establish Clause. n24 However, none of these cases appears to have tested the potential [*384] limits on the exercise of this power. n25 As I will discuss below, Boumediene suggests such a limit. n26

A2 Prez Will Veto

Makes zero sense – if the executive wanted expansive war powers, it's in their interest to pass legislation that would give them those powers

Executive won't veto jurisdiction stripping in the context of the war on terror

Grove 12 (Tara Leigh – Assistant Professor, William and Mary Law School, "THE ARTICLE II SAFEGUARDS OF FEDERAL JURISDICTION", 2012, 112 Colum. L. Rev. 250, lexis)

Thus, the executive branch seems **most likely** to **consent** to **jurisdictional restrictions** (1) following a major historical event, and (2) when the jurisdictional restriction is integrated into an expansive statute, the bulk of which the President supports. These factors may help explain the enactment of recent **jurisdiction-stripping laws** in response to the "**war on terror**." n342 Notably, these statutes largely preserved the Supreme Court's [*310] appellate jurisdiction and federal jurisdiction over constitutional claims n343 and thus did not interfere with the executive branch's principal concerns about federal jurisdiction. But one provision of the Military Commissions Act of 2006 (MCA) does purport to eliminate federal jurisdiction over a detainee's challenge to his "conditions of confinement" during his detention. n344 It does not appear that the second Bush Administration made any public statements about this provision during the legislative process. n345 But the executive branch's acceptance of this jurisdiction-stripping measure arguably accords with the analysis here. The MCA was enacted in the wake of a major historical event: the attacks of September 11, 2001 and the ensuing **war on terror**. Moreover, the MCA was an expansive statute, the bulk of which the President supported. However, with respect to the MCA, there are reasons to doubt that the executive branch simply acquiesced in a jurisdictional restriction championed by members of Congress. Although the executive does not [*311] appear to have taken a position on the "conditions of confinement" measure, the second Bush Administration generally sought to **avoid judicial oversight** of its actions in the "war on terror." n346 It therefore seems quite possible that the Administration supported the "conditions of confinement" measure

Stripping Hurts Democracy – 2NC

Stripping undermines democracy and an independent judiciary

Brown 10 (Rebecca – Newton Professor of Constitutional Law, USC Gould School of Law, "WILL AND PRINCIPLE", 2010, Mich. St. L. Rev. 569, lexis)

Friedman has shown us that there is an eventual correlation between the Court's interpretations of the Constitution and some zone of approval that can be attributed to the American public. n5 The burning question, how [*572] ever, is why. The book offers both weaker and stronger versions of an answer to this question. In the weaker version, The Will of the People suggests that the institutional structure of the Court, including political appointment and need for enforcement of its decisions by the political branches, very generally operates to ensure that decisions will be within some degree of acceptability to the larger public. But Friedman does not find this explanation sufficient. n6 In the end, he embraces the strong version of the answer, which relies on an anthropomorphism of both the Court and the public. "If [the people] simply raise a finger, the Court seems to get the message." n7 Friedman's answer suggests that individual justices have consciously made outcome-determinative decisions in cases based on their sense of the direction of public opinion. n8 Furthermore, they have done so out of **self interest.** The motivation

for accommodating popular opinion is a fear of **popular efforts to "discipline" the Court**: imposing political checks on the judiciary such as impeachment, defiance of court orders, court-packing, and **jurisdiction-stripping.** n9 Two aspects of Friedman's account make me uneasy. Both involve a lurking concern I have that this account of judicial review **minimizes** what I hold to be profoundly important values in **our constitutional democracy**. The first of these values is the public **commitment to an independent judiciary**, and the second is the **importance of judgment to constitutional interpretation.** I will discuss each in turn.

Destroys democracy

Committee on Federal Legislation 9 ("CHECKS AND BALANCES: CONGRESSIONAL RESTRICTION OF FEDERAL COURT JURISDICTION", 2009, 64 The Record 143, lexis)

The American Constitutional system is based on **checks** and **balances**. Throughout our history, competing branches of government have struggled to define their own respective jurisdictions, to prevent encroachments on that power by other branches, and even to seek the expansion of their own authority at the expense of other branches. This struggle is particularly acute today as Congress has attempted, through the enactment of legislation, to **divest the courts of their jurisdiction** over specific subjects and even over specific cases. This congressional action, often referred to as **"court stripping,"** reflects Congress' disagreement with the way the courts have resolved particular issues, or its desire to keep certain [*144] groups of litigants from seeking redress in the federal courts. This legislation may, in some cases, disrupt the delicate and essential system of **checks and balances that is central** to our **nation's democracy**.

Democracy Turns Everything

Transitions are coming now – err negative because democratic structures are more likely to prevent escalation of their impact – countries are less likely to go to war

Diamond 95 (Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://wwics.si.edu/subsites/ccpdc/pubs/di/1.htm)

OTHER THREATS This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. **N**uclear, **c**hemical, and **b**iological **weapons continue to proliferate. The very source of life** on Earth, **the global ecosystem, appears** increasingly **endangered.** Most of **these** new and unconventional **threats** to security **are associated with** or aggravated by the weakness or **absence of democracy, with its provisions for** legality, **accountability**, popular sovereignty, **and openness**. LESSONS OF THE TWENTIETH CENTURY The experience of this century offers important lessons. Countries that govern themselves in a truly democratic fashion **do not go to war** with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honor international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders,

they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.

Democracy promotion prevents oppression, war, economic decline, and famine globally

Beng 2K (Phar Kim, Senior Correspondent @ Straits Times + consultant to Waseda University in Japan on Southeast Asian matters, Straits Times, 1/14, lexis)

The spread of democracy can enhance US national interests in four major ways. Firstly, by encouraging other nations to democratise, the political conditions of otherwise repressive republics would improve. **The pressure and attraction for others to enter America illegally would thus be reduced significantly**. Secondly, as more countries democratise, that is by instituting multi-party electoral competition, the prospect of governments launching wars against one another would decline exponentially. This is because the decision to go to war would not be made by any one man or party at the helm, but would be subject to the purview and discretion of the public. Given the greater degree of public accountability, it would be **correspondingly difficult** for any government to justify the launching of an open war against the US or other nations. Democratic peace would, therefore, prevail across the world, much to the US' interests. Thirdly, democracy is also conducive to economic growth. A World Survey of Economic Freedom for 1995 to 1996, found that the countries rated "free" generated 81 per cent of the world's output even though they had only 17 per cent of the world's population. In another study by The Heritage Foundation, it was found that countries classified as "free" had annual 1980-1993 real per capita Gross Domestic Product (GDP) growth rates of 2.88 per cent. In "mostly-free" countries, the rate was 0.97 per cent; in "mostly-not-free" ones, minus 0.32 per cent; and in "repressed" countries, minus 1.44 per cent. Fourthly, the US should spread democracy because the citizens of democracies do not suffer from famines. Most of the countries that have experienced severe famines in recent decades have been among the world's least democratic: the Soviet Union (Ukraine in the early 1930s), China, Ethiopia, Somalia, Cambodia and Sudan. **Throughout history, famines have occurred in many different types of countries, but never in a democracy**. Democracies do not experience famines for reasons of greater transparency and accountability. To the extent that the incidence of famine continues to fall, massive cross-border human emigration would cease, too. **Global and regional security would thus be enhanced, by which the US would no doubt stand to gain due to its extensive political and economic interests abroad**.

Democracy Solves Environment

Democracy is key to environmental protection

Li and Reuveny 7 (Quan, Professor of Political Science – Penn State University and Rafael, Professor of Public and Environmental Affairs, "The Effects of Liberalism on the Terrestrial Environment", Conflict Management and Peace Science, 24(3), September)

Moving to the view that democracy reduces the level of environmental degradation, one set of considerations focuses on the institutional qualities of democracy. The responsiveness argument is that democracies are more responsive to the environmental needs of the public than are autocracies due to their very nature of taking public interests into account (Kotov and Nikitina, 1995). It is also argued that democracies comply with environmental agreements well, since they respect, and respond to, the rule of law (Weiss and Jacobsen, 1999). The freedom of information channel is offered by Schultz and Crockett (1990) and Payne (1995). They theorize that political rights and greater freedom for information flows help2 to promote the cause of environmental groups, raise public awareness of problems and potential solutions, and encourage environmental legislation to curtail environmental degradation. Democracies also tend to have market

economies, which further promotes the flow of information as economic efficiency and profits requires full information. Hence, unlike the above argument, this channel expects that profit-maximizing markets will promote environmental quality (Berger, 1994).

Extinction

Kline 98 (Gary, Associate Professor of Political Science, Georgia Southwestern State University, Journal of Third World Studies, 15(1), Spring)

Additionally, natural ecosystems provide certain less obvious services that are **crucial to life** as we know it.6 The atmosphere of our planet is the product largely of ecosystem operations. About twenty-one percent of our atmosphere is made up of oxygen, the result of plant photosynthesis which releases the gas. Approximately seventy-eight percent of the remaining air we breathe is nitrogen, which is regulated by the nitrogen cycle of plant production. Ecosystems then influence weather and climate patterns by affecting the circulation of air in this atmosphere. Plants, and especially forests, are instrumental in retaining and conserving our soil and water. Destruction of forest areas results in soil erosion (deleterious to agriculture and plant life in general), floods, and droughts. The rapid decertification of large tracts of land in places like north Africa are a direct consequence of loss of such ecosystems. Each year an area equivalent in size to Belgium falls victim to decertification. Plant and animal life, much of it not visible to the naked eye, helps create and maintain soil by breaking down rocks into finer and finer pieces and by adding organic material to it, enriching it for agriculture. Except for some of the most troublesome products of Humankind, like DDT and plastics, these same plants and animals work to dispose of wastes. Decomposed wastes are then recycled as nutrients into the food chain for the sustenance of new life. Natural ecosystems also produce mechanisms in plants for the resistance of pests and diseases and for the pollination of flowering plants, essential to their reproduction, including many of our food crops. It should be apparent that biodiversity and life are synonymous. The organisms in an ecosystem are part of a "trophic pyramid," as labelled by scientists. That is, a large mass of plants supports a smaller number of herbivores; these support a smaller number of primary carnivores and an even smaller number of second order carnivores. Due to their more rapid rates of reproduction, the lower order life forms are generally better able to adapt to changes in their environment than the higher forms. The latter are also disadvantaged by bioconcentration of harmful substances which make their way into the food chain. Every organism has some niche and work to perform in the pyramid. Homo sapiens occupy a position at the top and are therefore vulnerable to instability at the base. Human activity which threatens the pyramid is **akin to playing Russian roulette**. Of this, Humankind is now more aware. As Garrison Wilkes of the University of Massachusetts put it, "We have been building our roof with stones from the foundation."7 This problem is now manifesting itself especially in an area of human endeavor which is essential to our existence: agriculture.

Democracy Solves Heg

Democracy is key to heg – checks counter-balancing

Owen 1 (John M., Assistant Professor of Government and Foreign Affairs – University of Virginia, “Transnational Liberalism and U.S. Primacy”, International Security, 26(3))

In this article I argue that the degree to which a state counterbalances U.S. power is a function of how politically liberal that state is, measured by the degree to which its internal institutions and practices are liberal and the degree to which liberals influence foreign policy. Political liberalism is an ideology that seeks to uphold individual autonomy and prescribes a particular set of domestic institutions as means to that end.[15] No coalition has formed to counterbalance U.S. power because political liberalism constitutes a transnational movement that has penetrated most potential challenger states at least to some degree. How liberal a state is affects both how it responds to U.S. power and policy and how the United States treats it. Liberal elites the world over tend to perceive a relatively broad coincidence of interest between their country and other liberal countries. They tend to interpret the United States as benign and devote few state resources to counterbalancing it. In turn, the liberals who govern the United States tend to treat other liberal countries relatively benignly. But antiliberal elites tend to perceive a more malign United States and devote relatively more state resources to counterbalancing; the United States meanwhile tends to treat less benignly countries governed by such elites and their favored institutions.

The interactions between the United States and a given potential challenger are mutually reinforcing, and so each relationship is on a path that is difficult to abandon. Unilateral moves by the administration of George W. Bush on issues such as the

environment and missile defense may perturb and even anger U.S. allies, but should not drive them toward military counter-balancing. Similarly, U.S. policies are unlikely to cause China to abandon counterbalancing. The U.S.-Russian relationship is the least settled, in part because the Russian domestic regime is itself unsettled. Should Russia end up with an antiliberal regime, it will likely counterbalance the United States more consistently. U.S. policies toward Russia can have a marginal effect on the fate of Russian liberalism: The more objectively threatening are U.S. gestures toward Russia, the more Russian liberals lose domestic credibility and influence. In this way the power of transnational liberal identity is limited, as is the durability of U.S. primacy. If Americans want to preserve primacy—and the benefits of U.S. primacy outweigh the costs for many non-Americans as well as for Americans—their country must walk a difficult line, simultaneously preserving not only its power but transnational liberalism where it can, and yet guarding against actions that appear imperialistic to foreign elites.

Global nuclear war

Khalilzad 95 (Zalmay, RAND Corporation, Losing The Moment? Washington Quarterly, Vol 18, No 2, p. 84)

Under the third option, the United States would seek to retain global leadership and to preclude the rise of a global rival or a return to multipolarity for the indefinite future. On balance, this is the best long-term guiding principle and vision. Such a vision is desirable not as an end in itself, but because a world in which the United States exercises leadership would have tremendous advantages. First, the global environment would be more open and more receptive to American values -- democracy, free markets, and the rule of law. Second, such a world would have a better chance of dealing cooperatively with the world's major problems, such as nuclear proliferation, threats of regional hegemony by renegade states, and low-level conflicts. Finally, U.S. leadership would help preclude the rise of another hostile global rival, enabling the United States and the world to avoid another global cold or hot war and all the attendant dangers, including a **global nuclear exchange**. U.S. leadership would therefore be more conducive to global stability than a bipolar or a multipolar balance of power system.

Democracy Solves Econ

Democracy is key to economic growth

Lynn-Jones 8 (Sean M., Editor – International Security, “Why the United States Should Spread Democracy”, International Security, March, http://belfercenter.ksg.harvard.edu/publication/2830/why_the_united_states_should_spread_democracy.html)

A third reason for promoting democracy is that democracies tend to enjoy greater prosperity over long periods of time. As democracy spreads, more individuals are likely to enjoy greater economic benefits. Democracy does not necessarily usher in prosperity, although some observers claim that "a close correlation with prosperity" is one of the "overwhelming advantages" of democracy.32 Some democracies, including India and the Philippines, have languished economically, at least until the last few years. Others are among the most prosperous societies on earth. Nevertheless, over the long haul democracies generally prosper. As Mancur Olson points out: "It is no accident that the countries that have reached the highest level of economic performance across generations are all stable democracies."33 Authoritarian regimes often compile impressive short-run economic records. For several decades, the Soviet Union"s annual growth in gross national product (GNP) exceeded that of the United States, leading Soviet Premier Nikita Khrushchev to pronounce "we will bury you." China has posted double-digit annual GNP increases in recent years. But autocratic countries rarely can sustain these rates of growth for long. As Mancur Olson notes, "experience shows that relatively poor countries can grow extraordinarily rapidly when they have a strong dictator who happens to have unusually good economic policies, such growth lasts only for the ruling span of one or two dictators."34 The Soviet Union was unable to sustain its rapid growth; its economic failings ultimately caused the country to disintegrate in the throes of political and economic turmoil. Most experts doubt that China will continue its rapid economic expansion. Economist Jagdish Bhagwati argues that "no one can maintain these growth rates in the long term. Sooner or later China will have to rejoin the human race."35 Some observers predict that the stresses of high

rates of economic growth will cause political fragmentation in China.36 Why do democracies perform better than autocracies over the long run? Two reasons are particularly persuasive explanations. First, democracies-especially liberal democracies-are more likely to have market economies, and market economies tend to produce economic growth over the long run. Most of the world"s leading economies thus tend to be market economies, including the United States, Japan, the "tiger" economies of Southeast Asia, and the members of the Organization for Economic Cooperation and Development. Two recent studies suggest that there is a direct connection between economic liberalization and economic performance. Freedom House conducted a World Survey of Economic Freedom for 1995-96, which evaluated 80 countries that account for 90% of the world"s population and 99% of the world"s wealth on the basis of criteria such as the right to own property, operate a business, or belong to a trade union. It found that the countries rated "free" generated 81% of the world"s output even though they had only 17% of the world"s population.37 A second recent study confirms the connection between economic freedom and economic growth. The Heritage Foundation has constructed an Index of Economic Freedom that looks at 10 key areas: trade policy, taxation, government intervention, monetary policy, capital flows and foreign investment, banking policy, wage and price controls, property rights, regulation, and black market activity. It has found that countries classified as "free" had annual 1980-1993 real per capita Gross Domestic Product (GDP) (expressed in terms of purchasing power parities) growth rates of 2.88%. In "mostly free" countries the rate was 0.97%, in "mostly not free" ones -0.32%, and in "repressed" countries -1.44%.38 Of course, some democracies do not adopt market economies and some autocracies do, but liberal democracies generally are more likely to pursue liberal economic policies. Second, democracies that embrace liberal principles of government are likely to create a stable foundation for long-term economic growth. Individuals will only make long-term investments when they are confident that their investments will not be expropriated. These and other economic decisions require assurances that private property will be respected and that contracts will be enforced. These conditions are likely to be met when an impartial court system exists and can require individuals to enforce contracts. Federal Reserve Chairman Alan Greenspan has argued that: "The guiding mechanism of a free market economy ... is a bill of rights, enforced by an impartial judiciary."39 These conditions also happen to be those that are necessary to maintain a stable system of free and fair elections and to uphold liberal principles of individual rights. Mancur Olson thus points out that "the conditions that are needed to have the individual rights needed for maximum economic development are exactly the same conditions that are needed to have a lasting democracy. ... the same court system, independent judiciary, and respect for law and individual rights that are needed for a lasting democracy are also required for security of property and contract rights."40 Thus liberal democracy is the basis for long-term economic growth. A third reason may operate in some circumstances: democratic governments are more likely to have the political legitimacy necessary to embark on difficult and painful economic reforms.41 This factor is particularly likely to be important in former communist countries, but it also appears to have played a role in the decisions India and the Philippines have taken in recent years to pursue difficult economic reforms.42

Extinction

Beardon 00 (T.E., Director of Association of Distinguished American Scientists, The Unnecessary Energy Crisis: How to Solve It Quickly," Space Energy Access Systems, http://www.seaspower.com/EnergyCrisis-Bearden.htm)

History bears out that desperate nations take desperate actions. Prior to the final economic collapse, the stress on nations will have increased the intensity and number of their conflicts, to the point where the arsenals of weapons of mass destruction (WMD) now possessed by some 25 nations, are almost certain to be released. As an example, suppose a starving North Korea launches nuclear weapons upon Japan and South Korea, including U.S. forces there, in a spasmodic suicidal response. Or suppose a desperate China — whose long-range nuclear missiles (some) can reach the United States — attacks Taiwan. In addition to immediate responses, the mutual treaties involved in such scenarios will quickly draw other nations into the conflict, escalating it significantly. Strategic nuclear studies have shown for decades that, under such extreme stress conditions, once a few nukes are launched, adversaries and potential adversaries are then compelled to launch on perception of preparations by one's adversary. The real legacy of the MAD concept is this side of the MAD coin that is almost never discussed. Without effective defense, the only chance a nation has to survive at all is to launch immediate full-bore pre-emptive strikes and try to take out its perceived foes as rapidly and massively as possible. As the studies showed, rapid escalation to full WMD exchange occurs. Today, a great percent of the WMD arsenals that will be unleashed, are already on site within the United States itself. The resulting great Armageddon will destroy civilization as we know it, and perhaps most of the biosphere, at least for many decades.

Democracy Solves Trade

Democracy sustains free trade

Li and Reuveny 7 (Quan, Professor of Political Science – Penn State University and Rafael, Professor of Public and Environmental Affairs, "The Effects of Liberalism on the Terrestrial Environment", Conflict Management and Peace Science, 24(3), September)

If trade can be used as a tool of power, who will trade with whom? Grieco (1988), Gowa (1994), and Gowa and Mansfield (1993), among others, expect that states will avoid trade with states they consider to be their actual or potential adversaries. In such situations, the concern for relative gains—who gains more from trade—may reduce trade flows to trickles, as the side that gains less will worry that the side that gains more may translate the gain to military power. During the Cold War, for example, the U.S. regulated its trade with the Soviet bloc based on this logic. Since democracies are expected not to engage in wars against each other, they feel more secure in their bilateral trade and may be content with trade regardless of who gains more. Democracy, then, should promote trade (e.g., Russett & Oneal, 2001; Morrow, 1997; Snidal, 1991). Moreover, since democracy is associated with the rule of law and respect for property rights, agents will feel more secure to trade as the level of democracy rises, as it is more likely they will be able to enjoy the fruits of their investments (e.g., Olson, 1993; Clauge et al., 1996).

Extinction

Pazner 8 (Michael J., Faculty – New York Institute of Finance, Financial Armageddon: Protect Your Future from Economic Collapse, p. 137-138)

The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientists at the University of Chicago, have even speculated that an "intense confrontation" between the United States and China is "inevitable" at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-

busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

Democracy Solves Russia

Democracy checks Russian expansion

Diamond 95 (Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://www.wilsoncenter.org/subsites/ccpdc/pubs/di/1.htm)

A HOSTILE, EXPANSIONIST RUSSIA

Chief among the threats to the security of Europe, the United States, and Japan would be the reversion of Russia--with its still very substantial nuclear, scientific, and military prowess--to a hostile posture toward the West. Today, the Russian state (insofar as it continues to exist) appears perched on the precipice of capture by ultranationalist, anti-Semitic, neo-imperialist forces seeking a new era of pogroms, conquest, and "greatness." These forces feed on the weakness of democratic institutions, the divisions among democratic forces, and the generally dismal economic and political state of the country under civilian, constitutional rule. Numerous observers speak of "Weimar Russia." As in Germany in the 1920s, the only alternative to a triumph of fascism (or some related "ism" deeply hostile to freedom and to the West) is the development of an effective democratic order. Now, as then, this project must struggle against great historical and political odds, and it seems feasible only with international economic aid and support for democratic forces and institutions.

Nuclear war

Pry 99 (Peter Vincent, Professional Military Advisor to the US House of Representatives, War Scare, p. 274)

Russian internal troubles—such as a leadership crisis, coup, or civil war—could aggravate Russia's fears of foreign aggression and lead to a miscalculation of U.S. intentions and to nuclear overreaction. While this may sound like a complicated and improbable chain of events, Russia's story in the 1990s is one long series of domestic crises that have all too often been the source of nuclear close calls. The war scares of August 1991 and October 1993 arose out of coup attempts. The civil war in Chechnya caused a leadership crisis in Moscow, which contributed to the nuclear false alarm during Norway's launch of a meteorological rocket in January 1995. Nuclear war arising from Russian domestic crises is a threat the West did not face, or at least faced to a much lesser extent, during the Cold War.

Democracy Solves China

Democracy stops Chinese aggression

Diamond 95 (Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://www.wilsoncenter.org/subsites/ccpdc/pubs/di/1.htm)

A HOSTILE, EXPANSIONIST CHINA

In China, the threat to the West emanates from success rather than failure and is less amenable to explicit international assistance and inducement. Still, a China moving toward democracy--gradually constructing a real constitutional order, with established ground rules for political competition and succession and civilian control over the military--seems a much better prospect to be a responsible player on the regional and international stage. Unfair trade practices, naval power projection, territorial expansion, subversion of neighboring regimes, and bullying of democratic forces in Hong Kong and Taiwan are all more likely the more China resists political liberalization. So is a political succession crisis that could disrupt incremental patterns of reform and induce competing power players to take risks internationally to advance their power positions at home. A China that is building an effective rule of law seems a much better prospect to respect international trading rules that mandate protection for intellectual property and forbid the use of prison labor. And on these matters of legal, electoral, and institutional development, international actors can help.

Global war

Swaine 98 (Michael, Senior Associate and Co-Director of the China Program – Carnegie Endowment for International Peace, et al., Sources of Conflict in the 21st Century, p. 54-55)

These events pose major implications for the future security of the Asia-Pacific region. Indeed, China today arguably constitutes the most critical and least understood variable influencing the future Asian security environment and the possible use of U.S. military forces in that region. If current growth trends continue into the next century and most of the problems mentioned above are overcome, China could emerge as a major military and economic power in Asia, capable of projecting air, land, and naval forces considerable distances from its borders while serving as a key engine of economic growth for many nearby states. Such capabilities could embolden Beijing to resort to coercive diplomacy or direct military action in an attempt to resolve in its favor various outstanding territorial claims or to press other vital issues affecting the future economic and security environment of the region. The possibility of military conflict across the Taiwan Strait in particular has become a more urgent concern in some quarters, largely as a result of rapid, and in many ways revolutionary, domestic changes occurring on both sides of the Strait. The above developments could eventually reorder the regional security environment in decidedly adverse directions, producing various conflict scenarios. For example, a confident, chauvinistic China could apply unprecedented levels of political and military coercion against an increasingly independent Taiwan in an effort to reunify the island with the mainland, thereby prompting a confrontation and even military conflict with the United States and possibly Japan. Equally negative outcomes would likely emerge from a reversal or wholesale collapse of Beijing's experiment in combining political authoritarianism with liberalizing market-led reform. National fragmentation, breakdown, and/or complete chaos could result, leading to severe economic decline and a loss of government control over the population and over China's national borders. Such developments would almost certainly generate massive refugee flows and send economic shockwaves across the region, producing major crises for neighboring countries. A weak, fragmented Chinese political and social environment could also lead to the adoption of a highly xenophobic, anti-foreign stance by

many Chinese elites and social groups, possibly resulting in confrontations with the outside over a variety of territorial and other issues.

Democracy Solves Terrorism

Terrorism inevitable without democracy

Diamond 95 (Larry, Senior Fellow – Hoover Institution, Promoting Democracy in the 1990s, December, http://www.wilsoncenter.org/subsites/ccpdc/pubs/di/1.htm)

Terrorism and immigration pressures also commonly have their origins in political exclusion, social injustice, and bad, abusive, or tyrannical governance. Overwhelmingly, the sponsors of international terrorism are among the world's most authoritarian regimes: Iran, Iraq, Syria, Libya, Sudan. And locally within countries, the agents of terrorism tend to be either the fanatics of antidemocratic, ideological movements or aggrieved ethnic and regional minorities who have felt themselves socially marginalized and politically excluded and insecure: Sri Lanka's Tamils, Turkey's Kurds, India's Sikhs and Kashmiris. To be sure, democracies must vigorously mobilize their legitimate instruments of law enforcement to counter this growing threat to their security. But a more fundamental and enduring assault on international terrorism requires political change to bring down zealous, paranoiac dictatorships and to allow aggrieved groups in all countries to pursue their interests through open, peaceful, and constitutional means.

Terrorism will go nuclear, sparking global nuclear war

Speice 6 (Patrick, JD Candidate, 47 Wm and Mary L. Rev. 1427, February, Lexis)

Terrorist groups could acquire a nuclear weapon by a number of methods, including "steal[ing] one intact from the stockpile of a country possessing such weapons, or ... [being] sold or given one by [*1438] such a country, or [buying or stealing] one from another subnational group that had obtained it in one of these ways." 40 Equally threatening, however, is the risk that terrorists will steal or purchase fissile material and construct a nuclear device on their own. Very little material is necessary to construct a highly destructive nuclear weapon. 41 Although nuclear devices are extraordinarily complex, the technical barriers to constructing a workable weapon are not significant. 42 Moreover, the sheer number of methods that could be used to deliver a nuclear device into the United States makes it incredibly likely that terrorists could successfully employ a nuclear weapon once it was built. 43 Accordingly, supply-side controls that are aimed at preventing terrorists from acquiring nuclear material in the first place are the most effective means of countering the risk of nuclear terrorism. 44 Moreover, the end of the Cold War eliminated the rationale for maintaining a large military-industrial complex in Russia, and the nuclear cities were closed. 45 This resulted in at least 35,000 nuclear scientists becoming unemployed in an economy that was collapsing. 46 Although the economy has stabilized somewhat, there [*1439] are still at least 20,000 former scientists who are unemployed or underpaid and who are too young to retire, 47 raising the chilling prospect that these scientists will be tempted to sell their nuclear knowledge, or steal nuclear material to sell, to states or terrorist organizations with nuclear ambitions. 48 The potential consequences of the unchecked spread of nuclear knowledge and material to terrorist groups that seek to cause mass destruction in the United States are truly horrifying. A terrorist attack with a nuclear weapon would be devastating in terms of immediate human and economic losses. n49 Moreover, there would be

immense political pressure in the United States to discover the perpetrators and retaliate with nuclear weapons, massively increasing the number of casualties and potentially triggering a **full-scale nuclear conflict**. n50 In addition to the threat posed by terrorists, leakage of nuclear knowledge and material from Russia will reduce the barriers that states with nuclear ambitions face and may trigger widespread proliferation of nuclear weapons. n51 This proliferation will increase the risk of nuclear attacks against the United States [*1440] or its allies by hostile states, n52 as well as increase the likelihood that regional conflicts will draw in the United States and escalate to the use of nuclear weapons.

Democracy Solves War

Democratic peace theory is true – statistically proven

Dafoe 11 (Allan, PhD Candidate in Political Science – UC Berkeley, Midwest Political Science Association, , "Statistical Critiques of the Democratic Peace: Caveat Emptor," American Journal of Political Science, 55(2), April)

The "democratic peace"—the inference that democracies rarely fight each other—is one of the most important and empirically robust findings in international relations (IR).1 The apparent empirical association2 between joint democracy3 and peace has been debated and challenged since its first discovery by political scientists to the present (Gartzke 2007). Scholars have argued that this empirical association is in fact a product of other confounding factors, such as Cold War alliances (Farber and Gowa 1997; Gowa 1999), satisfaction with the regional status quo (Kacowicz 1995), shared foreign policy interests (Gartzke 1998, 2000), unmeasured factors such as dyad-specific effects (Green, Kim, and Yoon 2001), stable borders (Gibler 2007), and capital openness and development (Gartzke 2007; Gartzke and Hewitt 2010). Despite the large number of serious challenges, most current quantitative analyses continue to find a substantial, robust, and **statistically significant association** between joint democracy and the absence of militarized conflict. This article will analyze a recent challenge to the democratic peace (Gartzke 2007), situate it in the context of other statistical challenges to the democratic peace, and show that the democratic peace persists as a compelling finding. In so doing, this article also identifies new features of the democratic peace. It is important to be clear about what this empirical association implies about international politics. Despite the robustness of this result to different model specifications, this observational finding by itself does not prove that it is characteristics of democracies—such as regular competitive elections, constraints on the executive, liberal norms, or civil rights—that make these countries more peaceful toward each other. Even less does it prove that the forceful spread of democracy in particular regions of the world will reduce the frequency or severity of wars. Justifying causal claims such as these exclusively using analyses of observational data requires the leverage of strong assumptions. It is for this reason that there is less agreement about the actual causal mechanisms of the democratic peace than that around the underlying explanandum. Scholars have proposed that the democratic peace arises because of **shared norms** (Maoz and Russett 1993), **restraint on democratic leaders** (Bueno deMesquita et al. 1999),**more credible communication** through transparency (Schultz 1998) or domestic audience costs (Fearon 1994; Tomz 2007; Weeks 2008), greater capacity to reach stable bargains (Lipson 2003), and other possible causal pathways. On the other hand, it may not be a "democratic" characteristic at all that accounts for the peace, but some other co-occurring or preceding factor, such as shared strategic circumstances, shared political systems, capitalism, prosperity, liberal economic norms, or other factors. Nonetheless, the democracy-peace empirical association remains of paramount importance because, despite our best attempts to "control for" other possible correlates of this peace, the fact that two countries are democratic remains **strongly associated** with them having peaceful relations. Furthermore, under relatively modest assumptions this apparently peaceful proclivity seems unlikely to have arisen by chance (that is, the finding is "statistically significant"). This empirical association is foundational to a vast literature testing, refining, and extending theories about the apparent relationship between regime type and peace. Thus it matters greatly whether this association is robust to potential confounders (for reviews of this literature, see George and Bennett 2004; Ray 1995).

A2 Transition Wars

Our impact outweighs – lack of democracy makes extinction inevitable through war, prolif, and environmental collapse – its try-or-die – that's Diamond – their wars are small

Democratic transition decreases war – best models

Ward and Gleditsch 98 (Michael D., Professor of Political Science – University of Washington and Kristian S., Graduate Research Trainee in the Globalization and Democratization Program – University of Colorado, Boulder, American Political Science Review, March)

As Figure 1 details, democratization-whether in mild or strong degrees-is accompanied by reduction, not increase, in the risk of war. Though we do not present graphs of the converse, changes toward autocracy and reversals of democratization are accompanied by increased risks of war involvement. These risks are proportionally greater than the decline or benefits of further democratization. Thus, there is strong evidence that democratization has a monadic effect: It reduces the probability that a country will be involved in a war. Although the probability of war involvement does not decrease linearly, it does decrease monotonically, so that over the entire range of democracy minus autocracy values, there is a reduction of about 50%. During the democratic transition, at **every point** along the way as well as at the end points, there is an attendant reduction in the probability of a polity being at war. We also find that reversals toward greater levels of autocracy (not shown) not only increase the probability of war involvement. Apparently, it is more dangerous to be at a given level of democracy if that represents an increase in the level of authoritarianism than it is to be at the same level of democracy if that represents a decrease in the authoritarian character of the regime. Stated differently, reversals are riskier than progress. It has been argued that institutional constraints are theoretically important in translating the effect of democracy into foreign policy (Bueno de Mesquita, Siverson, and Woller 1992; Siverson 1995). If the idea of democracy is separated into its major components, then the degree of executive constraints empirically dominates the democracy and autocracy scales (Gleditsch and Ward 1997). Accordingly, we demonstrate that moving toward stronger executive constraints also yields a visible reduction in the risk of war.

[Continues]

CONCLUSION Our results show that the process of democratization is accompanied by a decrease in the probability of a country being involved in a war, either as a target or as an initiator. These results were obtained with a more current (and corrected) database than was used in earlier work, and our analyses also focus more clearly on the process of transition. In comparison to studies that look only at the existence of change in authority characteristics, we examine the direction, magnitude, and smoothness of the transition process.

Authoritarianism makes recurring transition crises inevitable

Halperin 5 (Morton, Senior Vice President – Center for American Progress and Director – Open Society Policy Center, The Democracy Advantage, p. 50-51)

Adaptability. Political Stability. An established mechanism for replacing leaders augments democracies' political stability. The recognized legitimacy of this succession process serves as a deterrent to those who would contemplate unconstitutional seizures of power. Periodic elections allow for the peaceful replacement of ineffectual leaders, limiting the damage they can do, mitigating the disastrous effects of their unchallenged policy assumptions and preventing the institutional sclerosis endemic to governments that remain in power for prolonged periods or are beholden to special interests. By contrast, in authoritarian systems, the very narrowness of their

claim on power carries with it the ever-present risk that leaders in these systems will be deposed through unconstitutional means. As Mancur Olson noted, the stability of even durable autocrats is limited to a single lifetime. Even if a leader isn't overthrown but dies or retires, the succession process must be reinvented every time. And the absence of a legal mechanism for a transition practically guarantees unscrupulous behavior on the part of potential successors.

A2 Mansfield/Snyder

Only 25% risk of war – at worst

Snyder 00 (Jack, Professor of International Relations – Columbia University, From Voting to Violence, p. 20)

Though democratization heightens a state's risk of war, historical evidence shows that three out of four democratizing states nonetheless avoided war in the decade after their democratization. Moreover, once liberal democracy became entrenched, no mature democracies have ever fought wars against each other. In those countries where transitions to democracy were fully consolidated during the l990s, the rights of ethnic minorities tended to improve, and ethnic conflicts were rare.'

Mansfield and Snyder are wrong

Narang and Nelson 9 (Vipin and Rebecca, Ph.D. Candidates – Harvard University, "Who Are These Belligerent Democratizers? Reassessing the Impact of Democratization on War", International Organization, 63)

Over the past decade, Edward D. Mansfield and Jack Snyder have argued for a qualification to the democratic peace theory.1 Mansfield and Snyder contend that while mature democracies may be more pacific in their relations with each other, incompletely democratizing states with weak central institutions are more likely to initiate external wars than stable regimes or fully democratizing and autocratizing states. Using regression analysis, Mansfield and Snyder show that this specific class of states is roughly eight to ten times more likely to be involved in war than a stable state undergoing no transition.2 These statistical findings are bolstered by a series of case studies illustrating the causal mechanisms of incomplete democratization and war initiation. This finding has been cited across the academic and foreign policy world as a crucial caveat to the democratic peace theory and has been posited as a robust relationship across the pages of such influential media as the New York Times, Foreign Affairs, Foreign Policy, National Public Radio, and even Slate Magazine.3 By Google Scholar's count, articles and books put forth by Mansfield and Snyder about the dangers of democratization and war have been cited more than 500 times. It has informed debates about the wisdom and sequencing of attempting democracy promotion in countries such as Iraq and the broader Middle East.4 It has been cited as a key reason why the United States should be careful about promoting democracy in China, where "greater political freedom … could at worst empower more aggressive leaders in a nuclear-armed economic powerhouse."5 The Mansfield and Snyder argument has gained plenty of high-profile traction but does the empirical evidence support the argument? We find in our study that it does not. In particular, we find few observations involving incomplete democratization, weak

institutions, and war between 1816 and 1992. Furthermore, we show that the purported relationship between incomplete democratization and war rests entirely on a cluster of unrepresentative observations involving the dismemberment of the Ottoman Empire prior to World War I. Finally, we discover that the cases selected to support the hypothesis rarely involved incomplete democratization with weak institutions. This is not to say that incomplete democratizers face no risks—indeed, scholars have recently shown that these states face a serious increased propensity for state failure or internal conflict.6 But while incomplete democratizers may face a heightened risk of imploding, we show that there is scant empirical support for the argument that these states are at risk of exploding and becoming more belligerent members of the international system.

Your authors conclude aff – creating institutions focused on civic action allow successful transitions

Mansfield and Snyder 7 (Edward D., Professor of Political Science – University of Pennsylvania, and Jack L., Professor of International Relations – Colombia Universoty, "The Sequencing "Fallacy"," Journal of Democracy, 18(3), July, p. 5-10, Project Muse)

There is, however, one key issue on which we may disagree with Berman and Carothers. We suggest not only that democratization is often violent (Berman's main point), but also that premature, out-of sequence attempts to democratize may make subsequent efforts to democratize more difficult and more violent than they would otherwise be. When elections are held in an institutional wasteland like Iraq, for example, political competition typically coalesces around and reinforces the ethnic and sectarian divisions in traditional society. To forge liberal, secular coalitions that cut across cultural divisions, it is necessary to have impartial state institutions that provide a framework for civic action and a focal point for civic loyalty. Without reasonably effective civic institutions, the outcome in culturally diverse societies is likely to resemble Iraq and Lebanon. Once a country starts on an illiberal trajectory, ideas are unleashed and institutions are established that tend to continue propelling it along that trajectory. A key danger is that premature democratization will push a country down this path. We highlight the importance of sequencing not because we are so optimistic about the prospects of engineering a properly ordered democratization, but because we are so concerned about the consequences of transitions occurring under other conditions. Our findings are consistent with the conjecture that out-of-sequence transition attempts delay the eventual achievement of stable democracy, although this issue was not a central focus of our research. Many troubled partial democracies have long retained the institutional deformities born of an initial transition from autocracy that failed to produce a coherent democracy. For example, the connection between Serbian ethnic nationalism and political demagogy began with early experiments with mass electoral politics in the nineteenth century, a pattern that persisted in the face of communist and liberal attempts to break this connection. Likewise, the foundational role of the military in Argentine, Pakistani, and Turkish mass-nationalist politics established a recurrent pattern of oscillations between semidemocracy and military rule. Similarly, Colombia's pattern of urban semidemocracy and violent rural anarchy, established during the "La Violencia" bloodletting that followed the disastrous opening to mass politics in the late 1940s, has become entrenched in subsequent decades.

A2 US Democracy Not Key/Modeled

US democracy developments are modeled internationally

Johnson 4 (Eddie, US House of Representatives—Texas, Roll Call, 7/14)

I write this letter in response to recent criticisms around my support for a letter to United Nations Secretary General Kofi Annan, asking the United Nations to monitor our upcoming election. I stand behind that letter because I believe in the principles of American democracy. I believe in telling the truth about the flaws in our electoral system to the American people, and improving and restoring integrity into our democracy. People may believe that to not trust the system 100 percent is un-American, and to that I say we must have trust in the system, but **we must** also **look for opportunities to improve it**. It is more American to improve than it is to sit back and ignore problems within our electoral system. **We owe our efforts to improve upon our democracy not only to Americans, but also to the rest of the world. The world looks to the United States as a role model for freedom and justice**.

Domestic improvements in democracy are modeled globally

Malinowski 4 (Tom, WASHINGTON ADVOCACY DIRECTOR @ Human Rights Watch, 3/10, FDCH)

A third challenge for the United States in regaining its authority as a champion of freedom in the Middle East is to lead by example at home. Throughout American history, this has been the greatest contribution the United States has made to the struggle for democracy around the world - **by serving as a beacon and as a model** of a society where the power of government to limit the freedom of its people is itself limited by law.

US democracy is a powerful global model

Stacy 3 (Helen, Center on Democracy, Development, and the Rule of Law, Institute for International Studies, Stanford University, and Faculty of Law, Queensland University of Technology, Australia, Stanford Law Review, 5/1)

The United States represents a high water mark of individual rights and freedoms in the post-World War II and post-Cold War period. It has **given inspiration** to both postcolonial and post-Cold War peoples in recrafting their societies. Human rights ideas were a crucial catalyst to these revolutions around the world and to internal debates about the relative rights of people within sovereign states. That the U.S. model is in some respects no more than an idealized chimera (take, for example, the death penalty) does not detract from the model's potency for political mobilization. Nor is the power of the U.S. model diminished by the failure of some postcolonial and post-Cold War nations to convert their dreams of a new society into rule of law democracies and human rights havens. Rather, **the U.S. model**--with all of its contradictions and failures--**continually beckons**. It provides people with a moral and rhetorical framework in which to press their claims with their own sovereigns or before the international community.

Legalism Links

Legal Restriction Link

The aff's legal restriction is merely hollow political stagecraft – it serves to reinforce the abusive power of the totalitarian state

Hedges 14 (Chris, Author and foreign affairs correspondent, "Our Sinister Dual State," 2/18, http://therealnews.com/t2/component/content/article/282-chris-hedges/1973-our-sinister-dual-state)

On Thursday the former National Security Agency official and whistle-blower William E. Binney and I will debate Stewart A. Baker, a former general counsel for the NSA, P.J. Crowley, a former State Department spokesman, and the media pundit Jeffrey Toobin. The debate, at Oxford University, will center on whether Edward Snowden's leaks helped or harmed the public good. The proposition asks: "Is Edward Snowden a Hero?" But, on a deeper level, the debate will revolve around our nation's loss of liberty.¶ The government officials who, along with their courtiers in the press, castigate Snowden insist that congressional and judicial oversight, the right to privacy, the rule of law, freedom of the press and the right to express dissent remain inviolate. They use the old words and the old phrases, old laws and old constitutional guarantees **to give our corporate totalitarianism a democratic veneer**. They insist that the system works. They tell us we are still protected by the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Yet the promise of that sentence in the Bill of Rights is pitted against the fact that every telephone call we make, every email or text we send or receive, every website we visit and many of our travels are tracked, recorded and stored in government computers. The Fourth Amendment was written in 1789 in direct response to the arbitrary and unchecked search powers that the British had exercised through general warrants called writs of assistance, which played a significant part in fomenting the American Revolution. A technical system of surveillance designed to monitor those considered to be a danger to the state has, in the words of Binney, been "turned against you."¶ We live in what the German political scientist Ernst Fraenkel called "the dual state." Totalitarian states are **always dual states**. In the dual state civil liberties are abolished in the name of national security. The political sphere becomes a vacuum "as far as the law is concerned," Fraenkel wrote. There is no legal check on power. Official bodies operate with impunity outside the law. In the dual state the government can convict citizens on secret evidence in secret courts. It can strip citizens of due process and detain, torture or assassinate them, serving as judge, jury and executioner. It rules according to its own arbitrary whims and prerogatives. The outward forms of democratic participation—voting, competing political parties, judicial oversight and legislation—**are hollow, political stagecraft**. Fraenkel called those who wield this unchecked power over the citizenry "the prerogative state."¶ The masses in a totalitarian structure live in what Fraenkel termed "the normative state." The normative state, he said, is defenseless against the abuses of the prerogative state. Citizens are subjected to draconian laws and regulations, as well as arbitrary searches and arrests. The police and internal security are omnipotent. The internal workings of power are secret. Free expression and opposition political activity are pushed to the fringes of society or shut down. Those who challenge the abuses of power by the prerogative state, those who, like Snowden, expose the crimes carried out by government, are made into criminals. Totalitarian states always invert the moral order. It is the wicked who rule. It is the just who are damned.¶ Snowden, we are told, could have reformed from the inside. He could have gone to his superiors or Congress or the courts. But Snowden had numerous examples—including the persecution of the whistle-blower Thomas Drake, who originally tried to go through so-called proper channels—to remind him that **working within the system is fatal**. He had watched as senior officials including Barack Obama lied to the public about internal surveillance. He knew that the president was dishonest when he assured Americans that the Foreign Intelligence Surveillance Court, which meets in secret and hears only from the government, is "transparent." He knew that the president's statement that Congress was "overseeing the entire program" was false. He knew that everything Director of National Intelligence James Clapper told the press, the Congress and the public about the surveillance of Americans was a lie. And he knew that if this information was to be made available to the public he would have to do so through a few journalists whose integrity he could trust.¶ I was a plaintiff before the Supreme Court in Clapper v. Amnesty International, which challenged the FISA Amendments Act of 2008. This act authorizes surveillance without a showing, or probable cause, that a targeted person is an agent of a foreign power. The court dismissed our lawsuit because, it said, the idea that we were targets of surveillance was "based too much on speculation." That Supreme Court ruling was then used by the 2nd Circuit Court of Appeals to deny the credibility, or standing, of the other plaintiffs and me when it heard the Obama administration's appeal of our successful challenge to Section 1021 of the National Defense Authorization Act (NDAA), a provision that permits the U.S. military to detain citizens in military facilities, strip them of due

process and hold them indefinitely. The government, in both court cases, did not attempt to defend the surveillance and detention programs as constitutional. It said that I and the other plaintiffs had no right to bring the cases to court. And the courts agreed.¶ This deadly impasse, the tightening of the corporate totalitarian noose, would have continued if Snowden had not jolted the nation awake by disclosing the crimes of the prerogative state. Snowden's revelations triggered, for the first time, a genuine public debate about mass surveillance. Since the disclosures, three judges have ruled on the NSA's surveillance program, one defending it as legal and two accusing the NSA of violating the Constitution. A presidential panel has criticized the agency's blanket surveillance and called for reform. Some members of Congress—although that body authorized the Patriot Act and its Section 215, which ostensibly permitted this wholesale surveillance of the public—have expressed dismay at the extent of the NSA's activities and the weakness of its promised reforms. Maybe they are lying. Maybe they are not. Maybe reforms will produce improvements or maybe they will be merely cosmetic. But before Snowden we had nothing. Snowden's revelations made us conscious. And as George Orwell wrote in his dystopian novel "1984": "Until they become conscious they will never rebel. ..."¶ "Now, we're all familiar with Congress' most dramatic oversight failure," said Ben Wizner, the director of the American Civil Liberties Union Speech, Privacy & Technology Project and a legal adviser to Snowden, in a recent debate over Snowden with R. James Woolsey, a former director of the Central Intelligence Agency. "And this was in the notorious exchange between Sen. Ron Wyden and Director of National Intelligence James Clapper. Wyden had asked, did the NSA collect any type of data on millions or hundreds of millions of Americans? Clapper's answer was, 'No, sir.' Now, this brazen falsehood is most often described as Clapper's lie to Congress, but that's not what it was. Wyden knew that Clapper was lying. Only we didn't know. And Congress lacked the courage to correct the record—allowed us to be deceived by the director of national intelligence."¶ Societies that once had democratic traditions, or periods when openness was possible, are often seduced into totalitarian systems because those who rule continue to pay outward fealty to the ideals, practices and forms of the old systems. This was true when the Emperor Augustus dismantled the Roman Republic. It was true when Lenin and the Bolsheviks seized control of the autonomous soviets and ruthlessly centralized power. It was true following the collapse of the Weimar Republic and the rise of Nazi fascism. Thomas Paine described despotic government as a fungus growing out of a corrupt civil society. And this is what has happened to us.¶ No one who lives under constant surveillance, who is subject to detention anywhere at any time, whose conversations, messages, meetings, proclivities and habits are recorded, stored and analyzed, can be described as free. The relationship between the U.S. government and the U.S. citizen is now one of **master and slave**. Yet the prerogative state assures us that our rights are sacred, that it abides by the will of the people and the consent of the governed.¶ The defense of liberty, which Snowden exhibited when he cast his fortune, his safety and his life aside to inform the public of the forces arrayed against constitutional rights, entails grave risks in dual states. It demands personal sacrifice. Snowden has called us to this sacrifice. He has allowed us to see who we are and what we have become. He has given us a chance. He has also shown us the heavy cost of defiance. It is up to us to seize this chance and **dismantle the prerogative state**. This means removing from power those who stole our liberty and lied to us. It means **refusing to naively trust in their promised reform**—for reform will never come from those who are complicit in such crimes. **It will come through Americans' construction of mass movements and alternative centers of power that can mount sustained pressure**. If we fail to sever these chains we will become, like many who did not rise up in time to save their civil societies, human chattel.

Surveillance Reform Link

Reforms like the affirmative leave completely unchanged the primary mechanisms of governmental surveillance – fundamental limits are impossible absent INDIVIDUAL resistance to governmental power

Greenwald 14 (Glenn, 11/14, journalist, constitutional lawyer, and author of four New York Times best-selling books on politics and law, "CONGRESS IS IRRELEVANT ON MASS SURVEILLANCE. HERE'S WHAT MATTERS INSTEAD," https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/)

The boredom of this spectacle was simply due to the fact that this has been seen so many times before—in fact, every time in the post-9/11 era that the U.S. Congress pretends publicly to debate some kind of foreign policy or civil liberties bill. Just enough members stand up to scream "9/11″ and "terrorism" over and over until the bill vesting new powers is passed or the bill protecting civil liberties is defeated. Eight years ago, when this tawdry ritual was still a bit surprising to me, I live-blogged the 2006 debate over passage of the Military Commissions

Act, which, with bipartisan support, literally abolished habeas corpus rights established by the Magna Carta by sanctioning detention without charges or trial. (My favorite episode there was when GOP Sen. Arlen Specter warned that "what the bill seeks to do is set back basic rights by some nine hundred years," and then voted in favor of its enactment.) In my state of naive disbelief, as one senator after the next thundered about the "message we are sending" to "the terrorists," I wrote: "The quality of the 'debate' on the Senate floor is so shockingly (though appropriately) low and devoid of substance that it is hard to watch." So watching last night's Senate debate was like watching a repeat of some hideously shallow TV show. The only new aspect was that the aging Al Qaeda villain has been rather ruthlessly replaced by the show's producers with the younger, sleeker ISIS model. Showing no gratitude at all for the years of value it provided these senators, they ignored the veteran terror group almost completely in favor of its new replacement. And they proceeded to save a domestic surveillance program clearly unpopular among those they pretend to represent. There is a real question about whether the defeat of this bill is good, bad, or irrelevant. To begin with, it sought to change only one small sliver of NSA mass surveillance (domestic bulk collection of phone records under section 215 of the Patriot Act) **while leaving completely unchanged the primary means of NSA mass surveillance**, which takes place under section 702 of the FISA Amendments Act, based on the lovely and quintessentially American theory that all that matters are the privacy rights of Americans (and not the 95 percent of the planet called "non-Americans"). There were some mildly positive provisions in the USA Freedom Act: the placement of "public advocates" at the FISA court to contest the claims of the government; the prohibition on the NSA holding Americans' phone records, requiring instead that they obtain FISA court approval before seeking specific records from the telecoms (which already hold those records for at least 18 months); and reducing the agency's "contact chaining" analysis from three hops to two. One could reasonably argue (as the ACLU and EFF did) that, though woefully inadequate, the bill was a net-positive as a first step toward real reform, but one could also reasonably argue, as Marcy Wheeler has with characteristic insight, that the bill is **so larded with ambiguities and fundamental inadequacies** that it **would forestall better options** and advocates for real reform should thus root for its defeat. When pro-privacy members of Congress first unveiled the bill many months ago, it was actually a good bill: real reform. But the White House worked very hard— in partnership with the House GOP—to water that bill down so severely that what the House ended up passing over the summer did more to strengthen the NSA than rein it in, which caused even the ACLU and EFF to withdraw their support. The Senate bill rejected last night was basically a middle ground between that original, good bill and the anti-reform bill passed by the House. * * * * * All of that illustrates what is, to me, the most important point from all of this: the last place one should look to impose limits on the powers of the U.S. government is . . . the U.S. government. Governments don't walk around trying to figure out how to limit their own power, and that's particularly true of empires. The entire system in D.C. is designed at its core to prevent real reform. **This Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance**. Even if it somehow did, this White House would never sign it. Even if all that miraculously happened, the fact that the U.S. intelligence community and National Security State operates with no limits and no oversight means they'd **easily co-opt** the entire reform process. That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court—the committees were instantly captured by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became a rubber stamp with subservient judges who operate in total secrecy. Ever since the Snowden reporting began and public opinion (in both the U.S. and globally) began radically changing, the White House's strategy has been obvious. It's vintage Obama: Enact something that is called "reform"—so that he can give a pretty speech telling the world that he heard and responded to their concerns—**but that in actuality changes almost nothing, thus strengthening the very system he can pretend he "changed."** That's the same tactic as Silicon Valley, which also supported this bill: Be able to point to something called "reform" so they can trick hundreds of millions of current and future users around the world into believing that their communications are now safe if they use Facebook, Google, Skype and the rest. In pretty much every interview I've done over the last year, I've been asked why there haven't been significant changes from all the disclosures. I vehemently disagree with the premise of the question, which equates "U.S. legislative changes" with "meaningful changes." But it has been clear from the start that U.S. legislation is not going to impose meaningful limitations on the NSA's powers of mass surveillance, at least not fundamentally. Those limitations are going to come from—are now coming from —very different places: 1) **Individuals refusing to use internet services that compromise their privacy**. The FBI and other U.S. government agencies, as well as the U.K. Government, are apoplectic over new products from Google and Apple that are embedded with strong encryption, precisely because they know that such protections, while far from perfect, are serious impediments to their power of mass surveillance. To make this observation does not mean, as some deeply confused people try to suggest, that one believes that Silicon Valley companies care in the slightest about people's privacy rights and civil liberties. As much of the Snowden reporting has proven, these companies don't

care about any of that. Just as the telecoms have been for years, U.S. tech companies were more than happy to eagerly cooperate with the NSA in violating their users' privacy en masse when they could do so in the dark. But it's precisely because they can't do it in the dark any more that things are changing, and significantly. That's not because these tech companies suddenly discovered their belief in the value of privacy. They haven't, and it doesn't take any special insight or brave radicalism to recognize that. That's obvious. Instead, these changes are taking place because these companies are petrified that the perception of their collaboration with the NSA will harm their future profits, by making them vulnerable to appeals from competing German, Korean, and Brazilian social media companies that people shouldn't use Facebook or Google because they will hand over that data to the NSA. That—fear of damage to future business prospects—is what is motivating these companies to at least try to convince users of their commitment to privacy. And the more users refuse to use the services of Silicon Valley companies that compromise their privacy—and, conversely, resolve to use only truly pro-privacy companies instead—the stronger that pressure will become. Those who like to claim that nothing has changed from the NSA revelations simply ignore the key facts, including the serious harm to the U.S. tech sector from these disclosures, driven by the newfound knowledge that U.S. companies are complicit in mass surveillance. Obviously, tech companies don't care at all about privacy, but they care a lot about that. Just yesterday, the messaging service WhatsApp announced that it "will start bringing end-to-end encryption to its 600 million users," which "would be the largest implementation of end-to-end encryption ever." None of this is a silver bullet: the NSA will work hard to circumvent this technology and tech companies are hardly trustworthy, being notoriously close to the U.S. government and often co-opted themselves. But as more individuals demand more privacy protection, the incentives are strong. As The Verge notes about WhatsApp's new encryption scheme, "'end-to-end' means that, unlike messages encrypted by Gmail or Facebook Chat, WhatsApp won't be able to decrypt the messages itself, even if the company is compelled by law enforcement." 2) Other countries taking action against U.S. hegemony over the internet. Most people who claim nothing has changed from the Snowden disclosures are viewing the world jingoistically, with the U.S. the only venue that matters. But the real action has long been in other countries, acting individually and jointly to prevent U.S. domination of the internet. Brazil is building a new undersea internet infrastructure specifically to avoid U.S. soil and thus NSA access. That same country punished Boeing by denying the U.S. contractor a long-expected $4.5 billion contract for fighter jets in protest over NSA spying. Another powerful country, Germany, has taken the lead with Brazil in pushing for international institutions and regulatory schemes to place real limits on NSA mass surveillance. U.S. diplomatic relations with numerous key countries have been severely hampered by revelations of mass surveillance. In July, Pew reported that "a new…survey finds widespread global opposition to U.S. eavesdropping and a decline in the view that the U.S. respects the personal freedoms of its people" and that, while the U.S. remains popular in many countries, particularly relative to others such as China, "in nearly all countries polled, majorities oppose monitoring by the U.S. government of emails and phone calls of foreign leaders or their citizens." After just one year of Snowden reporting, there have been massive drops in the percentage of people who believe "the U.S. government respects personal freedom," with the biggest drops coming in key countries that saw the most NSA reporting: All of that has significantly increased the costs for the U.S. to continue to subject the world, and the internet, to dragnets of mass surveillance. It has resulted in serious political, diplomatic, and structural impediments to ongoing spying programs. And it has meaningfully altered world opinion on all of these critical questions. 3) U.S. court proceedings. A U.S. federal judge already ruled that the NSA's domestic bulk collection program likely violates the 4th Amendment, and in doing so, obliterated many of the government's underlying justifications. Multiple cases are now on appeal, almost certainly headed to the Supreme Court. None of this was possible in the absence of Snowden disclosures. **For a variety of reasons, when it comes to placing real limits on the NSA, I place almost as little faith in the judiciary as I do in the Congress and executive branch**. To begin with, the Supreme Court is dominated by five right-wing justices on whom the Obama Justice Department has repeatedly relied to endorse their most extreme civil-liberties-destroying theories. For another, of all the U.S. institutions that have completely abdicated their role in the post-9/11 era, **the federal judiciary has probably been the worst**, the most consistently subservient to the National Security State. Still, there is some chance that one of these cases will result in a favorable outcome that restores some 4th Amendment protections inside the U.S. The effect is likely to be marginal, but not entirely insignificant. 4) Greater individual demand for, and use of, encryption. In the immediate aftermath of the first Snowden reports, I was contacted by countless leading national security reporters in the U.S., who work with the largest media outlets, seeking an interview with Snowden. But there was a critical problem: despite working every day on highly sensitive matters, none of them knew anything about basic encryption methods, nor did their IT departments. Just a few short months later, well over 50 percent of the journalists who emailed me did so under the protection of PGP encryption. Today, if any journalist emails me without encryption, they do so apologetically and with embarrassment. That is reflective of a much broader change from the Snowden reporting, perhaps the most important one: a significantly increased awareness of the need for encryption and its usage around the world. As Wired reported in May: Early last year—before the Snowden revelations—encrypted traffic accounted for 2.29 percent of all peak hour traffic in North America, according to Sandvine's report. Now, it spans 3.8 percent. But that's a small jump compared to other parts of the world. In Europe, encrypted traffic went from 1.47 percent to 6.10 percent, and in Latin America, it increased from 1.8 percent to 10.37 percent. As a result, there are people genuinely devoted to privacy (as opposed to Silicon Valley profit-driven companies) developing all-new, free encryption capabilities. The New York Times recently urged all media outlets to provide default "HTTPS" protection for their sites to protect user privacy (The Intercept is currently only one of three news sites to do so). Increased individual encryption use is a serious impediment to NSA mass surveillance: far stronger than any laws the U.S. Congress might pass. Aside from the genuine difficulty the agency has in cracking well-used encryption products, increased usage presents its own serious problem. Right now, the NSA—based on the warped mindset that anyone who wants to hide what they're saying from the NSA is probably a Bad Person—views "encryption usage" as one of its key factors in determining who is likely a terrorist. But that only works if 10,000 people around

the world use encryption. Once that number increases to 1 million, and then to 10 million, and then to default usage, the NSA will no longer be able to use encryption usage as a sign of Bad People. Rather than being a red flag, encryption will simply be a brick wall: one that individuals have placed between the snooping governments and their online activities. That is a huge change, and it is coming. So let Saxby Chambliss and Susan Collins and Marco Rubio scream into their insular void about ISIS and 9/11 and terrorism. Let Barack Obama, Dianne Feinstein and Nancy Pelosi deceitfully march under a "reform" banner as they do everything possible to protect the NSA from any real limits. Let the NSA and other national security officials sit smugly in the knowledge that none of the political branches in D.C. can meaningfully limit them even if they wanted to (which they don't). The changes from the Snowden disclosures are found far from the Kabuki theater of the D.C. political class, and they are unquestionably significant. That does not mean the battle is inevitably won: The U.S. remains the most powerful government on earth, has all sorts of ways to continue to induce the complicity of big Silicon Valley firms, and is not going to cede dominion over the internet easily. **But the battle is underway and the forces of reform are formidable—not because of anything the U.S. congress is doing, but despite it**.

Metadata Link

The affirmative's focus on the (il)legality of metadata surveillance obfuscates more important questions regarding the technological infrastructure that enables such surveillance – this framing ensures the continuation of privacy violations and the ineffectiveness of reform

Reed and Soghoian 15 (John and Chris, managing editor of Just Security and a research fellow at NYU Law School's Center for Human Rights and Global Justice + ACLU's chief technologist, 6/1, "Chris Soghoian on What's Wrong With the Debate on Section 215," http://justsecurity.org/23369/chris-soghoian-wrong-focusing-section-215/)

It's great that the sunset of Section 215 has reignited the debate about mass surveillance in the United States, but all the focus on this one provision, more specifically on the telephone metadata program it permited, **may miss the mark**, according to Chris Soghoian, the ACLU's chief technologist and longtime fixture at the intersection of digital security and privacy. He thinks a lack of technological understanding and diversity of experience is **preventing us from asking the most important questions** about the ways the United States government is collecting communications data and how effective this collection is in light of the government's rationales for gathering it. Last night's expiration of Section 215 offers the chance to give our readers a taste of a Q+A that yours truly recently did with Soghoian. His comments align with the news about Section 215, but it's pretty safe to assume Soghoian's remarks will be relevant to other surveillance-related discussions that emerge in the coming months and years. The excerpt below stems from a portion of a conversation about the harm being caused by a lack of both diversity of experience and technological expertise among legal experts, policymakers, and journalists involved in the debate over mass surveillance programs. High-level discourse about when government can access data is good, but this discussion **should be informed by an understanding of how government actually gathers and uses that data**. Bringing in voices with greater technological understanding and a more diverse range of backgrounds would enable more potent oversight, a more thorough understanding of such efforts' effectiveness, and a better ability to judge the costs and benefits of surveillance programs. **A debate that focuses solely on the legality of surveillance without details of a technological infrastructure** that may exist through numerous changes in law, policy, and even governments **is truly deficient**. Click through the jump to read Soghoian's comments. Section 215 and our focus on the wrong collection programs "[Marcy Wheeler] keeps harping on this point and I think she's 100% right. The FISA Court issued 180 [Section] 215 orders last year. And five of them were for the domestic telephony metadata program. Five. So we are having a debate right now about reauthorizing 215, but we don't know what 175 of the 180 215 orders were used for. What kind of debate is that? That is the most fraudulent debate I can imagine. And again, I really think that debate around the metadata program is an intentional diversion. People in the IC have said this is not actually a particularly useful program. When they're being honest, they'll say they can live without it. They would rather have the fight be over this than the 175 other uses for this kind of order. It boggles the mind that in 2015, at a time when most Americans have a smart phone, that the only debate taking place is about how the NSA collects phone records about that device. Of course they're collecting Internet records. They are a high tech agency that employs thousands of hackers. Of course they are doing Internet metadata collection and analysis. But we're not having a conversation about how they do domestic Internet collection. We're not

having a debate about how Americans' data gets transmitted over international links and then gets picked up by the NSA. **The trap which we have allowed this debate to be framed solely around** — or constrained solely around **the program that the intelligence community doesn't really give a shit about and is willing to have it be sacrificed as a pawn to protect the other things**. And **we've played into their hands**. We played into that trap completely. That's a problem that we've not done a good job with."

Politics Links

Costs Pol Cap

Ending metadata surveillance costs political capital – creates grave political risks

Heymann 15 (Philip, James Barr Ames Professor of Law @ Harvard and former Deputy Atty General under Clinton, "LAWFARE RESEARCH PAPER SERIES," http://www.lawfareblog.com/wp-content/uploads/2013/08/Lawfare-Philip-Heymann-SURVEILLANCE-for-publ-10-May-2015.pdf)

No one will feel responsible to ensure that the group discuss and consider the social consequences of the fears of American citizens likely to be aroused by such a massive and continuing program. Many citizens are already deeply suspicious of government and untrusting of secret judicial institutions and of a congress that enjoys less than ten percent public approval. What's worse, the program may well endure whether or not is useful. It is unlikely to be cut off even if it produces no useful information, so long as that ineffectiveness is kept secret. Cutting it off would **create grave political risks** of revelation and of being accused of prying, wasting money, and, inconsistently, now endangering the American public. So there is likely to be little effort to monitor the effectiveness of the program and no effort to weigh the social effects. There will be no public criticisms unless the existence of the program leaks and, in any event, there is legal authority for it, which many will consider provides whatever moral or social legitimacy is needed.

Metadata reform costs political capital – sucks up all the legislative oxygen

Vladeck 15 (Steve, co-editor-in-chief of Just Security. Steve is a professor of law at American University Washington College of Law, and is also a senior editor of the Journal of National Security Law & Policy; a contributing editor to the Lawfare blog; a fellow of the Fordham University School of Law Center on National Security; the Supreme Court Fellow for the Constitution Project; a member of the American Law Institute; and the Chair of the Section on Federal Courts of the Association of American Law Schools, "How Rand Paul Hijacked Surveillance Reform," 6/1, http://justsecurity.org/23353/rand-paul-hijacked-surveillance-reform/)

I, though, come to bury Caesar, not to praise him. As I explain in the post that follows, Senator Paul's focus on the substantive validity and wisdom of the phone records program has obscured two larger problems with the USA FREEDOM Act: (1) that it says nothing at all about the government's other controversial surveillance authorities, especially those carried out pursuant to Executive Order 12,333 and the FISA Amendments Act of 2008; and (2) that its procedural reforms, especially with respect to judicial review by the FISA Court, are laughably modest. These shortcomings could easily be dismissed if it was clear that Congress means to address them in subsequent legislation. But by all accounts, section 215 is–and has been–the ballgame. Thus, Senator Paul's grandstanding on the call records program may well come to epitomize what I've elsewhere described as "libertarian hijacking," "wherein libertarians form a short-term coalition with progressive Democrats on national security issues, only to pack up and basically go home once they have extracted concessions that don't actually resolve the real issues." Even worse, as I've explained, "**such efforts . . . consume most (if not all) of the available oxygen and political capital**, obfuscating, if not downright suppressing, the far more problematic elements of the relevant national security policy." So too, here.

Surveillance reform costs political capital AND Obama gets involved

Roberts 15 (Dan, Columnist @ The Guardian, 6/1, "Charges against Edward Snowden stand, despite telephone surveillance ban," http://www.theguardian.com/us-news/2015/jun/01/charges-against-edward-snowden-stand-despite-telephone-surveillance-ban)

Obama administration spokesman Josh Earnest rejected the argument that the imminent passage of legislation banning the practice meant it was time to take a fresh look at the charges against the former National Security Agency contractor. "The fact is that Mr Snowden committed very serious crimes, and the US government and the Department of Justice believe that he should face them,"

Earnest told the Guardian at the daily White House press briefing. “That’s why we believe that Mr Snowden should return to the United States, where he will face due process and have the opportunity to make that case in a court of law.” Earnest refused to comment on whether Snowden could be allowed to employ a whistleblower defence if he choose to return voluntarily, something his supporters have argued is impossible under current Espionage Act charges. “Obviously this is something that the Department of Justice would handle if they are having [those conversations],” said Earnest. “The thing I would put out is that there exists mechanisms for whistleblowers to raise concerns about sensitive national security programmes.” “Releasing details of sensitive national security programmes on the internet for everyone, including our adversaries to see, is inconsistent with those protocols that are established for protecting whistleblowers,” he added. But the White House placed itself firmly on the side of NSA reform, when asked if the president was “taking ownership” of the USA Freedom Act, which is expected to pass Congress later this week. Analysis US surveillance reform: what has happened and what happens next? Is the Patriot Act gone forever? What exactly is the USA Freedom Act? Can the government still monitor terrorist groups? Here’s what you need to know Read more “To the extent that we’re talking about the president’s legacy, I would suspect [it] would be a logical conclusion from some historians that the president ended some of these programmes,” replied Earnest. “This is consistent with the reforms that the president advocated a year and a half ago. And these are reforms that **required the president and his team to expend significant amounts of political capital** to achieve over the objection of Republicans.”

A2 No Spillover

Surveillance fights spillover to weaken momentum for TPA

Wright 15 (Andy, Founding Editor @ Just Security + formerly faculty of Savannah Law School after serving two years as Associate Counsel to the President in the White House Counsel’s Office, "The Patriot Act's Sunset Recess," 5/29, http://justsecurity.org/23308/patriot-acts-sunset-recess/)

As one former Senate leadership aide put it to me, “fatigue and jet fumes” usually fuel a photo finish even on controversial sunsets. However, **that has not been the case here**. **The Senate lost valuable floor time and political capital on the controversy over trade authority**. In addition, it is more difficult to reach legislative compromise on surveillance reform when there are numerous presidential candidates jockeying within the Republican caucus. As recounted by Patrick Eddington and Jennifer Granick, Sen. Rand Paul’s (R-Ky.) May 20 filibuster had the effect of preventing a vote on Sen. Mitch McConnell’s (R-Ky.) clean reauthorization bill (i.e, extend Section 215 without reforms) before the House of Representatives went on recess. The House seems content to let pressure build on senators as the sunset approaches rather than engage in compromise negotiations.

Circumvention Turn

1nc

NSA will circumvent and weaken new restrictions

Ackerman 6/1/15 (Spencer, Columnist @ the Guardian, "Fears NSA will seek to undermine surveillance reform," http://www.theguardian.com/us-news/2015/jun/01/nsa-surveillance-patriot-act-congress-secret-law)

Privacy advocates fear the National Security Agency **will attempt to weaken new restrictions** on the bulk collection of Americans' phone and email records **with a barrage of creative legal wrangles**, as the first major reform of US surveillance powers in a generation looked likely to be a foregone conclusion on Monday. The USA Freedom Act, a bill banning the NSA from collecting US phone data in bulk and compelling disclosure of any novel legal arguments for widespread surveillance before a secret court, has already been passed by the House of Representatives and on Sunday night the Senate voted 77 to 17 to proceed to debate on it. Between that bill and a landmark recent ruling from a federal appeals court that rejected a longstanding government justification for bulk surveillance, civil libertarians think they stand a chance at stopping attempts by intelligence lawyers to undermine reform in secret. Attorneys for the intelligence agencies react scornfully to the suggestion that they will stretch their authorities to the breaking point. Yet reformers remember that such legal tactics during the George W Bush administration allowed the NSA to shoehorn bulk phone records collection into the Patriot Act. Rand Paul, the Kentucky senator and Republican presidential candidate who was key to allowing sweeping US surveillance powers to lapse on Sunday night, warned that NSA lawyers would now make mincemeat of the USA Freedom Act's prohibitions on bulk phone records collection by taking an expansive view of the bill's definitions, thanks to a pliant, secret surveillance court. "My fear, though, is that the people who interpret this work at a place known as the rubber stamp factory, the Fisa [court]," Paul said on the Senate floor on Sunday. Paul's Democratic ally, Senator Ron Wyden, warned the intelligence agencies and the Obama administration against attempting to unravel NSA reform. "My time on the intelligence committee has taught me to always be vigilant for secret interpretations of the law and new surveillance techniques that Congress doesn't know about," Wyden, a member of the intelligence committee, told the Guardian. "Americans were rightly outraged when they learned that US intelligence agencies relied on secret law to monitor millions of law-abiding US citizens. The American people are now on high alert for new secret interpretations of the law, and intelligence agencies and the Justice Department would do well to keep that lesson in mind." The USA Freedom Act is supposed to prevent what Wyden calls "secret law". It contains a provision requiring congressional notification in the event of a novel legal interpretation presented to the secret Fisa court overseeing surveillance. Yet in recent memory, the US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004. Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, an internal NSA draft history records that attorneys found a different legal rationale that "essentially gave NSA the same authority to collect bulk internet metadata that it had". After a New York Times story in 2005 revealed the existence of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along – precisely the contention that the second circuit court of appeals rejected in May. Despite that recent history, veteran intelligence attorneys reacted with scorn to the idea that NSA lawyers will undermine surveillance reform. Robert Litt, the senior lawyer for director of national intelligence, James Clapper, said during a public appearance last month that creating a banned bulk surveillance program was "not going to happen". "The whole notion that NSA is just evilly determined to read the law in a fashion contrary to its intent is bullshit, of the sort that the Guardian and the left – but I repeat myself – have fallen in love with. The interpretation of 215 that supported the bulk collection program was creative but not beyond reason, and it was upheld by many judges," said the former NSA general counsel Stewart Baker, referring to Section 215 of the Patriot Act. This is the section that permits US law enforcement and surveillance agencies to collect business records and expired at midnight, almost two years after the whistleblower Edward Snowden revealed to the Guardian that the Patriot Act was secretly being used to justify the collection of phone records from millions of Americans. With one exception, the judges that upheld the interpretation sat on the non-adversarial Fisa court, a body that approves nearly all government surveillance requests and modifies about a quarter of them substantially. The exception was reversed by the second circuit court of appeals. Baker, speaking before the Senate voted, predicted: "I don't think anyone at NSA is going to invest in looking for ways to defy congressional intent if USA Freedom is adopted." The USA Freedom Act, a compromise bill, would not have an impact on the vast majority of NSA surveillance. It would not stop any overseas-focused surveillance program, no matter how broad in scope, nor would it end the NSA's dragnets of Americans' international communications authorized by a different law. Other bulk domestic surveillance programs, like the one the Drug Enforcement Agency operated, would not be impacted. The rise of what activists have come to call "bulky" surveillance, like the "large collections" of Americans' electronic communications records the FBI gets to collect under the Patriot Act, continue unabated – or, at least, will, once the USA Freedom Act passes and restores the Patriot Act powers that lapsed at midnight on Sunday. That collection, recently confirmed by a largely overlooked

Justice Department inspector general's report, **points to a slipperiness in shuttering surveillance programs – one that creates opportunities for clever lawyers**.

2nc

Yes NSA will circumvent

Gaist 6/2/15 (Thomas, Columnist @ WSWS, "US Senate prepares to extend NSA spy powers," http://www.wsws.org/en/articles/2015/06/02/nsas-j02.html)

Defending the agency before the Senate this week, the NSA's top in-house lawyer Stewart Baker acknowledged that the readings of Section 215 by NSA and DoJ lawyers from 2005 required some inventiveness. "The interpretation of 215 that supported the bulk collection program was creative," admitted Baker. Baker then proceeded to speak in favor of passage of the USA Freedom Act legislation, saying that such legal "creativity" would no longer be necessary should the law pass. "I don't think anyone at NSA is going to invest in looking for ways to defy congressional intent if USA Freedom is adopted," Baker said, implying that the bill provides all the necessary leeway for the NSA to operate as it desires.

Baker's testimony makes clear that for all the talk of "ending NSA spying" and "shutting down NSA servers," what is emerging out of the USA Freedom Act saga is, in reality, **a blank check for the spy agency to continue and expand its operations**, which are targeting the entire US and world population. Even assuming that constraints against telephone metadata were actually enforced, the USA Freedom Act in no way limits the NSA's existing authority to conduct limitless dragnet surveillance against targets in foreign countries, against US persons who communicate with persons abroad, and against US data "incidentally" collected from servers located overseas. The vast majority of domestic surveillance operations developed by the NSA, FBI, DEA and other agencies with increasing speed since 9/11 **would** also **not be subject to any new constraints**.

Internet Freedom Adv Answers

Nationalization Good

Internet nationalization key to cybersecurity – prevents attacks

Renda 13 (Andrea Renda, , Senior Research Fellow, Centre for European Policy Studies, "Cybersecurity and Internet Governance," May 3, 2013, http://www.cfr.org/councilofcouncils/global_memos/p32414)

Cybersecurity is now a leading concern for major economies. Reports indicate that hackers can target the U.S. Department of Justice or Iranian nuclear facilities just as easily as they can mine credit card data. Threats have risen as the Internet has become a critical infrastructure for the global economy, with thousands of operations migrating onto it. For example, the innocuous practice of bring-your-own-device to work presents mounting dangers due to malware attacks--software intended to corrupt computers. Between April and December 2012, the types of threats detected on the Google Android platform increased by more than thirty times from 11,000 to 350,000, and are expected to reach one million in 2003, according to security company Trend Micro (See Figure 1). Put simply, as the global economy relies more on the Internet, the latter becomes increasingly insidious. There is no doubt that the Internet is efficient. But it now needs a more concerted global effort to preserve its best aspects and guard against abuses. The rise of the digital cold war Cyber threats and cyberattacks also reveal an escalating digital cold war. For years the United States government has claimed that cyberattacks are mainly state-sponsored, initiated predominantly by China, Iran, and Russia. The penetration of the U.S. Internet technology market by corporations such as Huawei, subsidized by the Chinese government, has led to more fears that sensitive information is vulnerable. After an explicit exchange of views between President Barack Obama and President Xi Jinping in February 2013, the United States passed a new spending law that included a cyber espionage review process limiting U.S. government procurement of Chinese hardware. U.S. suspicions intensified when Mandiant, a private information security firm, released a report detailing cyber espionage by a covert Chinese military unit against 100 U.S. companies and organizations. In March 2013, the U.S. government announced the creation of thirteen new teams of computer experts capable to retaliate if the United States were hit by a major attack. On the other hand, Chinese experts claim to be the primary target of state-sponsored attacks, largely originating from the United States. But in reality the situation is more complex. Table 1 shows that cyberattacks in March 2013 were most frequently launched from Russia and Germany, followed by Taiwan and the United States. What is happening to the Internet? Created as a decentralized network, the Internet has been a difficult place for policymakers seeking to enforce the laws of the real world. Distributed Denial of Service (DDoS) attacks—consisting of virus infected systems (Botnet) targeting a single website leading to a Denial of Service for the end user—became a harsh reality by 2000, when companies such as Amazon, eBay, and Yahoo! had been affected. These costs stem from the direct financial damage caused by loss of revenue during an attack, disaster recovery costs associated with restoring a company's services, a loss of customers following an attack, and compensation payments to customers in the event of a violation of their service level agreements. As the Internet permeates everyday life, the stakes are becoming even higher. In a few years, society could delegate every aspect of life to information technology imagine driverless cars, machine-to-machine communications, and other trends that will lead to the interconnection of buildings to trains, and dishwashers to smartphones. This could open up these societies to previously unimaginable disruptive cyber events. What is as concerning is that in cyberspace, attacks seem to have a structural lead over defense capabilities: it can be prohibitively difficult to foresee where, how, and when attackers will strike. Confronted with this challenge, the global community faces a dilemma. The neutrality of the Internet has proven to be a formidable ally of democracy, but the cost of protecting users' freedom is skyrocketing. Critical services, such as e-commerce or e-health, might never develop if users are not able to operate in a more secure environment. Moreover, some governments simply do not like ideas to circulate freely. Besides the "giant cage" built by China to insulate its Internet users, countries like Pakistan have created national firewalls to monitor and filter the flow of information on the network. And even the Obama administration, which has most recently championed Internet freedom initiatives abroad, is said to be cooperating with private telecoms operators on Internet surveillance, and Congress is discussing a new law imposing information sharing between companies and government on end-user behavior, which violates user privacy. The question becomes more urgent every day: Should the Internet remain an end-to-end, neutral environment, or should we sacrifice Internet freedom on the altar of enhanced security? The answer requires a brief explanation of how the Internet is governed, and what might change. The end of the Web as we know it? Since its early days, the Internet has been largely unregulated by public authorities, becoming a matter for private self-regulation by engineers and experts, who for years have taken major decisions through unstructured

procedures. No doubt, this has worked in the past. But as cyberspace started to expand, the stakes began to rise. Informal bodies such as the Internet Corporation for Assigned Names and Numbers (ICANN)—a private, U.S.-based multi-stakeholder association that rules on domain names and other major aspects of the Internet have been increasingly put under the spotlight. Recent ICANN rulings have exacerbated the debate over the need for more government involvement in Internet governance, either through a dedicated United Nations agency or through the International Telecommunications Union (ITU), an existing UN body that ensures international communication and facilitates deployment of telecom infrastructure. But many experts fear that if a multi-stakeholder model is abandoned, the World Wide Web would cease to exist as we know it. Last year's World Conference on International Telecommunications, held in Dubai, hosted a heated debate on the future of cyberspace. Every stakeholder was looking for a different outcome. The ITU looked to expand its authority over the Internet; European telecoms operators wanted to secure more revenues by changing the rules for exchanging information between networks; China, Russia, and India wanted stronger government control over the Internet; the United States and Europe stood to protect the multi-stakeholder model of ICANN; and a group of smaller countries sought to have Internet access declared a human right. When a new treaty was finally put to vote, unsurprisingly, as many as fifty-five countries (including the United States and many EU member states) decided not to sign. Since then, the question on how the Internet will be governed remains unresolved.

Cyber attacks between states results in great power war

Gable 10 (Kelly A. Gable, Adjunct Professor of Public International Law, Drexel University Earle Mack School of Law, Cyber-Apocalypse Now: Securing the Internet Against Cyberterrorism and Using Universal Jurisdiction as a Deterrent, Vanderbilt Journal of Transnational Law, January, 2010, 43 Vand. J. Transnat'l L. 57, lexis)

Spoofing attacks are concentrated on impersonating a particular user or computer, usually in order to launch other types of attacks. n122 Spoofing is often committed in connection with password sniffing; after obtaining a user's log-in and password, the spoofer will log in to the computer and masquerade as the legitimate user. The cyberterrorist typically does not stop there, instead using that computer as a bridge to another, hopping in this fashion from computer to computer. This process, called "looping," effectively conceals the spoofer's identity, especially because he or she may have jumped back and forth across various national boundaries. n123 Even more disturbing is the possibility of misleading entire governments into believing that another, potentially hostile government is attempting to infiltrate its networks. Imagine that a cyberterrorist perpetrates an attack on the network maintained by the U.S. Treasury and steals millions of dollars, transferring the money to his own account to be used for funding further terrorist activities. n124 He has used the spoofing technique, however, which causes the U.S. government to believe the Russian government to be behind the attack and to accuse them of the attack. The Russian government denies the accusation and is insulted at the seemingly unprovoked hostility. Tensions between the governments escalate and boil over, potentially **resulting in war**. Though this may be only a hypothetical example, **it is frighteningly plausible**. In fact, it may have been used in the attacks on U.S. and South Korean websites - the South Korean government initially was so certain that North Korea was behind the attack that it publicly accused the North Korean government, despite already tense relations. n125 Similarly, in the 2007 attack on Estonia, Estonian authorities were so certain that the Russian government was behind the attack that they not only publicly accused them but requested military assistance from NATO in responding to the attack. n126 It was later determined that Russia was not behind the attack and that at least some of the attackers were located in Brazil and Vietnam. n127

Government control over the internet key to prevent and mitigate cyber disasters

Baldor 9 (Lolita C. Baldor, Associated Press, "How much government control in cybercrisis?," http://www.nbcnews.com/id/33038143/ns/technology_and_science-security/t/how-much-government-control-cybercrisis/#.VWXbAvlViko]

There's no kill switch for the Internet, no secret on-off button in an Oval Office drawer. Yet when a Senate committee was exploring ways to secure computer networks, a provision to give the president the power to shut down Internet traffic to compromised Web sites in an emergency set off alarms. Corporate leaders and privacy advocates quickly objected, saying the government must not seize control of the Internet. Lawmakers dropped it, but the debate rages on. How much control should federal authorities

have over the Web in a crisis? How much should be left to the private sector? It does own and operate at least 80 percent of the Internet and argues it can do a better job. "We need to prepare for that digital disaster," said Melissa Hathaway, the former White House cybersecurity adviser. "We need a system to identify, isolate and respond to cyberattacks at the speed of light." So far at least 18 bills have been introduced as Congress works carefully to give federal authorities the power to protect the country in the event of a massive cyberattack. Lawmakers do not want to violate personal and corporate privacy or squelching innovation. All involved acknowledge it isn't going to be easy. For most people, the Internet is a public haven for free thought and enterprise. Over time it has become the electronic control panel for much of the world's critical infrastructure. Computer networks today hold government secrets, military weapons specifications, sensitive corporate data, and vast amounts of personal information. Millions of times a day, hackers, cybercriminals and mercenaries working for governments and private entities are scanning those networks, looking to defraud, disrupt or even destroy. Just eight years ago, the government ordered planes from the sky in the hours after the Sept. 11 terrorist attacks. Could or should the president have the same power over the Internet in a digital disaster? If hackers take over a nuclear plant's control system, should the president order the computer networks shut down? If there's a terrorist attack, should the government knock users off other computer networks to ensure that critical systems stay online? And should the government be able to dictate who companies can hire and what they must do to secure the networks that affect Americans' daily life.

A2 Nationalization Bad

Nationalization inevitable AND doesn't break the Internet

Goldstein 14 (Gordon M. Goldstein, 6/25/2014. Served as a member of the American delegation to the World Conference on International Telecommunications. "The End of the Internet?" The Atlantic, http://m.theatlantic.com/magazine/archive/2014/07/the-end-of-the-internet/372301/)

Some experts anticipate a future with a Brazilian Internet, a European Internet, an Iranian Internet, an Egyptian Internet—all with different content regulations and trade rules, and perhaps with contrasting standards and operational protocols. Eli Noam, a professor of economics and finance at Columbia Business School, believes that such a progressive fracturing of the global Internet is inevitable. "We must get used to the idea that the standardised internet is the past but not the future," he wrote last fall. "And that **the future is a federated internet**, not a uniform one." Noam thinks that can be managed, in part through the development of new intermediary technologies that would essentially allow the different Internets to talk to each other, and allow users to navigate the different legal and regulatory environments.

Open Internet impossible AND regulation and nationalization key to Net growth

Mansell 11 (Robin, Department of Media and Communications , London School of Economics and Political Science , London, UK. New visions, old practices: Policy and regulation in the Internet era, Continuum: Journal of Media & Cultural Studies, 25:01, 19-32)

Champions of an open Internet, not subject to regulation, have so far managed to convince policy makers that direct intervention under conventional telecommunication or broadcasting regulatory mechanisms is not needed and would suppress innovative activity (Benkler 2000; Johnson and Post 1996). Internet Service Providers (ISPs)4 have been classed in the **U**nited **S**tates as information service providers, not subject to traditional common carriage regulations by the Federal Communications Commission (FCC 2005). In Europe, the Internet **is unregulated**, at least in so far as it is not understood to involve carriage, and it is not classed as a mass media audio-visual service (EC 2009b, 2010b). It is important to

recall, however, that the Internet 'sits' on top of a network infrastructure. **There are corporate interests in the sale of routers**, **network cables**, **microware towers**, **terminals and handsets and in software applications and content**. Many of these market segments are subject to regulation in the public interest which has been affected by the neoliberal agenda. Thus, claims that the Internet has escaped this agenda entirely **are misguided**.5 Scarcity and corporate interest in the Internet Political economy analyses of the content and telecommunication industries have revealed the market power of the large companies (Bettig and Hall 2003; McChesney 2004; Mosco 2004), but there has been **remarkably little research** on the specific interests of companies that are dominating many aspects of the Internet. Even if the distributed nature of the Internet enables many actors to participate in content production and communicative processes, empirical analysis indicates that emerging strategies are **similar to the monopolizing tendencies of the earlier media and communication industries.** Exploiting labour power Cohen (2008, 7), for example, analyses corporate interests in social interactions among users of Facebook. She considers whether audiences are 'empowered' when they serve as co-producers of content,6 suggesting that users are providing their unpaid labour **in support of the profit-seeking motives of large companies**. The Web 2.0 applications are being put into the service of capital, 'reorganizing production and distribution in order to increase wealth and extend control over the labour force' (7). The unpaid work of users enables the owners of Facebook and other similar sites to build revenue models **around users who 'self-service' themselves**.7 Her analysis of the political economy of the new online social media recalls Smythe's earlier discussion of the 'audience commodity' in the age of the mass media (Smythe 1977).8 If today's 'audience' comprises globally networked users who seem to **derive pleasure through social networking**, producing a 'productive composition of bodies as aggregates of networked ICTs' (Cote´ and Pybus 2007, 97), then '**immaterial labour 2.0**' on Facebook or MySpace offers companies a basis for targeting their marketing of goods and services. As Cote´ and Pybus (103) argue, these networked relations of affinity 'are an emergent form of contestation of neoliberal globalization' but they also serve capitalist interests increasingly well, **offering new sites for co-optation.** The dialectic of co-optation and resistance is evident in the proliferation of peer-to-peer (P2P) file sharing of copyright-infringing content (David 2010) and in the use of social networking to mount social movements of many different kinds. The Internet is being used to support political opposition, but these activities **remain subject to co-optation** either by mainstream media or they are subject to surveillance and other online counter-insurgency activities of the state (Bennett 2003; Cammaerts 2008; Latham and Sassen 2005; McCurdy 2009; Rogers 2004). The existence of involuntary, **or even voluntary co-optation,** creates a prima facie case for public oversight, if not a case for regulatory intervention. In this paper, the focus is on the strategies **of the corporate world** rather than on those of the state. In the next sub-sections I discuss whether the open Internet is being managed to create scarcity conditions that are necessary for the exercise of discriminatory corporate power.

A2 Internet Collapse

No Internet collapse – too robust

Dvorak 7 {John C., syndicated technology and computing analyst, Bachelors in History (California-Berkley), "Will the Internet Collapse?" PC Mag, 5/1, http://www.pcmag.com/article2/0%2c2817%2c2124376%2c00.asp#THUR}

When is the Internet going to collapse? The answer is **NEVER**. The Internet is amazing for no other reason than that **it hasn't simply collapsed**, never to be rebooted. Over a decade ago, many pundits were predicting an all-out catastrophic failure, and back then the load was nothing compared with what it is today. So how much more can this network take? Let's look at the basic changes that have occurred since the Net became chat-worthy around 1990. First of all, only a few people were on the Net back in 1990, since it was essentially a carrier for e-mail (spam free!), newsgroups, gopher, and FTP. These capabilities remain. But the e-mail load has grown to phenomenal

proportions and become burdened with megatons of spam. In one year, the amount of spam can exceed a decade's worth, say 1990 to 2000, of all Internet traffic. It's actually the astonishing overall growth of the Internet that is amazing. In 1990, the total U.S. backbone throughput of the Internet was 1 terabyte, and in 1991 it doubled to 2TB. Throughput continued to double until 1996, when it jumped to 1,500TB. After that huge jump, it returned to doubling, reaching 80,000 to 140,000TB in 2002. This ridiculous growth rate has continued as more and more services are added to the burden. The jump in 1996 is attributable to the one-two punch of the universal popularization of the Web and the introduction of the MP3 standard and subsequent music file sharing. More recently, the emergence of inane video clips (YouTube and the rest) as universal entertainment has continued to slam the Net with overhead, as has large video file sharing via BitTorrent and other systems. Then VoIP came along, and IPTV is next. All the while, e-mail numbers are in the trillions of messages, and spam has never been more plentiful and bloated. Add blogging, vlogging, and twittering and it just gets worse. According to some expensive studies, the growth rate has begun to slow down to something like 50 percent per year. But that's growth on top of huge numbers. Petabytes. So when does this thing just grind to a halt or blow up? To date, we have to admit that the structure of the Net is robust, to say the least. This is impressive, considering the fact that **experts were predicting a collapse in the 1990s**. Robust or not, this Internet is a transportation system. It transports data. All transportation systems eventually need upgrading, repair, basic changes, or reinvention. But what needs to be done here? This, to me, has come to be the big question. Does anything at all need to be done, or do we run it into the ground and then fix it later? Is this like a jalopy leaking oil and water about to blow, or an organic perpetual-motion machine that fixes itself somehow? Many believe that the Net has never collapsed because **it does tend to fix itself.** A decade ago we were going to run out of IP addresses—remember? **It righted itself**, with rotating addresses and subnets. Many of the Net's **improvements are self-improvements**. **Only spam, viruses, and spyware represent incurable diseases** that could kill the organism. I have to conclude that the worst-case scenario for the Net is an outage here or there**, if anywhere**. After all, the phone system, a more machine-intensive system, never really imploded after years and years of growth, did it? While it has outages, it's **actually more reliable than the power grid it sits on**. Why should the Internet be any different now that it is essentially run by phone companies who know how to keep networks up? And let's be real here. The Net is being **improved daily**, with newer routers and better gear being constantly hot-swapped all over the world. This is not the same Internet we had in 1990, nor is it what we had in 2000.

A2 Internet Solves Extinction

Internet doesn't solve existential threats

Mnookin 12 (Seth, teaches science writing at MIT and blogs at the Public Library of Science, Download the Universe, March 23, 2012, "The Frozen Future of Nonfiction", http://www.downloadtheuniverse.com/dtu/2012/03/why-the-net-matters-how-the-internet-will-save-civilization-by-david-eagleman-canongate-books-2010-for-ipad-by-set.html)

Or maybe you're like me, and you can no longer remember when you first became aware of Eagleman and his work--you just know you're curious about whatever it is he decides to tackle next because it will inevitably be interesting and erudite and thought-provoking and, in all likelihood, fun. At least, that's what I assumed before I read Why The Net Matters, Eagleman's frustrating 2010 e-book about how and why the Internet will save civilization. (I reviewed the $7.99 iPad version, which is the platform it was designed for; a stripped-down, text-based version is available on the Kindle for the portentous price of $6.66.) The problems start with Eagleman's premise, which is so vague and broad as to be **practically meaningless**. There are, he writes, just "a handful of reasons" that civilizations collapse: "disease, poor information flow, natural disasters, political corruption, resource depletion and economic meltdown." Lucky for us (and Eagleman does offer readers "[c]ongratulations on living in a fortuitous moment in history"), the technology that created the web "obviates many of the threats faced by our ancestors. In other words...[t]he advent of the internet represents a watershed moment in history that just might rescue our future." **On the other hand, it just might not**: In order to make his point, Eagleman **either ignores or doesn't bother to look** for any evidence that might undercut it. The first of six "random access" chapters that make up the bulk of Why The Net Matters is devoted to "Sidestepping Epidemics," like the smallpox outbreak that helped bring down the Aztec Empire. In the future, Eagleman writes, the "protective net," in the form of telemedicine, telepresence ("the ability to work remotely via computer"), and sophisticated information tracking, will save us from these outbreaks. **That** all **sounds lovely**, but what of the fact that **we're currently experiencing a resurgence in vaccine-preventable diseases such as measles**...a

resurgence which is fueled in no small part by **misinformation spread over that very same "protective net"?** A few chapters later, in a section celebrating the benefits of the hive mind, Eagleman invokes Soviet pseudoscientist Trofim Lysenko, a famed quack who took over the U.S.S.R.'s wheat production under Stalin. Because the Soviet Union spanned 13 time zones, Eagleman writes, "central rule-setting was disastrous for wheat production. … Part of the downfall of the USSR can be traced to this centralization of agricultural decisions." That sounds nice, and might even be true—but it's not a point that's supported by Lysenko, whose main shortcoming was not that he believed in a one-size-fits-all approach; **it was that he was a fraud**. Moving to the present day, Eagleman addresses wildfires that swept through Southern California in 2007, which, he writes, "brought into relief the relationship between natural disasters and the internet." At the beginning of the outbreak in October, Californians were glued to their television screens, hoping to determine if their own homes were in danger. But at some point they stopped watching the televisions and turned to other sources. A common suspicion arose that the news stations were most concerned with the fate of celebrity homes in Malibu and Hollywood; mansions that were consumed by the flames took up airtime in proportion to their square footage, which made for gripping video but a poor information source about which areas were in danger next. So people be-gan to post on Twitter, upload geotagged cell phone photos to Flickr, and update Facebook. I had been fairly obsessed with the wildfires, and since I didn't remember this "common suspicion," I decided to check the article Eagleman cites as the source of this info, which was **a Wired blog post** titled "Firsthand Reports from California Wildfires Pour Through Twitter." It contained no references to a celebrity-obsessed news media; instead, the piece described how "the local media [was] overwhelmed." It also talked about a San Diego resident who was "[a]cting as an ad hoc news aggregator of sorts" by "watching broadcast television news, listening to local radio reports and monitoring streaming video on the web" and then posting information, along with info gleaned from IMs, text messages, and e-mails, to his Twitter account.

A2 Key to Econ

Internet not key to economic growth – data confirms

Kenny 13 (Charles Kenny, 6/17/2013. senior fellow at the Center for Global Development. "Think the Internet Leads to Growth? Think Again," Bloomberg Business Week, http://www.businessweek.com/articles/2013-06-17/think-the-internet-leads-to-growth-think-again)

Remember the year 2000 in the months after the Y2K bug had been crushed, when all appeared smooth sailing in the global economy? When the miracle of finding information online was so novel that The Onion ran an article, "Area Man Consults Internet Whenever Possible?" It was a time of confident predictions of an ongoing economic and political renaissance powered by information technology. Jack Welch—then the lauded chief executive officer of General Electric (GE)—had suggested the Internet was "the single most important event in the U.S. economy since the Industrial Revolution." The Group of Eight highly industrialized nations—at that point still relevant—met in Okinawa in 2000 and declared, "IT is fast becoming a vital engine of growth for the world economy. … Enormous opportunities are there to be seized by us all." In a 2000 report, then-President Bill Clinton's Council of Economic Advisers suggested (PDF), "Many economists now posit that we are entering a new, digital economy that could inaugurate an unprecedented period of sustainable, rapid growth." It hasn't quite worked out that way. Indeed, if the last 10 years have demonstrated anything, it's that for all the impact of a technology like the Internet, thinking that any new innovation will set us on a course of high growth is almost certainly wrong. That's in part because many of the studies purporting to show a relationship between the Internet and economic growth relied on shoddy data and dubious assumptions. In 1999 the Federal Reserve Bank of Cleveland released a study that concluded (PDF), "… the fraction of a country's population that has access to the Internet is, at least, correlated with factors that help to explain average growth performance." It did so by demonstrating a positive relationship between the number of Internet users in a country in 1999 with gross domestic product growth from 1974 to 1992. Usually we expect the thing being caused (growth in the 1980s) to happen after the things causing it (1999 Internet users). In defense of the Fed, researchers at the World Bank recently tried to repeat the same trick. They estimated that a 10 percent increase in broadband penetration in a country was associated with a 1.4 percentage point increase in growth rate. This was based on growth rates and broadband penetration from 1980 to 2006. Given

that most deployment of broadband occurred well after the turn of the millennium, the only plausible interpretation of the results is that countries that grew faster from 1980 to 2006 could afford more rapid rollouts of broadband. Yet the study is widely cited by broadband boosters. Many are in denial about the failure of the IT revolution to spark considerable growth. Innovation in information technology has hardly dried up since 2000. YouTube(GOOG) was founded in 2005, and Facebook (FB) is only a year older. Customer-relations manager Salesforce.com (CRM), the first cloud-based solution for business, only just predates the turn of the millennium. And there are now 130 million smartphones in the U.S., each with about the same computing power as a 2005 vintage desktop. Meanwhile, according to the U.S. Department of Commerce (PDF), retail e-commerce as a percentage of total retail sales has continued to climb—e-commerce sales were more than 6 percent of the total by the fourth quarter of 2012, up from less than 2 percent in 2003. Yet despite continuing IT innovation, we've seen few signs that predictions of "an unprecedented period of sustainable, rapid growth" are coming true. U.S. GDP expansion in the 1990s was a little faster than the 1980s—it climbed from an annual average of 3 percent to 3.2 percent. But GDP growth collapsed to 1.7 percent from 2000 to 2009. Northwestern University economist Robert Gordon notes that U.S. labor productivity growth spiked briefly—rising from 1.38 percent from 1972 to 1996 to 2.46 percent from 1996 to 2004—but fell to 1.33 percent from 2004 and 2012. Part of the labor productivity spike around the turn of the century was because of the rapidly increasing efficiency of IT production (you get a lot more computer for the same cost nowadays). Another part was because of considerable investments in computers and networks across the economy—what economists call "capital deepening." But even during the boom years it was near-impossible to see an economywide impact of IT on "total factor productivity"—or the amount of output we were getting for a given input of capital and labor combined. Within the U.S., investment in the uses of the Internet for business applications had an impact on wage and employment growth in only 6 percent of counties—those that already had high incomes, large populations, high skills, and concentrated IT use before 1995, according to a recent analysis (PDF) by Chris Forman and colleagues in the American Economic Review. Investments in computers and software did yield a return for most companies—but the return wasn't anything special. So what happened to the promised Internet miracle? While the technology has had a dramatic impact on our lives, it hasn't had a huge impact on traditional economic measures. Perhaps that shouldn't come as a surprise. To understand why, think about television in the 1970s. Broadcast to the home for free, and all we had to pay for was the set and the electricity to run it. Despite that small expenditure, we spent hours a day watching TV. Fast-forward four decades: 209 million Americans spent an average 29 hours online in January, according toNielsen; 145 million U.S. Facebook visitors spent an average six hours in January on that site alone. And each month, YouTube users spend 6 billion hours watching videos—or 684,000 times as long as it took to paint the Sistine Chapel. They pay for the PC and Internet connection, but per hour, surfing the Web is a cheap form of entertainment. And all that time online has knock-on effects. Andirana Bellou at the University of Montreal suggests that broadband adoption has led to increasing marriage rates among 21- to 30-year-olds as they meet online in chatrooms and dating sites, but has "significantly reduced the time young people spend on socializing and physically communicating." This may be why the link between Internet usage and measures of contentment are pretty weak. According to the World Database of Happiness, answers to a poll that asked if you were not happy (a score of 1), somewhat happy (2), or very happy (3) averaged 2.28 in the U.S. in 1990. That fell to 2.11 in 2010. Studies of Internet use tend to suggest that people who spend more time online are less happy (PDF) than the rest of us—although it may be that less happy people are surfing more rather than surfing being the cause of their misery. Regardless, the Internet has been behind a massive shift in our use of time during the past two decades, and not necessarily one that has generated a huge amount of positive feelings. Of course, we also use the Internet to sell stuff on e-Bay and look for jobs. While Betsy Stevenson has suggested (PDF) in a National Bureau of Economic Research paper that the widespread use of the Internet in job searches may be one factor behind employed people switching jobs more often, she concludes there's little evidence that the Web helps the unemployed find jobs faster. Perhaps one reason we haven't seen a huge impact on productivity because of access to the Internet is because, once we find a job, we spend quite a lot of time surfing the Web at the office. (Some of that time is used to look for a different job, apparently.) Ninety percent of workers with a PC also say they surf recreational sites at work. Almost the same number say they send personal e-mails, and more than half report they cybershop. The reality may be worse: Tracking software suggests that 70 percent of employees visit retail sites, and more than one-third check out X-rated sites. Perhaps we're using the Internet to do more in less time at work. Yet

we're using the extra hours to check out pictures of Kate Upton or cats playing the piano rather than producing more widgets for the boss.

Internet not key to econ – economic consensus, not key to jobs

Lowrey 11 (Annie, Tech Columnist @ Slate, "Freaks, Geeks, and the GDP", Slate, Mar 8; www.slate.com/articles/business/moneybox/2011/03/freaks_geeks_and_gdp.html)

If you have attended any economists' cocktail parties in the past month or so—lucky you!—then you have probably heard chatter about Tyler Cowen's e-book, The Great Stagnation. The book seeks to explain why in the United States median wages have grown only slowly since the 1970s and have actually declined in the past decade. Cowen points to an innovation problem: Through the 1970s, the country had plenty of "low-hanging fruit" to juice GDP growth. In the past 40 years, coming up with whiz-bang, life-changing innovations—penicillin, free universal kindergarten, toilets, planes, cars—has proved harder, pulling down growth rates across the industrialized world. But wait! you might say. In the 1970s, American businesses started pumping out amazing, life-changing computing technologies. We got graphing calculators, data-processing systems, modern finance, GPS, silicon chips, ATMs, cell phones, and a host of other innovations. Has the Internet, the most revolutionary communications technology advance since Gutenberg rolled out the printing press, done nothing for GDP growth? The answer, **economists broadly agree**, is: Sorry, but no—at least, **not nearly as much as you would expect.** A quarter century ago, with new technologies starting to saturate American homes and businesses, economists looked around and expected to find computer-fueled growth everywhere. But signs of increased productivity or bolstered growth were few and far between. Sure, computers and the Web transformed thousands of businesses and hundreds of industries. But overall, things looked much the same. The GDP growth rate did not tick up significantly, nor did productivity. As economist Robert Solow put it in 1987: "You can see the computer age everywhere but in the productivity statistics." An overlapping set of theories emerged to explain the phenomenon, often termed the "productivity paradox." Perhaps the new technologies advantaged some firms and industries and disadvantaged others, leaving little net gain. Perhaps computer systems were not yet easy enough to use to reduce the amount of effort workers need to exert to perform a given task. Economists also wondered whether it might just take some time—perhaps a lot of time—for the gains to show up. In the past, information technologies tended to need to incubate before they produced gains in economic growth. Consider the case of Gutenberg's printing press. Though the technology radically transformed how people recorded and transmitted news and information, economists have failed to find evidence it sped up per-capita income or GDP growth in the 15th and 16th centuries. At one point, some economists thought that an Internet-driven golden age might have finally arrived in the late 1990s. Between 1995 and 1999, productivity growth rates actually exceeded those during the boom from 1913 to 1972—perhaps meaning the Web and computing had finally brought about a "New Economy." But that high-growth period faded quickly. And some studies found the gains during those years were not as impressive or widespread as initially thought. Robert Gordon, a professor of economics at Northwestern, for instance, has found that computers and the Internet mostly helped boost productivity in durable goods manufacturing—that is, the production of things like computers and semiconductors. "Our central theme is that computers and the Internet do not measure up to the Great Inventions of the late nineteenth and early twentieth century, and in this do not merit the label of Industrial Revolution," he wrote. Gordon's work leads to another theory, one espoused by Cowen himself. Perhaps the Internet is just not as revolutionary as we think it is. Sure, people might derive endless pleasure from it—its tendency to improve people's quality of life is undeniable. And sure, it might have revolutionized how we find, buy, and sell goods and services. But that still **does not necessarily mean it is as transformative of an economy** as, say, railroads were. That is in part because the Internet and computers tend to push costs toward zero, and have the capacity to reduce the need for labor. You are, of course, currently reading this article for free on a Web site supported not by subscriptions, but by advertising. You probably read a lot of news articles online, every day, and you probably pay nothing for them. Because of the decline in subscriptions, increased competition for advertising dollars, and other Web-driven dynamics, journalism profits and employment have dwindled in the past decade. (That Cowen writes a freely distributed blog and published his ideas in a $4 e-book rather than a $25 glossy airport hardcover should not go unnoted here.) Moreover, **the Web- and computer-dependent technology sector itself does not employ that many people**. And it does not look set to add workers: The Bureau of Labor Statistics estimates that employment in information technology, for instance, will be lower in 2018 than it was in 1998. That **the Internet has not produced an economic boom** might be hard to believe, Cowen admits. "We have a collective historical memory that technological progress brings a big and predictable stream of revenue growth across most of the economy," he writes. "When it comes to the web, those assumptions are turning out to be wrong or misleading. The revenue-intensive sectors of our economy have been slowing down and the big technological gains are coming in revenue-deficient sectors." But revenue is not always the end-all, be-all—even in economics. That brings us to a final explanation: Maybe it is not the growth that is deficient. Maybe it is the yardstick that is deficient. MIT professor Erik Brynjolfsson * explains the idea using the example of the music industry. "Because you and I stopped buying CDs, the music industry has shrunk, according to revenues and GDP. But we're not listening to less music. There's more music consumed than before." The improved choice and variety and availability of music must be worth something to us—even if it is not easy to put into numbers. "On paper, the way GDP is calculated, the music industry is disappearing, but in reality it's not disappearing.

It is disappearing in revenue. It is not disappearing in terms of what you should care about, which is music." As more of our lives are lived online, he wonders whether this might become a bigger problem. "If everybody focuses on the part of the economy that produces dollars, they would be increasingly missing what people actually consume and enjoy. The disconnect becomes bigger and bigger." But providing an alternative measure of what we produce or consume based on the value people derive from Wikipedia or Pandora proves an extraordinary challenge—indeed, no economist has ever really done it. Brynjolfsson says it is possible, perhaps, by adding up various "consumer surpluses," measures of how much consumers would be willing to pay for a given good or service, versus how much they do pay. (You might pony up $10 for a CD, but why would you if it is free?) That might give a rough sense of the dollar value of what the Internet tends to provide for nothing—and give us an alternative sense of the value of our technologies to us, if not their ability to produce growth or revenue for us. Of course, if our most radical and life-altering technologies are not improving incomes or productivity or growth, then we still have problems. Quality-of-life improvements do not put dinner on the table or pay for Social Security benefits. Still, even Cowen does not see all doom and gloom ahead, with incomes stagnating endlessly as we do more and more online and bleed more and more jobs and money. Who knows what awesome technologies might be just around the bend?

Alt Caus – Net Neutrality

Net neutrality thumps the Internet AND econ

Ammory 14 (Marvin, Future Tense Fellow at the New America Foundation, "The Case for Net Neutrality.," Foreign Affairs. Jul/Aug2014, Vol. 93 Issue 4, p62-73. 12p, ebsco)

What's Wrong With Obama's Internet Policy For all the withering criticism leveled at the White House for its botched rollout of HealthCare.gov, that debacle is not the biggest technology-related failure of Barack Obama's presidency. That inauspicious distinction belongs to his administration's incompetence in another area: reneging on Obama's signature pledge to ensure "net neutrality," the straightforward but powerful idea that Internet service providers (ISPS) should treat all traffic that goes through their networks the same. Net neutrality holds that ISPS shouldn't offer preferential treatment to some websites over others or charge some companies arbitrary fees to reach users. By this logic, AT&T, for example, shouldn't be allowed to grant iTunes Radio a special "fast lane" for its data while forcing Spotify to make do with choppier service. On the campaign trail in 2007, Obama called himself "a strong supporter of net neutrality" and promised that under his administration, the Federal Communications Commission would defend that principle. But in the last few months, his FCC appears to have given up on the goal of maintaining an open Internet. This past January, a U.S. federal appeals court, in a case brought by Verizon, struck down the net neutrality rules adopted by the FCC in 2010, which came close to fulfilling Obama's pledge despite a few loopholes. Shortly after the court's decision, Netflix was reportedly forced to pay Comcast tens of millions of dollars per year to ensure that Netflix users who connect to the Internet through Comcast could stream movies reliably; Apple reportedly entered into its own negotiations with Comcast to secure its own special treatment. Sensing an opening, AT&T and Verizon filed legal documents urging the FCC to allow them to set up a new pricing scheme in which they could charge every website a different price for such special treatment. Obama wasn't responsible for the court's decision, but in late April, the administration signaled that it would reverse course on net neutrality and give ISPS just what they wanted. FCC Chair Tom Wheeler circulated a proposal to the FCC'S four other commissioners, two Democrats and two Republicans, for rules that would allow broadband providers to charge content providers for faster, smoother service. The proposal would also authorize ISPS to make exclusive deals with particular providers, so that PayPal could be the official payment processor for Verizon, for example, or Amazon Prime could be the official video provider for Time Warner Cable. Word of the proposal leaked to the press and sparked an immediate backlash. One hundred and fifty leading technology companies, including Amazon, Microsoft, and Kickstarter, sent a letter to the FCC calling the plan a "grave threat to the Internet." In their own letter to the FCC, over 100 of the nation's leading venture capital investors wrote that the proposal, if adopted as law, would "stifle innovation," since many start-ups and entrepreneurs wouldn't be able to afford to access a fast lane. Activist groups organized protests outside the FCC'S headquarters in Washington and accused Wheeler, a former lobbyist for both the cable and the wireless industries, of favoring his old clients over the public interest. Nonetheless, on May 15, the FCC released its official proposal, concluding tentatively that it could authorize fast lanes and slow lanes on the Internet. Although the FCC is now officially gathering feedback on that proposal, it has promised to adopt a final rule by the end of this year. Despite the missteps so far, the administration still has a second chance to fix its Internet policy, just as it did with HealthCare.gov. Preferably working with policymakers of all stripes supportive of open markets, it should ensure that the FCC adopts rules that maintain the Internet as basic infrastructure that can be used by entrepreneurs, businesses, and average citizens alike -- not a limited service controlled by a few large corporations. In the arcane world of federal administrative agencies, that guarantee comes down to whether

the FCC adopts rules that rely on flimsy legal grounds, as it has in the past, or ones that rely on the solid foundation of its main regulatory authority over "common carriers," the legal term the U.S. government uses to describe firms that transport people, goods, or messages for a fee, such as trains and telephone companies. In 1910, Congress designated telephone wires as a common carrier service and decreed that the federal government should regulate electronic information traveling over wires in the same way that it regulated the movement of goods and passengers on railroads across state lines through the now defunct Interstate Commerce Commission, which meant that Congress could prevent companies from engaging in discrimination and charging unreasonable access fees. When the FCC was created in 1934 by the Communications Act, those common carrier rules were entrusted to it through a section of the law known as Title II. Today, the broadband wires and networks on which the Internet relies are the modern-day equivalent of these phone lines, and they should be regulated as such: like telephone companies before them, ISPS should be considered common carriers. This classification is crucial to protecting the Internet as public infrastructure that users can access equally, whether they run a multinational corporation or write a political blog. However, in 2002, Michael Powell, then chair of the FCC, classified ISPS not as common carriers but as "an information service," which has handicapped the FCC's ability to enforce net neutrality and regulate ISPS ever since. If ISPS are not reclassified as common carriers, Internet infrastructure will suffer. By authorizing payments for fast lanes, the FCC will encourage ISPS to cater to those customers able and willing to pay a premium, at the expense of upgrading infrastructure for those in the slow lanes. **The stakes for the U.S. economy are high**: failing to ban ISPS from discriminating against companies would make it harder for tech entrepreneurs to compete, because the costs of entry would rise and ISPS could seek to hobble service for competitors unwilling or unable to pay special access fees. Foreign countries would likely follow Washington's lead, enacting **protectionist measures** that would close off foreign markets to U.S. companies. But the **harm would extend even further**. Given how much **the Internet has woven itself into every aspect of daily life**, the laws governing it shape economic and political decisions **around the world and affect every industry**, almost **every business, and billions of people**. If the Obama administration fails to reverse course on net neutrality, the Internet could turn into a **patchwork of fiefdoms**, with **untold ripple effects**. INNOVATION SUPERHIGHWAY Net neutrality is not some esoteric concern; it has been a major contributor to the success of the Internet economy. Unlike in the late 1990s, when users accessed relatively hived-off areas of cyberspace through slow dial-up connections, the Internet is now defined by integration. The credit for this improvement goes to high-speed connections, cellular networks, and short-distance wireless technologies such as WiFi and Bluetooth, which have allowed companies large and small -- from Google to Etsy -- to link up computers, smartphones, tablets, and wearable electronics. But all this integration has relied on a **critical feature** of the global Internet: no one needs permission from anyone to do anything. Historically, ISPS have acted as gateways to all the wonderful (or not so wonderful) things connected to the Internet. But they have not acted as gatekeepers, determining which files and servers should load better or worse. From day one, the Internet was a public square, and the providers merely connected everyone, rather than regulating who spoke with whom. That allowed the Internet to evolve into a form of basic infrastructure, used by over a billion people today. The Internet's openness has radically transformed all kinds of industries, from food delivery to finance, by lowering the barriers to entry. It has allowed a few bright engineers or students with an idea to launch a business that would be immediately available all over the world to over a billion potential customers. Start-ups don't need the leverage and bank accounts of Apple or Google to get reliable service to reach their users. In fact, historically, they have not paid any arbitrary fees to providers to reach users. Their costs often involve nothing more than hard work, inexpensive cloud computing tools, and off-the-shelf laptops and mobile devices, which are getting more powerful and cheaper by the day. As Marc Andreessen, a co-founder of Netscape and a venture capitalist, has pointed out, the cost of running a basic Internet application fell from $150,000 a month in 2000 to $1,500 a month in 2011. It continues to fall. In some ways, the Internet is just the latest and perhaps most impressive of what economists call "general-purpose technologies," from the steam engine to the electricity grid, all of which, since their inception, have had a **massively disproportionate impact on innovation and**

economic growth. In a 2012 report, the Boston Consulting Group found that the Internet economy accounted for 4.1 percent (about $2.3 trillion) of GDP in the G-20 countries in 2010. If the Internet were a national economy, the report noted, it would be among the five largest in the world, ahead of Germany. And a 2013 Kauffman Foundation report showed that in the previous three decades, the high-tech sector was 23 percent more likely, and the information technology sector 48 percent more likely, to give birth to new businesses than the private sector overall. That growth, impressive as it is, could be just the beginning, as everyday objects, such as household devices and cars, go online as part of "the Internet of Things." John Chambers, the CEO of Cisco Systems, has predicted that the Internet of Things could create a $19 trillion market in the near future. Mobile-based markets will only expand, too; the Boston Consulting Group projects that mobile devices will account for four out of five broadband connections by 2016.

Net Neutrality thumps – disputes hurt open Internet

Quittner 14 (Jeremy, staff writer for Inc. magazine and Inc.com. He previously covered technology for American Banker and entrepreneurship for BusinessWeek, 2/25, http://www.inc.com/jeremy-quittner/netflix-net-neutrality-comcast-direct-deal.html)

In the past week, Netflix has made agreements with AT&T, Comcast, and Verizon to connect directly to their broadband networks. While these deals seem to have very little to do with the Net Neutrality regulations currently being formulated by the Federal Communications Commission, they are actually connected. In order to get to the networks operated by the big broadband providers, Netflix has had to rely on third party network connections that are ungoverned by the FCC. And it's here where a new battle is brewing, because these middlemen, which make up the backbone of the Internet, and which many small businesses also depend on for access, are now competing head-on with enormous providers like Comcast and Verizon. In other words, Netflix's deals may not overtly challenge Net Neutrality, but the prospects for preserving an open Internet going forward don't look good. "**Disputes like this hurt the open Internet**," Craig Aaron, president and chief executive of Free Press, whose Save the Internet campaign lobbies to maintain net neutrality, wrote on the company's website Monday. "They hurt consumers. And they'll become par for the course if [Internet service providers] are allowed to get even bigger and operate without the Federal Communications Commission stepping in."

Internet Tech Adv Answers

Offshoring Good

Fears of ‘domestic surveillance’ are driving companies to abandon US technology companies and services for foreign competitors

Wall St Journal 13 (**“**NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy,” 9/27, http://www.wsj.com/articles/SB10001424052702303983904579096082938662594]

Google Inc.,Facebook Inc. and other American technology companies were put on the defensive when Edward Snowden's allegations about U.S.-government surveillance of Internet traffic emerged this spring. Outside the U.S., some companies and politicians saw an opportunity. Three of Germany's largest email providers, including partly state-owned Deutsche Telekom AG, teamed up to offer a new service, Email Made in Germany. The companies promise that by encrypting email through German servers and hewing to the country's strict privacy laws, U.S. authorities won't easily be able to pry inside. More than a hundred thousand Germans have flocked to the service since it was rolled out in August. Politicians outside the U.S. are pushing new data-privacy rules in the wake of Edward Snowden's revelations. "We can say that we protect the email inbox according to German law," says Jorg Fries-Lammers, a spokesman for one of the German companies, 1&1 Internet AG. "It's definitely a unique selling point." The U.S. National Security Agency has acknowledged collecting email data about Americans through phone and Internet companies. Silicon Valley companies have said that they don't give the government unfettered access to user data but that they are barred from disclosing details. **Fueled by the controversy**, countries are seeking to use data-privacy laws as a competitive advantage—a way to boost domestic companies that long have sought an edge over Google, Microsoft Corp. and other U.S. tech giants. "Countries are competing to be the Cayman Islands of data privacy," says Daniel Castro, a senior analyst at the Information Technology and Innovation Foundation, a nonpartisan Washington, D.C., think tank that receives funding from the tech industry.

That ‘offshoring’ is key to economic growth and avoiding inflationary fears.

Raimondi 5 (Mike Raimondi, **Global Insight IT/**Telecom Advisory Service, IT Outsourcing and the U.S. Economy, http://www.ihsglobalinsight.com/MultiClientStudy/MultiClientStudyDetail846.htm)

A new study by Global Insight concluded that IT outsourcing, while displacing some IT workers, actually benefits the U.S. economy and increases the number of U.S. jobs. According to the 2005 study, The Impact of Offshore IT Software and Services Outsourcing on the U.S. Economy and the IT Industry, the U.S. economy has much to gain from global sourcing and an environment of free trade, open markets and robust competition. Benefits include job creation, higher real wages, higher real GDP growth, contained inflation and expanded exports resulting in increased economic activity. The Study was commissioned by The Information Technology Association of America (ITAA), the leading trade association for the IT industry, and led by Global Insight's chief economist Dr. Nariman Behravesh. Major Findings include: Worldwide sourcing of IT services and software increases total employment in the United States. This activity generated an additional 257,042 net new U.S. jobs in 2005; by 2010, net new jobs will total 337,625; Workers enjoy higher real wages. Global sourcing adds to the take-home pay of the average U.S. worker. With inflation kept low and productivity high, worldwide sourcing will increase real hourly wages in the U.S. by $0.06 in 2005, climbing to $0.12 in 2010; The cost savings and use of offshore resources lower inflation, increase productivity, and lower interest rates. This boosts spending and increases economic activity; Worldwide sourcing contributes significantly to real U.S. Gross Domestic Product, adding $68.7 billion in 2005. By 2010, the real GDP will be $147.4 billion higher than it would be in an environment in which offshore IT software and services outsourcing does not occur; Spending for global sourcing of computer software and services will grow at a compound annual rate of 20 percent, from approximately $15.2 billion in 2005 to $38.2 billion in 2010. Total spending on software and services will also continue to increase in the U.S. During the same time period, total cost

savings from worldwide sourcing of computer software and services will grow from $8.7 billion to $20.4 billion, much of which will be reinvested in the U.S.; Demand for U.S. exports increases due to global sourcing. Countries can buy more because they can sell more; the U.S. has more to sell through increased investment in new products and services, better productivity and lower inflation. Global sourcing contributed $5.1 billion to U.S. exports in 2005, growing to $9.7 billion by 2010; The U.S. continues to run a large and robust trade surplus in IT services with the rest of the world;

Surveillance sparks IT offshoring

DNS 13 (Online Technology Blog, DNS Made Easy, "NSA Fallout Continues: U.S. Companies Seeking "Offshore Havens" for Data Privacy, Silicon Valley Anticipates Billions In Lost Revenue," http://www.dnsmadeeasy.com/nsa-fallout-continues-u-s-companies-seeking-offshore-havens-for-data-privacy-silicon-valley-anticipates-billions-in-lost-revenue/)

As a result of NSA"s snooping, U.S. companies are seeking refuge overseas to protect their data. And U.S. companies aren't the only ones who are now feeling suspicious about privacy issues on the internet. Numerous governments are turning away from the IT community in the U.S., and it turns out that Silicon Valley is not immune to the fallout from revelations about widespread surveillance by the NSA. In fact, the Valley is bracing itself for losses in the range of $35 billion in annual revenue. Why such a big loss? **Companies are seeking storage of their data elsewhere**. Indeed, damaging information about NSA's tactics is spurring an IT renaissance in several countries. For instance, Brazil wants data about its own citizens stored there. So, the government is pushing a bill, once languishing most likely in some dead-end queue, to create servers to store data, ensuring that it won't be looked at by NSA eyes. European leaders are asking for a "Euro cloud." This Euro cloud would allow Europeans to share data with one another, but it would stop there – those outside of Europe would not be able to access the information. Google and Yahoo Inc. might be in for an ugly surprise, too. Apparently, India is moving forward with a measure that would prohibit government employees to use the mail services of these two companies. It is unclear whether or not they have already moved forward with this ban. Despite these measures, it is unlikely that data will be protected from snoopers, because other countries are eager to catch up to Washington's spying capabilities. So such measures are most likely futile, as it is probably inevitable that surveillance systems, if not already in place, will be built or improved upon outside of the United States. What's the reality? So-called private data on the internet is not really protected, and outfits, such as the NSA, will always have access to so-called protected information. That said, citizens as well as companies are unnerved by the revelations about spying that Snowden, the former NSA contractor and whistle blower, brought to light this past summer.

Domestic surveillance fears motivate offshoring of tech

Bednar 15 (Chuck Bednar, Red Orbit Staff Writer , "Storing data offshore won't protect it from NSA, expert says," http://www.redorbit.com/news/technology/1113307187/storing-data-offshore-would-not-make-it-safe-from-nsa-expert-says-010315/)

Ever since Edward Snowden first blew the lid off the US National Security Agency's data collection practices, Americans have been looking for a way to keep their information safe from prying eyes in the federal government. Some tech companies, including Google, have **explored the possibility of using floating data centers to move servers offshore**. However, in a new article penned for TechCrunch, former Obama administration director of privacy and civil liberties and Brown University fellow Tim Edgar says that simply moving data centers offshore will not protect them from the NSA. "The natural reaction of many citizens, companies and governments is to try to get their data out of the United States and out of the hands of American companies," Edgar wrote, calling the idea "a seductive one, even for Americans." "This offshoring of data to avoid surveillance is not just an idle notion," he continued. "As a privacy lawyer with experience in the intelligence community and the Obama White House, technology companies have asked me how they might pursue such a strategy. It turns out that shifting user data abroad or into the hands of foreign companies is a very poor way to combat American surveillance." While the NSA's top brass have "stated quite openly their desire to collect everything American law permits," Edgar explained that regulations governing what they do depends upon where they are collecting information. The Foreign Intelligence Surveillance Act (FISA), places stricter guidelines on data collected from domestic servers than from those located overseas, he noted.

Offshoring drives business confidence and growth – no turns

Balasubramaniyan 4 (SM, general manager at Wipro Technologies, a global IT services provider, "Offshoring's positives outweigh its negatives,"http://www.networkworld.com/article/2323783/software/offshoring-s-positives-outweigh-its-negatives.html]

Organizations all over the world are under constant pressure to provide value to their customers and meet the challenges of competition. In globalized free economies, this is truer today than ever. The primary factor that directly or indirectly contributes toward a company's business success is the cost of production and operation. Among the many initiatives that have succeeded in reducing the cost of producing goods and services is the outsourcing/offshoring model. This model has taken many forms and its characteristics have been refined over a period of time. Before enumerating the benefits of offshoring, it must be acknowledged that its success does not come without pain, mainly in the form of job cuts and the phasing out of low-earning products and services. However, organizations that take a well-planned and articulated approach to offshoring succeed in managing this situation better than ones that rush in without due consideration. Offshoring happens through two means: outsourced offshoring through vendor partners, or in-house offshoring. In the former, the work is performed at the offshore partner's premises, using the partner's resources. In the latter, a U.S. company establishes its own global centers in other countries. Perhaps the greatest benefit of offshoring is the **cost advantage it produces, which directly affects the company's bottom line**. In tight fiscal situations, any savings in operating costs will contribute toward the company's sustenance and growth. Companies in recession segments sustain themselves and grow through innovation. Lower operating costs means they have more money to invest in innovation, resulting in a stabilized domestic workforce. In the service sectors, the cost saving from offshoring enables companies to create new service lines, many of which had been deferred for want of investment. New services increase customer satisfaction and become new revenue streams, as well as growth paths for companies. The geographic nature of offshoring brings its own advantages. It helps the company expand its reach, thereby helping the company grow. This growth mitigates any negative effects of offshoring. Offshoring also helps a company be closer to its global customers, thereby providing appropriate offerings to its regional market and ensuring speedier problem resolution. Developers and support personnel in the relevant geographies have a better understanding of customers' needs, regulatory compliances and regional preferences, and can better implement the product or provide the service.

IT outsourcing good for the US economy

Miller 4 (Michael J. Miller, chief information officer at Ziff Brothers investments, "The Benefits of Offshore Outsourcing," 4/28/14, Offshoring is lowering costs and actually creating jobs by fostering a more efficient economy. Also: IT jobs are changing, and Adobe's CEO speaks his mind, http://www.pcmag.com/article2/0,2817,1573729,00.asp)

As more companies transfer programming and call- center jobs offshore, the topic of offshore outsourcing is raging throughout the information technology industry. I understand the frustration of workers whose jobs have moved and of customers who fail to get their technical-support questions answered. But the backlash may be overblown. One of the latest studies indicates that the trend may actually be creating more jobs. At least that's the conclusion of a recent study by Global Insight, sponsored by the Information Technology Association of America (ITAA). Given our global economy, the globalization of the IT industry is inevitable. Most big IT companies do much of their business overseas and naturally want to have some of their employees in those markets. Lower wages in some countries are also a huge incentive to move operations, especially since high-speed communication removes many of the barriers to dealing with U.S.-based colleagues and customers. I think that some of the criticism of offshore outsourcing is misplaced. According to the Global Insight study, from 1998 through 2003 offshore IT software and services spending increased from $2.5 billion to $10 billion; the figure could reach $31 billion by 2008. It also estimates that as of 2003 nearly 104,000 IT software and services jobs were displaced. The same study says that 372,000 IT jobs have been lost in this country since 2000, accounting for about 10 percent of the total number of such jobs in the U.S. The main reasons for the loss: the dot-com bust, the recession, and the growth in productivity. Interestingly, Global Insight says that rather than reducing the number of jobs

in the U.S., offshoring is lowering costs for everyone and actually creating jobs, thanks to a more efficient economy. It says that about 194,000 new jobs—both IT and non-IT—were created in 2003 thanks to offshore IT outsourcing, and by 2008 the number will reach over 589,000. According to a study by Gartner, fewer than 5 percent of U.S. IT jobs have moved offshore. But analysts predict that by 2010 25 percent will be in developing countries. They urge companies to proceed carefully, as such moves could result in the loss of future talent, intellectual assets, and organizational performance.

A2 Cloud Computing

NASA already has its own cloud system for climate modeling

Network World 10 (Network World, 2/1/2010. Jon Brodkin. "NASA building cloud service for climate modeling," http://www.networkworld.com/article/2243438/saas/nasa-building-cloud-service-for-climate-modeling.html)

NASA is aiming to improve its climate research capabilities by creating a software-as-a-service interface for scientists and students who need to build complex climate models. NASA: Astronauts start Twitter from space station "Right now the climate models that we have are very complex, the software is upwards of 500,000 to 1 million lines of code," says Michael Seablom, head of the software integration and visualization office at NASA's Goddard Space Flight Center in Maryland. A climate model might, for example, predict what would happen to global temperatures over the next hundred years if humans double carbon dioxide emissions. "Trying to get the models running is difficult and it costs us a lot of money here because we have to help groups build the system on their local machine," Seablom says. "The problem with that is if you're a graduate student, you could spend months just trying to get the model running and verify that it's working correctly." NASA's goal is to build a Web portal for investigators to log onto, allowing them to run the climate models on remote systems provided by the space agency. The grid computing software company Parabon Computation was awarded a two-year, $600,000 contract to help NASA build the system. Parabon says the Web-based platform will be built upon its Frontier Grid software, which can take idle computing capacity from many machines and manage it as one large computational grid, with applications running on virtual machines. Seablom says NASA's climate modeling teams will tap into processors from NASA's Nebula cloud computing platform and could someday purchase computing cycles from public cloud platforms. "I hate to use the term 'cloud computing' because I've heard the term so much and I'm sick of it," Seablom says. "But the fact of the matter is this is a very good cloud computing model and we're going to save a lot of money doing it. I'm very excited." Parabon uses its own software to buy idle computing capacity from universities and businesses and then resells computing cycles as an online service, says Parabon CEO Steven Armentrout. In this case, Parabon is selling its platform to NASA as an enterprise software package to be deployed internally behind the NASA firewall, he says. "These tools -- such as a browser-based source code editor, online collaboration utilities, and virtualized build and runtime environment management interfaces -- will allow developers to more efficiently create and modify a wide variety of high-performance computing (HPC) applications," Parabon states in an announcement of the NASA contract. Frontier can be used to harness the unused CPU power of desktops and servers, Armentrout notes. "I believe they [NASA] have 80,000 desktops," he says. "If they were to put Frontier on all 80,000 they would have one of the fastest supercomputers in the world." Although the system will initially run climate models, it can be used for many types of scientific research.

No internal link to adaptation --- we have models and information now but people still refuse to acknowledge the reality of warming

Pope 10 (Vicky Pope, 9/16/2010. Head of climate science advice at the Met Office Hadley Centre, "How science will shape climate adaptation plans," http://www.guardian.co.uk/environment/cif-green/2010/sep/16/science-climate-change-adaptation)

Some would argue that the demand for information on how climate change will affect our future outstrips the current capability of the science and climate models. My view is that as scientists, we can provide useful information, but we need to be clear about its limitations and strive to improve information for the future. We need to be clear about the uncertainties in our projections while still extracting useful information for practical decision-making. I have been involved in developing climate models for the last 15 years and despite their limitations we are now able to assess the probability of different outcomes for the first time. That means we can quantify the risk of these outcomes happening. These projections – the UK climate projections published in 2009 - are already forming the backbone of adaptation decisions being made in the UK for 50 to 100 years ahead. A project commissioned by the Environment Agency to investigate the impact of climate change on the Thames estuary over the next 100 years concluded that current government predictions for sea level rise are realistic. A major outcome from the scientific analysis was that the worst-case scenarios for high water levels can be significantly reduced - from 4.2m to 2.7m – because we are able to rule out the more extreme sea level rise. As a result, massive investment in a tide-excluding estuary barrage is unlikely to be needed this century. This will be reviewed as more information becomes available, taking a flexible approach to adaptation. The energy industry, working with the Met Office, looked at the likely impact of climate change on its infrastructure. The project found that very few changes in design standards are required, although it did highlight a number of issues. For instance, transformers could suffer higher failure rates and efficiency of some types of thermal power station could be markedly reduced because of increasing temperatures. A particular concern highlighted by this report and reiterated in today's report from the Climate Change Committee - the independent body that advises government on its climate targets - is that little is known about how winds will change in the future - important because of the increasing role of wind power in the UK energy mix. Fortunately many people, from private industry to government, recognise the value of even incomplete information to help make decisions about the future. Demand for climate information is increasing, particularly relating to changes in the short to medium term. More still needs to be done to refine the climate projections and make them more usable and accessible. This is especially true if we are to provide reliable projections for the next 10 to 30 years. The necessary science and modelling tools are being developed, and the first tentative results are being produced. We need particularly to look at how we communicate complex and often conflicting results. In order to explain complex science to a lay audience, scientists and journalists are prone to progressively downplay the complexity. Conversely, in striving to adopt a more scientific approach and include the full range of uncertainty, we often give sceptics an easy route to undermine the science. All too often uncertainty in science offers a convenient excuse for delaying important decisions. However, in the case of climate change there is overwhelming evidence that the climate is changing — in part due to human activities — and that changes will accelerate if emissions continue unabated. In examining the uncertainty in the science we must take care to not throw away what we do know. Science has established that climate is changing. Scientists now need to press on in developing the emerging tools that will be used to underpin sensible adaptation decisions which will determine our future.

A2 Heg

Hegemony solves war isn't true – data's on our side

Fettweis 11 (Christopher J., Department of Political Science, Tulane University, "Free Riding or Restraint? Examining European Grand Strategy", 9/26, Comparative Strategy, 30:316–332, Ebsco)

It is perhaps worth noting that **there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true**. During the 1990s, the United States cut back on its defense spending fairly substantially. **By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990**.51 **To** internationalists, defense hawks and **believers in hegemonic stability**, **this irresponsible "peace dividend" endangered both national and global security**. "No serious analyst of American military capabilities," argued Kristol and Kagan, "doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peace."52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. **The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military**, or at least none took any action that would suggest such a belief. **No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred** once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands**, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone**.

A2 Warming

Warming won't cause extinction or laundry list impacts

Kopits et al 14 -- National Center for Environmental Economics, US Environmental Protection Agency; Alex Marten, Ann Wolverton (Elizabeth, 9/1/2014, "Incorporating 'catastrophic' climate change into policy analysis," Climate Policy 14(5), Galileo)

It is common within the academic and public discourse on climate change for the term '**catastrophe'** to be invoked when describing possible outcomes of a changing climate and in justifying particular responses to the problem. It has been suggested that the potential for abrupt, large-scale 'catastrophic impacts' due to climate change is the most important aspect for determining the optimal level of response (Pindyck & Wang, 2012; Weitzman, 2009) and that 'the economic case for a stringent GHG abatement policy, if it is to be made at all, must be based on the possibility of a catastrophic outcome' (Pindyck, 2012). Thus, it is perhaps not surprising that analyses of GHG mitigation benefits are often criticized for failing to adequately capture catastrophic impacts (e.g. National Academy of Sciences, 2010; Tol, 2009). However, despite the seeming importance of such potential climate change-related events, there has been little progress in defensibly integrating catastrophic impacts into analyses of the benefits of climate policy. One obstacle that has impeded progress on this front is the **inconsistent and sometimes nebulous way in which the expression 'catastrophic impacts' has been used** (Hulme, 2003). The term often refers to any climate-induced impact that exhibits one or more characteristics: relatively sudden occurrence, irreversible transition to a new state after crossing a threshold, and relatively large physical or

welfare impacts. In addition, some researchers consider catastrophic impacts to necessarily result from low-probability events. For this reason the types of impacts covered under the catastrophic label are often **numerous and heterogeneous**, everything from dieback of Amazon rainforests over the coming decades to the potential massive release of methane emissions from the sea floor over the next thousand years (Lenton et al., 2008). Some have even argued for establishing a global threshold for climate change, below which there is negligible risk of violating 'planetary boundaries' that 'define the safe operating space for humanity' ... [and] avoid crossing threshold levels of key variables 'with deleterious or potentially even disastrous consequences for humans' scales' (Rockstrom et al., 2009, p. 472).1 In public discourse, catastrophic impacts are often invoked as a **seemingly monolithic occurrence**,2 a tendency that is also often present in economic analyses of such events. By assuming uniformity, researchers have **severely limited their ability to substantively inform policy discussions**. This tendency may arise from an absence of literature that summarizes significant differences between potential large-scale climate events and what that means for incorporating them into economic analysis. In addition, many economic modelling efforts fall substantially short in incorporating scientific evidence regarding the causes, likelihood, and potential physical impacts of such climate change-induced events. While one expects a natural lag in the incorporation of new scientific findings into economic models, this shortcoming appears to stem more from fundamental differences between disciplines as to what constitutes relatively rapid or large changes (the scientific literature does not even use the term catastrophe, instead relying on the phrase 'abrupt climate change') and the appropriate end points to measure in policy analysis. Both of these concerns have been observed by natural scientists (e.g. Hulme, 2003), and calls are increasing across the scientific community for more research on welfare impacts, with **better links to the scientific evidence on how physical processes are likely to unfold** (e.g. Lenton, 2011; Lenton & Ciscar, 2013).

Best data proves climate change doesn't cause conflict

Erik **Gartzke 11**, Associate Professor of Political Science at UC-San Diego, March 16, 2011, "Could Climate Change Precipitate Peace?," online: http://dss.ucsd.edu/~egartzke/papers/climate_for_conflict_03052011.pdf

An evolving consensus that the earth is becoming warmer has led to increased interest in the social consequences of climate change. Along with rising sea levels, varying patterns of precipitation, vegetation, and possible resource scarcity, perhaps the **most incendiary claims** have to do with conflict and political violence. A second consensus has begun to emerge among policy makers and opinion leaders that global warming may well result in increased civil and even interstate warfare, as groups and nations compete for water, soil, or oil. Authoritative bodies, leading government officials, and even the Nobel Peace prize committee have highlighted the prospect that climate change will give rise to more heated confrontations as communities compete in a warmer world. Where the basic science of climate change preceded policy, this second consensus among politicians and pundits about climate and conflict **formed in the absence of substantial scientific evidence**. While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions (c.f., Homer-Dixon 1991, 1994; Burke et al. 2009). these claims have been **severely criticized** by other studies (Nordas & Gleditsch 2007; Buhaug et al. 2010: Buhaug 2010).1 In contrast, **long-term macro statistical studies** find that **conflict increases in periods of climatic chill** (Zhang et al. 2006, 2007; Tol & Wagner 2010).2 Research on the more recent past reveals that interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt (Goldstein 2002; Levy et al. 2001; Luard 1986, 1988; Hensel 2002; Sarkees, et al. 2003; Mueller 2009).3 While talk of a "climatic peace" is premature, broader claims that global warming causes conflict must be evaluated in light of **countervailing evidence** and a contrasting set of causal theoretical claims.4

Judicial Indy Adv Answers

Citing ECHR Hurts Judicial Indy

New courts ensure no modeling AND citing the ECHR diminishes US influence

Morag-Levine 6 (Noga – Associate Professor, Michigan State University College of Law, "THE MARYLAND/GEORGETOWN CONSTITUTIONAL LAW SCHMOOZE: JUDGES, LEGISLATORS, AND EUROPE'S LAW: COMMON-LAW CONSTITUTIONALISM AND FOREIGN PRECEDENTS", Maryland Law Reivew, 2006, 65 Md. L. Rev. 32, lexis)

The **global emergence** of **powerful**, politically assertive courts has **redefined** the process and meaning of **legal transplantation.** With the rise of powerful judiciaries outside the **U**nited **S**tates, court opinions have emerged as a novel avenue for cross-national importation of law. In this environment, newly created or emboldened courts can draw inspiration from statutes of other countries and the opinions of foreign judges. Courts were encouraged in this direction over the past two decades by a growing sense of community among members of the judiciary worldwide. n1 A distinctive result has been a marked increase in the prevalence of citation to foreign court opinions on the part of a growing number of national supreme courts and international adjudicative bodies. n2 The U.S. Supreme Court has been comparatively slow to follow this trend. n3 Nonetheless, it is in the United States that the practice of citing foreign precedents seems to have met with the greatest controversy. The role of foreign law in Supreme Court jurisprudence is currently the topic of extensive discussion on the Internet, in the press, in academic journals, and in Congress. A number of Supreme Court Justices have addressed the issue directly in their opinions, n4 and, more unusually, in off the bench writings and speeches. n5 [*33] The controversy is perplexing in part because it appears to be restricted to the United States. There is little evidence to suggest parallel mobilization in opposition to foreign citations by courts abroad. n6 Moreover, even when viewed strictly within the parameters of American law and politics, the foreign citation controversy seems to deviate from the prevailing pattern. The Court tends to draw political fire in response to controversial results rather than contested modes of reasoning. The usual line of criticism, familiar from responses to the Court's decisions on abortion or flag burning, works back from a hot-button decision to the absence of a legal basis sufficient to justify interference with the decisions of the democratically elected legislative branch. By contrast, opposition to the citing of foreign cases puts front and center the Court's reasoning as such. Even if we take the view that opposition to foreign references serves as a proxy for substantive disagreement with the rulings, the benefits of such a strategy are not self-evident. If the goal was defense of criminal prohibitions on sodomy or the juvenile death penalty (to take two prominent areas where references to foreign cases have recently appeared), why deflect from these politically potent issues by framing the question at hand in reference to the citation of foreign law? Alternatively, if we opt to view opposition to the Court's comparative jurisprudence in principled terms, the principle at stake is not simple to pinpoint. Supreme Court opinions are replete with references to extra-legal sources such as philosophical treatises and social science research. n7 Why single out foreign case law as deserving of special condemnation? [*34] This Essay seeks the answer in American legal history. Throughout the nineteenth century, American elites divided over the question of whether political and legislative principles inspired by the continental civil-law tradition were compatible with American constitutionalism. Legal treatises, political pamphlets, and newspaper articles attest to the depth of disagreements regarding codification initiatives, social legislation, and other European-inspired reform agendas. n8 Opponents of such reforms offered a dual line of response based in political theory and constitutional law: the first cast the civil-law tradition as an absolutist instrument of authoritarian origin, and the second equated constitutional due process with a closed set of common-law procedures and principles. n9 Defined in this fashion, due process served to bar civil-law-based legislative reforms. Today's controversy bears a striking similarity to the nineteenth-century dispute. Contemporary opponents of judicial citations to foreign law stress the importance of **securing the boundary** between American and European constitutionalism. n10 The timing of the current controversy is instructive in this regard. Citations to foreign judicial opinions are hardly a novel development in American jurisprudence. Supreme Court Justices across the nineteenth and the twentieth centuries repeatedly referenced the views of their overseas English-speaking colleagues regarding the constitutional disputes of the day. n11 Opposition to the practice, however, materialized only once the Justices began to look beyond the common-law world for comparative insights. **Critical attention** to foreign citations in the **U**nited **S**tates closely **tracks growth in the global influence** of **European courts**, most importantly the **E**uropean **C**ourt of **H**uman **R**ights (ECHR). Entrusted with enforcing the European Convention on Human Rights, the ECHR "has become a source of authoritative pronouncements on human rights law" for adjudicative bodies **well beyond Europe**, including the courts of South Africa and Zimbabwe, writes Anne-Marie Slaughter. n12 This ascendancy has **been matched by** [*35] a **decline in the American Supreme Court's influence** on the **jurisprudence of foreign courts. n13**

No Judicial Modeling

U.S. judicial leadership is not modeled – influence is on the decline

Liptak 12 (Adam – J.D. – Yale Law School, NYT Supreme Court Correspondent, 'We the People' Loses Appeal With People Around the World, 2/6, http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?_r=2&partner=MYWAY&ei=5065)

In 1987, on the Constitution's bicentennial, Time magazine calculated that "of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version." A quarter-century later, the picture looks very different. "The U.S. Constitution appears to be **losing its appeal** as a model for constitutional drafters elsewhere," according to a new **study** by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia. The study, to be published in June in The **N**ew **Y**ork **U**niversity Law Review, bristles with data. Its authors coded and analyzed the provisions of **729 constitutions** adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them. "Among the world's democracies," Professors Law and Versteeg concluded, "constitutional similarity to the **U**nited **S**tates has **clearly gone into free fall**. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, only to **reverse course** in the 1980s and 1990s." "The turn of the twenty-first century, however, saw the beginning of a **steep plunge** that continues through the most recent years for which we have **data**, to the point that the constitutions of the world's democracies are, on average, less similar to the U.S. Constitution now than they were at the end of World War II." There are lots of possible reasons. The **U**nited **S**tates Constitution is **terse** and **old**, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may **send the signal** that it is of little current use to, say, **a new African nation**. And the Constitution's **waning influence** may be part of a general **decline in American power and prestige**. In an interview, Professor Law identified a **central reason** for the trend: the availability of newer, sexier and more powerful operating systems in the constitutional marketplace. "Nobody wants to copy **Windows 3.1**," he said. In a television interview during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. "I would not look to the **U**nited **S**tates Constitution if I were drafting a constitution in the year 2012," she said. She recommended, instead, the South African Constitution, the Canadian Charter of Rights and Freedoms or the European Convention on Human Rights. The rights guaranteed by the American Constitution are **parsimonious** by international standards, and they are frozen in amber. As Sanford Levinson wrote in 2006 in "Our Undemocratic Constitution," "the U.S. Constitution is the **most difficult to amend** of any constitution currently existing in the world today." (Yugoslavia used to hold that title, but Yugoslavia did not work out.) Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in a 1789 letter to James Madison, once said that every constitution "naturally expires at the end of 19 years" because "the earth belongs always to the living generation." These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty. Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care. It has its idiosyncrasies. Only 2 percent of the world's constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.) The Constitution's **waning global stature** is consistent with the **diminished influence** of the Supreme Court, which "is losing the central role it once had among courts in modern democracies," Aharon Barak, then the president of the Supreme Court of Israel, wrote in The Harvard Law Review in 2002. Many foreign judges say they have become **less likely** to cite decisions of the **U**nited **S**tates Supreme Court, in part because of what they consider its **parochialism**. "America is in danger, I think, of becoming something of a **legal backwater**," Justice Michael Kirby of the High Court of Australia said in a 2001 interview. He said that he looked instead to India, South Africa and New Zealand.

Judiciary isn't modeled – new courts, no foreign citations, and diminished credibility

Liptak 8 (Adam – J.D. – Yale Law School, NYT Supreme Court Correspondent, "U.S. Court Is Now Guiding Fewer Nations ", 9/17, http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all&_r=0)

But now American legal influence is **waning**. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a **diminishing number** of foreign courts seem to **pay attention** to the writings of American justices. "One of our great exports used to be constitutional law," said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. "We are **losing one of the greatest bully pulpits** we have ever had." From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has **fallen by half**, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the **number had fallen** to 72. The story is similar **around the globe**, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies **often cite** the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, "they tend **not to look to the rulings** of the U.S. Supreme Court." The rise of **new** and **sophisticated** constitutional courts elsewhere is one reason for the Supreme Court's **fading influence**, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another. Another reason is the **diminished reputation** of the **U**nited **S**tates in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration's **unpopularity** around the world. Foreign courts are **less apt to justify their decisions** with citations to cases from a nation unpopular with their domestic audience. "It's not surprising, given our foreign policy in the last decade or so, that American influence should be declining," said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago. **Aversion to Foreign Law** The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions **also plays a role**, some foreign judges say. "Most justices of the United States Supreme Court do not cite foreign case law in their judgments," Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. "They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems." Partly as a consequence, Chief Justice Barak wrote, the **U**nited **S**tates Supreme Court "is **losing the central role** it once had among courts in modern democracies." Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. "Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa," he said in an interview published in 2001 in The Green Bag, a legal journal. "America" he added, "is in danger of becoming something of a **legal backwater**."

No modeling – newest ev

Law and Versteeg 12 (David, Prof. of Law and Prof of PoliSci @ Washington University, St Louis, PHD @ Stanford, JD @ Harvard Law, Mila, Assoc. Prof, U of Virginia Law, D.Phil @ Oxford, "The Declining Influence of the United States Constitution" New York University Law Review -- Vol 87:762 -- www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__journals__law_review/documents/documents/ecm_pro_072892.pdf)

There are growing suspicions, however, **that America's days as a¶ constitutional hegemon are coming to an end**. ¶ 12¶ It has been said that **the U**nited **S**tates **is losing constitutional influence because it is¶ increasingly out of sync with an evolving global consensus** on issues of¶ human rights.¶ 13¶ Indeed, **to the extent that other countries still look to¶ the U**nited **S**tates **as an example, their goal may be less to imitate**¶ American constitutionalism **than to avoid its** perceived **flaws** and mistakes.¶ 14¶ Scholarly and popular attention has focused in particular¶ upon the influence of American constitutional jurisprudence. **The¶ reluctance of the U.S. Supreme Court to pay "decent respect to the¶ opinions of mankind" 15 by**

participating in an ongoing "global judicial¶ dialogue"¶ 16¶ is supposedly **diminishing the global appeal and influence¶ of American** constitutional **jurisprudence**.¶ 17¶ **Studies conducted by scholars** in other countries have begun to **yield empirical evidence that¶ citation to U.S. Supreme Court decisions by foreign courts is** in fact **on the decline**.¶ 18¶ By contrast, however, the extent to which the U.S.¶ Constitution itself continues to influence the adoption and revision of¶ constitutions in other countries remains a matter of speculation and¶ anecdotal impression.¶ With the help of an extensive data set of our own creation that¶ spans all national constitutions over the last six decades, this¶ Article explores the extent to which various prominent¶ constitutions—including the U.S. Constitution—epitomize generic¶ rights constitutionalism or are, instead, increasingly out of sync with¶ evolving global practice. **A stark contrast can be drawn between the¶ declining attraction of the U.S. Constitution as a model** for other¶ countries **and the increasing attraction of the model provided by**¶ America's neighbor to the north, **Canada**. We also address the possibility that **today's constitution makers look for inspiration not only to¶ other national constitutions, but also to regional and international¶ human rights instruments such as the Universal Declaration of¶ Human Rights and the European Convention on Human Rights**. **Our findings do little to assuage American fears of diminished influence in¶ the constitutional sphere**.

Statistical analysis of citations proves

L'Heureux-Dube 98 (Honourable Claire – Puisne Justice, Supreme Court of Canada, "Conference on the Rehnquist Court: The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court", Tulsa Law Journal, Fall, 34 Tulsa L.J. 15, lexis)

Despite these cautions, there is a **general perception** that the Rehnquist Court's impact has **declined relative** to that of its predecessors. First, this is borne out by **statistical analysis**, at least of the situation in Canada. An informal analysis of Canadian Supreme Court decisions since 1986 revealed that the Rehnquist Court was cited in **fewer than one-half** as many cases as the Warren Court, and in just under one-third the number of Burger Court cases. This suggests a **sharp drop in influence**. There is an even **greater disparity** if one compares the number of Rehnquist Court decisions cited by the Canadian court to the number of its predecessors' cases cited; Burger court cases, in particular, vastly outnumber cases from the Rehnquist Court. Though I have not compiled statistics, a similar trend is **easily discernable** through reading judgments from other countries. When the U.S. Supreme Court is cited, it is usually Warren or Burger Court decisions, and sometimes older ones. The Rehnquist Court is **much less frequently cited**. A couple of examples will suffice, beginning with the Indian Supreme Court decision in Rajagopal and Another v. State of Tamil Nadu. n54 Central to the case were issues of balancing freedom of expression and of privacy, and the court relied heavily on American jurisprudence. The court devoted several pages to the cases of New York Times Co. v. Sullivan, n55 Cox Broadcasting Corp. v. Cohn, n56 Griswold v. Connecticut, n57 and Roe v. Wade, n58 all classic Warren and Burger Court cases. It included extensive descriptions of the facts and holdings, and provided lengthy citations from several of these cases. The only reference to Rehnquist Court jurisprudence, however, was a one sentence [*30] comment that "though [Roe v. Wade] received a few knocks in the recent decision in Planned Parenthood v. Casey (1992), 120 L. Ed. (2d) 683, the central holding of this decision has been left untouched -- indeed affirmed." n59 This decision illustrates the trend of focusing on Warren and Burger Court decisions, and giving less attention to Rehnquist Court judgments modifying or explaining those decisions. The contrast between the strong focus on the reasoning of the older decisions and the passing reference to the Rehnquist Court decision is striking. Another example is the opinion of Justice Ackermann of the Constitutional Court of South Africa in Ferreira v. Levin NO. n60 The case dealt with the right to liberty and freedom from self-incrimination. The court examined the protections of the Fifth Amendment, and referred to the judgments in Miranda, Feldman v. United States, n61 Hoffman v. United States, n62 United States v. James, n63 Ullmann v. United States, n64 Bolling v. Sharpe, n65 Board of Regents v. Roth, n66 and Meyer v. Nebraska, n67 quoting from several of them. Again, though the court cited a wide variety of Fifth Amendment decisions from various eras of constitutional jurisprudence, no Rehnquist Court decisions were considered. The Ferreira decision also illustrates the declining prominence of American constitutional jurisprudence in general, since American cases were much less prominent in this opinion than those of Canadian, German, and British Courts, as well as the European Court of Human Rights. This is true of other cases as well. Thus, though the Rehnquist Court's impact has declined internationally, so has the influence of the United States Supreme Court in general. Therefore, though it is not scientifically demonstrable, at least not at this stage and not without more in-depth research, a variety of indicators show that the Rehnquist Court's international **impact is smaller** than that of its predecessors, and corresponds to a general **relative decline in influence** of the U.S. Court, particularly on human rights issues. As a force driving the definition of human rights around the world, the **U**nited **S**tates is **not as influential** as it used to be. This does not mean, however, that American decisions are not still very prominent in human rights jurisprudence in all jurisdictions; the Rehnquist Court's jurisprudence is regularly consulted and considered. The "overseas trade" in the Bill of Rights, described by Lord Lester, is far from being at an end. But numbers and general perceptions suggest a decline relative to previous courts. There are several reasons for this new phenomenon, particularly in the area of human rights. Some of these are within the control of the Rehnquist Court; others are beyond its power to change.

A2 Africa

African and Arab countries don't model the US – not effective for them

Horowitz 12 (Jake, co-founder of PolicyMic, "Why is the U.S. Constitution Losing Influence Across the World?" http://www.policymic.com/articles/3975/why-is-the-u-s-constitution-losing-influence-across-the-world)

But, my sense is that the **Constitution is slipping** because America has **lost its power** and prestige as a shining democracy due to over a decade of constitutional excess. In particular, the Bush administration's War on Terror policies which interpreted the Constitution to permit torture, deprive suspected terrorists of due process, sanction wire-tapping and domestic spying, and amass unprecedented power in the hands of the executive eroded the credibility of the document and undermined our democracy. After a decade of America's imprisoning and torturing Arab citizens under the guise of the Constitution, it is no wonder that it no longer holds any weight in **newly emerging democracies** like Egypt and Tunisia. Moreover, the decline in influence is also a reflection of the all-too-often forgotten fact that American liberal democracy is **not for every country**. The U.S. Constitution guarantees certain rights, like the separation of religion and state, which may **not neatly fit** into other countries' models of democracy. Stanford democracy expert Larry Diamond has written often about public opinion polling of the Arab world, which indicates that although the majority of Arabs want democracy, they also believe **Islam should play a strong role** in governing their society. The U.S. Constitution, then, **provides little guidance** for structuring newly emerging democracies with more devout populations. Although the decline of the Constitution is likely to unnerve the bevy of IR theorists and pundits who routinely lament America's decline, this study is not necessarily cause for concern. Rather, that emerging democracies are adapting democracy to fit their context serves as a powerful reminder that liberal democracy **cannot be imposed from the outside**, something the U.S. learned well this past decade in Iraq. It should also serve as a stark warning to President Barack Obama, however, that the longer Guantanamo remains open, and the more the administration chips away at our civil liberties by signing bills like the NDAA, the more U.S. influence, leadership, and credibility will wane across the globe.

African war doesn't escalate

Barrett 5 (Robert, MA in Conflict Analysis and Management, Jun 1, "Understanding the Challenges of African Democratization through Conflict Analysis," http://papers.ssrn.com/sol3/papers.cfm?abstract_id=726162)

This is a problem, as Western nations may be increasingly wary of intervening in Africa hotspots after experiencing firsthand the unpredictable and unforgiving nature of societal warfare in both Somalia and Rwanda. On a costbenefit basis, the West continues to be somewhat reluctant to get to get involved in Africa's dirty wars, evidenced by its political hesitation when discussing ongoing sanguinary grassroots conflicts in Africa. Even as the world apologizes for bearing witness to the Rwandan genocide without having intervened, the United States, recently using the label 'genocide' in the context of the Sudanese conflict (in September of 2004), has only proclaimed sanctions against Sudan, while dismissing any suggestions at actual intervention (Giry, 2005). Part of the problem is that traditional military and diplomatic approaches at separating combatants and enforcing ceasefires have yielded little in Africa. No powerful nations want to get embroiled in conflicts they cannot win – especially those conflicts in which the intervening nation has very little interest.

No disease can cause human extinction – they either kill their hosts too quickly or aren't lethal

Posner 5 (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. "Catastrophe: the dozen most significant

catastrophic risks and what we can do about them."
http://findarticles.com/p/articles/mi_kmske/is_3_11/ai_n29167514/pg_2?tag=content;col1)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extiinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist

A2 Latin America

No Latin modeling – they follow Europe

Garoupa and Maldonado 11 (Nuno – Professor of Law and H. Ross & Helen Workman Research Scholar, University of Illinois College of Law, and Maria – J.D. at University of Illinois, "CHINA'S ASSET MANAGEMENT PLATFORMS & CLEANTECH SECTOR: ARTICLE: THE JUDICIARY IN POLITICAL TRANSITIONS: THE CRITICAL ROLE OF U.S. CONSTITUTIONALISM IN LATIN AMERICA", Cardozo Journal of International and Comparative Law, Summer, 19 Cardozo J. Int'l & Comp. L. 593, lexis)

In Europe, the political transitions of the twentieth century also evidence creative ways of addressing the incumbent judiciary. Some examples of such include: **Germany** and Italy after WWII; **Portugal, Spain and Greece** at the end of their authoritarian regimes in the late 1970s; and the former communist Central and Eastern European countries in the 1990s. n16 The Argentina and [*600] Chile regime transitions from military to democratic in the early 1990s have more recently become the focus of much debate. Judicial reform in Latin America is constrained by the needs to address the role of the judiciary and their difficult past in terms of democratic legitimacy. n17 **Unlike the United States**, Europe and Latin America have a **common civil law tradition**. Although subject to debate, comparative law usually includes the Latin American countries in the French civil law family, because of Portuguese and Spanish **colonial influence**, whereas the German civil law stands as a separate and distant relative. n18

US model empirically fails

Garoupa and Maldonado 11 (Nuno – Professor of Law and H. Ross & Helen Workman Research Scholar, University of Illinois College of Law, and Maria – J.D. at University of Illinois, "CHINA'S ASSET MANAGEMENT PLATFORMS & CLEANTECH SECTOR: ARTICLE: THE JUDICIARY IN POLITICAL TRANSITIONS: THE CRITICAL ROLE OF U.S. CONSTITUTIONALISM IN LATIN AMERICA", Cardozo Journal of International and Comparative Law, Summer, 19 Cardozo J. Int'l & Comp. L. 593, lexis)

The essence of reputation in the Latin American judiciary has been questionable for a long time. n57 Unfortunately, the reforms imposed by international organizations at the end of the twentieth century have **largely failed** to address this problem. The persistent organizational, administrative, and managerial problems of the Latin American judiciary have been described in detail in the literature: financial and political corruption, lack of capacity and resources, poorly organized courts, weak judicial education and training, ineffective delivery of justice, utilizing the judiciary as an arm of the government, and violence against the judiciary. n58 These traditional problems require a profound reform of the executive and

legislative powers that have been largely unaddressed. Also, as expected, the incumbent judiciary is usually hostile to any implementation of new legal policies. A structural change requires [*616] a new judicial culture that influences new law by adding legislation where there are gaps in the law. However, a new judicial culture is usually unavailable. n59 **Importing U.S. models** has not worked for **obvious local reasons** that are generally ignored by international organizations. n60 Narrow judicial reforms based on the view that an American-inspired judiciary would consolidate democracy **have changed little** and, in some cases, have **been counter-productive**. n61 An unhealthy judicial organization with a serious deficit of prestige has prevailed for most of the twentieth century to the present. n62

Instability won't escalate

Cárdenas 11 (Mauricio, senior fellow and director of the Latin America Initiative at the Brookings Institution, was cabinet minister during the Gaviria and Pastrana administrations in Colombia. Think Again Latin America, Foreign Policy, http://www.foreignpolicy.com/articles/2011/03/17/think_again_latin_america?page=full)

"**Latin America is violent** and dangerous." Yes, **but not unstable**. Latin American countries have among the world's highest rates of crime, murder, and kidnapping. Pockets of abnormal levels of violence have emerged in countries such as Colombia -- and more recently, in Mexico, Central America, and some large cities such as Caracas. With 140,000 homicides in 2010, it is understandable how Latin America got this reputation. Each of the countries in Central America's "Northern Triangle" (Guatemala, Honduras, and El Salvador) had more murders in 2010 than the entire European Union combined. Violence in Latin America is strongly related to poverty and inequality. When combined with the insatiable international appetite for the illegal drugs produced in the region, it's a noxious brew. As strongly argued by a number of prominent regional leaders -- including Brazil's former president, Fernando H. Cardoso, and Colombia's former president, Cesar Gaviria -- a strategy based on demand reduction, rather than supply, is the only way to reduce crime in Latin America. **Although some fear the Mexican drug violence could spill over into the southern United States, Latin America poses little to no threat to international peace or stability. The major global security concerns today are the proliferation of nuclear weapons and terrorism. No country in the region is in possession of nuclear weapons -- nor has expressed an interest in having them. Latin American countries**, on the whole, **do not have much history of engaging in cross-border wars. Despite the recent tensions on the Venezuela-Colombia border, it should be pointed out that Venezuela has never taken part in an international armed conflict**. **Ethnic and religious conflicts are very uncommon** in Latin America. Although the region has not been immune to radical jihadist attacks -- the 1994 attack on a Jewish Community Center in Buenos Aires, for instance -- they have been rare. **Terrorist attacks on the civilian population have been limited** to a large extent to the FARC organization in Colombia, a tactic which contributed in large part to the organization's loss of popular support.

A2 Sri Lanka

No chance of war from economic decline---best and most recent data

Daniel W. **Drezner 12**, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, "The Irony of Global Economic Governance: The System Worked," http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf

The final outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The

aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a "Global Peace Index" annually since 2007. A key conclusion they draw from the 2012 report is that "The average level of peacefulness in 2012 is approximately the same as it was in 2007."38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard "V"-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of "contained depression."41 The key word is "contained," however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: "that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate."42

No risk of India-Pakistan war

Mutti 9 – over a decade of expertise covering on South Asia geopolitics, Contributing Editor to Demockracy journal (James, 1/5, Mumbai Misperceptions: War is Not Imminent, http://demockracy.com/four-reasons-why-the-mumbai-attacks-wont-result-in-a-nuclear-war/)

Writer Amitav Ghosh divined a crucial connection between the two messages. "When commentators repeat the metaphor of 9/11, they are in effect pushing the Indian government to mount a comparable response." Indeed, India's opposition Hindu nationalist BJP has blustered, "Our response must be close to what the American response was." Fearful of imminent war, the media has indulged in frantic hand wringing about Indian and Pakistani nuclear arsenals and renewed fears about the Indian subcontinent being "the most dangerous place on earth." As an observer of the subcontinent for over a decade, I am optimistic that war will not be the end result of this event. As horrifying as the Mumbai attacks were, they are not likely to drive India and Pakistan into an armed international conflict. The media frenzy over an imminent nuclear war seems the result of the media being superficially knowledgeable about the history of Indian-Pakistani relations, of feeling compelled to follow the most sensationalistic story, and being recently brainwashed into thinking that the only way to respond to a major terrorist attack was the American way – a war. Here are four reasons why the Mumbai attacks will not result in a war: 1. For both countries, a war would be a disaster. India has been successfully building stronger relations with the rest of the world over the last decade. It has occasionally engaged in military muscle-flexing (abetted by a Bush administration eager to promote India as a counterweight to China and Pakistan), but it has much more aggressively promoted itself as an emerging economic powerhouse and a moral, democratic alternative to less savory authoritarian regimes. Attacking a fledgling democratic Pakistan would not improve India's reputation in anybody's eyes. The restraint Manmohan Singh's government has exercised following the attacks indicates a desire to avoid rash and potentially regrettable actions. It is also perhaps a recognition that military attacks will never end terrorism. Pakistan, on the other hand, couldn't possibly win a war against India, and Pakistan's military defeat would surely lead to the downfall of the new democratic government. The military would regain control, and Islamic militants would surely make a grab for power – an outcome neither India nor Pakistan want. Pakistani president Asif Ali Zardari has shown that this is not the path he wants his country to go down. He has forcefully spoken out against terrorist groups operating in Pakistan and has ordered military attacks against LeT camps. Key members of LeT and other terrorist groups have been arrested. One can hope that this is only the beginning, despite the unenviable military and political difficulties in doing so. 2. Since the last major India-Pakistan clash in 1999, both countries have made concrete efforts to create people-to-people connections and to improve economic relations. Bus and train services between the countries have resumed for the first time in decades along with an easing of the issuing of visas to cross the border. India-Pakistan cricket matches have resumed, and India has granted Pakistan "most favored nation" trading status. The Mumbai attacks will undoubtedly strain relations, yet it is hard to believe that both sides would throw away this recent progress. With the removal of Pervez Musharraf and the election of a democratic government (though a shaky, relatively weak one), both the Indian government and the Pakistani government have political motivations to ease tensions and to proceed with efforts to improve relations. There are also growing efforts to recognize and build upon the many cultural ties between the populations of India and Pakistan and a decreasing sense of animosity between the countries. 3. Both countries also face difficult internal problems that present more of a threat to their stability and security than does the opposite country. If they are wise, the governments of both countries will work more towards addressing these internal threats than the less dangerous external ones. The most significant problems facing Pakistan today do not revolve around the unresolved situation in Kashmir or a military threat posed by India. The more significant threat to Pakistan comes from within. While LeT has focused its firepower on India

instead of the Pakistani state, other militant Islamic outfits have not. Groups based in the tribal regions bordering Afghanistan have orchestrated frequent deadly suicide bombings and clashes with the Pakistani military, including the attack that killed ex-Prime Minister Benazir Bhutto in 2007. The battle that the Pakistani government faces now is not against its traditional enemy India, but against militants bent on destroying the Pakistani state and creating a Taliban-style regime in Pakistan. In order to deal with this threat, it must strengthen the structures of a democratic, inclusive political system that can also address domestic problems and inequalities. On the other hand, the threat of Pakistani based terrorists to India is significant. However, suicide bombings and attacks are also carried out by Indian Islamic militants, and vast swaths of rural India are under the de facto control of the Maoist guerrillas known as the Naxalites. Hindu fundamentalists pose a serious threat to the safety of many Muslim and Christian Indians and to the idea of India as a diverse, secular, democratic society. Separatist insurgencies in Kashmir and in parts of the northeast have dragged on for years. And like Pakistan, India faces significant challenges in addressing sharp social and economic inequalities. Additionally, Indian political parties, especially the ruling Congress Party and others that rely on the support of India's massive Muslim population to win elections, are certainly wary about inflaming public opinion against Pakistan (and Muslims). This fear could lead the investigation into the Mumbai attacks to fizzle out with no resolution, as many other such inquiries have. 4. The international attention to this attack – somewhat difficult to explain in my opinion given the general complacency and utter apathy in much of the western world about previous terrorist attacks in places like India, Pakistan, and Indonesia – is a final obstacle to an armed conflict. Not only does it put both countries under a microscope in terms of how they respond to the terrible events, it also means that they will feel international pressure to resolve the situation without resorting to war. India and Pakistan have been warned by the US, Russia, and others not to let the situation end in war. India has been actively recruiting Pakistan's closest allies – China and Saudi Arabia – to pressure Pakistan to act against militants, and the US has been in the forefront of pressing Pakistan for action. Iran too has expressed solidarity with India in the face of the attacks and is using its regional influence to bring more diplomatic pressure on Pakistan.

A2 Nepal

Indo-China disputes inevitable AND won't escalate

Wagner & Agarwal '10 (Daniel, Managing Dir. – Country Risk Solutions (a pol and econ risk consultancy), and Subhash, New-Delhi based political analyst and founer – India Focus, Huffington Post, "The State of Indian-Sino Relations", 2010, http://www.huffingtonpost.com/daniel-wagner/the-state-of-indian-sino_b_458847.html)

Indian/Sino friction will continue in the coming decade and is likely will be based on three primary issues: 1) The disputed border: Having never formally resolved their lingering border dispute, both countries will continue to find the absence of a resolution an irritant that will underlay and influence the health of bilateral relations; 2) Naval rivalry in the Indian Ocean: As China seeks to project its power regionally, India's navy will continue to be the only regional impediment to China's blue water ambitions. Other countries in the region may object to China's projection of sea power, but only India has the ability to challenge it; and 3) Pakistan: China's continuing support of Pakistan's military, and by extension its ability to remain an irritant on the subject of Kashmir, will remain a point of contention for India. India is of course aware that China has deftly spread its diplomatic influence globally in a very short span of time, largely through the disbursement of overseas aid (to African and Latin American nations) and through careful nurturing of its political connections in the West. Indian business, more than Indian diplomats, look longingly at the list of former U.S. government officials who have at some point in the past two decades acted as intermediaries and lobbyists for Chinese business interests -- from Henry Kissinger to Alexander Haig to Cyrus Vance. India also knows that Chinese ascendancy is much more than economic. Part of the future competition between India and China will be based on whether India can develop its military hardware and rebuild its naval muscle faster than Chinese attempts to build cultural and diplomatic sophistication. **But neither China nor India have an interest in overt or uncontrolled hostility. Both will work for their respective long-term interests within the rules of the present global order,** with China having greater deliberation and speed than India. It is most unlikely that China will attack India, even in the Northeast. Any military action by China towards any of its neighbors, especially a democracy like India, will erode the carefully crafted image of its "peaceful rise" and will only serve to reignite the Tibet issue. It would also provide a diplomatic opportunity for the U.S. to justify its continued militarily presence in Asia, as well as prompt Japan to want to expand its own military presence in the region.

Human Rights Adv Answers

US Not Key

U.S. policy has no effect on human rights --- past rejection of international norms proves --- other states don't pay attention

Moravcisk 2 [Andrew, Professor of International Politics at Princeton, "Why is US Human Rights Policy So Unilateralist?" Multilateralism & US Foreign Policy]

Yet little evidence suggests a close link between U.S. behavior and international norms, let alone domestic democratizations. Everywhere in the world, human rights norms have spread without much attention to U.S. domestic policy. Under the European Convention on Human Rights, the Europeans have established the most effective formal system for supranational judicial review of human rights claims, based in Strasbourg, without U.S. participation in the wake of the "third wave" of democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without paying much attention to U.S. domestic practice. Indeed, emerging democracies in the Western Hemisphere are following Europe's lead in ratifying and accepting compulsory jurisdiction of a regional human rights court, while ignoring U.S. unwillingness to ratify the American Convention on Human Rights, let alone accept jurisdiction of a supranational court. One might argue with equal plausibility that the pride of Latin American democracies in full adherence to the American Convention on Human Rights is strengthened by the unwillingness of the United States, Canada, Mexico, and the stable democracies in the Anglophone Caribbean to adhere. Likewise, 191 countries have ratified the CRC in record time without waiting to see what the United States would do. There is little evidence that Rwandan, Serbian, or Iraqi leaders would have been more humane if the United States had submitted to more multilateral human rights commitments. The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. In sum, the consequences of U.S. nonadherence to global norms, while signaling a weakening in theory, is probably of little import in practice.

Alt Causes

-- Alt causes –

A) Prisoner abuse

Wang 5 (Jisi, Dean – School of International Studies, Peking U., Foreign Affairs, Sept/Oct, Lexis)

Since then, the extent of armed resistance to the U.S. occupation of Iraq has exceeded the Bush administration's expectations. Meanwhile, revelations of prisoner abuse by U.S. personnel in Iraq and elsewhere have undermined the credibility of U.S. rhetoric on human rights and further damaged the United States' image in the world. U.S. "soft power"--the country's ability to influence indirectly the actions of other states--has been weakened. The United States also faces serious competition and disagreement from Europe, Japan, and Russia on many economic and development-related issues, and there have been disputes on arms control, regional policies, and the role of the United Nations and other international organizations.

B) State visits and War on terror

Delhunt 7 (Bill, US Representative, D-MA, FNS, 5-2, Lexis)

But let me suggest that it is not simply our counterterrorism policies that have undermined our claim to world leadership in terms of human rights. In the same inaugural address that I quoted earlier, President Bush spoke of how the "untamed fire of freedom will reach the darkest corners of our world." But as the reports clearly lay out, some of the darkest corners of the world are governed by some of our allies in the so-called war on terror, or those with whom we have important economic relationships. Now, the administration is right to criticize governments of countries like Iran or Cuba or North Korea for violations of human rights and a lack of democracy. But I would suggest that that criticism rings hollow when the president welcomes Hu Jintao of China or Islam Karimov of Uzbekistan or Abdullah of Saudi Arabia **to the White House**; or when Vice President Cheney visits Kazakhstan's dictator, Nazarbayev, and expresses, in his words, admiration for all that has been accomplished here in Kazakhstan; or Secretary Rice herself refers to Teodoro Obiang of Equatorial Guinea as a "good friend." And outside of the reports that we're reviewing here today, there is silence as to these leaders' abysmal human rights records. I'm not naive. I understand that absolute consistency in foreign relations is impossible, and that sometimes the choice is not between good and evil, but between more evil and less evil. But I also know that America's power ultimately comes not from our military and economic strength, but it emanates from our core values: our commitment to human rights and democracy, and from how we fulfill that commitment in our action, not just with our rhetoric. The unfortunate fact is that many of our policies have not lived up to those inspiring words of President Bush. This inconsistency between words and deeds makes us vulnerable to the charge of hypocrisy, and hypocrisy erodes our claim to moral leadership and to the sincerity of our commitment to human rights and dignity, which has always, always been so appealing to the rest of the world about the United States. And as the Government Accountability Office has concluded, that growing negative opinion of the United States can have real and dangerous consequences for the safety and the interests of the American people.

C) United Nations support

Shattuck 7 (John, CEO – John F. Kennedy Library Foundation, CQ Testimony, 3-29, Lexis)

4. The U.S. decision to disengage from U.N. human rights institutions undermines its position as a human rights leader. For more than sixty years the U.S. has been a world leader in building international institutions to promote human rights. Today, unfortunately, we seem to have renounced that leadership by withdrawing from the new U.N. Human Rights Council and by refusing to participate in efforts to shape the new International Criminal Court. In both cases the U.S. now has no influence over the future of these two flawed institutions. In the case of the Human Rights Council, the U.S. abandoned its support when it was unable to limit the Council's membership to countries with good human rights records, despite the fact that the Council membership requirements adopted in the recent U.N. reforms are an improvement over those of the dysfunctional Human Rights Commission which it replaced. In the case of the International Criminal Court, many structural changes need to be made in order for the U.S. to become a full participant. Nevertheless, in recent years the U.S. has lost all leverage over the Court's development by withdrawing its signature from the treaty establishing it. In addition, an active U.S. campaign to put pressure on governments not to join the Court has engendered international ill will and further undermined the capacity of the U.S. to exercise human rights leadership.

Cred/Promotion Fails

Human rights promotion fails --- modern warfare

Gentry, 1999 [John, researcher and writer on defense/security issues, traveled with the US Army in Bosnia, "Human Rights, Ethnicity, and National Identity," Vol. 22, No. 4:Pg 95, Lexis]

<Bureaucratic concerns and national ambitions aside, there are fundamental reasons why major parts of the international human-rights agenda make little sense. Warfare in recent decades has changed dramatically toward total warfare of a sort that prominently involves civilians as both targets and participants, which often is in alleged defense of group rights. The 1992-1995 Bosnian war is a classic example. In this conflict, simply put, grievances among three ethnic factions -- Bosnian Serbs, Bosnian Croats, and Bosnian Muslims -- led to combat whose strategic as well as tactical objectives focused on increasing the size and security of pockets of land held nearly completely by one's own ethnic group. This required expansion of key chunks of ethnically homogeneous land

and capture of some strategic locations, which simplified the demographic mosaic of prewar Bosnia. Pejoratively called ethnic cleansing, the strategy that all three sides employed had at its heart the advancement of the rights of their own group over those of others and the targeting of members of other groups who stubbornly resisted achievement of those goals by refusing to leave their homes. When bombast did not work, the groups used murder and other "atrocities" to move people to other places, either horizontally as corpses or vertically as living beings. This type of warfare both tramples the human rights of victims and fosters alleged rights to personal and group security and self-actualization. Western descriptions, such as victim or war criminal, depend largely on who won and who lost, not on behavior. This kind of conflict is incompatible with current international rules of warfare that define acceptable actions between groups of fighters called soldiers who are government employees. That is, the 1949 Geneva Conventions and other conventions that regulate by voluntary state compliance the conduct of the armies fighting conventional wars are woefully inadequate to describe, let alone regulate, intrasocietal and intersocietal wars. In a conflict such as Bosnia's in which movement of civilians was a major strategic goal, all significant participants were war criminals by conventional standards because they targeted noncombatants. In societal wars the distinction is often unclear between combatants and noncombatants who provide logistical, intelligence, and other support to people who pull triggers.>

Soft Power Fails

Soft power fails---no coordination between US diplomatic agencies and it's not key to influence

Adelman 11---Master's and PhD from Georgetown's School. Frmr director of the U.S. Arms Control and Disarmament Agency, former Ambassador to the UN, and former member of Pentagon's Defense Policy Board (6/18/11, Ken, Not-So-Smart Power, http://www.foreignpolicy.com/articles/2011/04/18/not_so_smart_power)

I didn't hear of similar activities from soft-power agencies -- past diplomats, USAID directors, agricultural-aid types -- with their Egyptian counterparts. The only diplomatic initiative that got any public attention involved the gifted former U.S. ambassador to Egypt, Frank Wisner, who was suddenly dispatched to Cairo at Clinton's request. But he, or she, made a real hash of it, for just as Obama had finally realized that Mubarak must go, Wisner publicly announced that Mubarak must stay -- at least for a while, to provide stability in any transition. **Not exactly a case study in smart power.** To his credit, even Nye admits that the line between soft and hard power is a blurry one, though he generally equates the former with the State Department and USAID budgets and the latter with the Pentagon. Yet the distinction breaks down pretty quickly, especially when you consider that many U.S. military activities have boosted America's reputation and enhanced its influence abroad -- more so than any diplomatic or U.S. foreign-aid event. The U.S. Navy's quick, effective reaction to the 2004 Indian Ocean tsunami, its timely assistance to Cyclone Nargis in Burma, its relief from awful flooding in Pakistan, and now its efforts in Japan have all been superb. What case studies from soft-power budgets that Joe Nye so desperately wants maintained could he use in his Kennedy School of Government classes to match these from the hard-power Pentagon budget?¶ Moreover, America's prime soft-power agency may be too soft to be effective. Let's recall: The State Department agreed to the Mubarak government's request for its approval before any U.S. democracy programs for Egypt got launched. To put it simply, the soft-power agency consented that anti-dictator programs appropriated by the U.S. Congress first get approved by that dictator.¶ And recent Washington Post editorials have complained about the State Department being unable, or unwilling, to spend allocated funds on an effective freedom agenda. Its Feb. 5, 2011, editorial, for instance, included this astonishing fact: "Congress allocated $30 million in the fiscal 2010 budget for the State Department to fund Internet freedom. But 16 months later, none of the funds have been allocated." What's not to like in such a mission?¶ The State Department has been reluctant, if not resistant, in helping modern-day freedom fighters in Iran, Libya, and Syria. This seems a no-brainer, as they're all places of need. There should be none of the usual fears of offending the host government, because the governments of these three countries couldn't be any more hostile to the United States or more ferocious toward their own people than they are now.¶ Besides resting on soft assumptions, **emphasis on soft power may lead to soft thinking**. Take Clinton's hallmark "three Ds" of defense, diplomacy, and development. While Americans do defense and diplomacy**, they don't do development** well. The United States can't be held responsible for another country doing what's needed to develop. By now, there's a checklist of how countries can go from poverty to prosperity -- low taxes, private property protected by law, restrained and limited government, solid currency, modern infrastructure, and attacks on corruption. But the State Department simply can't do much to ensure these elements are done well.¶ I wish to end on a positive note, especially because Joseph Nye is such a fine person. He's contributed enormously to the United States, always asking hard questions on conventional thinking. He surely would welcome the same on today's fashionable thinking.¶ All this may boil down to a big difference. I've come to believe that liberals focus primarily on intentions, while conservatives focus more on results. No doubt the soft-power goals of the State Department and USAID on diplomacy, foreign aid, exchange programs, and the like seem wonderful. They're peaceful, caring, intercultural, and so on. They signal the right intentions.¶ The hard-power association with Pentagon budgets, weapons, and soldiers seems quite contrary. They signal the wrong intentions. **But looking at the actual results of soft power** versus hard power may yield results that **make today's fashionable thinking seem soft, if not altogether squishy.**

Soft power fails

Rachman 9 [Gideon Rachman is the Economist's bureau chief in Brussels, June 1 http://www.ft.com/cms/s/0/e608b556-4ee0-11de-8c10-00144feabdc0.html]

Barack Obama is a soft power president. But the world keeps asking him hard power questions. From North Korea to Guantánamo Bay, from Iran to Afghanistan. Mr Obama is confronting a range of vexing issues that cannot be charmed out of existence. The problem is epitomised by the US president's trip to the Middle East this week. Its focal point will be a much-trailed speech in Cairo on Thursday June 4, in which he will directly address the Muslim world. The Cairo speech is central to Mr Obama's efforts to

rebuild America's global popularity and its ability to persuade – otherwise known as soft power. The president has been trying out potential themes for the speech on aides and advisers for months. He is likely to emphasise his respect for Islamic culture and history, and his personal links to the Muslim world. He will suggest to his audience that both the US and the Islamic world have, at times, misjudged and mistreated each other – and he will appeal for a new beginning. George W. Bush launched a military offensive in the Middle East. Mr Obama is launching a charm offensive. There is plenty to be said for this approach. Mr Bush embroiled America in a bloody war in Iraq that strengthened Iran and acted as a recruiting sergeant for America's enemies. Mr Obama's alternative strategy is based on diplomacy, engagement and empathy. Mr Bush had a shoe thrown at him in his last appearance in the Middle East. So if Mr Obama receives his customary standing ovation in Cairo, that will send a powerful symbolic message. But the president should not let the applause go to his head. Even if his speech is a success, the same foreign-policy problems will be sitting in his in-tray when he gets back to the Oval Office – and they will be just as dangerous as before. In particular, there is chatter in official Washington that the Israelis may be gearing up to attack Iran's nuclear facilities before the end of the year. The Obama administration is against any such move and it is normally assumed that Israel would not dare to pull the trigger without the go-ahead from Washington – not least because the Israelis would have to fly across US-controlled airspace to get to their targets. But the Americans do not have a complete veto over Israel's actions. One senior US official asks rhetorically: "What are we going to do? Shoot down their planes?" A conflict between Israel and Iran would scatter the Obama administration's carefully laid plans for Middle East peace to the winds. It would also make talk of improving American soft power around the world seem beside the point. The immediate task would be to prevent a wider regional war. In the meantime, the US will press on with the effort to achieve peace between the Israelis and the Palestinians. But even that goal is unlikely to be advanced much by Mr Obama's trip to the Middle East. Many in the audience in Cairo and in the wider Islamic world will want and even expect the new president to lay out a complete vision for a peace settlement and to apply unambiguous pressure on Israel. For reasons of domestic politics, diplomacy and timing, Mr Obama is highly unlikely to do this. Yet while his Arab audience may be disappointed by what he has to say about the Middle East peace process, Mr Obama is already facing an increasingly tense relationship with the new Israeli government. The administration has now clashed openly with the Israelis over the Netanyahu government's tolerance of expanded settlements in occupied Palestinian land. Mr Obama is also running up against the limits of soft power elsewhere. Closing the prison camp at Guantánamo was meant to be the ultimate tribute to soft power over hard power. The Obama team argued consistently that the damage that Guantánamo did to America's image in the world outweighed any security gains from holding al-Qaeda prisoners there. Yet, faced with the backlash against releasing the remaining 240 prisoners or imprisoning them in the US, the Obama administration has back-tracked. It is not clear whether Guantánamo will be closed on schedule or what will happen to the riskier-sounding prisoners, who may still be held indefinitely. The much-criticised military trials are likely to be revived. In Afghanistan, Mr Obama is trying a mixture of hard and soft power. There will be a military surge – but also a "civilian surge", designed to build up civil society and governance in Afghanistan. Old hands in Washington are beginning to shake their heads and mutter about Vietnam. Mr Obama's preferred tools of diplomacy, engagement and charm do not seem to be of much use with Kim Jong-il of North Korea, either. The North Koreans have just tested a nuclear weapon – leaving the Obama administration scratching its head about what to do. The president's charisma and rhetorical skill are real diplomatic assets. If Mr Obama can deploy them to improve America's image and influence around the world, that is all to the good. There is nothing wrong with trying to re-build American "soft power". The danger is more subtle. It is that President Yes-we-can has raised exaggerated hopes about the pay-off from engagement and diplomacy. In the coming months it will become increasingly obvious that soft power also has its limits.

Europe Add-On Answers

Policy Divergence Good

Judicial divergence between the US and Europe is good – ensures European political stability and creates international policy choice which solidifies global stability

Delahunty and Yoo 11 (Robert and John, Associate Professor at the University of St. Thomas School of Law + Professor of Law at the University of California at Berkeley School of Law and Visiting Scholar at the American Enterprise Institute, "Outsourcing American Law," http://www.aei.org/wp-content/uploads/2011/10/20090820-Chapter8.pdf)

This leads to two objections to using European decisions. First, as just suggested, the American political system should remain several steps removed from European "innovations" because it keeps the nation from falling into extremes of policy. Some attribute this moderation in American politics, in part, to our written Constitution.146 The separation of powers and federalism make it difficult to enact any sweeping, ideologically-inspired legislation, and the Bill of Rights places some obstacles before government action that might infringe on individual liberties. Appealing to European decisions would evade these structural checks on federal lawmaking, since the Supreme Court's decisions themselves are not subject to the strict restraints of bicameralism, presentment, and federalism that apply to Congress and the President. Second, the modern European experience should lead us to question whether its current phase of development is inevitably superior to the American. It may appear to some today that European constitutional schemes seem to protect individual liberties more effectively, or better balance the tension between government power and rights. It is difficult to determine now, however, whether history will vindicate the choices that Europe has made. It may have appeared to some American observers at the time that fascism and communism were modern, progressive ideologies from which the United States could learn, but history demonstrated their failure. Those ideologies produced tens of millions of deaths from inter-European warfare and from the oppression of domestic populations147 -- not exactly a sterling example to follow. Not only are their histories different, but the United States and Europe face very social and political circumstances so different as to counsel against any transplanting of constitutional values from the latter to the former. Europe has spent the last 60 years turning away from great power conflict and forming itself into a nation-state, one that has solved the problem of German ambition and melded former enemies into a broad economic common market.148 Military power and conquest have not been the tools for this amazing integration, but supranational institutions, international law, and diplomacy. As Robert Kagan has put it, "Europe is turning away from power, or to put it a little differently, it is moving beyond power into a self-contained world of laws and rules and transnational negotiation and cooperation."149 The United States, on the other hand, has chosen to rely more on power than international law, on military force as much as on persuasion, and sees a world threatened by terrorist organizations, rogue nations, and the proliferation of weapons of mass destruction.150 While Europe "is entering a post-historical paradise of peace and relative prosperity, the realization of Immanuel Kant's 'perpetual peace,'" the United States "remains mired in history, exercising power in an anarchic Hobbesian world where international law and rules are unreliable, and where true security and the defense and promotion of a liberal order still depend on the possession and use of military might."151 Europeans, in other words, may be unusually reliant upon international law, legal instruments, and legal institutions because these tools have been one of the key mechanisms by which they have promoted integration. If this view of European-American relations is correct, then European judicial decisions may be particularly inappropriate for guidance for American constitutional interpretation, because they take place in an environment of reliance upon law and legal institutions that makes no sense in the American context. In fact, **it may well be the case that the difference between our political systems has both promoted the integration of Europe and permitted the Europeans to attempt a different experiment in political organization**.152 That European nations have been able to put aside their historical animosities and engage in integration may be thanks to an American security guarantee. The North Atlantic Treaty Organization allowed the integration of Europe to proceed without heavy demands for military spending, thanks to the stationing of United States forces to contain the Soviet Union. As Lord Ismay, the first secretary general of NATO, famously quipped, the purpose of the Atlantic alliance was "to keep the Americans in, the Russians out, and the Germans down."153 That disparity in spending on defense is even starker since the end of the Cold War. In the 1990s, Europeans discussed increasing collective defense expenditures from $150 billion to $180 billion a year while the United States was spending $280 billion a year.154 Ultimately, the Europeans could not, and there was little political desire now remains to, come within shouting distance of the United States, which in the wake of September 11 and the wars in Afghanistan and Iraq plans to spend $400 billion a year on defense.155 The large gap in power between the United States and Europe is perhaps even more apparent qualitatively; the United States has become the

"indispensible nation" without which Europe could not even handle the internal civil war along its borders in Kosovo. Only the United States has the power to project power globally or to fight more than one large regional war at the same time.156 Without the United States' willingness to engage in power politics, Europe would not have had the luxury to integrate. If this is correct, then European constitutional values are particularly inappropriate for the United States. They have been developed and enjoyed because their governments enjoy a different tradeoff between national security on the one hand, and individual liberties and economic prosperity on the other. The United States, however, which has greater responsibilities for keeping international peace, and for guaranteeing stability in Europe, faces a different balance between national security demands and constitutional liberties. One last reason why European precedents should not find an easy home in American constitutional law draws on the lessons of federalism. Federalism makes sense, in part, because it creates a decentralized system of government that allows jurisdictions to offer a diversity of social, economic, and political policies. Similarly, at the international level, states may compete for residents and businesses by offering different mixes of economic and social policies. As in a market, citizens can satisfy their preferences by deciding to live in states that provide the tax, education, welfare or family policies that they agree with. Diversity of policies enhances social welfare by allowing individuals to increase their utility by living in jurisdictions that offer their desired policies. Certainly, there are certain minimum rights and structures that every jurisdiction should recognize, just as in a market certain basic rules must exist in order for a market to function. It is important, however, that before a universal right is recognized, that it really be one that we are sure must be universal, rather than one that is best handled through choice available from diverse jurisdictions. Indeed, diversity of policies will permit experimentation that will make apparent which policies may best work. Just as Justice Brandeis praised federalism because it permitted experimentation by the state laboratories of democracy,157 so too international decentralization allows jurisdictions to experiment before committing to a single policy. A convergence of American and European constitutional systems, through the citation of precedents, **could reduce the ability of jurisdictions to offer the packages of policies that will enhance global welfare.**

Delahunty and Yoo 11 (Robert and John, Associate Professor at the University of St. Thomas School of Law + Professor of Law at the University of California at Berkeley School of Law and Visiting Scholar at the American Enterprise Institute, "Outsourcing American Law," http://www.aei.org/wp-content/uploads/2011/10/20090820-Chapter8.pdf)

It is essential to identify out the outset precisely what is and is not in controversy here. Some Justices appear to believe that foreign and international legal practices and opinions can serve, at the minimum, to illuminate possible solutions to questions similar to those that U.S. federal courts must address (just as U.S. federal courts may learn from U.S. state courts, and vice-versa). They can do so by providing relevant empirical information about the practical effects of particular social policies, e.g. legalized euthanasia; or, like law review articles, they can furnish original legal arguments for particular conclusions. To the extent that foreign and international legal materials are used only for those purposes, we consider that use unobjectionable. More boldly, however, some Justices may also think it desirable, for normative or policy reasons, for U.S. constitutional law to converge with the constitutional law of European and other democratic legal systems over a broad range of issues. The desire to promote such convergence may lead those Justices to give decisional effect to those materials, thus allowing them to be outcome-determinative in some constitutional cases. Foreign or international law in that use would be given legal force and effect in deciding the questions, e.g., whether a state had afforded "due process" to a criminal defendant; whether a parental notification requirement placed an "undue burden" on a minor's right to abortion; whether the President had committed a "high Crime or Misdemeanor;" whether a police search had been "reasonable;" whether the government had created an "establishment of religion;" whether a specific type of capital punishment was "cruel" and unusual." That is the use of foreign law with which we take issue here.28 In our judgment, foreign and international law are not legitimately used in an outcomedeterminative way to decide questions of constitutional interpretation except in one narrow category of cases: where the text of the Constitution itself refers to international or foreign law, as it does, e.g., when it vests in Congress the powers to "define and punish . . . Offences against the Law of Nations"29 or to "declare War."30 Under those clauses, the Constitution gives Congress – normally a body whose jurisdiction relates to domestic law only – the authority to promulgate rules of international law. As we shall discuss below, the Supreme Court early held that public international law (or more precisely, the Law of Nations) could be used to interpret the scope of Congress' power to "declare War."31 The power to "declare War" has been correctly seen, not as a matter of domestic separation of powers law enabling Congress to check the President's authority to engage in armed conflict, but rather as an exceptional grant of authority to Congress to make legal rules in the international sphere.32 Likewise, the scope of Congress' power to define and punish offenses against the "Law of Nations" can legitimately be measured against that body of law. Other than in such unusual cases,33 however, foreign and international law are not generally available as sources for interpreting the Constitution. This Article makes five observations regarding the Supreme Court's practice of relying upon foreign and international decisions in the manner just described for support of its constitutional rulings. Part I

outlines the separation of powers problems that arise if the use of foreign decisions is more than merely ornamental. If foreign decisions were to become, in close cases, outcome-determinative, or even triggered some type of deference, they would effectively transfer federal authority to bodies outside the control of the national government and the domestic political constituencies that that government is designed to represent. Part II argues that use of foreign decisions undermines the limited theory of judicial review, as set out in Marbury v. Madison. 34 Chief Justice Marshall justified the federal courts' power to ignore enacted laws that were inconsistent with the Constitution on the ground that such statutes fell outside the delegation of authority by the people to the government, as expressed in the Constitution.35 Relying on decisions that interpret a wholly different document runs counter to the notion that judicial review derives from the Court's duty to enforce the Constitution. Part III considers the relevance of the Constitution's Supremacy Clause and Law of Nations Clause to the Court's emerging use of foreign law. Part IV questions the Court's use of precedents that derive almost exclusively from Europe. We will suggest that Europe does not present the ideal model of constitutionalism for the United States to follow, and that in fact **deviation between the United States and Europe may significantly enhance global welfare**. Finally, Part V offers a tentative and preliminary explanation of why some of the Justices are attracted to using foreign law.

Rels Reslient

US-EU ties resilient

Dennison 13 (Susi, fellow at the London-based think tank, the European Council on Foreign Relations, 2/22/2013, "Kerry's first trip gives clues on EU-US relations," http://euobserver.com/opinion/119168)

When US leader Barack Obama first announced, in autumn 2011, that he was to intensify the US' role in the Asia-Pacific region, it prompted much hand-wringing in Europe. But it is unclear whether EU-US relations suffered as a result. The European Council on Foreign Relations' (ECFR) latest "scorecard," which tracks the effectiveness of European foreign policy year on year, found that in 2012 **EU-US ties were resilient**. We cited as evidence the success of the G8 summit at Camp David and the Nato summit in Chicago in May 2012, compared with the G20 summit in Los Cabos a month later, which delivered little and drew precious little attention. Whatever the intention may have been with regard to continuing or reducing US resources in MENA, throughout 2012, American attention kept being drawn to the region. From supporting Arab transitions, most notably in Egypt, to the ongoing conflict in Syria, to the Iranian nuclear programme and Israel's Operation Pillar of Defence in Gaza in autumn, the US remained watchful. In the majority of these dossiers **co-ordination with the EU has remained close**, on the E3+3 process on Iran, through the Friends of Syria Group and at the UN. As a result, the European External Action Service (EEAS) delegation in Washington is one of a select few EEAS missions which has begun to play a serious negotiation and co-ordination role in advancing EU policy.

Alt Causes

Populist takeover and Anti-EU sentiments in member countries prevents effective US-EU relationship

Mix 15 (Derek E. Mix; 2/3/15; European affairs focused political analyst; The United States and Europe: Current Issues; http://fas.org/sgp/crs/row/RS22163.pdf)

U.S. officials and Members of Congress assessing the partnership with Europe also face complex and changing political dynamics within the EU and its member states. The European financial and debt crisis that followed the 2008-2009 global downturn has forced European leaders to confront the fundamentally unfinished nature of the EU. Although leaders took a number of unprecedented measures in response to the crisis, the process of arriving at these reforms highlighted diverging preferences and outlooks that caused tensions between EU member states. Although the crisis appears to have receded, **there is a sense that its underlying causes remain unresolved** and that basic questions about the future of further EU integration remain unanswered. At the same time, the perceived inability of Europe's traditional mainstream parties to solve economic and social problems has led to an anti-establishment backlash among European

voters. In many countries, relatively new political parties are gaining strength, many of them populist parties advocating far-right and far-left policies. While such parties tend to variously embrace forms of nationalist, anti-immigration, or anti-Islam policies, nearly all are anti-EU to some degree, whether in terms of opposing the euro currency, further European integration, or even their country's membership in the union. "Euro-skeptic" parties of the far-right and far-left won approximately one quarter of the votes in the May 2014 European Parliament election. Following the victory of the radical-left Syriza party in the January 2015 Greek elections, the strength of this trend will be further tested over the course of the year with national elections in Estonia, Finland, Denmark, Portugal, Poland, Spain, and the United Kingdom. The UK elections, in particular, are expected to have major implications related to a possible national referendum on the EU membership of the country frequently regarded as the United States' closest European ally.4 In various ways, **European domestic challenges, including political instability, economic struggles, social unrest, and growing skepticism about the EU could affect Europe's ability to act in partnership with the United States.**

Cooperation Fails

EU partnership fails

Techau 11 (Jan, 10/6, director of Carnegie Europe, the European centre of the Carnegie Endowment for International Peace, "The Dirty Secret of US European relations" http://carnegieendowment.org/2011/10/06/dirty-secret-of-u-s-european-relations/8l1h)

For the internal psychology of the transatlantic relationship, this is undoubtedly good news. The more interesting question, however, seems to be whether all this new love translates into a more meaningful partnership on shared foreign-policy challenges. Here the answer is less clear. While cooperation on issues such as the Middle East, Iran and terrorism was and is constructive, one of the most crucial items on the Euro-American agenda remains untouched by the improved atmosphere: transatlantic burden sharing in the field of security and defense. Here, Europeans have for the last sixty years been in a position of utter dependence on the Washington's willingness and ability to guarantee their security. And even though the global strategic framework has drastically changed since the beginning of this transatlantic bargain in the 1950s, Europeans still conduct their defense planning as if American generosity were the most naturally abundant and easily accessible political commodity. By doing so, they increase their reliance on U.S. guarantees, and they become less and less interesting as an ally for their American counterparts. All attempts to wake Europeans up and make them rethink their priorities have died away without much impact.¶ It would be easy to blame President Obama for not using his popularity with allies intelligently enough to induce them to get their act together. But the European passivity on security and defense issues goes far beyond the reach of even the most popular American president. By and large, Europeans are unaware of their utter dependency; they don't feel particularly threatened, they hold a deep mistrust in all things military, and they have learned to look at the world without regard to strategic considerations. Despite Libya, their willingness for an active approach to the world around them and for intervention on behalf of values and interests is small. Their political leaders—to the extent that they are aware of today's realities—shy away from the enormous budgetary and political costs that a realistic security and defense posture would create. The dirty little secret of transatlantic relations is that, under these circumstances, they will undoubtedly become a whole lot less boring very soon. Both America and Europe are broke. Their ability to shape the world around them is getting weaker. The global center of gravity is shifting towards the Pacific. Americans are ultimately better suited to master this process of relative decline. But it is in Washington's fundamental interest to keep Europe safe and stable, to keep its best allies strong and to defend the enormous economic investments it has placed in the old world. Obsessing about perceptions and sympathy ratings will soon look like frivolous luxury. The ball is in the European court. For Americans, a Europe with a grown-up strategic culture will be more important than one that produces high approval ratings for the United States. For Europeans, investing in a relevant and workable transatlantic future will be more important than an American president they find easy to like.

Deference Add-On Answers

Deference Low Now

No judicial deference now – post-9/11 defeats

Scheppele 12 (Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University (Kim Lane, 2012, "THE NEW JUDICIAL DEFERENCE," Boston Univ Law Review, 92(89), http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SCHEPPELE.pdf)

Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. 7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was decl ared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges : in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still " hot," courts jumped right in, dealing governments **one loss after another**. 8 After 9/11, **it appears that deference is dead.**

No judicial deference – data confirms

Wong 13 (U Jin, PhD dissertation in Government to Georgetown University, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong_georgetown_0076D_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do national security claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting **against the government**. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government's wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a statistically significant likelihood that the **Supreme Court will vote against the government**. National security claims were statistically significant with a negative signifier. This finding is consistent across all the major wars as well as peacetime. It also suggest s that **the Supreme Court generally is not predisposed to defer to the executive branch's arguments when it comes to national security claims**

Deference Good

Deference key executive urgency and flexibility

Posner & Sunstein 7 -- * Kirkland & Ellis Professor of Law, University of Chicago AND Karl N. Llewellyn Distinguished Service Professor, Law**

School and Department of Political Science, University of Chicago (Eric A. and Cass R., 4/1/2007, "Chevronizing foreign relations law" Yale Law Journal, L/N)

Critics of this transformation greatly fear executive overreaching, 180 and there is reasonable dispute about the extent of this risk and about how best to limit it; but critics and supporters agree that changes in the global environment jus tify at least some expansion of executive powers. A modern president, unlike George Washington, needs to be able to respond quickly to **intercontinental ballistic missiles, cyberattacks, terrorist attacks, global financial crises**, and other dange rs that will not wait for Congress to act. The critics of broad executive power have not argued that ambiguities in federal statutes should be construed by judges, rather than by the Pr esident and those who operate under him. To say this is not to take a stand on th e question whether the President can act on his own. It is merely to acknowledge that legislation often grants the executive some discretion to act rapidly in response to perceived threat s—and hence the increase in executive power, usually made possible by statutes, has reflect ed a recognition by Congress itself of this pragmatic point. 181 In these circumstances, deference to the executive's views on the meaning of ambiguous statutes, rather than invocation of the comity principles, is a step that seems at once modest and a bit late.

That solves numerous security threats

Yoo 12 (John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, War Powers Belong to the President, 2/1/12, http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president)

Congress' track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate's rejection of the Treaty of Versailles at the end of World War I. Congress' isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president's foreign adventurism, the real threat to our national security may come from **inaction and isolationism**. Many point to the Vietnam War as an example of the faults of the "imperial presidency." Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon's veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution's institutional design**,** critics nevertheless argue for a **radical remaking of the American way of war.** They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to "declare war." But these observers read the 18th century constitutional text through a modern lens by interpreting "declare war" to mean "start war." When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not "engage" in war "without the consent of Congress" unless "actually invaded, or in such imminent danger as will not admit of delay." This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress' check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president's decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress' power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: "The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist." Congress ended America's involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress' funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might **appease critics of presidential power**. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, **the executive branch needs flexibility**. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. **Presidents can take the initiativ**e and Congress can use its funding

power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of **terrorism**, **rogue nations** and **WMD proliferation**, now is not the time to introduce sweeping, untested changes in the way we make war.

France Add-On Answers

EU Econ Collapse Inevitable

Structural issues in the EU make solvency impossible

Porter 15 [Eduardo Porter, New York Times; "Local Politics Are Fracturing European Unity"; 2/3/2015; http://www.nytimes.com/2015/02/04/business/political-fractures-in-european-economic-unity.html]

To be fair, many economists — mostly on this side of the Atlantic — have long recognized the flaws of the euro area's monetary arrangement. But still wedded to the notion of European solidarity, euro advocates failed to grasp the **crucial, irreducible obstacle** to their economic plan that Mr. Feldstein highlighted: **Politics are still local.**¶ "They made the mistake of thinking that a solution had to happen at the eurozone level rather than at the country level," Professor Feldstein told me. "That anything they could do to increase the sense of European solidarity would be a good thing."¶ Desperate Greek voters ignited the latest panic in Europe's rolling crisis. Last week they elected a new populist government that promised to put an end to the drastic budget-cutting imposed by Europe in exchange for financial support.¶ But Greece is hardly the only problem. **Political contagion is in the air.** In Spain, "Podemos," a left-wing party born last year out of anger at Europe, has surged in the polls ahead of general elections to be held later this year. If elected, it promises to **write off much of Spain's debt**.¶ "The politics we see now are the result of an economic strategy," said Paul De Grauwe, a former member of the Belgian Parliament now at the London School of Economics. "When you push countries to impose deep austerity policies, you shouldn't be surprised that the unemployed push for extreme parties."¶ The economics are pretty straightforward.¶ The euro area suffers, principally, from a lack of growth. Indebted countries on Europe's periphery — which include not only Greece and Spain but also countries like Italy and Ireland — have been slashing their budgets, cutting jobs and trimming wages, hoping to lighten their burden of debt.¶ Germany, the biggest creditor country and main architect of the European Union's strategy, argues that such austerity is an indispensable corrective for the boom years, when low interest rates fueled spending binges — in Greece by the government, in Ireland and Spain by the private sector.¶ But the traditional **corrective hasn't worked**: Indebted economies are shrinking faster than their debt. "The **killer incriminating fact** is that for all the costs and all the pain, the debt-to-G.D.P. ratios are nevertheless much higher than before the crisis," said Jeffrey Frankel of Harvard's Kennedy School. "Even if you don't care about the distress and the extremist governments, you haven't even restored financial stability."

No Europe War

No large-scale European war

Massie 12 (Allan Massie is a Scottish writer who has published nearly 30 books, including a sequence of novels set in ancient Rome. His non-fiction works range from a study of Byron's travels to a celebration of Scottish rugby. He has been a political columnist for The Scotsman, The Sunday Times and The Daily Telegraph and writes a literary column for The Spectator., 7/17/2012, "Nuclear Iran, revolution in Europe: it's fun to make your flesh creep, but Armageddon isn't really nigh", blogs.telegraph.co.uk/culture/allanmassie/100065078/nuclear-iran-revolution-in-europe-its-fun-to-make-your-flesh-creep-but-armageddon-isnt-really-nigh/)

Then we had our expert Finance blogger Thomas Pascoe in similar thank-God-it's-Friday "I wants to make your flesh creep" Fat Boy mode. We are too complacent, he says. **We are faced with "impending events that would have precipitated a revolution in almost any other place at almost any other time in history**- either the collapse of the currency or the complete secession of budgetary control to a supra-natural body in the EU." (When I read that I said "Golly", until I realised that he probably meant to write supranational rather than supra-natural, delightfully flesh-creeping though the idea of a spectral supra-natural body taking control of national budgets may be.) **Either of these may lead, he would**

have us think, to some form of fascist revolution. This is because in the nations enduring austerity, and indeed suffering from austerity, "the populations at large feel no culpability for the debts their leaders have amassed." Well, I suppose he's right there. How much culpability do you, dear reader, feel for the size of the UK's national debt? Do you beat your breast moaning "I blame myself", or wring your hands in shame? No? I thought not. So why should the Greeks, the Spaniards and the others "feel culpability"? In Fat Boy mode, Thomas Pascoe says that **either the EU will take complete control of all national budgets or that countries will default on their debts. Either way, populist politicians will emerge to stir up the masses, and we'll be back to the Thirties**. "**Europe," it seems, " is one demagogue away from causing an earthquake in global finance such that the current problems seem a tremor in comparison**. If Silvio Berlusconi – the only truly populist politician the Continent has produced in half a century – had been twenty years younger, I fancy it might have been him…" **Well, if the playboy "Mussolini in a blue blazer" is the nearest to a fascist demagogue you can come up with**, **there isn't much to worry about.** And indeed **there isn't, because politics now matters less than football and entertainment** – **both things which bind the young people of Europe together, and make revolutionary fervour somewhat unlikely**. So, at the risk of being accused of complacency, I'll suggest, first, that **if a country was going to fall out of the euro, it would have done so by now; second, that the eurozone will muddle through**, **because the will to do so is there; and third, that while some supranational body charged with supervising national budgets will be set up**, **it will prove far less rigid and far more elastic in its exercise of control than many suppose or indeed hope or, alternatively, fear**. This is because the EU remains a union of nation-states, and national governments will insist on retaining a great degree of autonomy. **Flesh-creeping is fun and lively journalism**, **but Armageddon is not on the menu today, next week, next year, or in the next decade**. **We have come through worse and far more dangerous times, and goodwill and common sense will let us survive present difficulties and discontents**. The notion that "we are one charismatic leader away from a complete reordering of the Continent" is Fat Boy stuff.

Mosque DDI

Mosque Aff Case Neg

Solvency

Agencies like NYPD don't homogenize Muslims- they use technology to find terrorists within those law-abiding citizens

The Associated Press, 2014

(News and editorial company. "Judge Finds Surveillance of Mosques Was Allowed." http://www.nytimes.com/2014/02/21/nyregion/judge-finds-surveillance-of-mosques-was-allowed.html?_r=0. Date Accessed- 07/13/15. Anshul Nanda.)

The New York Police Department's intelligence unit did not discriminate against Muslims in carrying out far-reaching surveillance meant to identify "budding terrorist conspiracies" at mosques in Newark and other locations in New Jersey, a federal judge ruled on Thursday.¶ In a written decision filed in United States District Court in Newark, Judge William J. Martini dismissed a civil rights lawsuit brought in 2012 by eight Muslims who said the New York Police Department's surveillance programs were unconstitutional because they focused on religion, national origin and race. The suit accused the department of spying on ordinary people at several mosques, restaurants and grade schools in New Jersey since 2002.¶ The plaintiffs, including the former principal of a grade school for Muslim girls, "have not alleged facts from which it can be plausibly inferred that they were targeted solely because of their religion," Judge Martini wrote. "The more likely explanation for the surveillance was to locate budding terrorist conspiracies."¶ The judge added, "The police could not have monitored New Jersey for Muslim terrorist activities without monitoring the Muslim community itself."¶ "The motive for the program," he added, "was not solely to discriminate against Muslims, but to find Muslim terrorists hiding among the ordinary law-abiding Muslims."¶ The ruling also singled out The Associated Press, which helped the suit with a series of articles based on confidential police documents that showed how the Police Department sought to infiltrate dozens of mosques and Muslim student groups and investigated hundreds of people in New York and elsewhere.¶ "Nowhere in the complaint do the plaintiffs allege that they suffered harm prior to the unauthorized release of documents by The Associated Press," the judge wrote. "This confirms that plaintiffs' alleged injuries flow from The Associated Press's unauthorized disclosure of the documents."¶ He added: "Thus the injury, if any existed, is not fairly traceable to the city."¶ The Center for Constitutional Rights, which represented the plaintiffs, called the decision troubling.¶ "In addition to willfully ignoring the harm that our innocent clients suffered from the N.Y.P.D.'s illegal spying program, by upholding the N.Y.P.D.'s blunderbuss Muslim surveillance practices, the court's decision gives legal sanction to the targeted discrimination of Muslims anywhere and everywhere in this country, without limitation, for no other reason than their religion," said Baher Azmy, the center's legal director.¶ New York City's Law Department had no immediate comment on Thursday. Former Mayor Michael R. Bloomberg and Raymond W. Kelly, the former police commissioner, had been staunch supporters of the surveillance programs, saying they were needed to protect the city.¶ A similar lawsuit filed in federal court in Brooklyn is pending.

Curtailing surveillance in specific areas will just cause agencies to literally surveil areas outside/around it- mosque surveillance tactics prove

Goldman et. al, 12

(Adam and Matt are editors for the Associated Press. "NYPD Defends Tactics Over Mosque Spying; Records Reveal New Details On Muslim Surveillance." http://www.huffingtonpost.com/2012/02/24/nypd-defends-tactics-over_n_1298997.html. Date Accessed- 7/13/15. Anshul Nanda)

NEW YORK -- The New York Police Department targeted Muslim mosques with tactics normally reserved for criminal organizations, according to newly obtained police documents that showed police collecting the

license plates of worshippers, monitoring them on surveillance cameras and cataloging sermons through a network of informants.¶ The documents, obtained by The Associated Press, have come to light as the NYPD fends off criticism of its monitoring of Muslim student groups and its cataloging of mosques and Muslim businesses in nearby Newark, N.J.The NYPD's spokesman, Paul Browne, forcefully defended the legality of those efforts Thursday, telling reporters that its officers may go wherever the public goes and collect intelligence, even outside city limits.¶ The new documents, prepared for Police Commissioner Raymond Kelly, show how the NYPD's roster of paid informants monitored conversations and sermons inside mosques. The records offer the first glimpse of what those informants, known informally as "mosque crawlers," gleaned from inside the houses of worship.¶ For instance, when a Danish newspaper published inflammatory cartoons of Prophet Muhammad in September 2005, Muslim communities around the world erupted in outrage. Violent mobs took to the streets in the Middle East. A Somali man even broke into the cartoonist's house in Denmark with an ax.¶ In New York, thousands of miles away, it was a different story. Muslim leaders preached peace and urged people to protest lawfully. Write letters to politicians, they said. Some advocated boycotting Danish products, burning flags and holding rallies.¶ All of that was permissible under law and protected by the First Amendment to the Constitution. All was reported to the NYPD by its mosque crawlers and made its way into police files for Kelly.¶ "Imam Shamsi Ali brought up the topic of the cartoon, condemning them. He announced a rally that was to take place on Sunday (02/05/06) near the United Nations. He asked that everyone to attend if possible and reminded everyone to keep their poise if they can make it," one report read.¶ At the Muslim Center of New York in Queens, the report said, "Mohammad Tariq Sherwani led the prayer service and urged those in attendance to participate in a demonstration at the United Nations on Sunday."¶ When one Muslim leader suggested planning a demonstration, one of the people involved in the discussion about how to get a permit was, in fact, working for the NYPD.¶ "It seems horrible to me that the NYPD is treating an entire religious community as potential terrorists," said civil rights lawyer Jethro Eisenstein, who reviewed some of the documents and is involved in a decades-old class-action lawsuit against the police department for spying on protesters and political dissidents.¶ The lawsuit is known as the Handschu case, and a court order in that case governs how the NYPD may collect intelligence.¶ Eisenstein said the documents prove the NYPD has violated those rules.¶ "This is a flat-out violation," Eisenstein said. "This is a smoking gun."¶ Browne, the NYPD spokesman, did not discuss specific investigations Thursday but told reporters that, because of the Handschu case, the NYPD operates under stricter rules than any other department in the country. He said police do not violate those rules.¶ His statements were intended to calm a controversy over a 2007 operation in which the NYPD mapped and photographed all of Newark's mosques and eavesdropped on Muslim businesses. Newark Mayor Cory Booker said he was never told about the surveillance, which he said offended him.¶ Booker and his police director accused the NYPD of misleading them by not revealing exactly what they were doing. Had they known, they said it never would have been permitted. But Browne said Newark police were told before and after the operation and knew exactly what it entailed.¶ Kelly, the police commissioner, and Mayor Michael Bloomberg have been emphatic that police only follow legitimate leads of criminal activity and do not conduct preventive surveillance in ethnic communities.¶ Former and current law enforcement officials either involved in or with direct knowledge of these programs say they did not follow leads. The officials spoke on condition of anonymity because they were not authorized to discuss the secret programs. But the documents support their claims.¶ The effort highlights one of the most difficult aspects of policing in the age of terrorism. Solving crimes isn't enough; police are expected to identify would-be terrorists and move in before they can attack.¶ There are no universally agreed upon warning signs for terrorism. Terrorists have used Internet cafes, stayed in hostels, worked out at gyms, visited travel agencies, attended student groups and prayed at mosques. So the NYPD monitored those areas. In doing so, they monitored many innocent people as they went about their daily lives.¶ Using plainclothes officers from the squad known as the Demographics Unit, police swept Muslim neighborhoods and catalogued the location of mosques. The ethnic makeup of each congregation was logged as police fanned out across the city and outside their jurisdiction, into suburban Long Island and areas of New Jersey.¶ "African American, Arab, Pakistani," police wrote beneath the photo of one mosque in Newark.¶ Investigators looked at mosques as the center of Muslim life. All their connections had to be known.¶ David Cohen, the NYPD's top intelligence officer, wanted a source inside every mosque within a 250-mile radius of New York, current and former officials said. Though the officials said they never managed to reach that goal, documents show the NYPD successfully placed informants or undercovers - sometimes both - into mosques from Westchester County, N.Y., to New Jersey.¶ The NYPD used these sources to get a sense of the sentiment of worshippers whenever an event generated headlines. The goal, former officials said, was to alert police to potential problems before they bubbled up.¶ Even when it was clear there were no links to terrorism, the mosque informants gave the NYPD the ability to "take the pulse" of the community, as Cohen and other managers put it.¶ When New York Yankees pitcher Cory Lidle and his flight instructor were killed on Oct. 11, 2006, when their small plane crashed into a Manhattan high-rise apartment, fighter planes were scrambled. Within hours the FBI and Homeland Security Department said it was an accident. Terrorism was ruled out.¶ Yet for days

after the event, the NYPD's mosque crawlers reported to police about what they heard at sermons and among worshippers.¶ (View the PDF documents on Danish cartoons, mosque targeting and summaries of plane crash.)¶ At the Brooklyn Islamic Center, a confidential informant "noted chatter among the regulars expressing relief and thanks to God that the crash was only an accident and not an act of terrorism," one report reads.¶ "The worshippers made remarks to the effect that `it better be an accident; we don't need any more heat,'" an undercover officer reported from the Al-Tawheed Islamic Center in Jersey City, N.J.¶ In some instances, the NYPD put cameras on light poles and trained them on mosques, documents show. Because the cameras were in public space, police didn't need a warrant to conduct the surveillance.¶ Police also wrote down the license plates of cars in mosque parking lots, documents show. In some instances, police in unmarked cars outfitted with electronic license plate readers would drive down the street and record the plates of everyone parked near the mosque, former officials recalled.¶ "They're viewing Muslims like they're crazy.

Multiple ways that agencies can circumvent legislation- specifically the FBI will continue surveillance regardless of what the plan does

Ackerman, 2015

(Spencer Ackerman is an editor/ reporter for the US News in New York. Full Date: June 1, 2015. "Fears NSA will seek to undermine surveillance reform; Privacy advocates are wary of covert legal acrobatics from the NSA similar to those deployed post-9/11 to circumvent congressional authority" http://www.lexisnexis.com/hottopics/lnacademic/. Date Accessed- 7/15/15. Anshul Nanda)

Privacy advocates fear the National Security Agency will attempt to weaken new restrictions on the bulk collection of Americans' phone and email records with a barrage of creative legal wrangles, as the first major reform of US surveillance powers in a generation looked likely to be a foregone conclusion on Monday.¶ Related: Bush-era surveillance powers expire as US prepares to roll back NSA power¶ The USA Freedom Act, a bill banning the NSA from collecting US phone data in bulk and compelling disclosure of any novel legal arguments for widespread surveillance before a secret court, has already been passed by the House of Representatives and on Sunday night the Senate voted 77 to 17 to proceed to debate on it. Between that bill and a landmark recent ruling from a federal appeals court that rejected a longstanding government justification for bulk surveillance, civil libertarians think they stand a chance at stopping attempts by intelligence lawyers to undermine reform in secret.¶ Attorneys for the intelligence agencies react scornfully to the suggestion that they will stretch their authorities to the breaking point. Yet reformers remember that such legal tactics during the George W Bush administration allowed the NSA to shoehorn bulk phone records collection into the Patriot Act.¶ Rand Paul, the Kentucky senator and Republican presidential candidate who was key to allowing sweeping US surveillance powers to lapse on Sunday night, warned that NSA lawyers would now make mincemeat of the USA Freedom Act's prohibitions on bulk phone records collection by taking an expansive view of the bill's definitions, thanks to a pliant, secret surveillance court.¶ "My fear, though, is that the people who interpret this work at a place known as the rubber stamp factory, the Fisa [court]," Paul said on the Senate floor on Sunday.¶ Paul's Democratic ally, Senator Ron Wyden, warned the intelligence agencies and the Obama administration against attempting to unravel NSA reform.¶ "My time on the intelligence committee has taught me to always be vigilant for secret interpretations of the law and new surveillance techniques that Congress doesn't know about," Wyden, a member of the intelligence committee, told the Guardian.¶ "Americans were rightly outraged when they learned that US intelligence agencies relied on secret law to monitor millions of law-abiding US citizens. The American people are now on high alert for new secret interpretations of the law, and intelligence agencies and the Justice Department would do well to keep that lesson in mind."¶ The USA Freedom Act is supposed to prevent what Wyden calls " secret law ". It contains a provision requiring congressional notification in the event of a novel legal interpretation presented to the secret Fisa court overseeing surveillance.¶ Yet in recent memory, the US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004.¶ Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, an internal NSA draft history records that attorneys found a different legal rationale that " essentially gave NSA the same authority to collect bulk internet metadata that it had ".¶ After a New York Times story in 2005 revealed the existence of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along - precisely the contention that the second circuit court of appeals rejected in May.¶ Despite that recent history, veteran intelligence attorneys reacted with scorn to the idea that NSA lawyers will undermine surveillance reform. Robert Litt, the senior lawyer for director of national

intelligence, James Clapper, said during a public appearance last month that creating a banned bulk surveillance program was " not going to happen ".¶ "The whole notion that NSA is just evilly determined to read the law in a fashion contrary to its intent is bullshit, of the sort that the Guardian and the left - but I repeat myself - have fallen in love with. The interpretation of 215 that supported the bulk collection program was creative but not beyond reason, and it was upheld by many judges," said the former NSA general counsel Stewart Baker, referring to Section 215 of the Patriot Act.¶ This is the section that permits US law enforcement and surveillance agencies to collect business records and expired at midnight, almost two years after the whistleblower Edward Snowden revealed to the Guardian that the Patriot Act was secretly being used to justify the collection of phone records from millions of Americans.¶ With one exception, the judges that upheld the interpretation sat on the non-adversarial Fisa court, a body that approves nearly all government surveillance requests and modifies about a quarter of them substantially. The exception was reversed by the second circuit court of appeals.¶ Baker, speaking before the Senate voted, predicted: "I don't think anyone at NSA is going to invest in looking for ways to defy congressional intent if USA Freedom is adopted."¶ The USA Freedom Act, a compromise bill, would not have an impact on the vast majority of NSA surveillance. It would not stop any overseas-focused surveillance program, no matter how broad in scope, nor would it end the NSA's dragnets of Americans' international communications authorized by a different law. Other bulk domestic surveillance programs, like the one the Drug Enforcement Agency operated, would not be impacted.¶ The rise of what activists have come to call "bulky" surveillance, like the "large collections" of Americans' electronic communications records the FBI gets to collect under the Patriot Act, continue unabated - or, at least, will, once the USA Freedom Act passes and restores the Patriot Act powers that lapsed at midnight on Sunday.¶ Related: FBI used Patriot Act to obtain 'large collections' of Americans' data, DoJ finds¶ That collection, recently confirmed by a largely overlooked Justice Department inspector general's report, points to a slipperiness in shuttering surveillance programs - one that creates opportunities for clever lawyers.¶ The Guardian revealed in 2013 that Barack Obama had permitted the NSA to collect domestic internet metadata in bulk until 2011. Yet even as Obama closed down that NSA program, the Justice Department inspector general confirms that by 2009, the FBI was already collecting the same "electronic communications" metadata under a different authority.¶ It is unclear as yet how the **FBI transformed that authority, passed by Congress** for the collection of "business records", into large-scale collection of Americans' email, text, instant message, internet-protocol and other records. And a similar power to for the FBI gather domestic internet metadata, obtained through non-judicial subpoenas called "National Security Letters", also exists in a different, non-expiring part of the Patriot Act.¶ Jameel Jaffer, the deputy legal director of the ACLU, expressed confidence that the second circuit court of appeals' decision last month would effectively step into the breach. The panel found that legal authorities permitting the collection of data "relevant" to an investigation cannot allow the government to gather data in bulk - setting a potentially prohibitive precedent for other bulk-collection programs.¶ "We don't know what kinds of bulk-collection programs the government still has in place, but in the past it's used authorities other than Section 215 to conduct bulk collection of internet metadata, phone records, and financial records. If similar programs are still in place, the ruling will force the government to reconsider them, and probably to end them," said Jaffer, whose organization brought the suit that the second circuit considered.¶ Julian Sanchez, a surveillance expert at the Cato Institute, was more cautious.¶ "The second circuit ruling establishes that a 'relevance' standard is not completely unlimited - it doesn't cover getting hundreds of millions of people's records, without any concrete connection to a specific inquiry - but doesn't provide much guidance beyond that as to where the line is," Sanchez said.¶ "I wouldn't be surprised if the government argued, in secret, that nearly anything short of that scale is still allowed, nor if the same Fisa court that authorized the bulk telephone program, in defiance of any common sense reading of the statutory language, went along with it."¶

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Huus, 12

(Kari she spent three years as a staff writer for the Far Eastern Economic Review and is a reporter for msmbc. “ACLU: FBI 'mosque outreach' program used to spy on Muslim.” Article Published March 29,2012. http://usnews.nbcnews.com/_news/2012/03/29/10907668-aclu-fbi-mosque-outreach-program-used-to-spy-on-muslims. Date Accessed -07/20/15. //Anshul)

The FBI in San Francisco used a public relations program billed as "mosque outreach" to collect information on the religious views and practices of Muslims in Northern California and then shared the intelligence with other government agencies, according to FBI documents obtained by civil rights groups.¶ The heavily redacted documents, **released after a Freedom of Information Act lawsuit,** raise "grave constitutional concerns," said Hina Shamsi, director of the National Security Project of the American Civil Liberties Union.¶ "In San Francisco, we

have found that community outreach was being run out of the FBI's intelligence division and was part of a secret and systematic intelligence gathering program," conducted without any apparent evidence of wrongdoing," said Shamsi. "The bureau's documentation of religious leaders' and congregants' beliefs and practices violates the Privacy Act, which Congress passed to protect Americans' First Amendment rights."¶ The Privacy Act limits sharing of personal information among government agencies and the length of time it can be retained. In this case, the information shared included religious beliefs and affiliations, which the ACLU argues is entirely out of bounds.¶ Kari Huus¶ Follow Kari Huus on Twitter and Facebook.¶ The ACLU is calling for the Department of Justice's inspector general to investigate alleged violations of the Privacy Act in the San Francisco Division and determine the scope of such activity nationwide.¶ The FBI San Francisco defended its agents' actions, saying the information "was collected within the scope of an authorized law enforcement activity."¶ The ACLU of Northern California filed the FOIA lawsuit with the Asian Law Caucus and the San Francisco Bay Guardian newspaper, leading to the release of the FBI documents on Tuesday.¶ Meant to foster trust¶ The documents indicate that FBI was keeping records of conversations and activities within mosques and other Muslim organizations from 2004 through 2008, information that was provided by employees engaged in the outreach programs.¶ The announced intention of the FBI outreach programs is to foster trust between law enforcers and members of the Muslim community so they can work together to fight crime and avert terrorism.¶ An earlier ACLU report on community outreach prompted FBI national headquarters to issue a release stating that its policy requires separate operations and databases for intelligence gathering and community outreach programs.¶ A large proportion of the information was labeled "positive intelligence," which indicates that the FBI intends to keep it in its intelligence database, the ACLU report explained.¶ Many documents were marked "secret," even though they appeared to include only mundane information. Some documents were marked "disseminated outside," but did not specify the recipients.¶ Among the findings contained in the FBI documents:¶ A 2005 FBI memorandum from a meeting with a congregant at Islamic Center of Santa Cruz, documented his name and religious affiliation and detailed other worshipers' financial contributions to the center and community support for Islam.¶ The subject of a sermon and congregants' discussions about a property purchase for a new mosque were gathered by FBI agents during five visits to Seaside Mosque in 2005.¶ Documents based on four "outreach" meetings between FBI personnel and representatives of the South Bay Islamic Association note discussions about the Hajj pilgrimage and "Islam in general."¶ Documents based on FBI contacts with representatives of the Bay Area Cultural Connections — formerly the Turkish Center Musalla — describe the group's mission and activities, and the ethnicity of its members. A memo indicates the FBI searched for the cell phone number of one participant in the meeting in the LexisNexis records database and Department of Motor Vehicle records, obtaining detailed information about him, including his date of birth, Social Security number, address and home telephone number.¶ There is no indication that the subjects were informed that the information was being collected or shared with other law enforcement agencies, the ACLU said.¶ The FBI in San Francisco declined a request for an interview, but released a statement by Assistant Director Michael Kortan. In addition to stating that the information gathering abided by laws and agency rules, it indicated that it had adjusted its outreach program since the period covered by the documents.¶ "Since that time, the FBI has formalized its community relations program to emphasize a greater distinction between outreach and operational activities," Kortan said.¶ South Dakota law tackles 'shariah question'¶ Classified documents contradict FBI on post 9-11 probe of Saudis, ex-Senator says¶ US aid worker is home, but no-fly list grounds him again¶ No-fly Muslim takes case to court of public opinion¶ Outreach to 'generate goodwill'¶ "FBI San Francisco dedicated a full-time, non-agent employee to community outreach efforts in the fall of 2007," said a second statement from Stephanie Douglas, FBI special agent in charge. "The community outreach program is designed to generate goodwill and foster relationships with a wide-range of groups in the communities we serve."¶ But documents still under analysis by the ACLU indicate FBI San Francisco continued to mingle outreach and intelligence gathering through 2011, according to Shamsi.¶ The documents undermine trust for genuine outreach programs, said Farhana Khera, executive director of Muslim Advocates, a San Francisco-based nonprofit that makes policy recommendations to lawmakers and leaders.¶ "I think the recent documents further underscore how well-intentioned community leaders who talk with the FBI are instead the targets of this broad, intelligence-gathering effort," she said. "It's easy to see then how that community leader who had a conversation with an FBI agent finds himself being harassed when traveling or crossing borders."¶ "These documents are illustrating the actual experiences of American Muslims that we have been hearing for a number of years now," she added. ¶ The findings are the latest from an ACLU examination of how the FBI has conducted surveillance in the wake of 9-11 and a campaign to expose cases that they say threaten civil liberties.¶ In FBI documents obtained through other Freedom of Information lawsuits, the rights groups has highlighted systematic surveillance of Muslim student organizations and individuals and what it considers anti-Muslim bias in training materials being used by the FBI —now the subject of internal FBI investigation, according to published reports.¶ 'Count the mosques'¶ In a separate case, documents uncovered by The Associated Press revealed that the New York Police Department conducted an extensive surveillance campaign of the Muslim population there, keeping secret files on individuals, businesses, mosques and organizations. Those findings have provoked outrage from many Muslim and civil rights groups, which have called on the Obama administration to intervene.¶ Greater FBI scrutiny of Muslim communities goes back to shortly after the 9/11 attacks, when then FBI Director Robert Mueller instructed field offices across the country to "count the mosques" and set up investigative goals accordingly, according to an article by investigative reporter Michael Isikoff.¶ Rules governing FBI surveillance were relaxed in 2008 to give more leeway to FBI "assessments" — a stage of surveillance that takes place before the opening of a formal investigation. These more lenient standards, critics say, allow information gathering on individuals without probable cause.¶ Rights groups are asking the Department of Justice to

restore stricter rules on surveillance and to prohibit racial and religious profiling in all cases.¶ "What we need is for the FBI to go back to the standards set after the Hoover-era abuses.… guidelines put in place that required the FBI to engage in surveillance only if there's evidence of wrongdoing," said Khera of Muslim Advocates.¶ More content from msnbc.com and NBC News:¶ Record jackpot as Mega Millions hits $500 million¶ Cops: Suspect in Vt. teacher's death wanted to 'get a girl'¶ Passengers tell of pilot's in-flight meltdown¶ Gingrich axes third of staff, reduces travel¶ Zimmerman accused of domestic violence, fighting with police¶ Follow US News on msnbc.com on Twitter and Facebook

Alt cause- NYPD will continue surveillance even if laws pass

Goldman et. al, 2013

(Adam is a analyst for the Associated Press. "NYPD designates mosques as terrorism organizations." http://bigstory.ap.org/article/nypd-designates-mosques-terrorism-organizations. Date Accessed- 07/13/15. Anshul Nanda.)

They're terrorists. They all must be fanatics," said Abdul Akbar Mohammed, the imam for the past eight years at the Masjid Imam Ali K. Muslim in Newark. "That's not right."¶ NEW YORK (AP) — The New York Police Department has secretly labeled entire mosques as terrorist organizations, a designation that allows police to use informants to record sermons and spy on imams, often without specific evidence of criminal wrongdoing.¶ Designating an entire mosque as a terrorism enterprise means that anyone who attends prayer services there is a potential subject of an investigation and fair game for surveillance.¶ Since the 9/11 attacks, the NYPD has opened at least a dozen "terrorism enterprise investigations" into mosques, according to interviews and confidential police documents. The TEI, as it is known, is a police tool intended to help investigate terrorist cells and the like.¶ Many TEIs stretch for years, allowing surveillance to continue even though the NYPD has never criminally charged a mosque or Islamic organization with operating as a terrorism enterprise.¶ The documents show in detail how, in its hunt for terrorists, the NYPD investigated countless innocent New York Muslims and put information about them in secret police files. As a tactic, opening an enterprise investigation on a mosque is so potentially invasive that while the NYPD conducted at least a dozen, the FBI never did one, according to interviews with federal law enforcement officials.¶ The strategy has allowed the NYPD to send undercover officers into mosques and attempt to plant informants on the boards of mosques and at least one prominent Arab-American group in Brooklyn, whose executive director has worked with city officials, including Bill de Blasio, a front-runner for mayor.¶ De Blasio said Wednesday on Twitter that he was "deeply troubled NYPD has labelled entire mosques & Muslim orgs terror groups with seemingly no leads. Security AND liberty make us strong."¶ The revelations about the NYPD's massive spying operations are in documents recently obtained by The Associated Press and part of a new book, "Enemies Within: Inside the NYPD's Secret Spying Unit and bin Laden's Final Plot Against America." The book by AP reporters Matt Apuzzo and Adam Goldman is based on hundreds of previously unpublished police files and interviews with current and former NYPD, CIA and FBI officials.¶ The disclosures come as the NYPD is fighting off lawsuits accusing it of engaging in racial profiling while combating crime. Earlier this month, a judge ruled that the department's use of the stop-and-frisk tactic was unconstitutional.¶ The American Civil Liberties Union and two other groups have sued, saying the Muslim spying programs are unconstitutional and make Muslims afraid to practice their faith without police scrutiny.¶ Both Mayor Mike Bloomberg and Police Commissioner Raymond Kelly have denied those accusations. Speaking Wednesday on MSNBC's Morning Joe, Kelly reminded people that his intelligence-gathering programs began in the wake of 9/11.¶ "We follow leads wherever they take us," Kelly said. "We're not intimidated as to wherever that lead takes us. And we're doing that to protect the people of New York City."¶ ___¶ The NYPD did not limit its operations to collecting information on those who attended the mosques or led prayers. The department sought also to put people on the boards of New York's Islamic institutions to fill intelligence gaps.¶ One confidential NYPD document shows police wanted to put informants in leadership positions at mosques and other organizations, including the Arab American Association of New York in Brooklyn, a secular social-service organization.¶ Linda Sarsour, the executive director, said her group helps new immigrants adjust to life in the U.S. It was not clear whether the department was successful in its plans.¶ The document, which appears to have been created around 2009, was prepared for Kelly and distributed to the NYPD's debriefing unit, which helped identify possible informants.¶ Around that time, Kelly was handing out medals to the Arab American Association's soccer team, Brooklyn United, smiling and congratulating its players for winning the NYPD's soccer league.¶ Sarsour, a Muslim who has met with Kelly many times, said she felt betrayed.¶ "It creates mistrust in our organizations," said Sarsour, who was born and raised in Brooklyn. "It makes one wonder and question who is sitting on the boards of the institutions where we work and pray."¶ ___¶ Before the NYPD could target mosques as terrorist groups, it had to persuade a federal judge to rewrite rules governing how police can monitor speech protected by the First Amendment.¶ The rules stemmed from a 1971 lawsuit, dubbed the Handschu case after lead

plaintiff Barbara Handschu, over how the NYPD spied on protesters and liberals during the Vietnam War era.¶ David Cohen, a former CIA executive who became NYPD's deputy commissioner for intelligence in 2002, said the old rules didn't apply to fighting against terrorism.¶ Cohen told the judge that mosques could be used "to shield the work of terrorists from law enforcement scrutiny by taking advantage of restrictions on the investigation of First Amendment activity."¶ NYPD lawyers proposed a new tactic, the TEI, that allowed officers to monitor political or religious speech whenever the "facts or circumstances reasonably indicate" that groups of two or more people were involved in plotting terrorism or other violent crime.¶ The judge rewrote the Handschu rules in 2003. In the first eight months under the new rules, the NYPD's Intelligence Division opened at least 15 secret terrorism enterprise investigations, documents show. At least 10 targeted mosques.¶ Doing so allowed police, in effect, to treat anyone who attends prayer services as a potential suspect. Sermons, ordinarily protected by the First Amendment, could be monitored and recorded.¶ Among the mosques targeted as early as 2003 was the Islamic Society of Bay Ridge.¶ "I have never felt free in the United States. The documents tell me I am right," Zein Rimawi, one of the Bay Ridge mosque's leaders, said after reviewing an NYPD document describing his mosque as a terrorist enterprise.¶ Rimawi, 59, came to the U.S. decades ago from the Israeli-occupied West Bank.¶ "Ray Kelly, shame on him," he said. "I am American."¶ It was not immediately clear whether the NYPD targeted mosques outside of New York City specifically using TEIs. The AP had previously reported that Masjid Omar in Paterson, N.J., was identified as a target for surveillance in a 2006 NYPD report.¶ ___¶ The NYPD believed the tactics were necessary to keep the city safe, a view that sometimes put it at odds with the FBI.¶ In August 2003, Cohen asked the FBI to install eavesdropping equipment inside a mosque called Masjid al-Farooq, including its prayer room.¶ Al-Farooq had a long history of radical ties. Omar Abdel Rahman, the blind Egyptian sheik who was convicted of plotting to blow up New York City landmarks, once preached briefly at Al-Farooq. Invited preachers raged against Israel, the United States and the Bush administration's war on terror.¶ One of Cohen's informants said an imam from another mosque had delivered $30,000 to an al-Farooq leader, and the NYPD suspected the money was for terrorism.¶ But Amy Jo Lyons, the FBI assistant special agent in charge for counterterrorism, refused to bug the mosque. She said the federal law wouldn't permit it.¶ The NYPD made other arrangements. Cohen's informants began to carry recording devices into mosques under investigation. They hid microphones in wristwatches and the electronic key fobs used to unlock car doors.¶ Even under a TEI, a prosecutor and a judge would have to approve bugging a mosque. But the informant taping was legal because New York law allows any party to record a conversation, even without consent from the others. Like the Islamic Society of Bay Ridge, the NYPD never demonstrated in court that al-Farooq was a terrorist enterprise but that didn't stop the police from spying on the mosques for years.¶ And under the new Handschu guidelines, no one outside the NYPD could question the secret practice.¶ Martin Stolar, one of the lawyers in the Handschu case, said it's clear the NYPD used enterprise investigations to justify open-ended surveillance. The NYPD should only tape conversations about building bombs or plotting attacks, he said.¶ "Every Muslim is a potential terrorist? It is completely unacceptable," he said. "It really tarnishes all of us and tarnishes our system of values."¶ ___¶ Al-Ansar Center, a windowless Sunni mosque, opened in Brooklyn several years ago, attracting young Arabs and South Asians. NYPD officers feared the mosque was a breeding ground for terrorists, so informants kept tabs on it.¶ One NYPD report noted that members were fixing up the basement, turning it into a gym.¶ "They also want to start Jiujitsu classes," it said.¶ The NYPD was particularly alarmed about Mohammad Elshinawy, 26, an Islamic teacher at several New York mosques, including Al-Ansar. Elshinawy was a Salafist — a follower of a puritanical Islamic movement — whose father was an unindicted co-conspirator in the 1993 World Trade Center attacks, according to NYPD documents.¶ The FBI also investigated whether Elshinawy recruited people to wage violent jihad overseas. But the two agencies investigated him very differently.¶ The FBI closed the case after many months without any charges. Federal investigators never infiltrated Al-Ansar.¶ "Nobody had any information the mosque was engaged in terrorism activities," a former federal law enforcement official recalled, speaking on condition of anonymity because he wasn't authorized to discuss the investigation.¶ The NYPD wasn't convinced. A 2008 surveillance document described Elshinawy as "a young spiritual leader (who) lectures and gives speeches at dozens of venues" and noted, "He has orchestrated camping trips and paintball trips."¶ The NYPD deemed him a threat in part because "he is so highly regarded by so many young and impressionable individuals."¶ No part of Elshinawy's life was out of bounds. His mosque was the target of a TEI. The NYPD conducted surveillance at his wedding. An informant recorded the wedding, and police videotaped everyone who came and went.¶ "We have nothing on the lucky bride at this time but hopefully will learn about her at the service," one lieutenant wrote.¶ Four years later, the NYPD was still watching Elshinawy without charging him. He is now a plaintiff in the ACLU lawsuit, which was also filed by the Creating Law Enforcement Accountability & Responsibility project at CUNY School of Law and the New York Civil Liberties Union.¶ "These new NYPD spying disclosures confirm the experiences and worst fears of New York's Muslims," ACLU lawyer Hina Shamsi said. "From houses of worship to a wedding, there's no area of New York Muslim religious or personal life that the NYPD has not invaded through its bias-based surveillance policy."¶ ___¶ Online: Documents¶ TEI Discontinuance: http://apne.ws/146zqF9¶ Informant Profiles: http://apne.ws/1aNfuyH¶ Elshinawy Surveillance: http://apne.ws/15fau4D¶ Handschu Minutes: http://apne.ws/1cenpD6¶ ___¶ AP's Washington investigative team can be reached at DCinvestigations@ap.org¶ Follow Goldman and Apuzzo at http://twitter.com/adamgoldmanap¶ and http://twitter.com/mattapuzzo¶

Advantage 1-Not Disclosed Yet

Advantage 2- Not Disclosed Yet

Neoliberalism Links

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Conservatives are hardliners on Muslims- the plan would isolate their base

Dean Obeidallah, reporter for daily beast , "For Republicans, Muslims Will Be the Gays of 2016," Daily Beast, http://www.thedailybeast.com/articles/2015/01/21/for-republicans-muslims-will-be-the-gays-of-2016.html)//GV

Bobby Jindal isn't stupid enough to believe in Muslim no-go zones. He's working the base, which is more than willing to be worked. Now that Republicans realize that the fight over gay marriage is over, they're pivoting back to the old reliable: Muslims. It's true that Muslim-bashing among Republicans is hardly new, but I think that as 2016 approaches we're going to see even more of it as candidates try to outflank one another. The latest example was LouisianaGovernor's Bobby Jindal's speech on Monday in London. Jindal told the audience that there are "no-go zones" in Europe where Muslims have in essence carved out Islamic "autonomous" zones that are ruled by Koranic law and where non-Muslims fear to tread. His point, of course, was to warn Americans that Muslims could try the same thing in the United States. Now if that concept sounds familiar it's because last week Fox News served up this same rancid red meat to its viewers. Some Fox News anchors claimed these so-called "no-go zones" existed in parts of France. And Fox News' terrorism "expert" Steve Emerson even went as far as to say that Birmingham, England, the nation's second biggest city with more than one million people, was a "totally Muslim city where non-Muslims don't go in." The backlash to these comments was swift. Even British Prime Minster David Cameron responded, "When I heard this, frankly, I choked on my porridge and I thought it must be April Fools Day. This guy is clearly a complete idiot." Fox News stirring up fear of Muslims is nothing new. In fact, in my view it's part of Fox's business model since its viewers hold the most negative views of Muslims of any cable news audience. Fox is simply giving their viewers what they want to see. But a few days ago, Fox did something truly shocking. They apologized for making the claims about Muslim-controlled "no-go zones" in Europe. In fact, they apologized not once, but four times, and admitted unequivocally that these "no-go zones" don't even exist. Yet even though the Fox retractions occurred days before Jindal delivered his speech, that didn't stop him from asserting the same baseless claims. After his speech, Jindal was asked by a CNN reporter for specifics on where exactly these "no-go zones "are located. Jindal, in what looked almost like a sketch from Saturday Night Live, hemmed and hawed, finally responding: "I think your viewers know." So what do you do if you are a Republican candidate seeking conservative votes? Simple. Bash Muslims. We are truly an easy target. For those unfamiliar with Jindal, he's no Louie Gohmert. He's an Ivy League graduate and a Rhodes scholar. Jindal's remarks were not a mistake, but rather part **of a calculated strategy to garner support from more conservative Republicans** for an expected2016 presidential run. Now, in the past, candidates trying to garner support from these right wing voters could use opposition to gay marriage to curry favor. As conservative James Kirchick noted in an article he penned for The Wall Street Journal in 2008, the Republican Party has a long history of its candidates using not just opposition to gay marriage, but also anti-gay rhetoric to attract support from the GOP Base. Kirchick went on to urge Republicans to "kiss gay-bashing goodbye." But we still saw this bigotry in the 2012 race. For example, Rick Perry ran a campaign commercial that said you know "there's something wrong with this country when gays can openly serve in the military." Polls, however, now show a majority of Americans support gay marriage. And even the Mike Huckabees of the GOP would have to admit that after the Supreme Court announced Friday that it is considering the constitutionality of same-sex marriage this term, gay marriage will likely soon be the law of the land. Bottom line: **gay marriage will probably be dead as an issue capable of rallying conservative voters.** So what do you do if you are a Republican candidate seeking conservative votes? Simple. Bash Muslims. We are truly an easy target. First, Muslims are a small percentage of our nation's population at approximately 1 to 2 percent. Second, there are horrible Muslims who do commit terror in the name of our faith, which does offer cover for anti-Muslim bigotry. Third, we still don't have many allies outside of our community that stand with us. Sure, we have some interfaith supporters. But when ant-gay comments are made, like in the case of "Duck Dynasty's" Phil Roberson in 2013, the response by the left was swift and united. But with anti-Muslim bigotry, we don't see that. We see silence from many on the left, including from most Democratic elected officials. And worse, we see some outright anti-Muslim fear mongering by so-called liberals like Bill Maher. If I'm right, what can we expect to see as the 2016 presidential race heats up? More speeches like Jindal's designed to stir up fear with no factual support. His remarks were applauded by conservative ++Larry Kudlow in The National Review. Even more comments like the ones recently made by Oklahoma State Representative John Bennett that Muslims are a "cancer" that must be cut of our country and that Muslim-Americans are not loyal to the United States but to the "constitution of Islam." Bennett received a standing ovation from the conservative audience that heard these remarks, and the Oklahoma GOP Chair even backed him up. And possibly even more comments like the one made by newly sworn in member of Congress Jody Hice who stated that Islam is not a religion and doesn't deserve First Amendment protection. Was there any backlash from GOP leaders to this remarks? Nope, in fact people Red States' Erick Erickson even spoke at one of his fundraisers and wrote he was "proud to support" Hice. This is a far cry from the 2008 presidentialrace when John McCain countered anti-Muslim remarks made by a supporter at one of his campaign rallies. My hope is that I'm wrong. But after seeing close to a thousand people over the weekend protesting a Muslim-American event in Texas that was ironically organized to counter extremism, I'm not so optimistic. The more

conservative parts of the GOP base tend to vote in higher numbers in the primaries. So don't' be surprised when you see Republican candidates trying to get their attention with this cut of red meat.

A Republican election will cause there to be an increase in Islamophobia

Thomas, 14

(Bradford is a news analyst. "DailyBeast: Republicans A Major Reason Americans Hate Muslims

Republicans, media major reasons for plummeting opinion of Islam." http://www.truthrevolt.org/news/dailybeast-republicans-major-reason-americans-hate-muslims. Date accessed- 7/20/15.// Anshul)

In a 9/11 anniversary opinion piece Thursday, the Daily Beast's Dean Obeidallah argued that one of the major reasons Americans dislike Muslims more now than in 2001 is Republican politicians.¶ In the piece, Obeidallah, a Muslim, said that he has been pondering for some time why public opinion of Muslims has plummeted over the last decade. In Oct 2001, 47 percent of Americans held a favorable view of Islam, but today that number has shrunk to just 27 percent.¶ One of the key reasons, he admits, is the "the horrible acts committed by radical Muslims." Another is Americans not seeing moderate Muslims condemning the acts—which Obeidallah blames on the media. ¶ ¶ But, he says, there's another factor, something "truly despicable" going on in America: those who "intentionally stoke the flames of hate against our community." Most high-profile of those "despicable" Americans are, of course, Republican politicians:¶ Some do it because they simply detest/fear anyone who doesn't pray or look like them. For some, Muslim bashing is their career. They make a living writing books and giving lectures about how Muslims want to destroy America.¶ And then there are the politicians, almost exclusively Republicans, who gin up hate of the "other" for political gain. The anti-sharia law measures passed in states like Florida and North Carolina are a prime example.¶ The proponents of these laws will demonize Muslims while making the case for these measures. Yet they publicly admit there are zero instances of Muslims trying to impose Islamic law in their respective states. For example, Florida State Senator Alan Hays conceded as much but argued the anti-Shaira law legislation was needed as a "preemptive measure," similar to when your parents would "have you vaccinated against different diseases."¶ Image source: a Salon article mocking Republicans for fearing the "imagined threat of Islamic law.

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Obeidallah, 12

(Dean Obeidallah is an analyst for and a special for a CNN. Published on August 29, 2012" The GOP has a Muslim problem." http://www.cnn.com/2012/08/29/opinion/obeidallah-gop-muslim-problem/. Date Accessed- 07/20/15. //Anshul)

Catholic priest, a rabbi, an evangelical minister, a Sikh, a Greek Orthodox archbishop and two Mormon leaders walk into the Republican National Convention.¶ It sounds like the beginning of a joke. But the Republican Party's decision to invite representatives from all of these faiths to speak at this week's convention, but to exclude a Muslim-American imam, is anything but funny.¶ The Republican Party has a problem with Muslims. Of course, American Muslims can take some solace in the fact that we are not the only minority group that the Republican Party hardly welcomes.¶ Let's be honest, if you don't like Muslims, blacks, gays, immigrants or other minorities, which political party would make you feel most comfortable? Sure, some Republican officials are minorities, but a recent Galllup survey found that 89% of the Republican Party is white.¶ To be clear, I don't believe that most rank-and-file members of the Republican Party hate Muslims. The problem is that certain Republican leaders have stoked the flames of hate toward American Muslims, and other minorities, as a political tool to motivate people to support their cause.¶ Dean Obeidallah¶ Dean Obeidallah¶ For example, recently Rep. Michele Bachmann -- along with four other Republican House members -- asserted that the Muslim Brotherhood had infiltrated the U.S. government. Bachmann, who is in a tough re-election battle in her redrawn congressional district, even "named names" by claiming that Secretary Hillary Clinton's top aide, Huma Abedin, and Rep. Keith Ellison were

connected to the Muslim Brotherhood.¶ Although Republican Sen. John McCain publicly denounced Bachmann's baseless allegations, just a few weeks later, Republican Rep. Joe Walsh escalated the fear-mongering. Walsh, who is in a tight race with Democratic opponent Tammy Duckworth, told constituents at a town hall meeting in the Chicago suburbs that there are radical Muslims living among them who are plotting to kill them: "One thing I'm sure of is that there are people in this country -- there is a radical strain of Islam in this country -- it's not just over there -- trying to kill Americans every week." Walsh even claimed that this Muslim radical was in his district: "It's in Elk Grove. It's in Addison. It's in Elgin. It's here."¶ And let's not forget that during this year's Republican presidential primaries, Newt Gingrich and Herman Cain told voters that American Muslims want to impose Islamic law in America. It's a truly astounding task when you consider that this would require the 2.6 million Muslims in the U.S. to overpower the other 300 million Americans and implement an Islamic legal system. Obviously, this assertion is not based on facts, but to politicians desperate for votes, facts don't matter.¶ This type of rhetoric has yielded two distinct consequences. First, it can be seen in the attitudes of Republicans who have been poisoned by the anti-Muslim voices in their party. A recent poll found that 62% of Obama voters view American Muslims favorably, but only 34% of Romney voters shared that positive outlook.¶ Even more alarming is that fear-mongering by politicians can create an environment that inspires violence against the people being demonized. It sends a message that these people are "others" and not truly Americans like the rest of us.¶ For example, within a few weeks of Bachmann's comments, a suspicious fire destroyed a mosque in Missouri. And days after Walsh's warnings that Muslim terrorists were living in the Chicago suburbs, a homemade acid bomb was thrown at an Islamic school, pellet gunshots were fired at a mosque, and Muslim headstones at a cemetery were defaced with anti-Muslim graffiti, all in the Chicago area. It's impossible to know whether these hateful acts were related to the remarks, but the climate created by fear-mongering does not encourage tolerance.¶ Getting back to this week's Republican Convention: The Republican Party should be applauded for including so many faiths, especially the Sikhs, who number about 200,000 Americans and whose community was targeted by a hate-filled gunman who killed six people in a place of worship. But excluding Muslims sends a message that American Muslims are not part of the fabric of this country. That is wrong.¶ Republican National Committee Chairman Reince Priebus still has time to correct this mistake. He could invite a Muslim-American imam to be a part of this week's convention. That would send a clear message that the Republican Party is truly welcoming of all major religions practiced in the U.S.¶ It also would send a message that there is no place for hate in the GOP against any American minority group. It's now up to Preibus to show whether the Republican Party stands for inclusiveness or division.

Agenda Politics Links

Notes

Their solvency evidence has some things that you may be able to make an argument on –

The FBI goes to extremes to spy on the private lives of innocent Muslims – former informant Craig Monteilh's story proves

Rahel **Gebreye**, **3-4-**2015, "Former Informant: FBI Encouraged Me To Sleep With Muslim Women For Intel," Huffington Post, http://www.huffingtonpost.com/2015/03/04/fbi-informant-craig-monteilh_n_6800126.html

To Muslim mosque members in the Los Angeles area, Craig Monteilh was known as Farouk al-Aziz, a French Syrian looking to reconnect to his Islamic roots. But behind the devout facade and convincing knowledge of Islam, Monteilh was spying for the FBI, which instructed him to go as far as sleeping with Muslim women to gain information. Monteilh joined HuffPost Live to share his story and discuss how he went from a criminal to an FBI informant to a witness in a case against the Feds. Monteilh had his own brush with the law, having served time for using fraudulent checks**. His familiarity with criminals in Chino prison enticed the FBI to recruit him to root out organized crime and later seek out terrorists as part of Operation Flex**. "The FBI paid me to infiltrate mosques in Los Angeles and Orange County in Southern California, as a very broad surveillance operation to give them the personal information of Muslims," he told host Josh Zepps on Monday. That **"personal information" comprised of emails, cell phone numbers, names of known associates and where they attended mosque.** Monteilh said he even placed recording devices in the offices of imams and a local Muslim Student Union. The FBI would then gather the data and share the intel with the Office of Foreign Assets Control for the purpose of thwarting potential terror attacks. Monteilh's informant role had an intense training process, during which he learned to "pretend to be Muslim." "The FBI trained me in the tenets of Islam, in the elementary principles of Arabic, and just to blend into the community and to slowly integrate myself as a Muslim male," he said. The operation included even more extreme breaches of privacy, with Monteilh going as far as dating and having sex with Muslim women to extract intelligence. "I portrayed myself as a unmarried male, although I was married," he said. "Within the Muslim community, they would help me to get a bride, so they would introduce me to single Muslim women. I would go out on dates and things like that. … [My FBI handlers] instructed me, if I was getting good intel, to allow it to go into sexual relations." The undercover plot eventually took an ironic turn when his extreme jihadist rhetoric alienated his targets, who reported him to the FBI. In 2007, the Islamic Center of Irvine filed a restraining order against him, effectively blowing his cover. As Monteilh remembers, very few of his targets actually used similar jihadist rhetoric. The only time he heard extremist language was after some prodding and "inciting" on his part. "They'd follow my lead," he said. Looking back on his undercover operation now, Monteilh said the monthly $11,200 compensation he received "clouded his judgement," making it tough for him to question the practice. Although **he originally felt it was his "patriotic duty" to help the FBI operation**, he had a change of heart. "I began to be conflicted because I was spying on innocent people. They were not involved in criminal activity," he said. "They were not espousing terrorist rhetoric, but I was still spying on them and giving the FBI the information they wanted." Monteilh has since spoken out against the FBI's controversial informant program and even planned to testify in a class action suit against the FBI. The case was dismissed because it would risk exposing "state secrets."

Muslims, not criminals."¶

"His familiarity with criminals in Chino prison enticed the FBI to recruit him to root out organized crime and later seek out terrorists as part of Operation Flex", this can be used to argue that Monteilh was not racist, rather that Operation Flex just had a known suspect base and was targeting those who were criminals, not those who were muslim specifically.

The ""personal information" comprised of emails, cell phone numbers, names of known associates and where they attended mosque" can be used to argue that Monteilh was not just given the personal information of muslims in general, but those who were known associates of terrorists and criminals, and that's nothing to do with religion, just the person itself.

The "he originally felt it was his "patriotic duty" to help the FBI operation" can be used to argue that there was a personal incentive, not just the money or even possibly sex that motivated Craig Monteilh, but that he felt the obligation to do so for the sake of American freedom. There's no way to completely solve for informants and others who feel a certain way about something.

If the plan does not use the courts (make sure of this in cross x!!), you can run a courts cp and use this line from their own Democracy advantage card and prove that this flows neg –

First, the FBI surveillance of Muslims is destroying religious freedom

Madiha **Shahabuddin**, Chapman University Dale E. Fowler School of Law, May 20**15**, "'The More Muslim You Are, the More Trouble You Can Be': 1 How Government Surveillance of Muslim Americans Violates First Amendment Rights," Chapman Law Review, http://www.chapmanlawreview.com/wp-content/uploads/2014/09/Shahabuddin.pdf. Amanda Li.

Although the government has proffered the compelling interest of national security as a justification for its widespread network of surveillance and informants for the purpose of essentially monitoring Muslim American daily life, the means it has employed are not sufficiently narrowly tailored to survive strict scrutiny in the face of constitutional First Amendment protections of free association and speech. This has led to a significant "chilling" of religious and political expression, as well as the curtailment of actual religious activities such as mosque attendance, donations for charity, or participation in a Muslim Student Association on college campuses. Through the refining of the government's scope of surveillance, and the creation of objective, transparent criteria for individuals who do warrant such government scrutiny, Muslim Americans can be secured their fundamental rights, while still allowing law enforcement to accomplish its goal of fighting actual terrorism. Additionally, the government should not prosecute those vulnerable, and easily susceptible individuals who were unsuspectingly caught in the government "dragnet" of informant sting operations. Instead, law enforcement should allow the Muslim American community its own space to address the issue on its own terms, by offering such individuals social programs and mental health services as needed, without fear of government scrutiny or prosecution. This will not only empower Muslim Americans, a community largely marginalized post 9/11, but also allow them to mold their own destinies in this nation. It is not the place of a government based on fundamental constitutional principles of freedom to punish individuals for

mere adherence to their faith, no matter how stigmatized they are. Courts must now step in to uphold those fundamental rights that have been pushed aside out of misunderstanding and fear.

ALSO you may want to ask in cross x how there can be any global spillover in solvency with religious freedom in oppressive regimes such as Pakistan where the Taliban is not a fan of all religions or in China where communists aren't fans of any religions (given that the CCP requires that members renounce their faith), and how the plan can solve for entire mindset changes in foreign governments and just the general public. That's this card - "Fourth, International Religious Freedom and International democracy are crucial to resolve conflicts in the Middle East, China, and all other nations with religious minorities"

Farr 9" – that's in their Democracy Advantage

You can ask, in cross x, what they define Islamophobia as, and if it is something weird, nonsensical, or have no answer, the Islamophobia term bad cards may be good to read.

MOSQUES NEG – On Case

INHERENCY TAKE OUT

No Mosque Surveillance - General

MOSQUES EXCLUDED FROM SURVEILLANCE

John **Careccia 13**, Islamic Mosques: Excluded From Surveillance By Feds, 6-17-**2013,** Western Journalism, http://www.westernjournalism.com/islamic-mosques-excluded-from-surveillance-by-feds/

Since October 2011, mosques have been off-limits to FBI agents. Surveillance or undercover sting operations are not allowed without high-level approval from a special oversight body at the Justice Department dubbed the Sensitive Operations Review Committee (SORC). Who makes up this body, and under what methodology do they review requests – nobody knows. The names of the chairman, members and staff are kept secret. Why is it necessary to keep the names and titles of the people who decide whether or not to protect the rest of the country from radical Muslims, secret?

We do know the panel was set up under pressure from Islamist groups who complained about FBI stings at mosques. Just months before the panel's formation, the Council on American-Islamic Relations (CAIR) teamed up with the ACLU to sue the FBI for allegedly violating the civil rights of Muslims in Los Angeles by hiring an undercover agent to infiltrate and monitor mosques in America's second largest city. Another defeat for the politically correct imbeciles in our government. Before mosques were excluded from the otherwise wide domestic spy net the administration has cast, the FBI launched dozens of successful sting operations against homegrown radicals inside mosques, and disrupted dozens of plots against innocent American citizens across the United States.

No NYPD Muslim surveillance

No NYPD muslim surveillance

CBS 14 (CBS New York, "End of NYPD Muslim Surveillance Program Applauded", CBS New York, April 16, 2014, http://newyork.cbslocal.com/2014/04/16/end-of-nypd-muslim-surveillance-program-applauded/, 7/30/15 AV)

NEW YORK (CBSNewYork/AP) — Muslim groups and civil liberties advocates applauded the decision by NYPD officials to disband a controversial unit that tracked the daily lives of Muslims as part of efforts to detect terrorism threats, but they said there were concerns about whether other problematic practices remained in place. The NYPD said Tuesday it had disbanded the surveillance program and that detectives assigned to the unit had been transferred to other duties within the division. An ongoing review of the Demographics Unit by Police Commissioner Bill Bratton found that the same information collected by the unit could be better collected through direct contact with community groups, officials said. "This reform is a critical step forward in easing tensions between the police and the communities they serve, so that our cops and our citizens can help one another go after the real bad guys," Mayor Bill de Blasio said in a statement. The Demographics Unit was created 18 months after the 9/11 terror attacks. The program, conceived with the help of a CIA agent working with the NYPD, assembled databases on where Muslims lived, shopped, worked and prayed. Plainclothes officers infiltrated Muslim student groups, put informants in mosques, monitored sermons and cataloged Muslims in New York who adopted new, Americanized surnames. Linda Sarsour, the executive director of the Arab American Association of New York, applauded the decision but said there's still concern about the police use of informants to infiltrate mosques without specific evidence of crime. "This was definitely a part of the big puzzle that we're trying to get dismantled," Sarsour said. But, she added, "This doesn't necessarily prove to us yet that these very problematic practices are going to end." Others also voiced concerns and

said they want more assurances that the NYPD is ending the practice. “It’s a good step, but I think what we need to do now is build bridges between the NYPD and law enforcement authorities in general,” Ibrahim Hooper, spokesman for the Council on American-Islamic Relations. “We’re, of course, concerned that some of the functions might just be carried out by different parts of the NYPD,” said Glenn Katon, legal director for Muslim Advocates. New York Civil Liberties Union Executive Director Donna Lieberman said police-community relations took a blow from the NYPD unit’s broad surveillance of all Muslims, not just people suspected of wrongdoing. “The NYPD’s disbanding of a unit that targeted New York Muslims and mapped their everyday institutions and activities is a welcome first step for which we commend Commissioner Bratton,” said Lieberman. “We hope that the Demographics Unit’s discriminatory activities will not be carried out by other parts of the NYPD.” Former Police Commissioner Ray Kelly defended the surveillance tactics, saying officers observed legal guidelines while attempting to create an early warning system for terrorism. But in a deposition made public in 2012, an NYPD chief testified that the unit’s work had never generated a lead or triggered a terrorism investigation in the previous six years. In Washington, 34 members of Congress had demanded a federal investigation into the NYPD’s actions. Attorney General Eric Holder said he was disturbed by reports about the operations and the Department of Justice said it was reviewing complaints received from Muslims and their supporters. While campaigning for office last fall, de Blasio said he would end broad spying on Muslims. He said on his watch, NYPD surveillance tactics would only be authorized to follow up on specific leads and that the police force would be under the supervision of a new inspector general. Former federal prosecutor Philip Eure was named to the inspector general position last month. Bratton also met last week with Muslim community leaders to work on improved relations.

No FBI Mosque Surveillance

No FBI Mosque surveillance

Chasmar 13 (Jessica Chasmar, “Mosques off-limits by government snooping since 2011, IBD editorial claims”, the Washington Times, 6/13/13, Jessica Chasmar is a continuous news writer for The Washington Times, covering topics on culture and politics. Originally from Palm Beach Gardens, Fla., Jessica graduated from the University of Florida where she received a bachelor's degree in journalism and a master's degree in mass communication, http://www.washingtontimes.com/news/2013/jun/13/mosques-limits-government-snooping-2011-ibd-editor/, 7/30/15 AV)

An editorial posted in the Investor’s Business Daily on Wednesday had some scathing remarks for the Obama administration, after claiming that despite the NSA’s sweeping PRISM program, mosques have been off-limits by FBI surveillance since October 2011. “That’s right, the government’s sweeping surveillance of our most private communications excludes the jihad factories where homegrown terrorists are radicalized,” the editorial reads.

No Public Islamophobia View

Islamophobia isn’t inherent in America

Spencer 11 (Robert Spencer, “FIVE EASY STEPS TO END ‘ISLAMAPHOBIA’”, Frontpage Mag, 12/29/11, Robert Spencer is the director of Jihad Watch and author of the New York Times bestsellers The Politically Incorrect Guide to Islam (and the Crusades) and The Truth About Muhammad, http://www.frontpagemag.com/fpm/117562/five-easy-steps-end-islamophobia-robert-spencer, 7/31/15 AV)

Negin Farsad, an Iranian American stand-up comic from California, wears eye-catching mini dresses, curses liberally and has awkward sex talks with her mother (though hers sound more like alien encounters. Actual quote: “You had intergender flesh relations without the security of external safety product?”). Then she has more to worry about from observant Muslims than she does from "Islamophobes." Such conversations, painfully private in traditional Muslim societies, are public fodder for Farsad and three other Gen X and Gen Y Muslim comics with whom she traveled to the deep South this past summer. The tour, which later extended to Western states and included other Muslim comics, will form the backbone of “The Muslims Are Coming!,” a documentary film about Islamophobia in America that Farsad is working on with Palestinian Italian American comedian Dean Obeidallah. This is going to be the usual victimhood-mongering and deflecting of attention from the real causes of suspicion of Muslims in the U.S. Obeidallah contacted me and asked me to be interviewed for the piece, and assured me he would give me a fair hearing. But then he went on Twitter and called Pamela Geller a "Muslim-hater" -- echoing the deceptive Islamic supremacist claim that fighting for free speech and equality of rights for all people is "hate." His true agenda thus revealed, I bowed out of the interview. The documentary, which includes interviews with comics such as Jon Stewart and Louis Black and commentators including CNN’s Soledad O’Brien, explores freedom of religion and what it means to be a minority in America. Note the implication: that minorities have it so tough in America. No mention will be made, no doubt, of the far more precarious position of non-Muslim minorities in Muslim societies. Muslim American stand-up comedy is a relatively new phenomenon, the domain of second-generation immigrants who are American enough to satirize the Muslim American experience, said Obeidallah, who lives in New York City.“We’re confident enough to do this,” he said. “An immigrant would be less confident to use comedy to try to challenge perceptions of who we are. We’re confident enough in being Americans and knowing what that means, that we can push against those who are exhibiting behavior which is less than consistent with the values of this nation.” Note that in Obeidallah's world, the people who are "exhibiting behavior which is less than consistent with the values of this nation" are those fighting for freedom and Constitutional rights, not Brotherhood-related groups dedicated to bringing to the U.S. elements of a legal system that denies freedom of speech, freedom of conscience, and equality of rights for women and non-Muslims. A major factor driving Muslim Americans toward comedy was the Sept. 11, 2001, terrorist attacks. “There were no Middle Eastern comics before 9/11 that anyone knew about,” Obeidallah said. “The phenomenon really grew in the last 10 years, because of the [anti-Muslim] backlash. There was no backlash, of course. Innocent Muslims are not being victimized in the U.S. Muslims live better here than in many Muslim countries. Obeidallah -- clueless or complicit? You be the judge. I think a lot of people in our community started doing it as a form of political activism.” As they started appearing on national television, he said, “it spurred other Middle Eastern comedians to get involved.” Now, he said, there are about 10 full-time professinals and a growing number of aspiring professionals.Going to the South, where anti-mosque demonstrations and anti-immigrant sentiment has made some Muslims feel unwelcome, the comedians hoped to break through some of the cultural walls that have arisen since Sept. 11. The point was to see “how would people in the heartland take to us?” Obeidallah said. “Would we encounter angry people going, ‘Get out of here, you Muslims,’ or would they understand?” Traveling through Florida, Georgia, Alabama, Mississippi and Tennessee, they gave free performances in cafes, community centers and theaters. They set up tables in public places, with scripture-related guessing games and the opportunity for people to “Ask a Muslim” anything they wanted. “I could kind of like Muslims, but why do you guys like terrorism so much?” some asked. “What do you think of 9/11?” was another common question. How horrible! They got asked uncomfortable questions! Oh, the "Islamophobia"! On the whole, the public response was encouraging. While a few people drove by and yelled, “Go back to your country!” the one-on-one encounters tended to be positive. Oh, the horror! They encountered some rude jerks! Almost as bad as being Christians in Nigeria, eh? “Most people are more open-minded and not that concerned about Muslims,” Obeidallah said. “It’s really the fringe that’s driving that narrative.”Maysoon Zayid, one of the comics on the tour, said people were surprised to see that “I’m such a Jersey girl, I’m so accessible. . . . I think they are really surprised that I wasn’t this oppressed woman trying to convert people.” The comedians acknowledged that they were unlikely to win the hearts of the most fervent anti-Muslim types. “A show called ‘The Muslims Are Coming’ — people self-select to come see it,” Farsad said. “We’re never going to be able to touch the extreme haters. . . . We’re trying to affect the people in the middle, people with questions, the ‘persuadables.’ ” Do Negin Farsad and Dean Obeidallah really want to eradicate "Islamophobia"? As long as Islamic jihad and supremacism continue, a comedy tour will never do the trick. But here is an easy way. They can call on Muslims in the U.S. to do these things: 1. Focus their indignation on Muslims committing violent acts in the name of Islam, not on non-Muslims reporting on those acts. 2. Renounce definitively, sincerely, honestly, and in deeds, not just in comforting words, not just "terrorism," but any intention to replace the U.S. Constitution (or the constitutions of any non-Muslim state) with Sharia even by peaceful means. In line with this, clarify what is meant by their condemnations of the killing of innocent people by stating unequivocally that American and Israeli civilians are innocent people, teaching accordingly in mosques and Islamic schools, and behaving in accord with these new teachings. 3. Teach, again sincerely and honestly, in transparent and verifiable ways in mosques and Islamic schools, the imperative of Muslims coexisting peacefully as equals with non-Muslims on an indefinite basis, and act accordingly. 4. Begin comprehensive international programs in mosques all over the world to teach sincerely against the ideas of violent jihad and Islamic supremacism. 5. Actively and honestly work with Western law enforcement officials to identify and apprehend jihadists within Western Muslim communities. If Muslims do those five things, voila! "Islamophobia" will evanesce!

No Solvency

No Online Islamophobia Solvency

No online islamophobia solvency

Spence 14 (Duncan Spence, "Why online Islamophobia is difficult to stop", CBC News, 11/1/14, Duncan Spence is an author for CBC News, http://www.cbc.ca/news/why-online-islamophobia-is-difficult-to-stop-1.2810242, 7/31/15 AV)

Islamophobia has been an ongoing concern in the west since 9/11, but a number of recent incidents in Britain have given rise to a new wave of hatred that experts say is finding a breeding ground online. Part of the problem, researchers say, is that right-wing groups can post anti-Islamic comments online without fear of legal prosecution. "If they were to say, 'Black people are evil, Jamaicans are evil,' they could be prosecuted," says Fiyaz Mughal, founder of Islamophobia reporting web site TellMamaUK.org. But because religious hatred isn't covered legally in the same way that racism is, Mughal says "the extreme right are frankly getting away with really toxic stuff." Researchers believe the rise of the Islamic State in Iraq and Syria (ISIS) and incidents such as the murder of British soldier Lee Rigby and the recent sexual exploitation scandal in the town of Rotherham have contributed to a spike in online anti-Muslim sentiment in the UK. Imran Awan, deputy director of the Centre for Applied Criminology at Birmingham City University, noticed the trend when he was working on a paper regarding Islamophobia and Twitter following Rigby's death. Rigby was killed in the street in southeast London in 2013 by two Islamic extremists who have since been convicted. Awan says the anonymity of social media platforms makes them a popular venue for hate speech, and that the results of his report were "shocking, to say the least." Of the 500 tweets from 100 Twitter users Awan examined, 75 per cent were Islamophobic in nature. He cites posts such as "'Let's go out and blow up a mosque' and 'Let's get together and kill the Muslims," and says most of these were linked to far-right groups. Awan's findings echo those of Tell MAMA UK, which has compiled data on anti-Muslim attacks for three years. (MAMA stands for "Measuring Anti-Muslim Attacks.") Tell MAMA's Mughal says anti-Muslim bigotry is "felt significantly," and adds that "in our figures, we have seen a year-by-year increase." Researchers believe far-right advocates are partly responsible for a spike in online hate speech. "There's been a real increase in the far right, and in some of the material I looked at online, there were quite a lot of people with links to the English Defence League and another group called Britain First," says Awan. Both Mughal and Awan believe that right-wing groups such as Britain First and the EDL become mobilized each time there is an incident in the Muslim community. The Twitter profile of the EDL reads: "#WorkingClass movement who take to the streets against the spread of #islamism & #sharia #Nosurrender #GSTQ." Below it is a link to their Facebook page, which has over 170, 000 likes. Below that page, a caption reads, "Leading the Counter-Jihad fight. Peacefully protesting against militant Islam." EDL spokesperson Simon North dismisses accusations that his group is spreading hate, emphasizing that Muslims are often the first victims of attacks carried out by Islamic extremists. "We address things that are in the news the same way newspapers do," says North. Experts in far-right groups, however, say their tendency to spread hateful messages around high-profile cases is well established. North allows that some Islamophobic messages might emanate from the group's regional divisions. But they do not reflect the group's overall thinking, he says. "There are various nuances that get expressed by these organizations," North says. "Our driving line is set out very clearly in our mission statement." According to EDL's web site, their mission statement is to promote human rights while giving a balanced picture of Islam. Awan argues online Islamophobia should be taken seriously and says police and legislators need to make more successful prosecutions of this kind of hate speech and be more "techno-savvy when it comes to online abuse." Prosecuting online Islamophobia, however, is rare in the UK, says Vidhya Ramalingam of the European Free Initiative, which researches far-right groups. That's because groups like Britain First, which have over 400,000 Facebook likes, have a fragmented membership and do not have the traditional top-down leadership that groups

have had in the past. Online Islamophobia is also flourishing in Canada. The National Council of Canadian Muslims (NCCM) is receiving a growing number of reports. But there are now fewer means for prosecuting online hate speech in Canada. Section 13 of the Canadian Human Rights Act protected against the wilful promotion of hate online, but it was repealed by Bill C-304 in 2012. “It’s kind of hard to say what the impact is, because even when it existed, there weren’t a lot of complaints brought under it,” says Cara Zwibel of the Canadian Civil Liberties Association. Though there is a criminal code provision that protects against online hate speech, it requires the attorney general’s approval in order to lay charges — and that rarely occurs, says Zwibel. Section 319 of the Criminal Code of Canada forbids the incitement of hatred against “any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation." A judge can order online material removed from a public forum such as social media if it is severe enough, but if it is housed on a server outside of the country, this can be difficult. Ihsaan Gardee, executive director of NCCM, says without changes, anti-Muslim hate speech will continue to go unpunished online, which he says especially concerns moderate Muslims. “They worry about people perceiving them as sharing the same values these militants and these Islamic extremists are espousing.”

No Education Solvency (No mindset change)

Islamophobes don’t fuel American islamophobia

Spencer 11 (Robert Spencer, “FIVE EASY STEPS TO END ‘ISLAMAPHOBIA’”, Frontpage Mag, 12/29/11, Robert Spencer is the director of Jihad Watch and author of the New York Times bestsellers The Politically Incorrect Guide to Islam (and the Crusades) and The Truth About Muhammad, http://www.frontpagemag.com/fpm/117562/five-easy-steps-end-islamophobia-robert-spencer, 7/31/15 AV)

No comedy show, no matter how clever or winning, is going to eradicate the suspicion that many Americans have of Muslims. This is because Americans are concerned about Islam not because of the work of greasy Islamophobes, but because of Naser Abdo, the would-be second Fort Hood jihad mass murderer; and Khalid Aldawsari, the would-be jihad mass murderer in Lubbock, Texas; and Muhammad Hussain, the would-be jihad bomber in Baltimore; and Mohamed Mohamud, the would-be jihad bomber in Portland; and Faisal Shahzad, the would-be Times Square jihad mass-murderer; and Abdulhakim Mujahid Muhammad, the Arkansas military recruiting station jihad murderer; and Naveed Haq, the jihad mass murderer at the Jewish Community Center in Seattle; and Mohammed Reza Taheri-Azar, the would-be jihad mass murderer in Chapel Hill, North Carolina; Ahmed Ferhani and Mohamed Mamdouh, who hatched a jihad plot to blow up a Manhattan synagogue; and Umar Farouk Abdulmutallab, the would-be Christmas airplane jihad bomber; and many others like them who have plotted and/or committed mass murder in the name of Islam and motivated by its texts and teachings -- all in the U.S. in the last couple of years. The fact that there are other Muslims not fighting jihad is just great, but it doesn't mean that the jihad isn't happening.

No French Spillover Solvency

French leaders want mosque surveillance

Associated Press 1-16 (Associated Press, “French far right leader wants mosque surveillance”, San Diego Union Tribune, 1/16/15, http://www.sandiegouniontribune.com/news/2015/jan/16/french-far-right-leader-wants-mosque-surveillance/, 7/30/15 AV)

NANTERRE, France (AP) — French far right leader Marine Le Pen wants a tough response to last week's terrorist attacks, including surveillance of mosques and military service for children to stop youth radicalization. Le Pen's National Front party, which has long denounced what it calls the "Islamization" of France, has seen its support rise steadily in recent years. After attacks by radical French gunmen last week, she told journalists Friday that France is facing an enemy from within. She urged a global response, including "immediate" suspension of Europe's border-free travel accords, monitoring of mosques and sermons, as well as school uniforms and military service for boys and girls. Many in France's 5-million-strong Muslim community fear a backlash after the attacks by the gunmen, who claimed allegiance to al-Qaida and the Islamic State group.

No Saudi Spillover Solvency

Saudi Arabia surveilling mosques now

Toumi 6-29 (Habib Toumi, "Saudi Arabia to install surveillance cameras in major mosques", Gulf News, 6/29/15, Habib Toumi is the bureau chief of Gulf News, http://gulfnews.com/news/gulf/saudi-arabia/saudi-arabia-to-install-surveillance-cameras-in-major-mosques-1.1542550, 7/30/15 AV)

Manama: Saudi Arabia is drawing up plans to install surveillance cameras in major mosques throughout the kingdom. Cameras will be fixed within the mosques as well as outside to ensure that all angles are covered in a bid to boost security and ensure the safety of worshippers, particularly on Fridays, Saudi daily *Okaz* reported on Monday. The Ministry of Islamic Affairs is now working on identifying the mosques where the surveillance cameras will be installed in the first phase of the massive project. The major mosques in all provinces will be first on the list to be drawn up by the ministry. The decision follows two deadly attacks on two consecutive Fridays in two mosques in the Eastern Province and an attack in a mosque in Kuwait on Friday. The three attacks were carried out by suicide bombers who blew themselves up in their attempt to kill the highest number of worshippers. Two of the bombs were triggered inside mosques, while the third attack happened just outside a mosque after the bomber's attempt to enter the prayer hall was foiled.

Islamophobia term bad(?)

"Islamophobia" is a term used to incriminate outsiders

Spencer 11 (Robert Spencer, "FIVE EASY STEPS TO END 'ISLAMAPHOBIA'", Frontpage Mag, 12/29/11, Robert Spencer is the director of Jihad Watch and author of the New York Times bestsellers The Politically Incorrect Guide to Islam (and the Crusades) and The Truth About Muhammad, http://www.frontpagemag.com/fpm/117562/five-easy-steps-end-islamophobia-robert-spencer, 7/31/15 AV)

This comedy show simply doesn't address the problem of jihad terrorism and Islamic supremacism. As David Horowitz and I show in our pamphlet *Islamophobia: Thoughtcrime of the Totalitarian Future*, the term "Islamophobia" is a politically manipulative coinage designed to intimidate critics of Islamic supremacism and jihad into silence. Claire Berlinski explains how Islamic supremacists from the Muslim Brotherhood devised it for precisely that purpose: Now here's a point you might deeply consider: The neologism "Islamophobia" did not simply emerge *ex nihilo*. It was invented, deliberately, by a Muslim Brotherhood front organization, the International Institute for Islamic Thought, which is based in Northern Virginia. If that

name dimly rings a bell, it should: I've mentioned it before, and it's particularly important because it was co-founded by Anwar Ibrahim--the hero of Moderate Islam who is now trotting around the globecomparing his plight to that of Aung San Suu Kyi.Abdur-Rahman Muhammad, a former member of the IIIT who has renounced the group in disgust, was an eyewitness to the creation of the word. "This loathsome term," he writes, is nothing more than a thought-terminating cliche conceived in the bowels of Muslim think tanks for the purpose of beating down critics. And in fact, FBI statistics show that there is no "Islamophobia." In fact, many "anti-Muslim hate crimes" have been faked by Muslims, and Jews are eight times more likely than Muslims to be the victims of hate attacks. The Muslim Brotherhood is dedicated in its own words to "eliminating and destroying Western civilization from within." One easy way to do that would be to guilt-trip non-Muslims into being ashamed of resisting jihad activity and Islamic supremacism, for fear of being accused of "Islamophobia." I doubt these comics are aware of this program, but they're useful tools for it. "Muslim American comics' tneginour and documentary," by Tara Bahrampour in the Washington Post, December 27 (thanks to James): Beware, America. The Muslims are coming, and they look and act suspiciously like you. Sheesh. No one says they aren't. This is just a straw man designed to demonize opponents of jihad.

"Islamophobia" definition skewed

Goldberg 1-16 (Jeffrey Goldberg, "French Prime Minister: 'I Refuse to Use This Term *Islamophobia*'", The Atlantic, 1/16/15, Jeffrey Goldberg is a national correspondent for *The Atlantic* and a recipient of the National Magazine Award for Reporting, http://www.theatlantic.com/international/archive/2015/01/french-prime-minister-manuel-valls-on-islamophobia/384592/, 8/1/15 AV)

The prime minister of France, Manuel Valls, has emerged over the past tumultuous week as one of the West's most vocal foes of Islamism, though he's actually been talking about the threat it poses for a long while. During the course of an interview conducted before the *Charlie Hebdo* attacks, he told me—he went out of his way to tell me, in fact—that he refuses to use the term 'Islamophobia' to describe the phenomenon of anti-Muslim prejudice, because, he says, the accusation of Islamophobia is often used as a weapon by Islamism's apologists to silence their critics. Most of my conversation with Valls was focused on the fragile state of French Jewry—here is my post on his comments, which included the now-widely circulated statement that, "if 100,000 Jews leave, France will no longer be France"—and I didn't realize the importance of his comment about Islamophobia until I re-read the transcript of our interview. "It is very important to make clear to people that Islam has nothing to do with ISIS," Valls told me. "There is a prejudice in society about this, but on the other hand, I refuse to use this term 'Islamophobia,' because those who use this word are trying to invalidate any criticism at all of Islamist ideology. The charge of 'Islamophobia' is used to silence people. " Valls was not denying the existence of anti-Muslim sentiment, which is strong across much of France. In the wake of the *Charlie Hebdo* attack, miscreants have shot at Muslim community buildings, and various repulsive threats against individual Muslims have been cataloged. President Francois Hollande, who said Thursday that Muslims are the "first victims of fanaticism, fundamentalism, intolerance," might be overstating the primacy of anti-Muslim prejudice in the current hierarchy of French bigotries—after all, Hollande just found it necessary to deploy his army to defend Jewish schools from Muslim terrorists, not Muslim schools from Jewish terrorists—but anti-Muslim bigotry is a salient and seemingly permanent feature of life in France. Or to contextualize it differently: Anti-Muslim feeling appears to be more widespread than anti-Jewish feeling across much of France, but anti-Jewish feeling has been expressed recently (and not-so-recently) with far more lethality, and mainly by Muslims. It appears as if Valls came to his view on the illegitimacy of 'Islamophobia' after being influenced by a number of people, including and especially the French philosopher Pascal Bruckner and the writer (and fatwa target) Salman Rushdie. Rushdie, along with a group of mainly Muslim writers, attacked the use of the term 'Islamophobia' several years ago in an open letter: "We refuse to renounce our critical spirit out of fear of being accused of 'Islamophobia', a wretched concept that confuses criticism of Islam as a religion and stigmatization of those who believe in it." Bruckner argued that use of the word 'Islamophobia' was designed to deflect attention away from the goals of Islamists: "[I]t denies the reality of an Islamic offensive in Europe all the better to justify it; it attacks secularism by equating it with fundamentalism. Above all, however, it wants to silence all those Muslims who question the Koran, who demand equality of the sexes, who claim the right to renounce religion, and who want to practice their faith freely and without submitting to the dictates of the bearded and doctrinaire." It is difficult to construct a single term that captures the variegated expressions of a broad prejudice. 'Anti-Semitism,' of course, is a terribly flawed term to describe anti-Jewish thought or behavior, and not only because it was invented by an actual hater of Jews, Wilhelm Marr, to prettify the base hatred to which he subscribed. It's difficult to construct a single term that captures the variegated expressions of a broad prejudice. The

origins of the term 'Islamophobia' are somewhat murky. According to Bruckner, the term was first used in its current manner to excoriate the writer Kate Millett, who had called upon Iranian women living under a theocratic yoke to take off their chadors. The term seems to have come into widespread use after the U.K.-based Runnymede Trust issued a report in 1997 entitled "Islamophobia: A Challenge for Us All," and by 2001, the United Nations had recognized Islamophobia as a form of prejudice at its Durban conference on racism (this is the same conference from which the official U.S. delegation walked out, to protest the widespread trafficking in anti-Israel and anti-Jewish tropes). The Runnymede Trust defined Islamophobia as "unfounded hostility towards Muslims, and therefore fear or dislike of all or most Muslims." This corresponds, in some ways, to my colleague Conor Friedersdorf's definition of Islamophobia as the "irrational fear of mainstream Muslims." I don't think that Valls would disagree with the notion that the fear of "mainstream Muslims" is grounded in anything but prejudice. But the question he is asking (and answering) is this: Can hostility to the various related ideologies of Islamism—ideologies rooted in a particular reading of Muslim texts, theology, and history—be properly defined as Islamophobic? Michael Walzer, in the most recent issue of *Dissent*, provides one answer. He argues that it is quite rational to fear Islamism: I live with a generalized fear of every form of religious militancy. I am afraid of Hindutva zealots in India, of messianic Zionists in Israel, and of rampaging Buddhist monks in Myanmar. But I admit that I am most afraid of Islamist zealots because the Islamic world at this moment in time (not always, not forever) is especially feverish and fervent. Indeed, the politically engaged Islamist zealots can best be understood as today's crusaders. Is this an anti-Muslim position, not a fear but a phobia—and a phobia that grows out of prejudice and hostility? Consider a rough analogy (all analogies are rough): if I say that Christianity in the eleventh century was a crusading religion and that it was dangerous to Jews and Muslims, who were rightly fearful (and some of them phobic)—would that make me anti-Christian? I know that crusading fervor isn't essential to the Christian religion; it is historically contingent, and the crusading moment in Christian history came and, after two hundred years or so, went. Saladin helped bring it to an end, but it would have ended on its own. I know that many Christians opposed the Crusades; today we would call them Christian "moderates." And, of course, most eleventh-century Christians weren't interested in crusading warfare; they listened to sermons urging them to march to Jerusalem and they went home. Still, it is true without a doubt that in the eleventh century, much of the physical, material, and intellectual resources of Christendom were focused on the Crusades. Walzer doesn't understand how opposition to a misogynistic, homophobic, anti-Semitic, anti-free-speech theocratic strain of totalitarianism could make a person a "racist" (a particularly inapt term for prejudice against Muslims, who are found among all races) or "Islamophobic," or anything but a secular-minded progressive who is interested in defending the rights of women and minorities. "I frequently come across leftists who are more concerned with avoiding accusations of Islamophobia than they are with condemning Islamist zealotry," Walzer wrote. "There are perfectly legitimate criticisms that can be made not only of Islamist zealots but also of Islam itself—as of any other religion." Hussein Ibish, writing in *The National*, offered a definition of Islamophobia that makes sense to me, and I would imagine, makes sense to Valls. The key to a practicable definition of Islamophobia that can help identify truly objectionable speech, must be that it refers to living human beings and their fundamental rights. It cannot be about protecting people from being offended, or having their feelings hurt. Still less can it be about protecting abstract ideas, religious dogmas, or cultural norms from being questioned, critiqued or even lampooned. The proper metric to identify genuinely bigoted speech is whether or not the expression in question is intended or likely to have the effect of promoting fear and hatred against broad categories of people based on their identity. Would such speech make it more difficult for communities to function effectively in their own society? In other words, does the speech attack the legitimate rights and interests of identity-based communities? Does it prevent them being seen as, and treated as equal by, and with regard to, other communities? Ibish argues that *Charlie Hebdo*, against which accusations of Islamophobia continue to be leveled, does not meet his standard: While many of the images it printed over the years were offensive to Muslims and many others, and were intended to be so, did its track record really suggest that its presence on the French scene in any way compromised, challenged, or complicated the ability of the Arab and Muslim migrant communities in France to function properly in that society? Clearly, the answer is no. Prejudice against Muslims is repulsive. Criticism of Islamist doctrine, and the lampooning of religious beliefs, is not.

Off Case

T – Substantial

1NC Frontline

A. Substantially requires at least a 2% reduction --- this is the smallest percentage we could find

Word and Phrases 1960

'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App.

B. Plan violates

American Muslim Population is only .8%

Walen 14 (Andrew Walen, "Muslim Population in US: New Poll Shows None of Us Have Any Idea", iDigital Times, 11/3/14, http://www.idigitaltimes.com/muslim-population-us-new-poll-shows-none-us-have-any-idea-392930, 7/31/15 AV)

According to the new poll, US citizens guessed the Muslim population of the US to be about 15 percent when asked "Out of every 100 people, how many do you think are Muslim?" This would mean that the US has 47.4 million Muslims. The reality is quite different, with current research putting the percentage of Muslims in the United States at about .8 percent of the population, with an estimated 2.6 million Muslims in the US as of 2010. Even higher estimates find that there are between five and eight million Muslims in the entire country.

C. THE AFFIRMATIVE MUST DEFEND AN INTERPRETATION

They cannot just quibble with our definition. They have to counter-define and defend the limits of their definition. Substantially must be given meaning

CJS 83 Corpus Juris Secundum, 1983 , 765.

"Substantially. A relative and elastic term which should be interpreted in accordance with the context in which it isused. While it must be employed with care and discrimination, it must, nevertheless, be given effect." 48

D. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Permitting minor changes like the plan permits a huge number of cases.

E. T IS A VOTER because the opportunity to prepare promotes better debating, education and fairness.

Nietzsche K

Call to action link

The inability to resist the temptation to act is a symptom of the weakness of the will

Nietzsche **1888** *The Twilight of the Idols or, How to Philosophize with a Hammer* "Preface" trans. Walter Kaufmann and R. J. Hollingdale http://scholar.googleusercontent.com/scholar?q=cache:537-EkUddDYJ:scholar.google.com/&hl=en&as_sdt=0,37

To be fair, it should be admitted, however, that on the ground out of which Christianity grew, the concept of the "spiritualization of passion" could never have been formed. After all, the first church, as is well known, fought against the "intelligent" in favor of the "poor in spirit." How could one expect from it an intelligent war against passion? The church fights passion with excision in every sense: its practice, its "cure," is castratism. It never asks: "How can one spiritualize, beautify, deify a craving?" It has at all times laid the stress of discipline on extirpation (of sensuality, of pride, of the lust to rule, of avarice, of vengefulness). But an attack on the roots of passion means an attack on the roots of life: the practice of the church is hostile to life. 2 The same means in the fight against a craving—castration, extirpation—is instinctively chosen by those who are too weak-willed, too degenerate, to be able to impose moderation on themselves; by those who are so constituted that they require La Trappe, to use a figure of speech, or (without any figure of speech) some kind of definitive declaration of hostility, a cleft between themselves and the passion. Radical means are indispensable only for the degenerate; the weakness of the will—or, to speak more definitely, the inability not to respond to a stimulus—is itself merely another form of degeneration. The radical hostility, the deadly hostility against sensuality, is always a symptom to reflect on: it entitles us to suppositions concerning the total state of one who is excessive in this manner. This hostility, this hatred, by the way, reaches its climax only when such types lack even the firmness for this radical cure, for this renunciation of their "devil." One should survey the whole history of the priests and philosophers, including the artists: the most poisonous things against the senses have been said not by the impotent, nor by ascetics, but by the impossible ascetics, by those who really were in dire need of being ascetics.

Democracy link

Democratic movements are characterized by a slave morality that requires the slave master to exist. That makes ressentiment inevitable because the slave cannot act unless there exists an opposing master.

Newman 06 (Saul Newman, 11/11/2006, "Anarchism and the politics of ressentiment," libcom.org, https://libcom.org/library/anarchism-and-the-politics-of-ressentiment-saul-newman)

Political values also grew from this poisonous root. For Nietzsche, values of equality and democracy, which form the cornerstone of radical political theory, arose out of the slave revolt in morality. They are generated by the same spirit of revenge and hatred of the powerful. Nietzsche therefore condemns political movements like liberal democracy, socialism, and indeed anarchism. He sees the democratic movement as an expression of the herd-animal morality derived from the Judeo-Christian revaluation of values.[6] Anarchism is for Nietzsche the most extreme heir to democratic values - the most rabid expression of the herd instinct. It seeks to level the differences between individuals, to abolish class distinctions, to raze hierarchies to the ground, and to equalize the

powerful and the powerless, the rich and the poor, the master and the slave. To Nietzsche this is bringing everything down to level of the lowest common denominator - to erase the pathos of distance between the master and slave, the sense of difference and superiority through which great values are created. Nietzsche sees this as the worst excess of European nihilism - the death of values and creativity. Slave morality is characterized by the attitude of ressentiment - the resentment and hatred of the powerless for the powerful. Nietzsche sees ressentiment as an entirely negative sentiment - the attitude of denying what is life-affirming, saying 'no' to what is different, what is 'outside' or 'other'. Ressentiment is characterized by an orientation to the outside, rather than the focus of noble morality, which is on the self.[7] While the master says 'I am good' and adds as an afterthought, 'therefore he is bad'; the slave says the opposite - 'He (the master) is bad, therefore I am good'. Thus the invention of values comes from a comparison or opposition to that which is outside, other, different. Nietzsche says: "... in order to come about, slave morality first has to have an opposing, external world, it needs, psychologically speaking, external stimuli in order to act all, - its action is basically a reaction."[8] This reactive stance, this inability to define anything except in opposition to something else, is the attitude of ressentiment. It is the reactive stance of the weak who define themselves in opposition to the strong. The weak need the existence of this external enemy to identify themselves as 'good'. Thus the slave takes 'imaginary revenge' upon the master, as he cannot act without the existence of the master to oppose. The man of ressentiment hates the noble with an intense spite, a deep-seated, seething hatred and jealousy. It is this ressentiment, according to Nietzsche, that has poisoned the modern consciousness, and finds its expression in ideas of equality and democracy, and in radical political philosophies, like anarchism, that advocate it. Is anarchism a political expression of ressentiment? Is it poisoned by a deep hatred of the powerful? While Nietzsche's attack on anarchism is in many respects unjustified and excessively malicious, and shows little understanding of the complexities of anarchist theory, I would nevertheless argue that Nietzsche does uncover a certain logic of ressentiment in anarchism's oppositional, Manichean thinking. It is necessary to explore this logic that inhabits anarchism - to see where it leads and to what extent it imposes conceptual limits on radical politics.

Oppression link (define history as either 9/11 or based on old European oppression)

Demanding social justice for historical injustice codifies resentment and locks subordinated groups in their subordination.

Brown, Professor of Women's Studies @ UC Santa Cruz, 19**95** [Wendy, *States of Injury: Power and Freedom in Late Modernity* pg. 66-70]

Liberalism contains from its inception a generalized incitement to what Nietzsche terms ressentiment, the moralizing revenge of the powerless,"the triumph of the weak as weak. "22 This incitement to ressentitnent inheres in two related constitutive paradoxes of liberalism: that between individual liberty and social egalitarianism, a paradox which produces failure turned to recrimination by the subordinated, and guilt turned to resentment by the "successful"; and that between the individualism that legitimates liberalism and the cultural homogeneity required by its commitment to political universality, a paradox which stimulates the articulation of politically significant differences on the one hand, and the suppression of them on the other, and which offers a form of articulation that presses against the limits of universalist discourse even while that which is being articulated seeks to be harbored withinincluded inthe terms of that universalism. Premising itself on the natural equality of human beings, liberalism makes a political promise of universal individual freedom in order to arrive at social equality, or achieve a civilized retrieval of the equality postulated in the state of nature. It is the tension between the promises of individualistic liberty and the requisites of equality that yields ressentiment in one of two directions, depending on the way in which the paradox is brokered. A strong commitment to freedom vitiates the fulfillment of the equality promise and breeds ressentiment as welfare state liberalism --- attenuations of the unmitigated license of the rich and powerful on behalf of the "disadvantaged." Conversely, a strong commitment to equality, requiring heavy state interventionism and economic redistribution, attenuates the commitment to freedom and breeds ressentiment expressed as neoconservative antistatism,

racism, charges of reverse racism, and so forth, However, it is not only the tension between freedom and equality but the prior presumption of the self-reliant and self-made capacities of liberal subjects, conjoined with their unavowed dependence on and construction by a variety of social relations and forces, that makes all liberal subjects, and not only markedly disenfranchised ones, vulnerable to ressentiment: it is their situatedness within power, their production by power, and liberal discourse's denial of this situatedness and production that cast the liberal subject into failure, the failure to make itself in the context of a discourse in which its selfmaking is assumed, indeed, is its assumed nature. This failure, which Nietzsche calls suffering, must either find a reason within itself (which redoubles the failure) or a site of external blame upon which to avenge its hurt and redistribute its pain. Here is Nietzsche's account of this moment in the production of ressentiment: For every sufferer instinctively seeks a cause for his suffering, more exactly, an agent; still more specifically, a guilty agent who is susceptible to suffering in short, some living thing upon which he can, on some pretext or other, vent his affects, actually or in effigy . . . . This ... constitutes the actual physiological cause of ressentiment, vengefulness, and the like: a desire to deaden pain by means of affects, . . . to deaden, by means of a more violent emotion of any kind, a tormenting, secret pain that is becoming unendurable, and to drive it out of consciousness at least for the moment: for that one requires an affect, as savage an affect as possible, and, in order to excite that, any pretext at all. Ressentiment in this context is a triple achievement: it produces an affect (rage, righteousness) that overwhelms the hurt; it produces a culprit responsible for the hurt; and it produces a site of revenge to displace the hurt (a place to inflict hurt as the sufferer has been hurt). Together these operations both ameliorate (in Nietzsche's term, "anaesthetize") and externalize what is otherwise "unendurable." In a culture already streaked with the pathos of ressentiment for the reasons just discussed, there are several distinctive characteristics of late modern postindustrial societies that accelerate and expand the conditions of its production. My listing will necessarily be highly schematic: First, the phenomenon William Connolly names "increased global contingency", combines with the expanding pervasiveness and complexity of domination by capital and bureaucratic state and social networks to create an unparalleled individual powerlessness over the fate and direction of one's own life, intensifying the experiences of impotence, dependence, and gratitude inherent in liberal capitalist orders and constitutive of ressentiment.24 Second, the steady desacralization of all regions of life -- what Weber called disenchantment, what Nietzsche called the death of god would seem to add yet another reversal to Nietzsche's genealogy of ressenti;nent as perpetually available to "alternation of direction." In Nietzsche's account, the ascetic priest deployed notions of "guilt, sin, sinfulness, depravity, damnation" to "direct the ressentiment of the less severely afflicted sternly back upon themselves . . . and in this way exploit[ed] the bad instincts of all sufferers for the purpose of selfdiscipline, selfsurveillance, and selfovercoming. "25 However, the desacralizing tendencies of late modernity undermine the efficacy of this deployment and turn suffering's need for exculpation back toward a site of external agency.26 Third, the increased fragmentation, if not disintegration, of all forms of association not organized until recently by the commodities marketcommunities, churches, familiesand the ubiquitousness of the classificatory, individuating schemes of disciplinary society, combine to produce an utterly unrelieved individual, one without insulation from the inevitable failure entailed in liberalism's individualistic construction27 In short, the characteristics of late modern secular society, in which individuals are buffeted and controlled by global configurations of disciplinary and capitalist power of extraordinary proportions, and are at the same time nakedly individuated, stripped of reprieve from relentless exposure and accountability for themselves, together add up to an incitement to ressentiment that might have stunned even the finest philosopher of its occasions and logics Starkly accountable yet dramatically impotent, the late modern liberal subject quite literally seethes with ressentiment. Enter politicized identity, now conceivable in part as both product of and reaction to this condition, where "reaction" acquires the meaning Nietzsche ascribed to it: namely, an effect of domination that reiterates impotence, a substitute for action, for power, for selfaffirmation that reinscribes incapacity, powerlessness, and rejection. For Nietzsche, ressentiment itself is rooted in reaction -- the substitution of reasons, norms, and ethics for deeds -- and he suggests that not only moral systems but identities themselves take their bearings in this reaction. As Tracy Strong reads this element of Nietzsche's thought: Identity ... does not consist of an active component, but is reaction to something outside; action in itself; with its inevitable self-assertive qualities, must then become something evil, since it is identified with that against which one is reacting. The will to power of slave morality must constantly reassert that which gives definition to the slave: the pain he suffers by being in the world. Hence any attempt to escape that pain will merely result in the reaffirmation of painful structures. If the "cause" of ressentitnent is suffering, its "creative deed" is the reworking of this pain into a negative form of action, the "imaginary revenge" of what Nietzsche terms "natures denied the true reaction, that of deeds."29 This revenge is achieved through the imposition of suffering "on whatever does not feel wrath and displeasure as he does"30 (accomplished especially through the production of guilt), through the establishment of suffering as the measure of social virtue, and through casting strength and good fortune ("privilege," as we say today) as self-recriminating, as its own indictment in a culture of suffering: "it is disgraceful to be fortunate, there is too much misery."31 But in its attempt to displace its suffering, identity structured by ressentiment at the same time becomes invested in its own subjection. This investment lies not only in its discovery of a site of blame for its hurt will, not only in its acquisition of recognition through its history of subjection (a recognition

predicated on injury, now righteously revalued), but also in the satisfactions of revenge, which ceaselessly reenact even as they redistribute the injuries of marginalization and subordination in a liberal discursive order that alternately denies the very possibility of these things and blames those who experience them for their own condition. Identity politics structured by ressentiment reverse without subverting this blaming structure: they do not subject to critique the sovereign subject of accountability that liberal individualism presupposes, nor the economy of inclusion and exclusion that liberal universalism establishes. Thus, politicized identity that presents itself as a selfaffirmation now appears as the opposite, as predicated on and requiring its sustained rejection by a "hostile external world."32

AT Perm

Acording to some people I've talked to, perm just isin't that much of a problem for Nietzsche K. The basic general arg is that the aff can't perm because the perm does something, that means there is no perm.

They can't engage in a revaluation of all values because they already presuppose the 1AC.

Nietzsche '5 *The Anti-Christ, Ecce Homo, Twilight of the Idols, and Other Writings* p 11 Edited by Aaron Ridley and Judith Norman. Translated by Judith Norman

Let us not underestimate the fact that we ourselves, we free spirits, already constitute a 'revaluation of all values', a living declaration of war on and victory over all old concepts of 'true' and 'untrue' . The most valuable insights are the last to be discovered; but methods are the most valuable insights. All the methods, all the presuppositions of our present scientific spirit have been regarded with the greatest contempt for thousands of years, they barred certain people from the company of 'decent' men, - these people were considered 'enemies of God', despisers of the truth, or 'possessed'. As scientific characters, they were Chandala . . . 7 We have had the whole pathos of humanity against us - its idea of what truth should be, of what serving the truth should entail: so far, every 'thou shalt' has been directed against us . . . Our objectives, our practices, our silent, cautious, distrustful nature - all of this seemed totally unworthy and despicable. - In the end, and in all fairness, people should ask themselves whether it was not really an aesthetic taste that kept humanity in the dark for so long: people demanded a picturesque effect from the truth, they demanded that the knower make a striking impression on their senses. Our modesty is what offended their taste for the longest time . . . And didn't they know it, these strutting turkey-cocks of God - -

Terror DA

Uniqueness

Terror risk is high- maintaining current surveillance is key

Inserra, 6-8-2015

David Inserra is a Research Associate for Homeland Security and Cyber Security in the Douglas and Sarah Allison Center for Foreign and National Security Policy of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation, 6-8-2015, "69th Islamist Terrorist Plot: Ongoing Spike in Terrorism Should Force Congress to Finally Confront the Terrorist Threat," Heritage Foundation, http://www.heritage.org/research/reports/2015/06/69th-islamist-terrorist-plot-ongoing-spike-in-terrorism-should-force-congress-to-finally-confront-the-terrorist-threat

On June 2 in Boston, Usaamah Abdullah Rahim drew a knife and attacked police officers and FBI agents, who then shot and killed him. Rahim was being watched by Boston's Joint Terrorism Task Force as he had been plotting to behead police officers as part of violent jihad. A conspirator, David Wright or Dawud Sharif Abdul Khaliq, was arrested shortly thereafter for helping Rahim to plan this attack. This plot marks the 69th publicly known Islamist terrorist plot or attack against the U.S. homeland since 9/11, and is part of a recent spike in terrorist activity. The U.S. must redouble its efforts to stop terrorists before they strike, through the use of properly applied intelligence tools. The Plot According to the criminal complaint filed against Wright, Rahim had originally planned to behead an individual outside the state of Massachusetts,[1] which, according to news reports citing anonymous government officials, was Pamela Geller, the organizer of the "draw Mohammed" cartoon contest in Garland, Texas.[2] To this end, Rahim had purchased multiple knives, each over 1 foot long, from Amazon.com. The FBI was listening in on the calls between Rahim and Wright and recorded multiple conversations regarding how these weapons would be used to behead someone. Rahim then changed his plan early on the morning of June 2. He planned to go "on vacation right here in Massachusetts…. I'm just going to, ah, go after them, those boys in blue. Cause, ah, it's the easiest target."[3] Rahim and Wright had used the phrase "going on vacation" repeatedly in their conversations as a euphemism for violent jihad. During this conversation, Rahim told Wright that he planned to attack a police officer on June 2 or June 3. Wright then offered advice on preparing a will and destroying any incriminating evidence. Based on this threat, Boston police officers and FBI agents approached Rahim to question him, which prompted him to pull out one of his knives. After being told to drop his weapon, Rahim responded with "you drop yours" and moved toward the officers, who then shot and killed him. While Rahim's brother, Ibrahim, initially claimed that Rahim was shot in the back, video surveillance was shown to community leaders and civil rights groups, who have confirmed that Rahim was not shot in the back.[4] Terrorism Not Going Away This 69th Islamist plot is also the seventh in this calendar year. Details on how exactly Rahim was radicalized are still forthcoming, but according to anonymous officials, online propaganda from ISIS and other radical Islamist groups are the source.[5] That would make this attack the 58th homegrown terrorist plot and continue the recent trend of ISIS playing an important role in radicalizing individuals in the United States. It is also the sixth plot or attack targeting law enforcement in the U.S., with a recent uptick in plots aimed at police. While the debate over the PATRIOT Act and the USA FREEDOM Act is taking a break, the terrorists are not. The result of the debate has been the reduction of U.S. intelligence and counterterrorism capabilities, meaning that the U.S. has to do even more with less when it comes to connecting the dots on terrorist plots.[6] Other legitimate intelligence tools and capabilities must be leaned on now even more. Protecting the Homeland To keep the U.S. safe, Congress must take a hard look at the U.S. counterterrorism enterprise and determine other measures that are needed to improve it. Congress should: Emphasize community outreach. Federal grant funds should be used to create robust community-outreach capabilities in higher-risk urban areas. These funds must not be used for political pork, or so broadly that they no longer target those communities at greatest risk. Such capabilities are key to building trust within these communities, and if the United States is to thwart lone-wolf terrorist attacks, it must place effective community outreach operations at the tip of the spear. Prioritize local cyber capabilities. Building cyber-investigation capabilities in the higher-risk urban areas must become a primary focus of Department of Homeland Security grants. With so much terrorism-related activity occurring on the Internet, local law enforcement must have the constitutional ability to monitor and track violent extremist activity on the Web when reasonable suspicion exists to do so. Push the FBI toward being more effectively driven by intelligence. While the FBI has made high-level changes to its mission and organizational structure, the bureau is still working on integrating intelligence and law enforcement activities. Full integration will require overcoming inter-agency cultural barriers and providing FBI intelligence personnel with resources, opportunities, and the stature they need to become a more effective and integral part of the FBI. Maintain essential counterterrorism tools. Support for important investigative tools is essential to maintaining the security of the U.S. and combating terrorist threats. Legitimate government surveillance programs are also a vital component of U.S. national security and should be allowed to continue. The need for effective counterterrorism operations does not relieve the government of its obligation to follow the law and respect individual privacy and liberty. In the American system, the government must do both equally well. Clear-Eyed Vigilance The recent spike in terrorist plots and attacks should finally awaken policymakers—all Americans, for that matter—to the seriousness of the terrorist threat. Neither fearmongering nor willful blindness serves the United States. Congress must recognize and acknowledge the nature and the scope of the Islamist terrorist threat, and take the appropriate action to confront it.

Surveillance is critical to stopping terror threats

Lewis 14 [James Andrew Lewis, Director and Senior Fellow of the Technology and Public Policy Program at the CSIS, December 2014, "Underestimating Risk in the Surveillance Debate", Center for Strategic and International Studies, http://csis.org/files/publication/141209_Lewis_UnderestimatingRisk_Web.pdf pg 10-11 jf]

Assertions that a collection program contributes nothing because it has not singlehandedly prevented an attack reflect an ill-informed understanding of how the United States conducts collection and analysis to prevent harmful acts against itself and its allies. Intelligence does not work as it is portrayed in films—solitary agents do not make startling discoveries that lead to dramatic, last-minute success (nor is technology consistently infallible). Intelligence is a team sport. Perfect knowledge does not exist and success is the product of the efforts of teams of dedicated individuals from many agencies, using many tools and techniques, working together to assemble fragments of data from many sources into a coherent picture. Analysts assemble this mosaic from many different sources and based on experience and intuition. Luck is still more important than anyone would like and the alternative to luck is acquiring more information. This ability to blend different sources of intelligence has improved U.S. intelligence capabilities and gives us an advantage over some opponents. Portrayals of spying in popular culture focus on a central narrative, essential for storytelling but deeply misleading. In practice, there can be many possible narratives that analysts must explore simultaneously. An analyst might decide, for example, to see if there is additional confirming information that points to which explanation deserves further investigation. Often, the contribution from collection programs comes not from what they tell us, but what they let us reject as false. In the case of the 215 program, its utility was in being able to provide information that allowed analysts to rule out some theories and suspects. This allows analysts to focus on other, more likely, scenarios. In one instance, an attack is detected and stopped before it could be executed. U.S. forces operating in Iraq discover a bomb-making factory. Biometric data found in this factory is correlated with data from other bombings to provide partial identification for several individuals who may be bomb-makers, none of whom are present in Iraq. In looking for these individuals, the United States receives information from another intelligence service that one of the bombers might be living in a neighboring Middle Eastern country. Using communications intercepts, the United States determines that the individual is working on a powerful new weapon. The United States is able to combine the communications intercept from the known bomb maker with information from other sources—battlefield data, information obtained by U.S. agents, collateral information from other nations' intelligence services—and use this to identify others in the bomber's network, understand the plans for bombing, and identify the bomber's target, a major city in the United States. This effort takes place over months and involves multiple intelligence, law enforcement, and military agencies, with more than a dozen individuals from these agencies collaborating to build up a picture of the bomb-maker and his planned attack. When the bomb-maker leaves the Middle East to carry out his attack, he is prevented from entering the United States. An analogy for how this works would be to take a 1,000-piece jigsaw puzzle, randomly select 200 pieces, and provide them to a team of analysts who, using incomplete data, must guess what the entire picture looks like. The likelihood of their success is determined by how much information they receive, how much time they have, and by experience and luck. Their guess can be tested by using a range of collection programs, including communications surveillance programs like the 215 metadata program. What is left out of this picture (and from most fictional portrayals of intelligence analysis) is the number of false leads the analysts must pursue, the number of dead ends they must walk down, and the tools they use to decide that something is a false lead or dead end. Police officers are familiar with how many leads in an investigation must be eliminated through legwork and query before an accurate picture emerges. Most leads are wrong, and much of the work is a process of elimination that eventually focuses in on the most probable threat. If real intelligence work were a film, it would be mostly boring. Where the metadata program contributes is in eliminating possible leads and suspects. This makes the critique of the 215 program like a critique of airbags in a car—you own a car for years, the airbags never deploy, so therefore they are useless and can be removed. The weakness in this argument is that discarding airbags would increase risk. How much risk would increase and whether other considerations outweigh this increased risk are fundamental problems for assessing surveillance programs. With the Section 215 program, Americans gave up a portion of their privacy in

exchange for decreased risk. Eliminating 215 collection is like subtracting a few of the random pieces of the jigsaw puzzle. It decreases the chances that the analysts will be able to deduce what is actually going on and may increase the time it takes to do this. That means there is an increase in the risk of a successful attack. How much of an increase in risk is difficult to determine.

Terrorists will use bioweapons- guarantees extinction

Cooper 13

(Joshua, 1/23/13, University of South Carolina, "Bioterrorism and the Fermi Paradox," http://people.math.sc.edu/cooper/fermi.pdf, 7/15/15, SM)

We may conclude that, when a civilization reaches its space-faring age, it∂ will more or less at the same moment (1) contain many individuals who seek to cause large-scale destruction, and (2) acquire the capacity to tinker with its own genetic chemistry. This is a perfect recipe for bioterrorism, and, given the many very natural pathways for its development and the overwhelming∂ evidence that precisely this course has been taken by humanity, it is hard to∂ see how bioterrorism does not provide a neat, if profoundly unsettling, solution∂ to Fermi's paradox. One might object that, if omnicidal **individuals** are∂ successful in releasing **highly virulent** and **deadly genetic malware** into the∂ wild, they are still unlikely to succeed in killing everyone. However, even if∂ every such mass death event results only in a high (i.e., not total) kill rate and∂ there is a large gap between each such event (so that individuals can build up∂ the requisite scientific infrastructure again**), extinction would be inevitable**∂ regardless. Some of the engineered bioweapons will be more successful than∂ others; the inter-apocalyptic eras will vary in length; and post-apocalyptic∂ environments may be so **war-torn, disease-stricken, and impoverished of genetic variation that they may culminate in true extinction events even if the initial cataclysm 'only' results in 90% death rates**, since they may cause the∂ effective population size to dip below the so-called "minimum viable population."∂ This author ran a Monte Carlo simulation using as (admittedly very∂ crude and poorly informed, though arguably conservative) estimates the following∂ Earth-like parameters: bioterrorism event mean death rate 50% and∂ standard deviation 25% (beta distribution), initial population 1010, minimum∂ viable population 4000, individual omnicidal act probability 10−7 per annum,∂ and population growth rate 2% per annum. One thousand trials yielded an∂ average post-space-age time until extinction of less than 8000 years. This is∂ essentially instantaneous on a cosmological scale, and varying the parameters∂ by quite a bit does nothing to make the survival period comparable with the∂ age of the universe.

Links

Mass surveillance has thwarted many attacks – more transparency of the programs makes attacks very likely

Nakashima 13 [Ellen Nakashima, national security reporter for The Washington Post. She focuses on issues relating to intelligence, technology and civil liberties. "Officials: Surveillance programs foiled more than 50 terrorist plots", https://www.washingtonpost.com/world/national-security/officials-surveillance-programs-foiled-more-than-50-terrorist-plots/2013/06/18/d657cb56-d83e-11e2-9df4-895344c13c30_story.html, June 18th, 2013//Rahul]

The U.S. government's sweeping surveillance programs have disrupted more than 50 terrorist plots in the United States and abroad, including a plan to bomb the New York Stock Exchange, senior government officials testified Tuesday. The officials, appearing before a largely friendly House committee, defended the collection of telephone and Internet data by the National Security Agency as central to protecting the United States and its allies against terrorist attacks. And they said that recent disclosures about the surveillance operations have caused serious damage. "We are now faced with a situation that, because this information has been made public, we run the risk of losing these collection capabilities," said Robert S. Litt, general counsel of the Office of the Director of National Intelligence. "We're not going to know for many months whether these leaks

in fact have caused us to lose these capabilities, but if they do have that effect, there is no doubt that they will cause our national security to be affected." The hearing before the House Intelligence Committee was the third congressional session examining the leaks of classified material about two top-secret surveillance programs by Edward Snowden, 29, a former NSA contractor and onetime CIA employee. Articles based on the material in The Washington Post and Britain's Guardian newspaper have raised concerns about intrusions on civil liberties and forced the Obama administration to mount an aggressive defense of the effectiveness and privacy protections of the operations. Gen. Keith B. Alexander, the head of the NSA, told the committee that the programs had helped prevent "potential terrorist events over 50 times since 9/11." He said at least 10 of the disrupted plots involved terrorism suspects or targets in the United States. Alexander said officials do not plan to release additional information publicly, to avoid revealing sources and methods of operation, but he said the House and Senate intelligence committees will receive classified details of the thwarted plots. Newly revealed plots In testimony last week, Alexander said the surveillance programs had helped prevent an attack on the subway system in New York City and the bombing of a Danish newspaper. Sean Joyce, deputy director of the FBI, described two additional plots Tuesday that he said were stopped through the surveillance — a plan by a Kansas City, Mo., man to bomb the New York Stock Exchange and efforts by a San Diego man to send money to terrorists in Somalia. The officials said repeatedly that the operations were authorized by Congress and subject to oversight through internal mechanisms and the Foreign Intelligence Surveillance Court, whose proceedings are secret. Alexander said that more than 90 percent of the information on the foiled plots came from a program targeting the communications of foreigners, known as PRISM. The program was authorized under Section 702 of a 2008 law that amended the Foreign Intelligence Surveillance Act (FISA). The law authorizes the NSA to collect e-mails and other Internet communications to and from foreign targets overseas who are thought to be involved in terrorism or nuclear proliferation or who might provide critical foreign intelligence. No American in the country or abroad can be targeted without a warrant, and no person inside the United States can be targeted without a warrant. A second program collects all call records from U.S. phone companies. It is authorized under Section 215 of the USA Patriot Act. The records do not include the content of calls, location data, or a subscriber's name or address. That law, passed in 2001 and renewed twice since then, also amended FISA. Snowden, a high school dropout who worked at an NSA operations center in Hawaii for 15 months as a contractor, released highly classified information on both programs, claiming they represent government overreach. He has been in hiding since publicly acknowledging on June 9 that he leaked the material. Several lawmakers pressed for answers on how Snowden, a low-level systems administrator, could have had access to highly classified material such as a court order for phone records. "We need to seal this crack in the system," said Rep. C.A. Dutch Ruppersberger (Md.), the ranking Democrat on the intelligence panel. Alexander said he is working with intelligence officials to come up with a "two-person" rule to ensure that the agency can block unauthorized people from removing information from the system. But Alexander and the other witnesses focused more heavily on justifying the programs and arguing that they operate under legal guidelines. "As Americans, we value our privacy and our civil liberties," Alexander said. "As Americans, we also value our security and our safety. In the 12 years since the attacks on September 11th, we have lived in relative safety and security as a nation. That security is a direct result of the intelligence community's quiet efforts to better connect the dots and learn from the mistakes that permitted those attacks to occur on 9/11."

Bulk surveillance is crucial to detect and act on threats – many examples prove

Hines 13 [Pierre Hines is a defense council member of the Truman National Security Project, "Here's how metadata on billions of phone calls predicts terrorist attacks" http://qz.com/95719/heres-how-metadata-on-billions-of-phone-calls-predicts-terrorist-attacks, June 19th, 2013//Rahul]

Yesterday, when NSA Director General Keith Alexander testified before the House Committee on Intelligence, he declared that the NSA's surveillance programs have provided "critical leads to help prevent over 50 potential terrorist events." FBI Deputy Director Sean Boyce elaborated by describing four instances when the NSA's surveillance programs have had an impact: (1) when an intercepted email from a terrorist in Pakistan led to foiling a plan to bomb of the New York subway system; (2) when NSA's programs helped prevent a plot to bomb the New York Stock Exchange; (3) when intelligence led to the arrest of a U.S. citizen who planned to bomb the Danish Newspaper office that published cartoon depictions of the Prophet Muhammad; and (4) when the NSA's programs triggered reopening the 9/11 investigation. So what are the practical applications of internet and phone records gathered from two NSA programs? And how can "metadata" actually prevent terrorist attacks? Metadata does not give the NSA and intelligence community access to the content of internet and phone communications. Instead, metadata

is more like the transactional information cell phone customers would normally see on their billing statements—metadata can indicate when a call, email, or online chat began and how long the communication lasted. Section 215 of the Patriot Act provides the legal authority to obtain "business records" from phone companies. Meanwhile, the NSA uses Section 702 of the Foreign Intelligence Surveillance Act to authorize its PRISM program. According the figures provided by Gen. Alexander, intelligence gathered based on Section 702 authority contributed in over 90% of the 50 cases. One of major benefits of metadata is that it provides hindsight—it gives intelligence analysts a retrospective view of a sequence of events. As Deputy Director Boyce discussed, the ability to analyze previous communications allowed the FBI to reopen the 9/11 investigation and determine who was linked to that attack. It is important to recognize that terrorist attacks are not orchestrated overnight; they take months or years to plan. Therefore, if the intelligence community only catches wind of an attack halfway into the terrorists' planning cycle, or even after a terrorist attack has taken place, metadata might be the only source of information that captures the sequence of events leading up to an attack. Once a terrorist suspect has been identified or once an attack has taken place, intelligence analysts can use powerful software to sift through metadata to determine which numbers, IP addresses, or individuals are associated with the suspect. Moreover, phone numbers and IP addresses sometimes serve as a proxy for the general location of where the planning has taken place. This ability to narrow down the location of terrorists can help determine whether the intelligence community is dealing with a domestic or international threat. Even more useful than hindsight is a crystal ball that gives the intelligence community a look into the future. Simply knowing how many individuals are in a chat room, how many individuals have contacted a particular phone user, or how many individuals are on an email chain could serve as an indicator of how many terrorists are involved in a plot. Furthermore, knowing when a suspect communicates can help identify his patterns of behavior. For instance, metadata can help establish whether a suspect communicates sporadically or on a set pattern (e.g., making a call every Saturday at 2 p.m.). Any deviation from that pattern could indicate that the plan changed at a certain point; any phone number or email address used consistently and then not at all could indicate that a suspect has stopped communicating with an associate. Additionally, a rapid increase in communication could indicate that an attack is about to happen. Metadata can provide all of this information without ever exposing the content of a phone call or email. If the metadata reveals the suspect is engaged in terrorist activities, then obtaining a warrant would allow intelligence officials to actually monitor the content of the suspect's communication. In Gen. Alexander's words, "These programs have protected our country and allies . . . [t]hese programs have been approved by the administration, Congress, and the courts." Now, Americans will have to decide whether they agree.

Surveillance is necessary and has very little negative consequences on civil liberty

Boot 13 [Max Boot, Max Boot is an American author, consultant, editorialist, lecturer, and military historian, "Stay calm and let the NSA carry on", http://articles.latimes.com/2013/jun/09/opinion/la-oe-boot-nsa-surveillance-20130609, June 9th, 2015//Rahul]

After 9/11, there was a widespread expectation of many more terrorist attacks on the United States. So far that hasn't happened. We haven't escaped entirely unscathed (see Boston Marathon, bombing of), but on the whole we have been a lot safer than most security experts, including me, expected. In light of the current controversy over the National Security Agency's monitoring of telephone calls and emails, it is worthwhile to ask: Why is that? It is certainly not due to any change of heart among our enemies. Radical Islamists still want to kill American infidels. But the vast majority of the time, they fail. The Heritage Foundation estimated last year that 50 terrorist attacks on the American homeland had been foiled since 2001. Some, admittedly, failed through sheer incompetence on the part of the would-be terrorists. For instance, Faisal Shahzad, a Pakistani American jihadist, planted a car bomb in Times Square in 2010 that started smoking before exploding, thereby alerting two New Yorkers who in turn called police, who were able to defuse it. But it would be naive to adduce all of our security success to pure serendipity. Surely more attacks would have succeeded absent the ramped-up counter-terrorism efforts undertaken by the U.S. intelligence community, the military and law enforcement. And a large element of the intelligence community's success lies in its use of special intelligence — that is, communications intercepts. The CIA is notoriously deficient in human intelligence — infiltrating spies into terrorist organizations is hard to do, especially when we have so few spooks who speak Urdu,

Arabic, Persian and other relevant languages. But the NSA is the best in the world at intercepting communications. That is the most important technical advantage we have in the battle against fanatical foes who will not hesitate to sacrifice their lives to take ours. Which brings us to the current kerfuffle over two NSA monitoring programs that have been exposed by the Guardian and the Washington Post. One program apparently collects metadata on all telephone calls made in the United States. Another program provides access to all the emails, videos and other data found on the servers of major Internet firms such as Google, Apple and Microsoft. At first blush these intelligence-gathering activities raise the specter of Big Brother snooping on ordinary American citizens who might be cheating on their spouses or bad-mouthing the president. In fact, there are considerable safeguards built into both programs to ensure that doesn't happen. The phone-monitoring program does not allow the NSA to listen in on conversations without a court order. All that it can do is to collect information on the time, date and destination of phone calls. It should go without saying that it would be pretty useful to know if someone in the U.S. is calling a number in Pakistan or Yemen that is used by a terrorist organizer. As for the Internet-monitoring program, reportedly known as PRISM, it is apparently limited to "non-U.S. persons" who are abroad and thereby enjoy no constitutional protections. These are hardly rogue operations. Both programs were initiated by President George W. Bush and continued by President Obama with the full knowledge and support of Congress and continuing oversight from the federal judiciary. That's why the leaders of both the House and Senate intelligence committees, Republicans and Democrats alike, have come to the defense of these activities. It's possible that, like all government programs, these could be abused — see, for example, the IRS making life tough on tea partiers. But there is no evidence of abuse so far and plenty of evidence — in the lack of successful terrorist attacks — **that these programs have been effective in disrupting terrorist plots.** Granted there is something inherently creepy about Uncle Sam scooping up so much information about us. But Google, Facebook, Amazon, Twitter, Citibank and other companies know at least as much about us, because they use very similar data-mining programs to track our online movements. They gather that information in order to sell us products, and no one seems to be overly alarmed. The NSA is gathering that information to keep us safe from terrorist attackers. Yet somehow its actions have become a "scandal," to use a term now loosely being tossed around. The real scandal here is that the Guardian and Washington Post are compromising our national security by telling our enemies about our intelligence-gathering capabilities. Their news stories reveal, for example, that only nine Internet companies share information with the NSA. This is a virtual invitation to terrorists to use other Internet outlets for searches, email, apps and all the rest. No intelligence effort can ever keep us 100% safe, but to stop or scale back the NSA's special intelligence efforts would amount to unilateral disarmament in a war against terrorism that is far from over.

Unwarranted domestic surveillance is the most significant anti-terror tool available- allows us to infiltrate terror groups and prevent weapons proliferation- has solved 53 of 54 suppressed terror attacks in recent years

Clarke et al 2013 [Report and Recommendations of the President's Review Group on Intelligence and Surveillance Technologies, "Liberty and Security in a Changing World", https://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf, Accessed 7/3/15, AX]

According to NSA, section 702 "is the most significant tool in NSA collection arsenal for the detection, identification, and disruption of terrorist threats to the US and around the world." To cite just one example, collection under section 702 "was critical to the discovery and disruption" of a planned bomb attack in 2009 against the New York City subway system and led to the arrest and conviction of Najibullah Zazi and several of his co-conspirators. According to the Department of Justice and the Office of the Director of National Intelligence in a 2012 report to Congress: Section 702 enables the Government to collect information effectively and efficiently about foreign targets overseas and in a manner that protects the privacy and civil liberties of Americans. Through rigorous oversight, the Government is able to evaluate whether changes are needed to the procedures or guidelines, and what other steps may be appropriate to safeguard the privacy of personal information. In addition, the Department of Justice provides the joint assessments and other reports to the FISC. The FISC has been actively involved in the review of section 702 collection. Together, all of these mechanisms ensure thorough and continuous oversight of section 702 activities. . . . Section 702 is vital

to keeping the nation safe. It provides information about the plans and identities of terrorists allowing us to glimpse inside terrorist organizations and obtain information about how those groups function and receive support. In addition, it lets us collect information about the intentions and capabilities of weapons proliferators and other foreign adversaries who threaten the United States. In reauthorizing section 702 for an additional five years in 2012, the Senate Select Committee on Intelligence concluded: [T]he authorities provided [under section 702] have greatly increased the government's ability to collect information and act quickly against important foreign intelligence targets. The Committee has also found that [section 702] has been implemented with attention to protecting the privacy and civil liberties of US persons, and has been the subject of extensive oversight by the Executive branch, the FISC, as well as the Congress. . . . [The] failure to reauthorize [section 702] would "result in a loss of significant intelligence and impede the ability of the Intelligence Community to respond quickly to new threats and intelligence opportunities."147Our own review is not inconsistent with this assessment. During the course of our analysis, NSA shared with the Review Group the details of 54 counterterrorism investigations since 2007 that resulted in the prevention of terrorist attacks in diverse nations and the United States. In all but one of these cases, information obtained under section 702 contributed in some degree to the success of the investigation. Although it is difficult to assess precisely how many of these investigations would have turned out differently without the information learned through section 702, we are persuaded that section 702 does in fact play an important role in the nation's effort to prevent terrorist attacks across the globe.

Meta-data has stopped terror attacks

Schwartz 15 [Mattathias Schwartz, 1-26-2015, staff writer for the New Yorker and won the 2011 Livingston Award for international reporting "How to Catch a Terrorist," New Yorker, http://www.newyorker.com/magazine/2015/01/26/whole-haystack jf]

The N.S.A. asserts that it **uses the metadata to learn whether anyone inside the U.S. is in contact with high-priority terrorism suspects**, colloquially referred to as "known bad guys." Michael Hayden, **the former C.I.A. and N.S.A. director, has said, "We kill people based on metadata."** He then added, "But that's not what we do with *this* metadata," referring to Section 215.

Soon after Snowden's revelations, Alexander said that the **N.S.A.'s surveillance programs have stopped "fifty-four different terrorist-related activities." Most of these were "terrorist plots."** Thirteen involved the United States. **Credit for foiling these plots**, he continued, was partly due to the **metadata program, intended to "find the terrorist that walks among us."**

President Obama also quantified the benefits of the metadata program. That June, in a press conference with Angela Merkel, the German Chancellor, **Obama said, "We know of at least fifty threats that have been averted because of this information." He continued, "Lives have been saved."**

Even if terror is unlikely meta-data surveillance is worth it

Lake 2014 [Eli Lake, 2-17-2014, senior national-security correspondent for the Daily Beast, "Spy Chief: We Should've Told You We Track Your Calls," Daily Beast, http://www.thedailybeast.com/articles/2014/02/17/spy-chief-we-should-ve-told-you-we-track-your-calls.html jf]

Clapper still defends the 215 program, too. **The storage of the phone records allows NSA analysts to connect phone numbers of suspected terrorists overseas to a possible network inside the United States.** Other U.S. intelligence officials say its real value is that **it saves work** for the FBI and the NSA **in tracking down potential leads by ruling out suspicious numbers quickly.**

In the interview **Clapper said the 215 program was not a violation the rights of Americans.** "For me it was not some massive assault on civil liberties and privacy because of what we actually do and the safeguards that are put on this," he said. "**To guard against perhaps these days low probability but a very (high) impact thing if it happens**." Clapper compared the 215 program to fire insurance. "**I buy fire insurance** ever since I retired, the wife and I bought a house out here and we buy fire insurance every year. **Never had a fire. But I am not gonna quit buying my fire insurance**, same kind of thing."

Meta Data is key to damage control after terrorist attacks

Lewis 14 [James Andrew Lewis, Director and Senior Fellow of the Technology and Public Policy Program at the CSIS, December 2014, "Underestimating Risk in the Surveillance Debate", Center for Strategic and International Studies, http://csis.org/files/publication/141209_Lewis_UnderestimatingRisk_Web.pdf pg 9 jf]

The most controversial aspect of the surveillance program involved metadata. Metadata is information describing a telephone call, such as the number from which the call was placed, the number called, and the date, time, and length of the call. The content of the phone call (e.g., the conversation) is not collected. No locational data is collected, although commentators seem confused on this point. **Metadata analysis gave NSA the ability to identify individuals in the United States** or individuals outside the United States **who are in contact with terrorist groups.**10 In 2012, NSA looked at 288 primary telephone numbers and through "call chaining" analysis reviewed 6,000 other numbers connected to these primary numbers. The 288 people had some connection to terrorism and NSA looked at the 6,000 people with whom they talked to see if they were also involved. Metadata acquired and retained under Section 215 of the Patriot Act program could only be queried when there is "reasonable articulable suspicion" that a telephone number is associated with foreign terrorist organizations. If a query merits further investigation, which requires looking at either content of the individual unmaking the call, this requires a specific, individual court order based on probable cause. If there is one constitutional requirement that was not fully observed in the metadata program authorized under the Patriot Act, it was that search requires a warrant from a court rather than an internal approval by the executive branch

agency itself.11 This was a significant error. **The 215 program allows law enforcement and intelligence officials to determine if a terrorist event is an isolated incident or the first of a serious of attacks, and whether the attacker is a "lone wolf" or connected to a larger terrorist organization. The most important decision in the immediate aftermath of an attack is whether the incident is the first of a series. If it is** the first of a series of attacks, **additional steps must be taken without delay**, such as closing airports and other transportation hubs, putting police forces around the country on high alert, and mobilizing law enforcement agencies to locate and arrest the other attackers. **These steps are both disruptive and expensive and knowing that they are not necessary provides immediate benefit.**

Econ Impacts

A terrorist attack would crush the economy

Bandyopadhyay et al 15 -- Subhayu Bandyopadhyay is Research Officer at the Federal Reserve Bank of St. Louis and Research Fellow at IZA, Bonn, Germany. Todd Sandler is Vibhooti Shukla Professor of Economics and Political Economy at the University of Texas at Dallas. Javed Younasis Associate Professor of Economics at the American University of Sharjah, United Arab Emirates. "The Toll of Terrorism" http://www.imf.org/external/pubs/ft/fandd/2015/06/bandyopa.htm

modified for ableist language

New technology has lowered transportation costs and increased trade and capital flows across nations. But the same technology that has fostered international economic growth has also allowed terrorism to spread easily among countries whose interests are tightly interwoven. Terrorism is no longer solely a local issue. Terrorists can strike from thousands of miles away and cause vast destruction. The effects of terrorism can be terrifyingly direct. People are kidnapped or killed. Pipelines are sabotaged. Bombers strike markets, buses, and restaurants with devastating effect. But terrorism inflicts more than human casualties and material losses. It can also cause serious indirect harm to countries and economies by increasing the costs of economic transactions—for example, because of enhanced security measures to ensure the safety of employees and customers or higher insurance premiums. Terrorist attacks in Yemen on the USS Cole in 2000 and on the French tanker Limburg in 2002 seriously damaged that country's shipping industry. These attacks contributed to a 300 percent rise in insurance premiums for ships using that route and led ships to bypass Yemen entirely (Enders and Sandler, 2012). In this article we explore the economic burden of terrorism. It can take myriad forms, but we focus on three: national income losses and growth-[slowing]~~retarding~~ effects, dampened foreign direct investment, and disparate effects on international trade.

Terrorism will destroy the US econ along with those of other countries

(Dan Weil, 7-16-2015, "Celente: Terrorist Attack Would Crash World Economy," Newsmax, http://www.newsmax.com/Finance/StreetTalk/terrorist-gold-silver-HomelandSecurity/2011/07/07/id/402861)
Another terrorist attack would create a global economic disaster, says economic and political guru Gerald Celente, director of The Trends Research Institute. The wise investment strategy in such a scenario would be to buy silver and gold while selling currencies, he tells King World News. "What will another major terror strike mean should an attack hit one of the major NATO nations?" Celente says. "The effects this time will go global. Bank holidays will be called, the U.S. and other fragile economies will crumble, gold and silver will soar, and already troubled currencies will crash. Economic martial law will be declared, promised as a temporary measure. Once in place it will remain in place." And don't expect your ATM card to be of much use. "With banks closed and economic martial law in place, restrictions will be set on the amounts, times and frequencies of withdrawals (of cash). It will be essential to have a stash of cash on hand," Celente says.

Multiple shocks on econ after terror attacks—foreign direct investment, infrastructure, trade

Sandler and Ender 10

(Todd Sandler, Professor of International Relations and Economics at the University of Southern California, Walter Enders, Bidgood Chair of Economics and Finance at the University of Alabama, July 2010, http://www.utdallas.edu/~tms063000/website/Econ_Consequences_ms.pdf)

Terrorism can impose costs on a targeted country through a number of avenues. Terrorist incidents have economic consequences by diverting foreign direct investment (FDI), destroying infrastructure, redirecting public investment funds to security, or limiting trade. If a developing country loses enough FDI, which is an important source of savings, then it may also experience reduced economic growth. Just as capital may take flight from a country plagued by a civil war (see Collier et al., 2003), a sufficiently intense terrorist campaign may greatly reduce capital inflows (Enders and Sandler, 1996). Terrorism, like civil conflicts, may cause spillover costs 2 among neighboring countries as a terrorist campaign in a neighbor dissuades capital inflows, or a regional multiplier causes lost economic activity in the terrorism-ridden country to resonate throughout the region.1 In some instances, terrorism may impact specific industries as 9/11 did on airlines and tourism (Drakos, 2004; Ito and Lee, 2004). Another cost is the expensive security measures that must be instituted following large attacks – e.g., the massive homeland security outlays since 9/11 (Enders and Sandler, 2006, Chapter 10). Terrorism also raises the costs of doing business in terms of higher insurance premiums, expensive security precautions, and larger salaries to at-risk employees.

Domestic terrorism deters foreign direct investment – even small attacks crush investor confidence

Bandyopadhyay et al 15 -- Subhayu Bandyopadhyay is Research Officer at the Federal Reserve Bank of St. Louis and Research Fellow at IZA, Bonn, Germany. Todd Sandler is Vibhooti Shukla Professor of Economics and Political Economy at the University of Texas at Dallas. Javed Younasis Associate Professor of Economics at the American University of Sharjah, United Arab Emirates. "The Toll of Terrorism" http://www.imf.org/external/pubs/ft/fandd/2015/06/bandyopa.htm

Scaring off investors Increased terrorism in a particular area tends to depress the expected return on capital invested there, which shifts investment elsewhere. This reduces the stock of productive capital and the flow of productivity-enhancing technology to the affected nation. For example, from the mid-1970s through 1991, terrorist incidents reduced net foreign direct investment in Spain by 13.5 percent and in Greece by 11.9 percent (Enders and Sandler, 1996). In fact, the initial loss of productive resources as a result of terrorism may increase manyfold because potential foreign investors shift their investments to other, presumably safer, destinations. Abadie and Gardeazabal (2008) showed that a relatively small increase in the perceived risk of terrorism can cause an outsized reduction in a country's net stock of foreign direct investment and inflict significant damage on its economy. We analyzed 78 developing economies over the period 1984–2008 (Bandyopadhyay, Sandler, and Younas, 2014) and found that on average **a relatively small increase** in a country's domestic terrorist incidents per 100,000 persons **sharply reduced** net foreign direct investment. There was a similarly large reduction in net investment if the terrorist incidents originated abroad or involved foreigners or foreign assets in the attacked country. We also found that greater official aid flows can substantially offset the damage to foreign direct investment—perhaps in part because the increased aid allows recipient nations to invest in more effective counterterrorism efforts. Most countries that experienced above-average domestic or transnational terrorist incidents during 1970–2011 received less foreign direct investment or foreign aid than the average among the 122 in the sample (see table). It is difficult to assess causation, but the table suggests a troubling association between terrorism and depressed aid and foreign direct investment, both of which are crucial for developing economies. It is generally believed that there are higher risks in trading with a nation afflicted by terrorism, which cause an increase in transaction costs and tend to reduce trade. For example, after the September 11 attacks on New York City and the Washington, D.C., area, the U.S. border was temporarily closed, holding up truck traffic between the United States and Canada for an extended time. Nitsch and Schumacher (2004) analyzed a

sample of 200 countries over the period 1960–93 and found that when terrorism incidents in a pair of trading countries double in one year, trade between them falls by about 4 percent that same year. They also found that when one of two trading partners suffers at least one terrorist attack, it reduces trade between them to 91 percent of what it would be in the absence of terrorism. Blomberg and Hess (2006) estimated that terrorism and other internal and external conflicts retard trade as much as a 30 percent tariff. More specifically, they found that any trading partner that experienced terrorism experienced close to a 4 percent reduction in bilateral trade. But Egger and Gassebner (2015) found more modest trade effects. Terrorism had few to no short-term effects; it was significant over the medium term, which they defined as "more than one and a half years after an attack/incident." Abstracting from the impact of transaction costs from terrorism, Bandyopadhyay and Sandler (2014b) found that terrorism may not necessarily reduce trade, because resources can be reallocated. If terrorism disproportionately harmed one productive resource (say land) relative to another (say labor), then resources would flow to the labor-intensive sector. If a country exported labor-intensive goods, such as textiles, terrorism could actually lead to increased production and exportation. In other words, although terrorism may reduce trade in a particular product because it increases transaction costs, its ultimate impact may be either to raise or reduce overall trade. These apparently contradictory empirical and theoretical findings present rich prospects for future study. Of course terrorism has repercussions beyond human and material destruction and the economic effects discussed in this article. Terrorism also influences immigration and immigration policy. The traditional gains and losses from the international movement of labor may be magnified by national security considerations rooted in a terrorism response. For example, a recent study by Bandyopadhyay and Sandler (2014a) focused on a terrorist organization based in a developing country. It showed that the immigration policy of the developed country targeted by the terrorist group can be critical to containing transnational terrorism. Transnational terrorism targeted at well-protected developed countries tends to be more skill intensive: it takes a relatively sophisticated terrorist to plan and successfully execute such an attack. Immigration policies that attract highly skilled people to developed countries can drain the pool of highly skilled terrorist recruits and may cut down on transnational terrorism.

Retaliation Impacts

Terrorist retaliation causes nuclear war – draws in Russia and China

Robert **Ayson**, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, **2010** ("After a Terrorist Nuclear Attack: Envisaging Catalytic Effects," Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be "spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from."41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of

North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

Nuclear terrorism causes global nuclear escalation – national retaliation goes global

Morgan 9 (Dennis Ray, Professor of Foreign Studies at Hankuk University, "World on Fire: Two Scenarios of the Destruction of Human Civilization and Possible Extinction of the Human Race," Futures, Vol. 41, Issue 10, p683-693, ScienceDirect)

In a remarkable website on nuclear war, Carol Moore asks the question "Is Nuclear War Inevitable??" [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they've figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian "dead hand" system, "where regional nuclear commanders would be given full powers should Moscow be destroyed," it is likely that any attack would be blamed on the United States" [10]. Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal "Samson option" against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even "anti-Semitic" European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major

cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well.

Retaliation increases terrorism—more violence, easier recruitment

John A. **Nevin**, Behavior and Social Issues, 12, 109-128 (20**03**). Behaviorists for Social Responsibilit

Retaliation may reduce terrorism in several ways. Arresting terrorists takes them out of action and trying them within the criminal justice system legitimizes authority. Targeted killings of the leaders of terrorist organizations disrupt their operations and buy time while the terrorists regroup. Finally, large-scale attacks on terrorist groups and their supporters, coupled with mass arrests, reduce their numbers and may deter potential recruits to their cause. On the other hand, retaliation in any form may increase terrorism in several ways. It may incite terrorists to escalate the level of violence, increase their support in the population, and make it easier to recruit new members to their cause.

Retaliation is risky—multitude of escalation scenarios

Mallow 97

(Brittain P., 1997, The Industrial College of the Armed Forces, "Terror vs. Terror: Effects of Military Retaliation on Terrorism," http://www.au.af.mil/au/awc/awcgate/icaf/97-e-12.pdf)

Like terrorism, retaliation is a form of communication through violence. It can affect multiple audiences for many purposes: bolstering public opinion, destroying/disrupting terrorist infrastructure, and potentially deterring the choice of the terrorist tactic. Symmetry, proportionality, and discrimination in the targeting of retaliation all vary its effects on audiences. To deter terrorists and their supporters, retaliation must meet the requirements of deterrence theory: credibility, shared interest, and rationality. Examples of retaliation for terrorism indicate there are significant problems with its effectiveness as a deterrent. Its viability is diminished by the transience and fragility of credibility, the moral and legal "baggage" of retaliation itself, and the differences in values and interests between terrorists/supporters and retaliating states. Retaliation also presents substantial risks beyond its failure to deter. Force protection, dangers of escalatory violence, and risks of condemnation by the world community accompany the use of retaliation. These risks, combined with its questionable viability as a deterrent, make retaliation a difficult policy choice.

Breakdown of relations between the US and Pakistan causes conflict

Stephen **Tankel**, professor at American University and a nonresident fellow at the Carnegie Endowment for International Peace, *A Pakistan-Based Terrorist Attack on the U.S. Homeland*, August 20**11**

A successful terrorist attack of any proportion by a Pakistan-based group or groups would have significant domestic and foreign policy implications for the United States. Although the economic repercussions are unlikely to be as severe as those following 9/11, even a small attack could trigger a short-term dip in already shaky global markets. An attack also would reintroduce a sense of domestic vulnerability, particularly if it claims hundreds as opposed to tens of lives and/or the target is an iconic one. The origin of the attack—Pakistan—would cause a distraction from other pressing foreign

policy concerns. All of these issues would be magnified by the forthcoming presidential campaign season. The immediate impact on U.S.-Pakistan relations would depend on several factors—the nature and scale of the harm committed; which group(s), if any, claimed responsibility; the immediate public response by the Pakistan civilian government and military; and the level of cooperation they subsequently offered. The number of people killed is likely to be among the largest determining factors in a response, though an attack against a political or military target that causes few casualties could also have a major impact. Any indication that individuals or entities associated with the Pakistan army or ISI had foreknowledge of the strike or had in any way aided it would have severe consequences for the bilateral relationship. Even if there were no smoking gun, the involvement of a culprit with institutional ties to the state would be incredibly deleterious, as would Pakistan's failure to cooperate with U.S. authorities in the wake of the attack. Much rests on the bilateral relationship. A complete rupture is unlikely because both sides have a lot to lose. A further deterioration in relations could seriously compromise counterterrorism and nonproliferation interests, not to mention regional diplomatic initiatives, especially in Afghanistan. Pakistan's security establishment also might enact a short-term closure of corridors through which U.S. supplies pass into Afghanistan. Were a complete rupture to occur, this could lead to an indefinite closure of these corridors, an end to Pakistani support along the Durand Line, and an increased flow of insurgents across the border. The U.S. diplomatic mission to Pakistan could shrink significantly, Pakistani counterterrorism cooperation could cease, and in a worst-case scenario the threat to American

Anti-Black Terrorism Impact

Terrorists are destroying historically Black churches throughout the South in the wake of the mass murder in Charleston, South Carolina. This not only represents thousands of dollars in damages to the churches but also a resurfacing of decades of terror in the Jim Crow South.

Emma **Green**, managing editor of TheAtlantic.com, 7-1-20**15**, "Black Churches Are Burning Again in America," Atlantic, http://www.theatlantic.com/national/archive/2015/07/arson-churches-north-carolina-georgia/396881/

On Wednesday, July 1, a fire was reported at the Mount Zion African Methodist Episcopal Church in Greeleyville, South Carolina. The AP reports that an anonymous federal official said the fire did not appear to be intentionally set, but Winfred Pressley, a division operations officer at the regional Alcohol, Firearms, and Tobacco division, said that the investigation is still ongoing, as did other local investigators. Shanna Daniels, a spokesperson for the FBI, declined to comment on the case, but said that church arson "has been a hot topic over the past few days." "What's the church doing on fire?" Jeanette Dudley, **the associate pastor of God's Power Church of Christ in Macon, Georgia, got a call a little after 5 a.m. on Wednesday, June 24, she told a local TV news station**. **Her tiny church of about a dozen members had been burned, probably beyond repair**. The Bureau of Alcohol, Firearms, and Tobacco got called in, which has been the standard procedure for church fires since the late 1960s. **Investigators say they've ruled out possible causes like an electrical malfunction; most likely, this was arson. The very same night, many miles away in North Carolina, another church burned: Briar Creek Road Baptist Church, which was set on fire some time around 1 a.m. Investigators have ruled it an act of arson**, the AP reports; according to The Charlotte Observer, they haven't yet determined whether it might be a hate crime**. Two other predominantly black churches have been the target of possible arson in the past fornight: Glover Grove Missionary Baptist Church in Warrenville, South Carolina, which caught fire on Friday, and College Hill Seventh Day Adventist, which burned on Monday in Knoxville, Tennessee**. Investigators in Knoxville told a local news station they believed it was an act of vandalism, although they aren't investigating the incident as a hate crime. (There have also been at least four other cases of fires at churches in the past fortnight. At Fruitland Presbyterian Church in Gibson County, Tennessee, and the Greater Miracle Temple Apostolic Holiness Church in Tallahassee, Florida, officials suspect the blazes were caused by lightning and electrical wires, respectively, but investigations are still ongoing. A church that is not predominantly black—College Heights Baptist Church in Elyria, Ohio—was burned on Saturday morning. The fire appears to have been started in the sanctuary, and WKYC reports that the cause is still under investigation. The town's fire and police departments did not immediately return calls for

confirmation on Sunday.* And a Monday, June 29, fire at Disciples of Christ Ministries in Jackson, Mississippi, was ruled accidental.) **These fires join the murder of nine people at Charleston's Emanuel African Methodist Episcopal Church as major acts of violence perpetrated against predominantly black churches in the last fortnight. Churches are burning again in the United States, and the symbolism of that is powerful. Even though many instances of arson have happened at white churches, the crime is often association with racial violence: a highly visible attack on a core institution of the black community, often done at night, and often motivated by hate.** As my colleague David Graham noted last week, **the history of American church burnings dates to before the Civil War, but there was a major uptick in incidents of arson at black churches in the middle and late 20th century.** One of the most famous was the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama, which killed four girls. Three decades later, cases of church arson rose sharply. In response, in 1995, President Bill Clinton also set up a church-arson investigative task force, and in 1996, Congress passed a law increasing the sentences for arsonists who target religious organizations, particularly for reasons of race or ethnicity. Between 1995 and 1999, Clinton's task force reported that it opened 827 investigations into burnings and bombings at houses of worship; it was later disbanded. In recent years, it's been harder to get a clear sense of the number of church fires across the country. The National Fire Protection Association reports that between 2007 and 2011, there were an average of 280 intentionally set fires at houses of worship in America each year, although a small percentage of those took place at other religious organizations, like funeral homes. One of the organization's staffers, Marty Ahrens, said that tracking church arson has become much more complicated since reporting standards changed in the late '90s. Sometimes, fires that are reported to the National Fire Incident Reporting System are considered "suspicious," but they can't be reported as arson until they're definitively ruled "intentional." Even then, it's difficult to determine what motivated an act of arson. "To know that something is motivated by hate, you either have to know who did it or they have to leave you a message in some way that makes it very obvious," she said. "There are an awful lot of [intentionally set fires] that are not hate crimes—they're run-of-the-mill kids doing stupid things." **The investigations in North Carolina, Georgia, South Carolina, Florida, Ohio, and Tennessee are still ongoing, and they may end up in that broad category of fires of suspicious, but ultimately unknowable, origin that Ahrens described. But no matter why they happened, these fires are a troubling reminder of the vulnerability of our sacred institutions in the days following one of the most violent attacks on a church in recent memory. It's true that a stupid kid might stumble backward into one of the most symbolically terrifying crimes possible in the United States, but that doesn't make the terror of churches burning any less powerful.**

What has the government done in response to this rise in terrorism? Nothing. Now, the aff calls to decrease domestic surveillance, making any chance of involving federal authorities to investigate who these terrorists are impossible. The burning of Black churches in the south necessitates an increase of domestic surveillance in order to prevent future horrific attacks.

Deirdre **Griswold**, 7-14-20**15**, "As Black churches burn, where are the feds?," Workers World, http://www.workers.org/articles/2015/06/29/as-black-churches-burn-where-are-the-feds/

As of June 29, six Black churches in the South have either been destroyed or suffered severe damage from fires since Charleston. At least three are confirmed to have been caused by arson, according to the Southern Poverty Law Center. The loss to the people of these communities comes to hundreds of thousands of dollars. **Worse, the torchings are a threat of further violence to a people whose painful history at the hands of white exploiters still resonates so strongly.** The first burning deemed by fire marshals to be arson destroyed the College Hills Seventh Day Adventist Church in Knoxville, Tenn., on June 22. The Knoxville fire department said the arsonist set multiple fires on the church's property. The church's van was also burned. The very next day, a fire in the sanctuary of God's Power Church of Christ in Macon, Ga., was also blamed on arson. And the day after that, a fire was deliberately set at the Briar Creek Baptist Church in Charlotte, N.C., that destroyed an education wing meant to house a summer program for children. The gymnasium and sanctuary burned, causing an estimated $250,000 in damage. That same week, three other Southern Black churches — in Tennessee, Florida and South Carolina — also suffered fires, although two may have had natural causes. Investigations are continuing. **After what happened in Charleston, S.C., there can be little doubt**

that the arson fires were set by white supremacists, whose outpourings of hate in print and on the Internet call again and again for violence against people of color, using at best flimsily disguised language and at worst the vilest and most degrading terms. One might think that mass murder of the type that happened in Charleston would immediately lead to arrests of those advocating race war against Black people. We have seen many examples in recent years of elaborate sting operations set up by the FBI and local police authorities to ensnare Black militants on charges of plotting terrorist acts — which government agents had encouraged and facilitated. But just as with the murders of the three civil rights workers in 1964 — James Chaney, Andrew Goodman and Michael Schwerner — by members of the Ku Klux Klan, the authorities have not intervened to stop such attacks, even though it is logical to assume that, in this day and age of wide surveillance, they have knowledge of them.

Although before Charleston, the FBI and NSA were not doing enough to fight right-wing terrorism, after the recent increase in attacks, the focus has shifted to fight right-wing and white supremacist extremists.

Jaeah **Lee**, 6-17-20**15**, "The Rise Of Violent Right-Wing Extremism, Explained," Mother Jones, http://www.motherjones.com/politics/2015/06/right-wing-extremism-explainer-charleston-mass-shooting-terrorism

The federal and local governments ramped up efforts to combat domestic terrorism of all kinds in the wake of the 1995 Oklahoma City bombing that killed 168 people. A few months following the 9/11 attacks, FBI official Dale Watson testified before the Senate Intelligence Committee that "right-wing groups continue to represent a serious terrorist threat." But Johnson, German, and others assert that **federal counterterrorism programs since 9/11 have focused overwhelmingly on the perceived threat from Islamic extremism**. That includes the Obama administration's "countering violent extremism" strategy, which "revolves around impeding the radicalization of violent jihadists," according to a 2014 Congressional Research Service report. **The attack in Charleston underscored "the failure of the federal government to keep closer tabs" on right-wing extremists,** argues Gerald Horne, a historian and civil rights activist at the University of Houston**. But the focus may soon increase. In February, CNN reported that DHS circulated an intelligence assessment that focused on the domestic terror threat posed by right-wing extremists**. Kurzman and Schanzer also point to **a handout from a training program sponsored by the Department of Justice, cautioning that the threat from antigovernment extremism "is real."**

As the aff calls for a decrease in surveillance of white terrorists, justifying the murder of black people and destruction of black religious sites, they ignore the unwarranted, unjust surveillance of Black and Brown people used by local police departments to further structural racism and criminalize people of color.

Malkia Amala **Cyril**, 4-1-20**15**, "Black America's State of Surveillance," The Progressive Inc., http://www.progressive.org/news/2015/03/188074/black-americas-state-surveillance

Ten years ago, on Martin Luther King Jr.'s birthday, my mother, a former Black Panther, died from complications of sickle cell anemia. Weeks before she died, the FBI came knocking at our door, demanding that my mother testify in a secret trial proceeding against other former Panthers or face arrest. My mother, unable to walk, refused. The detectives told my mother as they left that they would be watching her. They didn't get to do that. My mother died just two weeks later. My mother was not the only black person to come under the watchful eye of American law enforcement for perceived and actual dissidence. Nor is dissidence always a requirement for being subject to spying. **Files obtained during a break-in at an FBI office in 1971 revealed that African Americans, J. Edger Hoover's largest target group, didn't have to be perceived as dissident to warrant surveillance. They just had to be black. As I write this, the same philosophy is driving the increasing adoption and use of surveillance technologies by local law enforcement agencies across the United States**. Today, **media reporting on government surveillance is laser-focused on the revelations by Edward Snowden that millions of Americans were being spied on by the NSA. Yet my mother's visit from the FBI reminds me that, from the slave pass system to laws that deputized white civilians as enforcers of Jim Crow, black people and other people of color have lived for centuries with surveillance practices aimed at maintaining a racial hierarchy.** It's time for journalists to tell **a new story that does not start the clock when privileged classes learn they are targets of surveillance. We need to understand that data has historically been overused to repress dissidence, monitor perceived criminality, and perpetually maintain an impoverished underclass**. In an era of big data, the Internet has increased the speed and secrecy of data collection. Thanks to new surveillance technologies, law enforcement agencies are now able to collect massive amounts of indiscriminate data. Yet legal protections and policies have not caught up to this technological advance. Concerned advocates see mass surveillance as the problem and protecting privacy as the goal. Targeted surveillance is an obvious answer—it may be discriminatory, but it helps protect the privacy perceived as an earned privilege of the inherently innocent. The trouble is, targeted surveillance frequently includes the indiscriminate collection of the private data of people targeted by race but not involved in any crime. For targeted communities, there is little to no expectation of privacy from government or corporate surveillance. Instead, we are watched, either as criminals or as consumers. We do not expect policies to protect us. Instead, **we've birthed a complex and coded culture—from jazz to spoken dialects—in order to navigate a world in which spying, from AT&T and Walmart to public benefits programs and beat cops on the block, is as much a part of our built environment as the streets covered in our blood.** In a recent address, New York City Police Commissioner Bill Bratton made it clear: "2015 will be one of the most significant years in the history of this organization. It will be the year of technology, in which we literally will give to every member of this department technology that would've been unheard of even a few years ago." **Predictive policing, also known as "Total Information Awareness," is described as using advanced technological tools and data analysis to "preempt" crime. It utilizes trends, patterns, sequences, and affinities found in data to make determinations about when and where crimes will occur. This model is deceptive, however, because it presumes data inputs to be neutral. They aren't. In a racially discriminatory criminal justice system, surveillance technologies reproduce injustice.** Instead of reducing discrimination**, predictive policing is a face of what author Michelle Alexander calls the "New Jim Crow"—a de facto system of separate and unequal application of laws, police practices, conviction rates, sentencing terms, and conditions of confinement that operate more as a system of social control by racial hierarchy than as crime prevention or punishment.** In New York City, the predictive policing approach in use is "Broken Windows."

This approach to policing places an undue focus on quality of life crimes—like selling loose cigarettes, the kind of offense for which Eric Garner was choked to death. **Without oversight, accountability, transparency, or rights, predictive policing is just high-tech racial profiling—indiscriminate data collection that drives discriminatory policing practices**. As local law enforcement agencies increasingly adopt surveillance technologies, they use them in three primary ways: to listen in on specific conversations on and offline; to observe daily movements of individuals and groups; and to observe data trends**. Police departments like Bratton's aim to use sophisticated technologies to do all three. They will use technologies like license plate readers, which the Electronic Frontier Foundation found to be disproportionately used in communities of color and communities in the process of being gentrified. They will use facial recognition, biometric scanning software, which the FBI has now rolled out as a national system, to be adopted by local police departments for any criminal justice purpose. They intend to use body and dashboard cameras, which have been touted as an effective step toward accountability based on the results of one study, yet storage and archiving procedures, among many other issues, remain unclear. They will use Stingray cellphone interceptors. According to the ACLU, Stingray technology is an invasive cellphone surveillance device that mimics cellphone towers and sends out signals to trick cellphones in the area into transmitting their locations and identifying information. When used to track a suspect's cellphone, they also gather information about the phones of countless bystanders who happen to be nearby. The same is true of domestic drones, which are in increasing use by U.S. law enforcement to conduct routine aerial surveillance. While drones are currently unarmed, drone manufacturers are considering arming these remote-controlled aircraft with weapons like rubber bullets, tasers, and tear gas.** They will use fusion centers. Originally designed to increase interagency collaboration for the purposes of counterterrorism, these have instead become the local arm of the intelligence community. According to Electronic Frontier Foundation, there are currently seventy-eight on record. They are the clearinghouse for increasingly used "suspicious activity reports"—described as "official documentation of observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity." These reports and other collected data are often stored in massive databases like e-Verify and Prism. As anybody who's ever dealt with gang databases knows, it's almost impossible to get off a federal or state database, even when the data collected is incorrect or no longer true. **Predictive policing doesn't just lead to racial and religious profiling—it relies on it. Just as stop and frisk legitimized an initial, unwarranted contact between police and people of color, almost 90 percent of whom turn out to be innocent of any crime, suspicious activities reporting and the dragnet approach of fusion centers target communities of color. One review of such reports collected in Los Angeles shows approximately 75 percent were of people of color. This is the future of policing in America, and it should terrify you as much as it terrifies me**. Unfortunately, it probably doesn't, because my life is at far greater risk than the lives of white Americans, especially those reporting on the issue in the media or advocating in the halls of power**. One of the most terrifying aspects of high-tech surveillance is the invisibility of those it disproportionately impacts. The NSA and FBI have engaged local law enforcement agencies and electronic surveillance technologies to spy on Muslims living in the United States. According to FBI training materials uncovered by Wired in 2011, the bureau taught agents to treat "mainstream" Muslims as supporters of terrorism, to view charitable donations by Muslims as "a funding mechanism for combat," and to view Islam itself as a "Death Star" that must be destroyed if terrorism is to be contained**. From New York City to Chicago and beyond, local law enforcement agencies have

expanded unlawful and covert racial and religious profiling against Muslims not suspected of any crime. There is no national security reason to profile all Muslims. At the same time, almost 450,000 migrants are in detention facilities throughout the United States, including survivors of torture, asylum seekers, families with small children, and the elderly. Undocumented migrant communities enjoy few legal protections, and are therefore subject to brutal policing practices, including illegal surveillance practices. According to the Sentencing Project, of the more than 2 million people incarcerated in the United States, more than 60 percent are racial and ethnic minorities. But by far, the widest net is cast over black communities. Black people alone represent 40 percent of those incarcerated. More black men are incarcerated than were held in slavery in 1850, on the eve of the Civil War. Lest some misinterpret that statistic as evidence of greater criminality, a 2012 study confirms that black defendants are at least 30 percent more likely to be imprisoned than whites for the same crime. This is not a broken system, it is a system working perfectly as intended, to the detriment of all. The NSA could not have spied on millions of cellphones if it were not already spying on black people, Muslims, and migrants. **As surveillance technologies are increasingly adopted and integrated by law enforcement agencies today, racial disparities are being made invisible by a media environment that has failed to tell the story of surveillance in the context of structural racism. Reporters love to tell the technology story. For some, it's a sexier read. To me, freedom from repression and racism is far sexier than the newest gadget used to reinforce racial hierarchy. As civil rights protections catch up with the technological terrain, reporting needs to catch up, too. Many journalists still focus their reporting on the technological trends and not the racial hierarchies that these trends are enforcing.** Martin Luther King Jr. once said, "Everything we see is a shadow cast by that which we do not see." Journalists have an obligation to tell the stories that are hidden from view. We are living in an incredible time, when migrant activists have blocked deportation buses, and a movement for black lives has emerged, and when women, queer, and trans experiences have been placed right at the center. The decentralized power of the Internet makes that possible. But the Internet also makes possible the high-tech surveillance that threatens to drive structural racism in the twenty-first century. **We can help black lives matter by ensuring that technology is not used to cement a racial hierarchy that leaves too many people like me dead or in jail. Our communities need partners, not gatekeepers. Together, we can change the cultural terrain that makes killing black people routine. We can counter inequality by ensuring that both the technology and the police departments that use it are democratized. We can change the story on surveillance to raise the voices of those who have been left out. There are no voiceless people, only those that ain't been heard yet. Let's birth a new norm in which the technological tools of the twenty-first century create equity and justice for all—so all bodies enjoy full and equal protection, and the Jim Crow surveillance state exists no more.**

Anti-black terror at the hand of white supremacist groups is THE biggest threat to U.S. national security. It did not end with the Jim Crow South, but as we have seen in Charleston, is an ongoing concern.

Julia **Craven**, 6-24-20**15**, "White Supremacists More Dangerous Than Foreign Terrorists: Study," Huffington Post, http://www.huffingtonpost.com/2015/06/24/domestic-terrorism-charleston_n_7654720.html

Nine people were added to a long list of lives taken by domestic terrorism when Dylann Roof allegedly began shooting inside a historic black church in Charleston, South Carolina, on June 17.

At least 48 people have been killed stateside by right-wing extremists in the 14 years since since the September 11 attacks -- almost twice as many as were killed by self-identified jihadists in that time, according to a study released Wednesday by the New America Foundation, a Washington, D.C., research center. **The study found that radical anti-government groups or white supremacists were responsible for most of the terror attacks. The data counters many conventional thoughts on what terrorism is and isn't. Since Sept. 11, many Americans attribute terror attacks to Islamic extremists instead of those in the right wing. But the numbers don't back up this popular conception,** said Charles Kurzman, a professor at the University of North Carolina at Chapel Hill. Kurzman is co-authoring a study with David Schanzer of Duke University, set to be published Thursday, that asks police departments to rank the three biggest threats from violent extremism in their jurisdiction. **Law enforcement agencies reported they were more concerned about the activities of right-wing extremist groups than Islamic extremists in their jurisdictions** (about 74 percent versus 39 percent) **due to the "menacing" rhetoric used by some of these groups -- and that they were training officers to take caution when they saw signs of potentially violent individuals,** Kurzman and Schanzer found. "**Muslim extremism was taken seriously in many of these jurisdictions that we surveyed… but overall, they did not see as much of an issue with Muslim extremism as with right-wing extremism in their locations,"** Kurzman told The Huffington Post. He added that it's hard to get a definitive statistical picture of plots and acts of violent extremism since that definition tends to vary and data for incidents nationwide is hard to come by. **The accused Charleston shooter is currently being investigated under domestic terrorism charges by the Department of Justice -- a move that acknowledges the long history of anti-black terrorist attacks.** America's first federal anti-terrorism law, known as the Third Force Act or the Ku Klux Klan Act, which was passed by Congress in 1871, caused nine counties in South Carolina to be placed under martial law and led to thousands of arrests. The Supreme Court ruled the law unconstitutional in 1882. David Pilgrim, the founder and director of the Jim Crow Museum at Ferris State University, told HuffPost in February that the actions of foreign extremist groups are no better or worse than the historic violence against African-Americans by domestic actors. "There's nothing you're going to see today that's not going to have already occurred in the U.S.," he said. "**If you think of these groups that behead now -- first of all, beheading is barbaric but it's no more or less barbaric than some of the lynchings that occurred in the U.S." Pilgrim said he found it offensive that, after Sept. 11, some Americans bemoaned that terrorism had finally breached U.S. borders. "That is ignoring and trivializing -- if not just summarily dismissing -- all the people, especially the peoples of color in this country, who were lynched in this country; who had their homes bombed in this country; who were victims of race riots," he said evoking lynching victims who were often burned, castrated, shot, stabbed -- and in some cases beheaded. And while most officially acknowledged anti-black terrorism cases occurred during the eras of slavery, Reconstruction and Jim Crow, as recent news demonstrate, this type of terrorism is still an ongoing concern.**

Turns Case

Terrorism is used as a justification for increased surveillance – empirics prove and turns case

Haggerty and Gazso 20**05** (Kevin, Professor of Criminology and Sociology at the University of Alberta; Amber, Associate Professor in the Department of Sociology at York University, The Canadian Journal of Sociology / Cahiers canadiens de sociologie, Vol. 30, No. 2 (

Spring, 2005), pp. 169-187 “Seeing beyond the Ruins: Surveillance as a Response to Terrorist Threats” JSTOR; accessed 7/17/15 JH @ DDI)

A climate of fear and anxiety helped ease the passage of such laws (Davis, 2001). However, a great deal of organizational opportunism was also at work. Many of the surveillance proposals adopted in the days after the attack were recycled from earlier legislative efforts. In previous incarnations these proposals had often been legitimated as essential for the international "war on drugs" or to address other crimes, such as money laundering. The September 11 th attacks gave the authorities a new and apparently unassailable legitimation for long-standing legislative ambitions. Before the dust had settled on Manhattan, the security establishment had mobilized to expand and intensify their surveillance capabilities, justifying existing proposals as necessary tools to fight the new war against terrorism. Ultimately, the police, military and security establishment reaped an unanticipated windfall of increased funding, new technology and loosened legislative constraints by strategically invoking fears of future attacks. There are several examples of such opportunism. Since at least 1999, when Congress initially turned down their request, the U.S. Justice Department has lobbied for the development of new "secret search" provisions. Likewise, prior to the attacks, the FBI and the National Telecommunications and Information Systems Security Committee had a lengthy shopping list of desired surveillance-related measures including legal enhancements to their wiretapping capabilities, legal constraints on the public use of cryptography, and provisions for governmental agents to compel Internet service providers to provide information on their customers (Burnham, 1997). All of these proposals were recycled and implemented after the September 11th attacks now justified as integral tools in the "war on terrorism." New provisions requiring banks to exercise "due diligence" in relation to their large depositors were originally justified by the authorities as a means to counter the "war on drugs." The opportunism of many of these efforts was inadvertently revealed by an RCMP Sergeant when, during a discussion about new official antiterrorism powers to monitor financial transactions, he noted that: "We've been asking for something like this for four years. It's really our best weapon against biker gangs" [emphasis added] (Corcan, 2001). In Canada, the Federal Privacy Commissioner was particularly alarmed by the development of what he referred to as a "Big Brother database." This amounts to a detailed computerized record of information about Canadian travelers. Although justified as a means to counter terrorism, the data will be made available to other government departments for any purpose they deem appropriate. Such provisions raise the specter of informational "fishing expeditions." Indeed, the Canadian government has already indicated that this ostensible anti-terrorist database will be used to help monitor tax evaders and catch domestic criminals. It will also be used to scrutinize an individual's travel history and destinations, in an effort to try and determine whether they might be a pedophile or money launderer (Radwanski, 2002). While these are laudable goals, they also reveal how a host of other surveillance agendas have been furthered by capitalizing on the new anti-terrorism discourse.

Lone wolf terror attacks are used to justify disproportionate increases in surveillance and military operations abroad

Lennard, Senior News Analyst for Vice News, 10/27/**14** (Natasha Lennard, Brooklyn-based Senior News Analyst for Vice News, VICE News, October 27, 2014, “'Lone Wolf' Terrorist Acts Will Be Used to Justify the Surveillance State” https://news.vice.com/article/lone-wolf-terrorist-acts-will-be-used-to-justify-the-surveillance-state, accessed 7/17/15 JH @ DDI)

The phenomenon of individuals committing violent and murderous acts in the name of an ideology is nothing new in the US. The FBI's Operation Lone Wolf investigated white supremacists encouraging autonomous violent acts in the 1990s. Why, then, are we seeing pundits and politicians newly focus on the "lone wolf" category? There's no simple answer, but we can at the very least see that the old binary, distinguishing terror as the act of networked groups versus lone madman mass killings — a distinction that has tacitly undergirded post-9/11 conceptions of terrorism — doesn't serve the latest iteration of the war on terror. California Senator Dianne Feinstein, speaking on CNN's State of the Union on Sunday, suggested that "the Internet, as well as certain specific Muslim extremists, are really firing up this lone-wolf phenomenon." Whether intentionally or not, the Senate Intelligence Committee chair performed a lot of political work with that one comment. Crystallizing "lone wolves" as a key threat domestically helps legitimize the US's current military operation against the Islamic State in Iraq and Syria. With or without established connections, the Islamic State's far-reaching tentacles of online influence encouraging individuals worldwide cement the group as a threat to the homeland — which is always useful for politicians struggling to legally justify another protracted war. In this way, attributing attacks to homegrown "lone wolves" is more useful for current US political interests than attributing them to madness alone. The assumption that terror acts were always borne of connected networks

problematically buoyed domestic counter-terror efforts that saw entire communities profiled as potential threats. Which is not to say that "lone wolf terrorist" is a flawed designation for attacks by ideologically motivated individuals. In many ways it seems apt, and any challenge is welcome to the all too basic distinction that imbues group terror with motive while dismissing individual acts as madness. The "lone wolf" straddles the ill-conceived gap between madman and terrorist node. It's an intersection all too complicated for the inexpert punditry of Fox News: "They are terrorist acts, to be sure," Megyn Kelly said about Canadian gunman Michael Zehaf-Bibeau, adding "but this guy was also a nutcase." Furthermore, the assumption that terror acts were always borne of connected networks problematically buoyed domestic counter-terror efforts that saw entire communities profiled as potential threats. Under the premise that terror networks ran like arteries through US Muslim communities enabled an era of profile-driven preemptive policing that has been nothing short of racist. Entire mosques in New York were designated terrorist organizations to enable police surveillance. The NSA's meta-data collections claim justifiability on the premise that terror was locatable by tracing networks of communication. The "lone wolf" phenomenon should at least prompt the questioning of the sort of profile-based counter-terror efforts that assumed terror lurked in any network of Muslims, and that the mass hoarding of communications data was vital to national security. However, the rhetoric surrounding this type of domestic threat already bodes ill for civil liberties. If the hunt for terrorist networks has been plagued by ethnic profiling and overreaching spycraft, an established threat of "lone wolf" attacks gives a defensive imprimatur for unbounded NSA-style surveillance — anyone can wield a hatchet with ideological ire. As Chairman of the House Homeland Security Committee Michael McCaul said on This Week, finding such lone actors in advance of attacks is like "finding a needle in a haystack." And as Feinstein said the same day, "You have to be able to watch it, and you have to be able to disrupt them." As such, the era of the "lone wolf" terrorist does not only spell the end of the bunk distinction between motivated group and deranged individual. It ushers in the dawn of a new era of justification for our totalized state of surveillance and national security paranoia.

Surveillance would increase after a terrorist attack

Feaver 1/13/15

(Peter D., 1/13/15, Foreign Policy, "10 Lessons to Remember After a Terrorist Attack," Peter is a professor of political science and public policy and Bass Fellow @ Duke University, and director of the Triangle Institute for Security Studies and the Duke Program in American Grand Strategy, http://foreignpolicy.com/2015/01/13/ten-lessons-to-remember-after-a-terrorist-attack/, 7/16/15, SM)

In particular, it is striking how some of the things that were "obvious" in the days and weeks after 9/11, but then were gradually forgotten, have become obvious again:∂ Terrorists succeed when they are abetted by intelligence failures. Or, put another way, terrorists only need to get lucky once to "succeed," whereas counterterrorism has to be lucky all the time to "succeed."∂ Even robust intelligence and law enforcement may not guarantee 100 percent safety and security. By global standards — certainly by the standards of Western democracies — France has a particularly formidable counterterrorist structure. But it failed in this instance.∂ When terrorists succeed in an attack, citizens demand that the government do more to protect them — even if they have already been doing a lot. And **steps that would have seemed heavy handed before the attack, say aggressive surveillance of suspected terrorists** or visible demonstrations of presence by the security forces, **are deemed not just tolerable but necessary.** Moreover, savvy political leaders will understand that one of the benefits of a stronger official response is that it is a hedge both against dangerously stronger vigilantism and also against additional pressure from some segments of the public to do more than is wise.

Terrorism leads to crackdowns

History.com, *Reaction to 9/11,* http://www.history.com/topics/reaction-to-9-11, 2010

"Today," the French newspaper Le Monde announced on September 12, 2001, "we are all Americans." People around the world agreed: The terrorist attacks of the previous day had felt like attacks on everyone, everywhere. They provoked an unprecedented expression of shock, horror, solidarity and sympathy for the victims and their families. Citizens of 78 countries died in New York, Washington, D.C., and Pennsylvania on September 11, and people around the world

mourned lost friends and neighbors. They held candlelight vigils. They donated money and goods to the Red Cross and other rescue and relief organizations. Flowers piled up in front of American embassies. Cities and countries commemorated the attacks in a variety of ways: The Queen Mother sang the American national anthem at Buckingham Palace's Changing of the Guard, while in Brazil, Rio de Janeiro put up huge billboards that showed the city's famous Christ the Redeemer statue embracing the New York City skyline. Meanwhile, statesmen and women rushed to condemn the attacks and to offer whatever aid they could to the United States. Russian president Vladimir Putin called the strikes "a blatant challenge to humanity," while German chancellor Gerhard Schroeder declared that the events were "not only attacks on the people in the United States, our friends in America, but also against the entire civilized world, against our own freedom, against our own values, values which we share with the American people." He added, "We will not let these values be destroyed." Canadian Prime Minister Jean Chretien denounced the "cowardly and depraved assault." He tightened security along the border and arranged for hundreds of grounded airplanes to land at Canadian airports. Even leaders of countries that did not tend to get along terribly well with the American government expressed their sorrow and dismay. The Cuban foreign minister offered airspace and airports to American planes. Chinese and Iranian officials sent their condolences. And the Palestinian leader Yasser Arafat, visibly dismayed, told reporters in Gaza that the attacks were "unbelievable, unbelievable, unbelievable." "We completely condemn this very dangerous attack," he said, "and I convey my condolences to the American people, to the American president and to the American administration." But public reaction was mixed. The leader of the Islamic militant group Hamas announced that "no doubt this is a result of the injustice the U.S. practices against the weak in the world." Likewise, people in many different countries believed that the attacks were a consequence of America's cultural hegemony, political meddling in the Middle East and interventionism in world affairs. The Rio billboards hadn't been up for long before someone defaced them with the slogan "The U.S. is the enemy of peace." Some, especially in Arab countries, openly celebrated the attacks. But most people, even those who believed that the United States was partially or entirely responsible for its own misfortune, still expressed sorrow and anger at the deaths of innocent people. On September 12, the 19 ambassadors of the North Atlantic Treaty Organization (NATO) declared that the attack on the United States was an attack on all of the member nations. This statement of solidarity was mostly symbolic–NATO did not authorize any specific military action–but it was still unprecedented. It was the first time that the organization had ever invoked the mutual defense section of its charter (intended to protect vulnerable European nations from Soviet invasion during the Cold War). NATO eventually sent five airplanes to help keep an eye on American airspace. Likewise, on September 12 the United Nations Security Council called on all nations to "redouble their efforts" to thwart and prosecute terrorists. Two weeks later, it passed another resolution that urged states to "suppress the financing of terrorism" and to aid in any anti-terrorism campaigns. But these declarations of support and solidarity didn't mean that other countries gave the United States a free hand to retaliate however, and against whomever, it pleased. Allies and adversaries alike urged caution, warning that an indiscriminate or disproportionate reaction could alienate Muslims around the world. In the end, almost 30 nations pledged military support to the United States, and many more offered other kinds of cooperation. Most agreed with George Bush that, after September 11, the fight against terrorism was "the world's fight."

Moten DDI

Notes

One very interesting combination of strategies is global local and the neoliberalism PIK. Their use of the word neoliberalism posits that it is some monolithic structure that is “out there” – we should recognize that it exists in contingent relationships in our own lives.

T-USFG

1NC

Take from the file

2NC

Link contextualization

- The neolib good arguments + credit reform is a thing arguments prove that working within mechanisms to solve is possible, which is solvency for your model of debate

T-Its

1NC

T – Its

A. USFG is the government established in the constitution

US Legal 13 "Legal Terms, Definitions, and Dictionary"
http://definitions.uslegal.com/u/united-states-federal-government/

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and 'checks and balances' for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

Its means belonging to

Oxford English Dictionary, 2013
http://www.oed.com/view/Entry/100354?redirectedFrom=its#eid

its, adj. and pron. Pronunciation: /ɪts/

A. adj. As genitive of the pronoun, now possessive adjective.

Of or belonging to it, or that thing (Latin ejus); also refl., Of or belonging to itself, its own (Latin suus).The reflexive is often more fully its own, for which in earlier times the own, it own, were used: see own adj. and pron.

B. pron. As possessive pronoun.

[Compare his pron.2] The absolute form of prec., used when no n. follows: Its one, its ones. rare.

B. The affirmative interpretation is bad for debate

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. There are literally infinite actors of surveillance – state governments, foreign governments, schoolteachers, and security guards. They don't have to defend USFG action, but limiting critique to USFG surveillance is a necessary check on topic explosion.

C. T IS A VOTER because the opportunity to prepare promotes better debating

Model Minority C/A

CX

Why is it that blacks are denied credit?

If we win that the presentation of the 1AC was net bad, do we win the debate?

1NC

The myth of the model minority perpetuates other racial oppression – whiteness has used it as a justification to demonize blacks and Latinos.

Noy **Thrupkaew**, 3-25-**2002** "The Myth of the Model Minority," American Prospect, http://prospect.org/article/myth-model-minority AC

The Southeast Asia Resource Action Center (SEARAC), an advocacy group in Washington, estimates that more than 2.2 million Southeast Asians now live in the United States. They are the largest group of refugees in the country and the fastest-growing minority. Yet for most policy makers, the plight of the many Mali Keos has been overshadowed by the well-known success of the Asian immigrants who came before and engendered the myth of the "model minority." Indeed, conservatives have exploited this racial stereotype -- arguing that Asians fare well in the United States because of their strong "family values" and work ethic. These values, they say, and not government assistance, are what all minorities need in order to get ahead. Paradoxically, Southeast Asians -- supposedly part of the model minority -- may be suffering most from the resulting public policies. They have been left in the hands of underfunded community-assistance programs and government agencies that, in one example of well-intentioned incompetence, churn out forms in Khmer and Lao for often illiterate populations. But fueled by outrage over bad services and a fraying social safety-net, Southeast Asian immigrants have started to embrace that most American of activities, political protest -- by pushing for research on their communities, advocating for their rights, and harnessing their political power. The model-minority myth has persisted in large part because political conservatives are so attached to it. "Asian Americans have become the darlings of the right," said Frank Wu, a law professor at Howard University and the author of Yellow: Race beyond Black and White. "The model-minority myth and its depiction of Asian-American success tells a reassuring story about our society working." The flip side is also appealing to the right. Because Asian Americans' success stems from their strong families and their dedication to education and hard work, conservatives say, then the poverty of Latinos and African Americans must be explained by their own "values": They are poor because of their nonmarrying, school-skipping, and generally lazy and irresponsible behavior, which government handouts only encourage.

The myth papers over Southeast Asian poverty – that causes psychic violence against Asians.

Noy **Thrupkaew**, 3-25-**2002** "The Myth of the Model Minority," American Prospect, http://prospect.org/article/myth-model-minority AC

What most dramatically skews the data, though, is the fact that about half the population of Asian (or, more precisely, Asian-Pacific Islander) Americans is made up of the highly educated immigrants who began arriving with their families in the 1960s. The plight of refugees from Cambodia, Laos, and Vietnam, who make up less than 14 percent of Asian Americans, gets lost in the averaging. Yet these refugees, who started arriving in the United States after 1975, differ markedly from the professional-class Chinese and Indian immigrants who started coming 10 years earlier. The Southeast Asians were fleeing wartime persecution and had few resources. And those disadvantages have had devastating effects on their lives in the United States. The most recent census data available show that 47 percent of Cambodians, 66 percent of Hmong (an ethnic group that lived in the mountains of Laos), 67 percent of Laotians, and 34 percent of Vietnamese were impoverished in 1990 -- compared with 10 percent of all Americans and 14 percent of all Asian Americans. Significantly, **poverty rates among Southeast Asian Americans were much higher than those of even the "nonmodel" minorities**: 21 percent of African Americans and 23 percent of Latinos

were poor. Yet despite the clear inaccuracies created by lumping populations together, the federal government still groups Southeast Asian refugees under the overbroad category of "Asian" for research and funding purposes. "We've labored under the shadow of this model myth for so long," said KaYing Yang, SEARAC's executive director. "There's so little research on us, or we're lumped in with all other Asians, so people don't know the specific needs and contributions of our communities." To get a sense of those needs, one has to go back to the beginning of the Southeast Asian refugees' story and the circumstances that forced their migration. In 1975, the fall of Saigon sent shock waves throughout Southeast Asia, as communist insurgents toppled U.S.-supported governments in Vietnam and Cambodia. In Laos, where the CIA had trained and funded the Hmong to fight Laotian and Vietnamese communists as U.S. proxies, the communists who took over vowed to purge the country of ethnic Hmong and punish all others who had workedwith the U.S. government. The first refugees to leave Southeast Asia tended to be the most educated and urban, English-speakers with close connections to the U.S. government. One of them was a man who wishes to be identified by the pseudonym John Askulraskul. He spent two years in a Laotian re-education camp -- punishment for his ability to speak English, his having been educated, and, most of all, his status as a former employee of the United States Agency for International Development (USAID). "They tried to brainwash you, to subdue you psychologically, to work you to death on two bowls of rice a day," Askulraskul told me recently. After being released, he decided to flee the country. He, his sister, and his eldest daughter, five and a half years old, slipped into the Mekong River with a few others. Clinging to an inflated garbage bag, Askulraskul swam alongside their boat out of fear that his weight would sink it. After they arrived on the shores of Thailand, Askulraskul and his daughter were placed in a refugee camp, where they waited to be reunited with his wife and his two other daughters. It was not to be. "My wife tried to escape with two small children. But my daughters couldn't make it" -- he paused, drawing a ragged breath -- "because the boat sank." Askulraskul's wife was swept back to Laos, where she was arrested and placed in jail for a month. She succeeded in her next escape attempt, rejoining her suddenly diminished family. Eventually, with the help of his former boss at USAID, they moved to Connecticut, where Askulraskul found work helping to resettle other refugees. His wife, who had been an elementary-school teacher, took up teaching English as a second language (ESL) to Laotian refugee children. His daughter adjusted quickly and went to school without incident. Askulraskul now manages a project that provides services for at-risk Southeast Asian children and their families. "The job I am doing now is not only a job," he said. "It is part of my life and my sacrifice. My daughter is 29 now, and I know raising kids in America is not easy. I cannot save everybody, but there is still something I can do." Like others among the first wave of refugees, Askulraskul considers himself one of the lucky ones. His education, U.S. ties, and English-language ability --everything that set off the tragic chain of events that culminated in his daughters' deaths -- proved enormously helpful once he was in the United States. But the majority of refugees from Southeast Asia had no such advantages. Subsequent waves frequently hailed from rural areas and lacked both financial resources and formal schooling. Their psychological scars were even deeper than the first group's, from their longer years in squalid refugee camps or the killing fields. The ethnic Chinese who began arriving from Vietnam had faced harsh discrimination as well, and the Amerasians -- the children of Vietnamese women and U.S. soldiers -- had lived for years as pariahs. Once here, these refugees often found themselves trapped in poverty, providing low-cost labor, and receiving no health or other benefits, while their lack of schooling made decent jobs almost impossible to come by. In 1990, two-thirds of Cambodian, Laotian, and Hmong adults in America had less than a high-school education -- compared with 14 percent of whites, 25 percent of African Americans, 45 percent of Latinos, and 15 percent of the general Asian-American population. Before the welfare-reform law cut many of them off, nearly 30 percent of Southeast Asian Americans were on welfare -- the highest participation rate of any ethnic group. And having such meager incomes, they usually lived in the worst neighborhoods, with the attendant crime, gang problems, and poor schools. But shouldn't the touted Asian dedication to schooling have overcome these disadvantages, lifting the refugees' children out of poverty and keeping them off the streets? Unfortunately, it didn't. "There is still a high number of dropouts for Southeast Asians," Yang said. "And if they do graduate, there is a low number going on to higher education." Their parents' difficulty in navigating American school systems may contribute to the problem. "The parents' lack of education leads to a lack of role models and guidance. Without those things, youth can turn to delinquent behavior and in some very extreme cases, gangs, instead of devoting themselves to education," said Narin Sihavong, director of SEARAC's Successful New Americans Project, which interviewed Mali Keo. "This underscores the need for Southeast Asian school administrators or counselors who can be role models, ease the cultural barrier, and serve as a bridge to their parents." "Sometimes families have to choose between education and employment, especially when money is tight," said Porthira Chimm, a former SEARAC project director. "And unfortunately, immediate money concerns often win out." The picture that emerges -- of high welfare participation and dropout rates, low levels of education and income -- is startlingly similar to the situation of the poorest members of "nonmodel" minority groups. Southeast Asians, Latinos, and African Americans also have in common significant numbers of single-parent families. Largely as a result of the killing fields, nearly a quarter of Cambodian households are headed by single women. Other Southeast Asian families have similar stories. Sihavong's mother, for example, raised him and his five siblings on her own while his father was imprisoned in a Laotian re-education camp. No matter how "traditional" Southeast Asians may be, they share the fate of other people of color when they are denied access to good education, safe neighborhoods, and jobs that provide a living wage and benefits. But for the sake of preserving the model-minority myth, conservative policy makers have largely ignored the needs of Southeast Asian communities. One such need is for psychological care. Wartime trauma and "lack of English proficiency, acculturative stress, prejudice, discrimination, and racial hate crimes" place Southeast Asians "at risk for emotional and behavioral problems," according to the U.S. surgeon general's 2001 report on race and mental health. One random sample of Cambodian adults found that 45 percent had post-traumatic stress disorder and 51 percent suffered from depression. John Askulraskul's past reflects trauma as well, but his education, English-language ability, and U.S. connections helped level the playing field. Less fortunate refugees need literacy training and language assistance. They also need social supports like welfare and strong community-assistance groups. But misled by

the model-minority myth, many government agencies seem to be unaware that Southeast Asians require their services, and officials have done little to find these needy refugees or accommodate them. Considering that nearly two-thirds of Southeast Asians say they do not speak English very well and more than 50 percent live in linguistically isolated ethnic enclaves, the lack of outreach and translators effectively denies them many public services. The problem extends beyond antipoverty programs, as Mali Keo's story illustrates. After her husband left her, she formed a relationship with another man and had two more children. But he beat the family for years, until she asked an organization that served Cambodian refugees to help her file a restraining order. If she had known that a shelter was available, she told her interviewer, even one without Khmer-speaking counselors, she would have escaped much earlier. Where the government hasn't turned a blind eye, it has often wielded an iron fist. The welfare-reform law of 1996, which cut off welfare, SSI, and food-stamp benefits for most noncitizens -- even those who are legal permanent residents -- sent Southeast Asian communities into an uproar. Several elderly Hmong in California committed suicide, fearing that they would become burdens to their families. Meanwhile, the lack of literacy programs prevented (and still does prevent) many refugees from passing the written test that would gain them citizenship and the right to public assistance.

We advocate a counterhegemonic exposure of the myth of the model minority – challenging it is key to rupture dominant discourses and solve the aff.

Caroline **Hargreaves**, 20**10**, "How Important is Discourse to Social Change? Case: Micro-blogging Community Tumblr," London School of Economics and Political Science https://www.academia.edu/1635691/How_Important_is_Discourse_to_Social_Change_Case_Micro-blogging_Community_Tumblr

Discourse can be described as a set of values and beliefs that informs our social responses and actions, More importantly, a thorough understanding of the discursive forces that shape our social fabric presents a valuable opportunity and instrument for resistance groups to challenge dominant discourses. Foucault's famous work on the relationship between power and knowledge brings the debate to another level, where discourses serve as the meeting place of these two forces. This conception opens up possibilities to bring about change, as power in a Foucauldian perspective is ubiquitous and operates without agency, beyond traditional notions of the state and through culturally embedded factors. Foucault rejects the liberal notion that knowledge can flourish only in the absence of power (see Evans, 2005), which allows alternative discursive methods onto the scene. These can **challenge the way in which relations and structures of power are embedded in everyday life by providing alternative values and norms as well as morally validating the identities and perspectives of those oppressed by the existing relations and structures of power** (Stammers, 1999). This is why much attention should be paid (by actors seeking to challenge the status quo) towards discourse in particular in terms of locating both opportunities and constraints for social change. As argued by Hacking (1999:58) "Politics, ideology and power matter more than metaphysics to most advocates of construction. Talk of construction tends to undermine the authority of knowledge and categorization. It challenges complacent ways of doing things not by refuting or proposing better, but by 'unmasking'." This will reveal how categories of knowledge are used in power relationships and towards moulding the global society in a particular way. With reference to the discourse of human rights, Hunt (1990) argues that the Gramscian concepts of hegemony and counter-hegemony make it possible to advance a positive evaluation certain strategies within progressive politics. The 'discursive war of position' is here seen as taking practical measurements to bring about shifts and modifications in popular consciousness. In discourse specifically, Mouffe (2005:18) explains that "[e]very hegemonic order is susceptible of being challenged by counter-hegemonic practices, i.e. practices which will attempt to disarticulate the existing order so as to install other forms of hegemony." Hegemony then becomes a process that generates a question of culturally altering social consciousness, reworking what already exists and introducing elements that transcend dominant narratives of issues and movements. Without going too far into the reasons behind resisting the mainstream media logic, the main concerns are to what extent this logic can be seen as representative of the larger voice of society, locally and globally. Mass culture has been perceived to be an instrument of ideological dominance over 'social consciousness' (see Gramsci, 1971), or what Hirst (1976:386) later labeled the 'imaginary', shaping social subjects. Discourses are therefore not deliberately created narratives, but rather ideological extensions of the hegemonic forces in play on both macro- and micro levels of society. The democratic deficits inherent in a media system dominated by corporate and commercial structures are apparent alongside inequalities of access, representation and ideological power (Carroll and Hackett, 2006). At every point in history when a larger minority has felt oppressed by a smaller majority, revolutions have taken place, often manifested in large social movements. Melucci (1996:84) also takes the constructivist approach and writes that

at the core of social movements is the construction of collective identity, an interactive process that addresses the question of how a collective becomes a collective. Since our identities and cultures are ultimately shaped through cognitive perceptions and flows of information, its democratization is integral to the collective welfare and progression. Collective action therefore becomes a way of communicating a message to the rest of society. As argued by Faiclough and Wodak (1997: 258), discourse is "constitutive both in the sense that it helps to sustain and reproduce the social status quo, and in the sense that it contributes to transforming it." From the mere conception of ideas to the distribution of messages through e.g. self-mediation, policy-makers, marketing-companies, social movements and NGOs, the significance of discourse to progressive social change is clear.

2NC

Whites deny credit to blacks because they can say "look at these hardworking Asians, be like them" – alt is a better starting point

Their silence provides legitimacy to the myth of the model minority – they single out blacks and Latinx, ignores Southeast Asians who face the same problems

Link of silence is uniquely justified – the myth of the model minority reproduces itself because of its seeming facticity. Any attempt to discuss something like lack of credit without considering the myth is doomed to failure – at worst, it's a solvency takeout to the aff.

Global Local

1NC

The 1AC is an act of world ordering – images of disempowering structures produce a vision of the world that negates activism at the level of the self. The I-In-Relationship is a necessary starting point for changing larger structures

Jayan **Nayar**, Law—University of Warwick, **1999** "SYMPOSIUM: RE-FRAMING INTERNATIONAL LAW FOR THE 21ST CENTURY: Orders of Inhumanity ," 9 Transnat'l L. & Contemp. Probs. 599

Despite the fixation of the beneficiaries of ordered worlds, even the ordered "critic," with the prescribed languages, visions and possibilities of human socialities, other realities of humanity nevertheless persist. Notwithstanding the globalization of social concern and the transnationalization of professionalized critique and reformatory action, struggles against violence remain energized, persistent and located. They are waged through the bodies of lives lived in experiential locations against real instruments of terror, functioning within embodied sites of violence. Non-information and non-representation of the existence of such struggles, and non-learning of the wisdoms thus generated do not negate their truths or the vibrancy of their socialities. 51 "We" are participants in ordered worlds, not merely observers. The choice is whether we wish to recognize our own locations of ordered violence and participate in the struggle to resist their orderings, or whether we wish merely to observe violence in far-off worlds in order that our interventionary participation "out there" never destabilizes the ground upon which we stand. I suggest that we betray the spirit of transformatory struggle, despite all our expressions of support and even actions of professionalized expertise, if our own locations, within which are ordered and from which we ourselves order, remain unscrutinized. And so, what might I contribute to the present collective exercise toward a futuristic imaging of human possibilities? I am unsure. It is only from my view of the "world," after all, that I can project my visions. These visions do not go so far as to visualize any "world" in its totality; they are uncertain even with regard to worlds closer to home, worlds requiring transformatory actions all the same. Instead of fulfilling this task of imagining future therefore I simply submit the following two "poems." [*629] Changing the "I" of the World: The Essential Message of Mahatmas?" We are today bombarded by images of our "one world." We speak of the world as "shrinking" into a "global village." We are not all fooled by the implicit benign-ness of this image of "time-space" contracted--so we also speak of "global pillage." This astuteness of our perceptions, however, does not prevent us from our delusion of the "global;" the image of the "global" world persists even for many activists amongst us who struggle to "change" the world. This is recent delusion. It is a delusion which anesthetizes us from the only world which we can ever locate ourselves in and know--the worlds of "I"-in relationships. The "I" is seldom present in "emancipatory" projects to change the world. This is because the "relational I"-world and the "global"-world are negations of one another; the former negates the concept of the latter whilst the latter negates the life of the former. And concepts are more amenable to scrutiny than life. The advance in technologies of image-ing enables a distanciation of scrutiny, from the "I"-world of relationships to the "global"-world of abstractions. As we become fixated with the distant, as we consume the images of "world" as other than here and now, as we project ourselves through technological time-space into worlds apart from our here and now, as we become "global," we are relieved of the gravity of our present. We, thus, cease the activism of self (being) and take on the mantle of the "activist" (doing). This is a significant displacement. 1NC That there is suffering all over the world has indeed been made more visible by the technologies of image-ing. Yet for all its consequent fostering of "networks," images of "global" suffering have also served to disempower. By this, we mean not merely that we are filled with the sense that the forces against which the struggle for emancipations from

injustice and exploitation are waged are pervasive and, therefore, often impenetrable, but, more importantly, that it diverts our gaze away from the only true power that is in our disposal--the power of self-change in relationships of solidarities. The "world," as we perceive it today, did not exist in times past. It does not exist today. There is no such thing as the global "one world." The world can only exist in the locations and experiences revealed through and in human relationships. It is often that we think that to change the world it is necessary to change the way power is exercised in the world; so we go about the business of exposing and denouncing the many power configurations that dominate. Power indeed does lie at the core of human misery, yet we blind ourselves if we regard this power as the power out there. Power, when all the complex networks of its reach are untangled, is personal; power does not exist out there, [*630] it only exists in relationship. To say the word, power, is to describe relationship, to acknowledge power, is to acknowledge our subservience in that relationship. There can exist no power if the subservient relationship is refused--then power can only achieve its ambitions through its naked form, as violence. Changing the world therefore is a misnomer for in truth it is relationships that are to be changed. And the only relationships that we can change for sure are our own. And the constant in our relationships is ourselves--the "I" of all of us. And so, to change our relationships, we must change the "I" that is each of us. Transformations of "structures" will soon follow. This is, perhaps, the beginning of all emancipations. This is, perhaps, the essential message of Mahatmas.

World-ordering is the ordering of worlds – a civilizing mission that subdues assimilates and eradicates the other

Jayan **Nayar**, Law—University of Warwick, **1999** "SYMPOSIUM: RE-FRAMING INTERNATIONAL LAW FOR THE 21ST CENTURY: Orders of Inhumanity ," 9 Transnat'l L. & Contemp. Probs. 599

[*606] Distinguishing these two meanings of "order" provides us with radically opposed directions of analysis and orientations for future imagings of social relations. Although the rhetoric of world-order would focus on visions of some projected "world" that provides the aspiration for collective endeavors, "order" does not come to be without necessary "ordering;" the "world" of "world-order" has not come to be without the necessary ordering of many worlds. The ordering and the ordered, the world of order and the ordered world, all are inextricable parts of the past and the present of "civilization." Despite the vision of world-order founded on a notion of a universal society of humankind aspiring toward a universal common good, (first given meaning within a conceptual political-legal framework through the birth of the so-called "Westphalian" state system n14), the materialities of "ordering" were of a different complexion altogether. Contrary to the disembodied rhetoric of world-order as bloodless evolution, the new images of the world and languages of "globality" did not evolve out of a sense of "hospitality" n15 to the "other," the "stranger." Rather, the history of the creation of the post-Westphalian "world" as one world, can be seen to be most intimately connected with the rise of an expansionist and colonizing world-view and practice. Voyages of "discovery" provided the necessary reconnaissance to image this "new world." Bit by bit, piece by piece, the jigsaw of the globe was completed. With the advance of the "discoverer," the "colonizer," the "invader," the "new" territories were given meaning within the hermeneutic construct that was the new "world." [*607] The significance of this evolution of the world does not, however, lie merely in its acquiring meaning. It is not simply the "idea" of the world that was brought to prominence through acts of colonization. The construction of the "stage" of the world has also occurred, albeit amid the performance of a violent drama upon it. The idea of a single world in need of order was followed by a succession of chained and brutalized bodies of the "other." The embodied world that has been in creation from the "colonial" times to the present could not, and does not, accommodate plurality. The very idea of "one world" contains the necessary impetus for the absorption, assimilation, if not destruction, of existing worlds and the genocide of existing socialities. This violence of "order-ing" within the historical epoch of colonialism is now plainly

visible. Through "colonialism" was reshaped the material basis of exchange that determined human relationships. Put differently, the very idea of what is "human" was recast by the imposed value-systems of the "civilizing" process that was colonialism. To be human, to live, and to relate to others, thus, both lost and gained meaning. Lost were many pre-colonial and indigenous conceptions of human dignity, of subsistence, production, consumption, wealth and poverty. Gained was the advent of the human "self" as an objective "economic" agent and, with it, the universals of commodification as the basis for human relations. Following this transformation of the material political-economy of the colonized, or "ordered," colonialism entrenched the "state" as the symbolic "political" institution of "public" social relations. The effect of this "colonization of the mind" was that the "political-economic" form of social organization--the state--was universalized as common, if not "natural," resulting in a homogenization of "political" imagination and language. Thus, diversity was unified, while at the same time, unity was diversified. The particularities and inconveniences of human diversity--culture and tradition--were subordinated to the "civilized" discourse of secular myths (to which the "rule of law" is central), n16 while concurrently, humanity was formally segregated into artificial "states," enclosures of mythic solidarities and common destinies. This brief remembering of colonialism as an historic process, provides us with the most explicit lessons on the violence of the "ordering" of "worlds." From its history we see that an important feature of ordering prevails. The world of those who "order" is the destruction of the "worlds" of those ordered. So many ideologies of negation and (re)creation served to justify this "beginning"--terra nullius, the "savage" native, the "civilizing mission." n17 The [*608] "world," after all, had to be created out of all this "unworldly" miasma, all for the common good of the universal society of humankind. Although historical colonialism as a formal structure of politico-legal ordering of humanity has come and gone, the violence of colonization is very much a persistent reality. A striking feature of historical world-orderings was the confidence with which the "new world" was projected upon human imagination. Colonialism was not a tentative process. The "right" of colonization, both as a right of the colonizer and as a right thing to do by the colonizer, was passionately believed and confidently asserted. Thus, for the most part, this "right" was uncontested, this confidence unchallenged. "World-order" today is similarly asserted with confidence and rectitude. Contemporary world-orderings, consistent with those of the past, are implemented using a range of civilizational legitimization. With the advent of an ideology of "humanity," a "post-colonial" concession to human dignity demanded by the previously colonized, new languages of the civilizational project had to be conceived of and projected. "Freed" from the brutalities of the order of historical colonialism, the "ordered" now are subjected to the colonizing force of the "post-colonial," and increasingly, globalization-inspired ideologies of development and security. Visible, still, is the legitimization of "order" as coercive command through the rhetoric of "order" as evolutionary structure.

Reject the 1AC in order to politicize our own relationships with structures – this is the first step towards liberation

Nayar, Law—University of Warwick, **1999** "SYMPOSIUM: RE-FRAMING INTERNATIONAL LAW FOR THE 21ST CENTURY: Orders of Inhumanity ," 9 Transnat'l L. & Contemp. Probs. 599

So, back to the question: to what extent, for this, "our world," do we contemplate change when "we" imagine transformed "world-orders?" In addition to the familiar culprits of violent orderings, such as government, financial institutions, transnational corporations, the World Bank, the IMF, and the WTO (as significant culprits they indeed are), do we, in our contemplations of violent orders, vision our locations within corporate "educational" institutions as "professional academics" and "researchers," our locations within corporate NGOs as "professional activists," our locations within "think-tanks" and "research organizations" as "professional policy-formulators," and whatever other locations of elite "expertise" we have been "trained" to possess, as ordered sites, complicit and parasitic, within a violent "world-order"? Do we see in our critiques of world-orderings, out there, the orderings we find, right here, in our bodies, minds, relationships, expectations, fears and hopes? Would we be willing to see "our (ordered) world" dismantled in order that other worlds, wherein our "privileges" become extinguished, may flourish? These concerns are, then, I believe, the real complexities of judgment and

action. Consideration should be given, not only to those of the political-structural, so often honed in on, but also to the [*628] issue of the political-personal, which ultimately is the "unit" of "worlds" and of "orders." If "globalization," as a recent obsession of intellectual minds, has contributed anything to an understanding of the ways of the "world," I suggest, it is that we cannot escape "our" implication within the violence of "world (mis)orders." IV. A WORLD FOR TRANSFORMATION: TWO POEMS Despite the fixation of the beneficiaries of ordered worlds, even the ordered "critic," with the prescribed languages, visions and possibilities of human socialities, other realities of humanity nevertheless persist. Notwithstanding the globalization of social concern and the transnationalization of professionalized critique and reformatory action, struggles against violence remain energized, persistent and located. They are waged through the bodies of lives lived in experiential locations against real instruments of terror, functioning within embodied sites of violence. Non-information and non-representation of the existence of such struggles, and non-learning of the wisdoms thus generated do not negate their truths or the vibrancy of their socialities. n51 "We" are participants in ordered worlds, not merely observers. The choice is whether we wish to recognize our own locations of ordered violence and participate in the struggle to resist their orderings, or whether we wish merely to observe violence in far-off worlds in order that our interventionary participation "out there" never destabilizes the ground upon which we stand. I suggest that we betray the spirit of transformatory struggle, despite all our expressions of support and even actions of professionalized expertise, if our own locations, within which are ordered and from which we ourselves order, remain unscrutinized.

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Link to idea of “gift” – posits cap as something external rather than as a logic that exists in us

This is could become a floating pik – the politics of brokenness is fine, but the starting point of analyzing larger institutions is problematic; neoliberalism is not external

Focusing on larger structures of power obscures our individual responsibility.

Kappeler, 95 – [Susanne, The Will to Violence, p. 10-11]

We are the war' does not mean that the responsibility for a war is shared collectively and diffusely by an entire society - which would be equivalent to exonerating warlords and politicians and profiteers or, as Ulrich Beck says, upholding the notion of `collective irresponsibility', where people are no longer held responsible for their actions, and where the conception of universal responsibility becomes the equivalent of a universal acquittal.' On the contrary, the object is precisely to analyse the specific and differential responsibility of everyone in their diverse situations. Decisions to unleash a war are indeed taken at particular levels of power by those in a position to make them and to command such collective action. We need to hold them clearly responsible for their decisions and actions without lessening theirs by any colle ctive `assumption' of responsibility. Yet our habit of focusing on the stage where the major dramas of power take place tends to obscure our sight in relation to our own sphere of competence, our own power and our own responsibility - leading to the well-known **illusion of our apparent `powerlessness'** and its accompanying phenomenon, our so-called political disillusionment. Single citizens - even more so those of other nations - have come to feel secure in their **obvious non-responsibility for such large-scale political events** as, say, the wars in Croatia and Bosnia-Hercegovina or Somalia - since the decisions for such events are always made elsewhere. Yet our insight that indeed we are not responsible for the decisions of a Serbian general or a Croatian president tends to mislead us into thinking that therefore we have no responsibility at all, not even for forming our own judgement, and thus into underrating the responsibility we do have within our own sphere of action. In particular, it seems to absolve us from having to try to see any relation between our own actions and those events, or to recognize the connections between those political decisions and our own personal decisions. It not only shows that we participate in what Beck calls `organized irresponsibility', upholding the apparent lack of connection between bureaucratically, institutionally, nationally and also individually organized separate competences. It also proves the phenomenal and unquestioned alliance of our personal thinking with the thinking of the major powermongers: **For we tend to think that we cannot `do' anything**, say, about a war, because we deem ourselves to be in the wrong situation; because we are not where the major decisions are made. Which is why many of those not yet entirely disillusioned with politics tend to engage in a form of mental deputy politics, in the style of `What would I do if I were the general, the prime minister, the president, the foreign minister or the minister of defence?' Since we seem to regard their mega spheres of action as the only worthwhile and truly effective ones, and since our political analyses tend to dwell there first of all, **any question of what I would do if I were indeed myself tends to peter out**

in the comparative insignificance of having what is perceived as `virtually no possibilities': what I could do seems petty and futile. For my own action I obviously desire the range of action of a general, a prime minister, or a General Secretary of the UN - finding expression in ever more prevalent formulations like `I want to stop this war', `I want military intervention', `I want to stop this backlash', or `I want a moral revolution." 'We are this war', however, even if we do not command the troops or participate in so-called peace talks, namely as Drakulic says, in our `non-comprehension': our **willed refusal to feel responsible for our own thinking** and for working out our own understanding, preferring innocently to drift along the ideological current of prefabricated arguments or less than innocently taking advantage of the advantages these offer. And we `are' the war in our `unconscious cruelty towards you', our tolerance of the `fact that you have a yellow form for refugees and I don't' - our readiness, in other words, to build identities, one for ourselves and one for refugees, one of our own and one for the `others'. **We share in the responsibility** for this war and its violence in the way we let them grow inside us, that is, in the way we shape `our feelings, our relationships, our values' according to the structures and the values of war and violence.

Huge offense against perm – focus tradeoff argument in first card – the idea of a global world and a large system of neoliberalism is a myth – neoliberalism exists in several contingent relationships.

Settlerism

Link

Settlerism

Link

They ignore the fact that all the wealth accumulated by the US is really based on native land – that papers over settler theft of America.

Tuck & Yang '12 (Eve, K. Wayne; Associate Professor of Educational Foundations and Coordinator of Native American Studies at the State University of New York at New Paltz, Associate Professor of Ethnic Studies at UC San Diego; Decolonization: Indigeneity, Education and Society, Vol. 1, No. 1, 2012, "Decolonization is not a metaphor", pp. 1-40)

Moves to innocence VI: Re-occupation and urban homesteading The Occupy movement for many economically marginalized people has been a welcome expression of resistance to the massive disparities in the distribution of wealth; for many Indigenous people, Occupy is another settler re-occupation on stolen land. The rhetoric of the movement relies upon problematic assumptions about social justice and is a prime example of the incommensurability between "re/occupy" and "decolonize" as political agendas. The pursuit of worker rights (and rights to work) and minoritized people's rights in a settler colonial context can appear to be anti-capitalist, but this pursuit is nonetheless largely pro-colonial. That is, the ideal of "redistribution of wealth" camouflages how much of that wealth is land, Native land. In Occupy, the "99%" is invoked as a deserving supermajority, in contrast to the unearned wealth of the "1%". It renders Indigenous peoples (a 0.9% 'super-minority') completely invisible and absorbed, just an asterisk group to be subsumed into the legion of occupiers. For example, "If U.S. land were divided like U.S. wealth" (figure 1.1) is a popular graphic that was electronically circulated on the Internet in late 2011 in connection with the Occupy movement. The image reveals inherent assumptions about land, including: land is property; land is/belongs to the United States; land should be distributed democratically. The beliefs that land can be owned by people, and that occupation is a right, reflect a profoundly settling, anthropocentric, colonial view of the world. In figure 1.1, the irony of mapping of wealth onto land seems to escape most of those who re-posted the images on their social networking sites and blogs: Land is already wealth; it is already divided; and its distribution is the greatest indicator of racial inequality17. Indeed the current wealth crisis facing the 99% spiraled with the crash in home/land ownership. Land (not money) is actually the basis for U.S. wealth. If we took away land, there would be little wealth left to redistribute.

Neoliberalism PIK

1NC

Power is exercised through specific local networks and relationships, not monolithic structures like neoliberalism. Their impact framing is wrong and counterproductive.

Bryant 9 — Levi R. Bryant, Professor of Philosophy at Collin College, holds a Ph.D. in Philosophy from Loyola University in Chicago, 2009 ("Fruit and Hubs," *Larval Subjects*—Levi R. Bryant's philosophy blog, October 2nd, https://larvalsubjects.wordpress.com/2009/10/02/fruit-and-hubs/)

Perhaps what Nick is getting at with his rejection of politics based on grand abstraction can be fleshed out through an anecdote about a young child. A while back an exasperated co-worker told me an amusing story about how her child had had a melt down the night before because she wanted fruit. The mother first tried to give her child grapes, then melons, then apple, then oranges, but with each attempt to appease the child the child's face grew a darker shade of purple, clouded with anger and frustration. The whole time the child screamed "**No! I want fruit!**" I was, of course, delighted by this anecdote because it is an exact version of Hegel's joke about the universal and the man who goes to the market trying to buy fruit. I was astonished to hear that this mistake could genuinely be made.¶ When Nick denounces grand abstractions it seems like he's gesturing at something like the error of trying to eat fruit. You can't fight capitalism, nor can you fight neoliberalism. **Asking how to turn over capitalism or how we can overcome neoliberalism is like trying to eat fruit**. The real issue is that of how **the local relations in a network** can be used to produce effects on global relations within a network. So suppose you're an oppressed worker in a corporation. Just as you can't fight capitalism and you can't eat fruit, you can't fight a corporation. Where is the corporation? It is **everywhere and nowhere**.¶ However, while you can't get at the corporation **itself**, within the corporation there are all sorts of **local networks and nodes** that you can act upon. Just as there are strawberries, grapes, apples, and so on, there are **local interactive relations** that make up the endo-consistency of the corporation in its ongoing existence. These can be **targeted**. Among these nodes there will be **hubs**, through which many axial or radiating elements are connected. For example, in the United States there are major airports like Chicago International or Dallas Fort Worth, and then all sorts of other smaller airports that radiate out from these like Lynchburg, Virginia's airport. If Chicago International Airport shuts down due to ice or a snow storm, all of these other airports are **effectively shut down as well**. Similarly, in the blogosphere, there are blogs that function as hubs that regulate flows of connection and exchanges of information throughout the rest of the internet. If these shut down, then the sites that get their traffic from these hubs become separate. New "speciations" begin to take place as a result through topological isolation and "information drift", new relations begin to come into being, and so on.¶ It seems to me that Nick is thus making two proposals. On the one hand, Nick is making the obvious observation that we need to know how these networks are **concretely organized**, where their hubs are, how interfaces among the elements in these hubs are interrelated, to strategize acting upon these networks. **Absent that sort of concrete knowledge we are like the child trying to eat fruit**. On the other hand, in proposing that "we can see that what is needed now is **not** a full-scale revolution, nor an overthrowing of an **entire** network, but rather **the piece-meal construction** of the conditions for a new system to emerge", I take it that Nick is asking how we go about producing new networks, nodes, and, perhaps most importantly hubs that act upon established networks that have become efficient at reproducing themselves over time. The point is that through this sort of **local action** the global network is acted upon. And, with any luck, a point emerges where a **tipping point** or bifurcation point is reached, leading to a **qualitative change in the object or social organization as a whole**. The worry here, however, is that what follows these tipping points is generally very difficult to calculate and predict.¶

* Nick = Nick Srnicek, Teaching Fellow in Geopolitics and Globalisation in the Department of Geography at University College London, holds a Ph.D. in International Relations from the London School of Economics

Their framing of "neoliberalism" as hegemonic inhibits political change. Their abstract analysis oversimplifies contingent social relations, which turns case.

Barnett 5 — Clive Barnett, Professor of Geography at The Open University (UK), 2005 ("The consolations of 'neoliberalism'," *Geoforum*, Volume 36, Issue 1, January)

None of these populist tendencies is simply an expression of a singular "hegemonic" project of "neoliberalization". They are effects of much longer rhythms of socio-cultural change that emanate from the bottom-up. It seems just as plausible to suppose that what we have come to recognise as "hegemonic neoliberalism" is a **muddled set of ad hoc, opportunistic accommodations** to these unstable dynamics of social change as it is to think of it as the outcome of **highly coherent** political-ideological projects. Processes of privatization, market liberalization, and de-regulation have often followed an ironic pattern in so far as they have been triggered by citizens' movements arguing from the left of the political spectrum against the rigidities of statist forms of social policy and welfare provision in the name of greater autonomy, equality, and participation (e.g. Horwitz, 1989). The political re-alignments of the last three or four decades **cannot** therefore be adequately understood in terms of **a straightforward shift from the left to the right**, from values of collectivism to values of individualism, or as a re-imposition of class power. The emergence and generalization of this populist ethos has much longer, deeper, and wider roots than those ascribed to "hegemonic neoliberalism". And it also points towards the extent to which easily the most widely resonant political rationality in the world today is not right-wing market liberalism at all, but is, rather, the polyvalent discourse of "democracy" (see Barnett and Low, 2004).¶ Recent theories of "neoliberalism" have retreated from the appreciation of the **long-term rhythms of socio-cultural change**, which Stuart Hall once developed in his influential account of Thatcherism as a variant of authoritarian populism. Instead, they favour **elite-focused analyses of state bureaucracies**, **policy networks**, and the like. One consequence of the residualization of the social is that theories of "neoliberalism" have **great difficulty** accounting for, or indeed even in **recognizing**, new forms of "individualized collective-action" (Marchetti, 2003) that have emerged in tandem with the apparent ascendancy of "neoliberal hegemony": **environmental politics** and the politics of sustainability; new forms of **consumer activism** oriented by an ethics of assistance and global solidarity; the **identity politics** of sexuality related to demands for changes in modes of health care provision, and so on (see Norris, 2002). All of these might be thought of as variants of what we might want to call bottom-up governmentality. This refers to the notion that non-state and non-corporate actors are also engaged in trying to govern various fields of activity, both by acting on the conduct and contexts of ordinary everyday life, but also by acting on the conduct of state and corporate actors as well. Rose (1999, pp. 281–284) hints at the outlines of such an analysis, at the very end of his paradigmatic account of governmentality, but investigation of this phenomenon is poorly developed at present. Instead, the trouble-free amalgamation of Foucault's ideas into the Marxist narrative of "neoliberalism" sets up **a simplistic image of the world** divided between the forces of hegemony and the spirits of subversion (see Sedgwick, 2003, pp. 11–12). And clinging to this image only makes it **all the more difficult** to acknowledge the possibility of **positive political action** that does not conform to **a romanticized picture of rebellion, contestation, or protest against domination** (see Touraine, 2001).

Vote negative to abandon the concept of "neoliberalism" – that opens up the recognition that power exists contingently.

Venugopal 14 — Rajesh Venugopal, Lecturer in International Development and Humanitarian Emergencies in the Department of International Development at the London School of Economics, holds a doctorate from the University of Oxford, 2014 ("The Antinomies of Neoliberalism," Draft Version of a Paper Under Review For Publication, March, http://personal.lse.ac.uk/venugopr/venugopalantinomiesofneoliberalism.pdf, p. 16-17)

6. Conclusions

This paper started by offering a different way of answering the question 'what is neoliberalism' based on its conceptual evolution. Through a critique that dwelt mainly on its uncoordinated and weakly grounded conceptual proliferation, and its one-sided usage by critics and non-economists, it has made four related points and claims:¶ Firstly, and most fundamentally, neoliberalism has proliferated well beyond its conceptual crib in political economy, and has as a result, become stretched to the point where widespread concerns have been raised about its viability and relevance. Secondly, this critical concern has resulted in attempts to either purify the concept with reference to its original ideational essence, or to reconceptualise it with respect to a more complex actually-existing ontology. Thirdly, the incoherence in neoliberalism goes beyond the problems evident in many overused and stretched concepts, to the extent that it is deployed in **entirely contradictory and opposite ways**. This means that it creates **analytical blind-spots** by conflating **significantly different phenomena** under a common term. Fourthly, terminological dysfunction is not an end-point in itself, but can provide important insights on what functions it does perform, and what knowledge it produces. The **morally loaded, one-sided deployment** of neoliberalism speaks to such a function. In effect, neoliberalism serves as a **rhetorical tool** and moral device for critical social scientists outside of economics to conceive of academic economics and a range of economic phenomena that are otherwise **beyond their epistemological horizons** and which they cannot otherwise grasp or evaluate. It has as a result, ended up, as Bob Jessop describes 'more as **a socially constructed term of struggle** (Kampfbegriff) that frames criticism and resistance than as a **rigorously defined concept** that can guide research in anthropology and other social sciences' (Jessop 2013:65).¶ As a result, it lives on as **a problematic signifier** that bundles together a proliferation of eclectic and **contradictory concepts**; a tableau of critical explorations of the material world [end page 16] by non-economists, clustered together by a shared signifier that thematically links them to a broader set of **morally devolved referents** about markets, economics, subjectivities, state authority, globalization or neo-colonialism.

2NC Epistemology

Epistemology is important – if their method of knowledge formation is flawed, they'll inevitably arrive at the wrong understanding of the problem.

Barnett 5 — Clive Barnett, Professor of Geography at The Open University (UK), 2005 ("The consolations of 'neoliberalism'," *Geoforum*, Volume 36, Issue 1, January)

3. There is no such thing as neoliberalism!¶ The blind-spot in theories of neoliberalism—whether neo-Marxist and Foucauldian—comes with trying to account for how top-down initiatives **'take'** in **everyday situations**. So perhaps the best thing to do is to **stop thinking of "neoliberalism" as a coherent "hegemonic" project altogether**. For all its apparent critical force, the vocabulary of "neoliberalism" and "neoliberalization" in fact provides a **double consolation** for leftist academics: it supplies us with plentiful opportunities for unveiling the real workings of hegemonic ideologies in a characteristic gesture of revelation; and in so doing, it invites us to align our own professional roles with the activities of various actors "out there", who are always framed as engaging in resistance or contestation. The conceptualization of "neoliberalism" as a "hegemonic" project does not need refining by adding a splash of Foucault. Perhaps we should try to **do without the concept of "neoliberalism" altogether**, because it might actually **compound rather than aid** in the task of figuring out how the world works and how it changes. One reason for this is that, between an overly economistic derivation of political economy and an overly statist rendition of governmentality, stories about "neoliberalism" manage to **reduce** the understanding of social relations to a residual effect of hegemonic projects and/or governmental programmes of rule (see Clarke, 2004a). Stories about "neoliberalism" pay **little attention** to the pro-active role of socio-cultural processes in

provoking changes in modes of governance, policy, and regulation. Consider the example of the restructuring of public services such as health care, education, and criminal justice in the UK over the last two or three decades. This can easily be thought of in terms of a "hegemonic" project of "neoliberalization", and certainly one dimension of this process has been a form of anti-statism that has rhetorically contrasted market provision against the rigidities of the state. But in fact these ongoing changes in the terms of public-policy debate involve a combination of different factors that add up to a much more dispersed populist reorientation in policy, politics, and culture. These factors include changing consumer expectations, involving shifts in expectations towards public entitlements which follow from the generalization of consumerism; the decline of deference, involving shifts in conventions and hierarchies of taste, trust, access, and expertise; and the refusals of the subordinated, referring to the emergence of anti-paternalist attitudes found in, for example, women's health movements or anti-psychiatry movements. They include also the development of the politics of difference, involving the emergence of discourses of institutional discrimination based on gender, sexuality, race, and disability. This has disrupted the ways in which welfare agencies think about inequality, helping to generate the emergence of contested inequalities, in which policies aimed at addressing inequalities of class and income develop an ever more expansive dynamic of expectation that public services should address other kinds of inequality as well (see Clarke, 2004b).¶ We don't need a large external impact, but over-determining neoliberalism as a "root cause" also results in violence. It's totalitarian thinking. ¶ **Achterhuis 2** — Hans Achterhuis, Professor Emeritus in Systematic Philosophy at the University of Twente (Netherlands), 2002 ("Violent Utopias," *Peace Review*, Volume 14, Issue 2, Available Online to Subscribing Institutions via InformaWorld, p. 157-158)¶ Philosophy does not have a single outlook on violence and aggression. If it did, that outlook would be extremely violent. Instead, we need multiple philosophical perspectives on the origins of violence. But even though I shall argue for plurality instead of unity in what follows, let me warn you against two possible misconceptions. First, while I'll examine the views of several different thinkers, it will not produce a definitive idea of how to theorize philosophically about the origins and effects of violence. This cannot be accomplished even for the leading philosophers of the second half of the twentieth century, much less for those before then. Instead I'll focus on a number of texts and thinkers I have collected in response to personal experiences, questions, and emotions. Over the years, they have helped me answer pressing questions I have had about the nature of violence.¶ While my academic participation in philosophical issues and debates has revealed to me the ways that violence has been thematized, my entry into these views is always personal and existential. Over the years, I've deepened my understanding of certain violent periods and episodes in the past, including the violence of the 1960s. Discussion of the latter has recently arisen again, in Germany, in response to the rise of the former stone-throwing rebel Joschka Fischer to become the German Foreign Minister. Other contemporary debates, such as over NATO's use of violent intervention to provide humanitarian relief in Kosovo, provide some perspective, as well.¶ To guard against a second misconception, let me mention that the philosophers I'll mention below have struggled to articulate the causes and functions of violence with varying degrees of success. I do not suggest that any of these theories succeeds more so than the others. Were that the case, we would be back to having a single outlook on violence, which arguably would itself be inherently violent. That paradox is the first of two important lessons I have learned in my explorations of the origins of violence; the second I shall relate in my conclusion.¶ My first important insight on violence—the need for multiple outlooks— stems from a text whose meaning emerged only a long time after I had read it. In Paul Valkenburgh's Four-Way Dialogue on the Nature of War and Peace, the fictive interlocutors include a politician, an informed citizen, a scientist, and a sociologist. This combination gave Valkenburgh an effective forum for highlighting his own views, enlightening the concerned citizen and correcting the scientist's narrow and exclusively logical reasoning. Thus the "dialogue" was staged and emphasized rhetorical flourishes. Still, this fictive set-up crystallized [end page 157] for me an appreciation for the multiple perspectives people hold on issues such as violence, war, and peace. There is no proper standpoint from which to view these issues. Different perspectives are possible and inevitable, they have no single cause or explanation, and these complementary and mutually correcting perspectives are necessary. If I possessed the rhetorical skill, I would have composed this contribution as a multiple dialogue, as well.¶ At base, each person who has—or claims to have—**a single account for violence** is proceeding in **an extremely violent manner**. Those who claim to know the origin of violence, to know the root of all evil, give themselves at the same stroke the moral right to reach back and root it out—thus providing, via a chain of reasoning with which we are all familiar, **the justification for using violence in order to drive violence from the world**. If we know where its origin lies, what could be wrong with using violence for the (sole) purpose of obtaining eternal peace and prosperity?¶ This is a violent chain of reasoning. Implicitly or explicitly, it entails the call for **a relentless struggle against the discovered origin of evil**, whether that be said to lie in a particular class, nation, or ethnic group; a particular social structure such as capitalism or socialism; or a particular condition such as poverty. Whenever or wherever such an origin is posed, violence is **already present**, for **it inevitably sets up the argument that violence is permitted in order to achieve peace**. It is a **means–ends logic**: the noble ends **sanctify the violent means**.¶ From Valkenberg I learned that we cannot think about violence as a means–ends logic, but only in the form of a dialogue between human beings. If readers sense a strong reaction on my part against monocausal theories, I readily admit that the reaction is first of all directed against myself. For it is a lesson I learned only through trial and error. Once upon a time I, too, thought that I had located the origin of violence and could thus revolutionize the world. But this, in my opinion, is the greatest temptation for the political thinker. Many political philosophers have proposed **totalitarian**

therapies based on philosophical analyses that attribute the origin of social evil to **a single root**. But single philosophical answers to the question of violence can never be more than partial. Such answers are but pieces of a dialogue.¶

2NC Perm

Acknowledging that neoliberalism is an incoherent signifier and then continuing to use it makes no sense.

Venugopal 14 — Rajesh Venugopal, Lecturer in International Development and Humanitarian Emergencies in the Department of International Development at the London School of Economics, holds a doctorate from the University of Oxford, 2014 ("The Antinomies of Neoliberalism," Draft Version of a Paper Under Review For Publication, March, http://personal.lse.ac.uk/venugopr/venugopalantinomiesofneoliberalism.pdf, p. 5-6)

Following from this is a third point that while many terminological critiques start by acknowledging that neoliberalism is already an over-stretched and ill-defined signifier, the solutions they reach for along the axes of reach versus depth are either to further **refine**, [end page 5] **complicate**, and **extend** old concepts, or to proliferate new ones. They seek to address problems in older versions of neoliberalism either by adding contingency and context to account for heterogeneity, or by seeking to unify and cohere the disparate theories into a grand, but fluid, meta-concept.¶ As a result, the criticism of neoliberalism has inadvertently served to add new, more deeply nuanced, analytically dense personalities to **an already over-burdened signifier**. Neoliberalism is now an **over-loaded and unwieldy term** that occupies a fluid and growing terrain that expands and contracts arbitrarily across several dimensions, but which increasingly **lacks firm foundations in real world referents**. The potential range of meanings has grown across numerous disciplines and theoretical enclaves, often in **entirely unconnected settings** and with **different meanings**. Nevertheless, the shared name continues to convey a **misleading impression** that they are all **comparable and mutually compatible**, anchored in some core, shared ontology, and referring to the same sorts of phenomena.

2NC FW

Debates about method are a prerequisite to constructive policy discussion—only the curriculum we establish can ensure meaningful political debate.

Kurki 8 — Milja Kurki, Lecturer in the Department of International Politics at Aberystwyth University, 2008 ("Introduction: causation and the divided discipline," *Causation in International Relations: Reclaiming Causal Analysis*, Published by Cambridge University Press, p. 8-9)

It should be noted that the approach adopted here is unashamedly theoretical and philosophical in nature. While philosophical, or meta- theoretical, discussions have often been subjected to criticism from the more empirically minded IR scholars, in my view philosophical reflection on the key concepts we use frequently, such as causation, is **fundamental** in the social sciences, IR among them. This is because, as Colin Wight puts it, 'conceptual inquiry is **a necessary prerequisite** to empirical research'.21 Without an adequate understanding of the ways in which we apply concepts, appreciation of the reasons for our conceptual choices, and recognition of the strengths and the weaknesses [end page 8] that our use of key concepts entail, we run the risk of conducting empirical studies that **we cannot justify** or that amount to **nothing more than aimless fact-finding**. Also, we risk not being able to understand how and why our accounts

might differ from those of others and, hence, are **not able to engage in constructive debate with other perspectives**. This book is motivated by the belief that IR has not become too theoretical or philosophical at the expense of empirical inquiry:22 rather it still remains **inadequately reflective towards many fundamental concepts** used in empirical analyses. While meta-theoretical, or philosophical, debate is clearly in and of itself not the sole or the central aim of Inter- national Relations scholarship, it should not be forgotten that the ways in which we 'see' and analyse the 'facts' of the world political environment around us are **closely linked** to the kinds of **underlying assumptions** we make about meta-theoretical issues, such as the nature of science and causation. Indeed, the analysis here is motivated by the belief that whenever we make factual, explanatory or normative judgements about world political environments, **important meta-theoretical filters are at work** in directing the ways in which we talk about the world around us, and these filters are **theoretically**, **linguistically**, **methodologically**, and also potentially **politically consequential**.23 It follows that philosophical investigation of key concepts such as causation should not be sidelined as 'hair-splitting' or 'meta-babble',24 but embraced—or at least engaged with—as one important aspect of the study of international relations.

2NC Ferguson

Radical critiques of neoliberalism are meaningless unless they provide a vision for a progressive policy alternative. Instead of endlessly repeating what we oppose, we need to re-center our conversations around what we want.

Ferguson 10 — James Ferguson, Susan S. and William H. Hindle Professor in the School of Humanities and Sciences and Professor in the Department of Anthropology at Stanford University, holds a Ph.D. in Social Anthropology from Harvard University, 2010 ("The Uses of Neoliberalism," *Antipode*, Volume 41, Issue Supplement 1, January)

In thinking about the rapidly expanding literature on neoliberalism, I am struck by how much of the critical scholarship on topic arrives in the end at **the very same conclusion**—a conclusion that might be expressed in its simplest form as: "neoliberalism is bad for poor and working people, therefore we must oppose it." It is not that I disagree with this conclusion. On the contrary. But I sometimes wonder **why I should bother to read one after another extended scholarly analysis** only to reach, **again and again**, such an **unsurprising conclusion**.

This problem in recent progressive scholarship strikes me as related to a parallel problem in progressive politics more broadly. For over the last couple of decades, what we call "the Left" has come to be organized, in large part, around a project of **resisting and refusing** harmful new developments in the world. This is understandable, since so many new developments have indeed been highly objectionable. But it has left us with a politics largely defined by **negation and disdain**, and centered on what I will call "**the antis**." Anti-globalization, anti-neoliberalism, anti-privatization, anti-imperialism, anti-Bush, perhaps even anti-capitalism—but **always "anti", not "pro"**. This is good enough, perhaps, if one's political goal is simply to denounce "the system" and to decry its current tendencies. And, indeed, some seem satisfied with such a politics. In my own disciplines of anthropology and African Studies, for instance, studies of state and development tend, with depressing predictability, to conclude (in tones of righteous indignation) that the rich are benefiting and the poor are getting screwed. The powerless, it seems, are getting the short end of the stick. This is **not exactly a** [end page 166] **surprising finding**, of course (isn't it precisely because they are on the losing end of things that we call them "powerless" in the

first place?). Yet this sort of work styles itself as "critique", and imagines itself to be **very "political"**.

But what if politics is really not about expressing indignation or denouncing the powerful? What if it is, instead, about **getting what you want**? Then we progressives must ask: **what do we want?** This is a quite different question (and a far more difficult question) than: what are we against? What do we want? Such a question brings us very quickly to the question of government. Denunciatory analyses often treat government as the simple expression of power or domination—the implication apparently being that it is politically objectionable that people should be governed at all. But any **realistic** sort of progressive politics that would seek a serious answer to the question "what do we want?" will have to involve an exploration of the contemporary possibilities for developing **genuinely progressive arts of government**.

Case – Undercommons

Notes

Read on case

The aff is a double turn – their politics of visibility is antithetical to the idea of the Undercommons

Vote neg so they don't make it to elims and it reduces their visibility

Also vote neg because this proves the aff doesn't meet the standard in their method card

Could run a ballot k-esque arg about how the aff is asking for recognition from capitalism rather than breaking the cycle between debate and intellectual profit (the ballot) – agreeing with the aff and voting neg distorts/complicates the linear logic of capitalism

Cards

Instead of fetishizing breaking silence we should embrace silence as a means of resisting regulation and depoliticization

Brown 1996 [Wendy Brown, Prof. Political Science, Prof. Rhetoric, Prof. Critical Theory @ UC-Berkeley, 96, "In the 'folds of our own discourse': The Pleasures and Freedoms of Silence," 3 U. Chi. L. Sch. Roundtable, 186]

But if the silences in discourses of domination are a site for insurrectionary noise, if they are the corridors we must fill with explosive counter-tales, it is also possible to make a fetish of breaking silence. Even more than a fetish, it is possible that this ostensible tool of emancipation carries its own techniques of subjugation-that it converges with non-emancipatory tendencies in contemporary culture (for example, the ubiquity of confessional discourse and rampant personalization of political life), that it establishes regulatory norms, coincides with the disciplinary power of confession, in short, feeds the powers we meant to starve. While attempting to avoid a simple reversal of feminist valorizations of breaking silence, it is this dimension of silence and its putative opposite with which this Article is concerned. In the course of this work, I want to make the case for silence not simply as an aesthetic but a political value, a means of preserving certain practices and dimensions of existence from regulatory power, from normative violence, as well as from the scorching rays of public exposure. I also want to suggest a link between, on the one hand, a certain contemporary tendency concerning the lives of public figures-the confession or extraction of every detail of private and personal life (sexual, familial, therapeutic, financial) and, on the other, a certain practice in feminist culture: the compulsive putting into public discourse of heretofore hidden or private experiences-from catalogues of sexual pleasures to litanies of sexual abuses, from chronicles of eating disorders to diaries of homebirths, lesbian mothering, and Gloria Steinam's inner revolution. In linking these two phenomena-the privatization of public life via the mechanism of public exposure of private life on the one hand, and the compulsive/compulsory cataloguing of the details of women's lives on the other-I want to highlight a modality of regulation and depoliticization specific to our age that is not simply confessional but empties private life into the public domain, and thereby also usurps public space with the relatively trivial, rendering the political personal in a fashion that leaves injurious social, political and economic powers unremarked and untouched. In short, while intended as a practice of freedom (premised on the modernist conceit that the truth shall make us free), these productions of truth not only bear the capacity to chain us to our injurious histories as well as the stations of our small lives but also to instigate the further regulation of those lives, all the while depoliticizing their conditions. My concern with what might be called compulsory feminist discursivity and the presumed evil of silences has yet another source. Notwithstanding American academic feminism's romance with Foucault, there is an oddly non or pre-Foucauldian quality to much feminist concern with censorship and silencing. In these formulations,

expression is cast either as that which makes us free, tells our truth, puts our truth into circulation,' or as that which oppresses us by putting "their" truth into circulation in the form of pornography, hate speech, harassment or simply the representation of the world from "the male point of view."4 If one side in the debate argues for more expression on our part-for example, by making our own pornography or telling our own stories-and the other argues for less on "their" part, both sides nonetheless subscribe to an expressive and repressive notion of speech, its capacity to express the truth of an individual's desire or condition, or to repress that truth. Both equate freedom with voice and visibility.' Both assume recognition to be unproblematic when we tell our own story, and assume that such recognition is the material of power and pleasure. Neither, in short, confronts the regulatory potential of speaking ourselves. I think the whole contemporary debate over censorship-whether focused on porn or rap music-is necessarily bound to an expressive-repressive model of power and freedom, which may explain why those who feel passionately about both freedom and dignity have trouble finding their way in this debate. If the choice is cast either as the free circulation of music and pictures venerating rape, racism, and misogyny, or state repression of the same, how does one choose? To inaugurate a different kind of analysis of the relationship between silence, speech, and freedom, I want to turn to two passages in Foucault's work, the first from The History of Sexuality: Discourses are not once and for all subservient to power or raised up against it, any more than silences are . . .Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it. In like manner, silence and secrecy are a shelter for power, anchoring its prohibitions; but they also loosen its hold and provide for relatively obscure areas of tolerance. Foucault here marks the ambiguity of silence in relationship to power, insisting that silence functions not only as a "shelter for power"7 but also as a shelter from it. (Foucault's example is the putative freedom of homosexual practice in a historical age when there is no discourse for or about it).8 This paradoxical capacity of silence to engage opposites with regard to power is rarely associated with Foucault's thinking due to his emphasis on discourse as power. Yet I do not think he is here reneging on this emphasis nor, in speaking of silence as a shelter from power, suggesting a pre-discursive existence to things. Critical here is the difference between what Foucault calls unitary discourses, which regulate and colonize, and those which do not perform these functions with same social pervasiveness, even as they do not escape the tendency of all discourse to establish norms by which it regulates and excludes. It is through this distinction that one can make sense of Foucault's otherwise inexplicable reference to sex in the eighteenth century as being "driven out of hiding and constrained to lead a discursive existence,"9 or his troubling example of the village simpleton whose "inconsequential" habit of molesting young girls in exchange for pennies was suddenly subjected to medical, judicial, and popular scrutiny and condemnation. ° Neither in these cases nor in others where Foucault seems to imply a "freer" because pre-discursive existence to certain practices would he appear to mean that they really occurred "outside" discourse, but rather that they had not yet been brought into the pervasive regulatory discourses of the age-science, psychiatry, medicine, law, pedagogy, and so forth." Silence, as Foucault affirms it, then, is identical neither with secrecy nor with not speaking. Rather, it signifies a relation to regulatory discourses, as well as a possible niche for the practice of freedom within those discourses. If, as Foucault insists, freedom is a practice (as opposed to an achievement, condition, or institution), then the possibility of practicing freedom inside a regulatory discourse occurs in the empty spaces of that discourse as well as in resistance to the discourse. Moreover, silence can function as speech in both ways at once, as in the following autobiographical example offered by Foucault: Maybe another feature of this appreciation of silence is related to the obligation of speaking. I lived as a child in a petit bourgeois, provincial milieu in France and the obligation of speaking, of making conversation with visitors, was for me something both very strange and very boring. I often wondered why people had to speak. 2

Academia has been militarized – the affirmative's radical strategy of visibility and calls for dialogue will be co-opted for sovereign violence

Giroux '08 [Henry A., Professorship at McMaster University in the English and Cultural Studies Department, "Against the Militarized Academy", http://www.truth-out.org/archive/component/k2/item/81138:against-the-militarized-academy]

In a post-9/11 world, with its all-embracing war on terror and a culture of fear, the increasing spread of the discourse and values of militarization throughout the social order is intensifying the shift from the promise of a liberal democracy to the reality of a militarized society. Militarization suggests more than simply a militaristic ideal - with its celebration of war as the truest measure of the health of the nation and the soldier-warrior as the most noble expression of the merging of masculinity and unquestioning patriotism - **but an intensification and expansion of the underlying values, practices, ideologies, social relations and cultural representations associated with military culture**. What appears new about **the amplified militarization of the post-9/11 world** is that it **has become normalized, serving as a powerful educational force that shapes our lives, memories and daily experiences. As an**

educational force, military power produces identities, goods, institutions, knowledge, modes of communication and affective investments - in short, it now bears down on all aspects of social life and the social order. As Michael Geyer points out, what is distinctive about the militarization of the social order is that **civil society not only "organizes itself for the production of violence,"(2) but increasingly spurs a gradual erosion of civil liberties. Military power and policies are expanded to address not only matters of defense and security, but also problems associated with the entire health and social life of the nation, which are now measured by military spending, discipline and loyalty, as well as hierarchical modes of authority.** As citizens increasingly assume the roles of informer, soldier and consumer willing to enlist in or be conscripted by the totalizing war on terror, we see the very idea of the university as a site of critical thinking, public service and socially responsible research being usurped by a manic jingoism and a market-driven fundamentalism that enshrine the entrepreneurial spirit and military aggression as means to dominate and control society. This should not surprise us, since, as William G. Martin, a professor of sociology at Binghamton University, indicates, **"universities, colleges and schools have been targeted precisely because they are charged with both socializing youth and producing knowledge of peoples and cultures beyond the borders of Anglo-America."**(3) But **rather than be lulled into complacency by the insidious spread of corporate and military power, we need to be prepared to reclaim institutions such as the university that have historically served as vital democratic spheres protecting and serving the interests of social justice and equality.** What I want to suggest is that **such a struggle is not only political, but also pedagogical in nature**. Over 17 million students pass through the hallowed halls of academe, and it is crucial that they be educated in ways that enable them to recognize creeping militarization and its effects throughout American society, particularly in terms of how these effects threaten "democratic government at home just as they menace the independence and sovereignty of other countries."(4) But **students must also recognize how such anti-democratic forces work in attempting to dismantle the university itself as a place to learn how to think critically and participate in public debate and civic engagement.**(5) In part, **this means giving them the tools to fight for the demilitarization of knowledge on college campuses - to resist complicity with the production of knowledge, information and technologies in classrooms and research labs that contribute to militarized goals and violence. Even so, there is more at stake than simply educating students to be alert to the dangers of militarization and the way in which it is redefining the very mission of higher education**. Chalmers Johnson, in his continuing critique of the threat that the politics of empire presents to democracy at home and abroad, argues that if the United States is not to degenerate into a military dictatorship, in spite of Obama's election, a grass-roots movement will have to occupy center stage in opposing militarization, government secrecy and imperial power, while reclaiming the basic principles of democracy.(6) Such a task may seem daunting, but **there is a crucial need for faculty, students, administrators and concerned citizens to develop alliances for long-term organizations and social movements to resist the growing ties among higher education**, on the one hand, and the armed forces, intelligence agencies and war industries on the other - ties that play a crucial role in reproducing mili tarized knowledge.

Critical Academia and University Professionalization have become one and the same. Rather than combat university institutionalization, critical academics only serve to support that system.

Harney and Moten '13 [Stefano Harney, Professor of Strategic Management Education at the Lee Kong Chian School of Business, Singapore Management University and a co-founder of the School for Study and Fred Moten, Helen L. Bevington Professor of Modern Poetry at Duke University, "The University and the Undercommons" The Undercommons: Fugitive Planning and Black Study]

The maroons know something about possibility. They are the condition of possibility of the production of knowledge in the university – the singularities against the writers of singularity, the writers who write, publish, travel, and speak. It is not merely a matter of the secret labor upon which such space is lifted, though of course such space is lifted from collective labor and by it. It is rather that **to be a critical academic in the university is to be against**

the university, and to be against the university is always to recognize it and be recognized by it, and to institute the negligence of that internal outside, that unassimilated underground, a negligence of it that is precisely, we must insist, the basis of the professions. And **this act of being against always already excludes the unrecognized modes of politics, the beyond of politics already in motion,** the discredited criminal para-organization, **what Robin Kelley might refer to as the infrapolitical field** (and its music). **It is not just the labor of the maroons but their prophetic organization that is negated by the idea of intellectual space in an organization called the university.** This is why **the negligence of the critical academic is always at the same time an assertion of bourgeois individualism. Such negligence is the essence of professionalization where it turns out professionalization is not the opposite of negligence but its mode of politics in the United States. It takes the form of a choice that excludes the prophetic organization of the undercommons – to be against**, to put into question the knowledge object, let us say in this case the university, **not so much without touching its foundation, as without touching one's own condition of possibility, without admitting the Undercommons and being admitted to it. From this, a general negligence of condition is the only coherent position.** Not so much an antifoundationalism or foundationalism, as both are used against each other to avoid contact with the undercommons. **This always-negligent act is what leads us to say there is no distinction between the university in the United States and professionalization. There is no point in trying to hold out the university against its professionalization. They are the same**. **Yet the maroons refuse to refuse professionalization, that is, to be against the university. The university will not recognize this indecision, and thus professionalization is shaped precisely by what it cannot acknowledge, its internal antagonism, its wayward labor, its surplus.** Against this wayward labor it sends the critical, sends its claim that what is left beyond the critical is waste. But in fact, **critical education only attempts to perfect professional education. The professions constitute themselves in an opposition to the unregulated and the ignorant without acknowledging the unregulated, ignorant, unprofessional labor that goes on not opposite them but within them. But if professional education ever slips in its labor, ever reveals its condition of possibility to the professions it supports and reconstitutes, critical education is there to pick it up, and to tell it, never mind – it was just a bad dream, the ravings, the drawings of the mad. Because critical education is precisely there to tell professional education to rethink its relationship to its opposite – by which critical education means both itself and the unregulated, against which professional education is deployed.** In other words, **critical education arrives to support any faltering negligence, to be vigilant in its negligence, to be critically engaged in its negligence. It is more than an ally of professional education, it is its attempted completion. A professional education has become a critical education.** But one should not applaud this fact. **It should be taken for what it is**, not progress in the professional schools, not cohabitation with the Universitas, but **counterinsurgency, the refounding terrorism of law, coming for the discredited, coming for those who refuse to write off or write up the undercommons.**

Case – Neolib/Cap Good

Regulated Cap

Regulated capitalism solves – deregulation produced the harms of the aff which proves that more regulation of the economy is necessary.

Melancon '11 (Glenn; 11/23/11; professor of History and Chair of the Department of Social Sciences at Southeastern Oklahoma State University; "Concentrated Power: Why We Need Regulated Capitalism" http://www.glennmelancon.com/?p=94)

Our founding fathers knew that concentrated power hurts society. They wrote a constitution that divided political power into three branches. This system has served us well for over two hundred years, protecting us from tyranny. The founders didn't foresee today's vast concentration of economic power and the destruction it could bring. We, however, can. We should have known the danger it poses to us all. Before the Great Depression the federal government let corporations grow relatively unchecked. It was a free market paradise. No minimum wage. No workers' compensation plans. No unemployment tax. No bookkeeping rules. No environmental laws. No safety regulations. If the free market myth were true, then this era should have been the greatest time in American history. It wasn't. The Great Depression and the New Deal brought this corporate paradise to end. President Franklin D. Roosevelt knew unregulated capitalism hurts average Americans. He decided to limit the power of corporations. They had to open their books to investors. Companies had to deal honestly with labor unions. They had to pay taxes. Businesses had to pay their workers better. Did the American economy crash? No. In fact regulated capitalism laid the foundation for the post war economic boom. After World War Two the federal government took an even larger role in the economy. It provided veterans with housing, education and health benefits. The federal government built the interstate highway system. It invested in aerospace, nuclear and computer technologies. Federal regulations required the automobile industry to improve safety and fuel efficiency. Industries were forced to stop polluting our air and water. The free marketeers screamed in protest. Liberals were destroying America. Socialists were punishing the successful. Capitalists would go on strike and bring the economy to a standstill. Luckily, no one listened to these Chicken Littles. The sky didn't fall. In fact regulated capitalism produced the world's largest middle class. Unfortunately, the oil crisis of the 1970s opened the door for the Chicken Littles to gain power. Slowly and methodically the corporation elite reasserted their hold on political power. The geniuses on Wall Street started selling snake oil again-Free Trade, electricity deregulation and the grand daddy of them all, banking deregulation. They told us that the "market" would regulate itself and no one would be hurt. Boy, were they wrong. American jobs moved overseas. Electricity prices went through the roof. In 2008 American families lost $11 trillion worth of assets, setting them back by four years. Now what do we do? Do we turn to the arsonist and say, "Are you an expert firefighter too?" No, we don't. Can the free market and more deregulation magically fix the current financial mess? No, it can't. We need to return to sensible regulations that check excessive corporate power. There is overwhelming bi-partisan support for this approach. Trade deals need to be fair, protecting American workers and the environment. We need affordable consumer technology to produce energy locally and allow for greater efficiency. Healthcare insurance needs to be affordable for all Americans. Stockholders need a greater say in executive pay and long-term planning. Finally, hedge funds need to disclose their secret deals that threaten us all. Change will not be easy. It never is. Chicken Little will be screaming the whole time. The sky will not fall. We're Americans. We've been in situations like this before. If we learn from our past successes and failures, we can effectively limit corporate excess and create sustained economic growth. Our founding fathers would be proud that we too learned the lesson that concentrated power hurts society and that we found a way to dilute it.

Neoliberalism does not exist – we live in an age of regulated capitalism.

Newman '12 (Rick; 12/6/12; author of three economics books; US News, "Why the Tension Between Socialism and Capitalism Will Intensify" http://www.usnews.com/news/blogs/rick-newman/2012/12/06/why-the-tension-between-socialism-and-capitalism-will-intensify)

It's encouraging that Americans spent 2012 looking up the meaning of "socialism" and "capitalism," since both concepts are largely misunderstood. This newfound knowledge is going to come in handy over the next several years, because the battle the two economic extremes may only be getting started. Merriam-Webster announced recently that "socialism" was the word with the most online lookups in 2012, with "capitalism" coming in right behind. Searches for "socialism" spiked around the time of the Supreme Court ruling on President Barack Obama's healthcare reform law, no doubt because critics derided it as the government takeover of healthcare. "Capitalism" was often the next word people looked up after investigating socialism. This year's presidential election included many bastardized references to both economic systems, which have been broadly mischaracterized for a long time. Many defenders of capitalism argue that the nation's economic system was more pure a decade ago (or two, or three), but America hasn't had pure capitalism in well over a century. And when it did have a raw form of capitalism, the consequences were often disastrous for significant chunks of the population, which is why public support grew for the kind of regulated capitalism we have now. In the 1800s, the federal government largely stayed out of the economy, with nothing like the regulatory apparatus we have now. That's one reason people like Andrew Carnegie, John Jacob Astor, John D. Rockefeller, Cornelius Vanderbilt, and J.P. Morgan built vast fortunes — often from monopolies or cartels--that still exist in various forms today. But unregulated capitalism also generated speculative bubbles, financial panics and destitution much more frequently than those things have occurred over the last 70 years. Public pressure led to a long series of reforms that morphed into the regulated free-market economy we have today. In the early 1900s, Teddy Roosevelt started to break up some of the all-powerful monopolies that enriched a few while overcharging the masses. Congress created the Federal Reserve and the income tax in 1913. A slew of regulatory agencies grew out of the Great Depression. During the 20th century, presidents of both parties signed legislation creating new agencies to oversee food, medicine, the environment and Wall Street (ahem). We still have a capitalist system centered on private ownership and prices set by the free market, but it's layered with rules meant to prevent abuses. Some Americans obviously feel there are too many rules, with a vocal set of critics claiming that Obama in particular has ushered in a system that's more like socialism than capitalism. That's hyperbole. Obama's new healthcare plan obviously will involve a lot more government involvement in the delivery of health care. But that happened because the prior system (which was itself governed by a dense thicket of insurance-company rules) failed to keep medical costs at affordable levels or make healthcare available to everybody. As in the past, public pressure for something better led to government intervention.

Empirics prove that regulated capitalism provides for the poor.

Klein '12 (Joe; 12/3/12; TIME's political columnist and author of six books; "Campaign 2012: The Report Card" http://content.time.com/time/magazine/article/0,9171,2129804,00.html)

There are sore losers in every election. But the quality of the carping is different this time. The sense that a "traditional" America is being supplanted by something foreign--an amalgam of Greece and Kenya, perhaps--seems to have only intensified since the election. The fantasy that the Obama coalition supports "socialism" was raised, mournfully, by William Bennett, who cited a 2011 Pew poll. The poll exists. Blacks, young people and liberals all copped to more positive feelings about "socialism" than "capitalism." But I wonder, What do these people think socialism is? I checked the dictionary. And socialism languishes there, just as it always has: "a system or condition of society in which the means of production are owned and controlled by the state." Is that what 49% of young people favor? I don't think so. If it is, count me on Bennett's team. That sort of socialism has been an utter failure, and regulated capitalism has been the greatest eradicator of poverty in the history of the world. But I suspect--and this would be wonderfully ironic, if true--that all those blacks and young people got their definition of socialism from Rush Limbaugh and the other wing-nut foghorns: socialism is when the government helps people out. What we've decided in this election is that most people are comfortable with a regulated free-enterprise system in which the government helps provide education and health care for everyone and financial support for those who need it most, especially the elderly. What we'll continue to

debate is how extensive those regulations and supports should be. But there is no question--except in the minds of the deluded--that any of our truly basic freedoms, especially the freedom to make money, are threatened in any significant way. In the real world, there is less drama to all this than meets the eye. Lessons have been learned. I remain optimistic that the professional politicians who lead the Republican Party will find a way to close a budget deal long before we reach a cliff, since they know they'll be blamed by a voting majority of Americans for any impasse.

Pull cards from Neolib file aff answers if necessary – this should be enough to demonstrate your claim that regulation solves

Credit Reform Working/Possible

These cards are redundant, so pick your favorite

New reforms allow consumers to see their credit scores – that makes financial decisions easier.

Stone & Dodd-Ramirez '15 (Corey, Daniel; June 2015 updated, published 4/21/15; Assistant Director at Consumer Financial Protection Bureau, Assistant Director of Financial Empowerment; CFPD, "Millions of consumers will now have access to credit scores and reports through nonprofit counselors" http://www.consumerfinance.gov/blog/millions-of-consumers-will-now-have-access-to-credit-scores-and-reports-through-nonprofit-counselors/)

Millions of consumers will now be able to receive the credit scores and credit reports that nonprofit credit counselors purchase on their behalf. Nonprofit organizations that offer credit counseling, housing counseling, and other financial counseling services buy credit reports and scores for the consumers they serve. These reports and scores help counselors engage in constructive conversations with their clients about steps the clients can take to improve their financial situation. Until now, counseling organizations have generally been prohibited by their contracts with the credit reporting agencies from giving the consumer the credit report or score that they have purchased on that consumer's behalf. For example, a nonprofit organization that purchases a credit report with a FICO credit score has typically signed a three-way agreement with one of the three large credit reporting agencies (TransUnion, Equifax, or Experian) and FICO, agreeing not to provide the report or score to any entity, including the consumer. This no-sharing policy is common in contracts signed by business users of credit reports and scores. But when applied to consumer counseling, it limits a client's ability to review the credit history provided by the counselor on their own and may make the consumer more dependent on the counselor to take steps to manage or improve her credit standing. We've heard concerns about this issue from counselors and consumers across the country. A policy change that will affect millions of consumers FICO's announcement today signals a change in this policy. FICO has reached new agreements with the three credit reporting agencies that will allow millions of consumers who receive nonprofit credit counseling, housing counseling, and other services to obtain a copy of the FICO score that these organizations have purchased. We've been working with industry to make progress on these issues and we are encouraged by this positive step. FICO has taken the additional step to create content to help these consumers understand the key factors that influence their credit scores. A step in the right direction These efforts build on our open credit score initiative, which is helping to increase consumers' access to credit scores and credit reports and empower consumers to improve their financial lives. Last year, we launched this initiative by calling on more of the nation's top credit card companies to make credit scores freely available to their customers. Today, more than a dozen major credit card issuers are providing credit scores directly and freely to consumers, and they are increasingly being joined by other types of consumer lenders as well. As part of this ongoing effort, we brought counseling organizations' concerns about restrictions on their clients' access to credit information to the attention of the credit reporting companies and FICO and urged that these restrictions be removed. However, even with the policy change on FICO credit scores, individual contracts between the credit reporting agencies and counseling organizations still prohibited the organizations from sharing the credit reports with their clients. This restriction made it harder for counselors to do their job. And it kept the consumers they serve from benefiting fully from the credit information that the counseling service organizations have paid for. We are encouraged that, as part of this ongoing effort to press forward on these issues, Experian, Trans Union, and Equifax have updated their policies. Nonprofit counselors that purchase credit reports on behalf of their consumer clients will now be able to share those reports, as well as the scores, with the consumer. Ending restrictions on sharing credit

scores and reports by consumer financial counseling organizations will empower consumers to take more control of managing their credit and help counselors to do their jobs more effectively.

New rules allow free credit scores – that particularly helps low-income communities.

CFPB '15 (Consumer Financial Protection Bureau; 2/19/15; "CFPB Reports That More Than 50 Million Credit Card Consumers Have Access to Free Credit Scores" http://www.consumerfinance.gov/newsroom/cfpb-reports-that-more-than-50-million-credit-card-consumers-have-access-to-free-credit-scores/)

WASHINGTON, D.C. – Today, the Consumer Financial Protection Bureau (CFPB) reported that more than 50 million consumers now have free and regular access to their credit scores through their monthly credit card statements or online. Last year, the CFPB launched a credit score initiative, which called on more of the nation's top credit card companies to make credit scores freely available to their customers. The Bureau also released a new consumer focus group study indicating that while consumers are accessing their credit scores and credit reports in a variety of ways, confusion about both persists. "Consumers' credit information is the foundation of their financial lives," said CFPB Director Richard Cordray. "Access to these scores provides an opportunity to engage consumers around their credit reports. Once consumers see their credit scores, they can be motivated to learn more about their credit history, check their full credit report, and take action to improve their financial lives." Consumer reporting companies collect information and provide reports on consumers that are used to decide whether to provide credit to consumers. Credit reports and scores can determine everything from consumer eligibility for credit to the rates consumers pay for credit. Because of the significance of these reports, consumer reporting companies have been a major focus for the CFPB. Recent research conducted by the Federal Reserve Bank of Philadelphia shows that when consumers became familiar with their credit reports, their credit scores often improved continuously over time. One year after the CFPB launched the credit score initiative, well more than a dozen major issuers are providing credit scores directly and freely to consumers. A few companies had begun offering access to credit scores prior to the CFPB initiative. Now, at least 50 million consumers have already had the opportunity to see their credit scores, and tens of millions of consumers will benefit by planned efforts by other major issuers this year. The CFPB is encouraging all Americans to review their credit standing and pull their free annual credit report at annualcreditreport.com. Consumer Perspective on Credit Reports and Scores To better understand consumers' perspectives on their credit reports and scores, the CFPB recently conducted focus groups with consumers from diverse backgrounds across the country. Through this research, the CFPB examined issues such as whether consumers were checking their credit scores and reports, how they were doing it, and what motivated them to check it. Key takeaways from the research include: Consumers access reports and scores multiple ways: Consumers who had seen their reports or scores accessed them from a variety of channels. Some consumers reported the presence of their score on their credit card statement, or were able to review it through their credit card company and found value in this feature. Others reported receiving their credit reports in other ways, such as a paid credit monitoring service, free online services, or as a result of a security breach or being denied credit. Consumer confusion around credit reports and scores persists: Some consumers reported being confused and frustrated about how to check credit reports and scores, what information these include, and how to improve them. Efforts by credit reporting companies to make it easier for consumers to access and interpret their reports could be a useful contribution to helping consumers access and navigate the credit reporting system. Consumers may lack information to take action to improve their credit histories: Consumers reported that they often do not feel empowered to take action to improve their credit histories and that they rarely apply credit information in their daily lives, such as using their credit reports and scores to negotiate better credit terms. Consumers who are more engaged in the financial system check their credit reports regularly: Consumers who reported feeling financially savvy and knowledgeable about their credit files, credit terms, and interest rates were more likely to say they check their reports regularly. These consumers thought that keeping aware of their credit files was helpful in achieving their financial goals.

Creating credit scores is crucial to help black and Latinx communities.

CFPB '15 (Consumer Financial Protection Bureau; 5/5/15; "CFPB Report Finds 26 Million Consumers Are Credit Invisible" http://www.consumerfinance.gov/newsroom/cfpb-report-finds-26-million-consumers-are-credit-invisible/; we don't endorse any offensive language in this card)

WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) published a report finding that 26 million Americans are "credit invisible." This figure indicates that one in every 10 adults do not have any credit history with a nationwide consumer reporting agency. The report also found that Black consumers, Hispanic consumers, and consumers in low-income neighborhoods are more likely to have no credit history with a nationwide consumer reporting agency or not enough current credit history to produce a credit score. "Today's report sheds light on the millions of Americans who are credit invisible," said CFPB Director Richard Cordray. "A limited credit history can create real barriers for consumers looking to access the credit that is often so essential to meaningful opportunity—to get an education, start a business, or buy a house. Further, some of the most economically vulnerable consumers are more likely to be credit invisible." The three nationwide consumer reporting agencies, also called credit bureaus, generate credit reports that track a consumer's credit history. Credit reports and the three-digit credit scores that are based on those reports play an increasingly important role in the lives of American consumers. Most decisions to grant credit and set interest rates for loans are made based on information contained in credit reports. As a result, those consumers who have a limited or nonexistent credit history face greater hurdles in getting credit. Consumers' credit histories reflect how they have repaid their debts. Consumers' credit histories may contain information about bank loans, car loans, credit card bills, student loans, and mortgages. They may also contain details about the terms of consumers' credit, how much is owed to creditors, consumers' payment histories, and court judgments or liens against them. Credit history helps the consumer reporting agencies determine how likely consumers are to repay their debts. The agencies use that information to produce credit reports and scores. In broad terms, consumers with limited credit histories can be placed into two groups. The first group is consumers without a credit report, or the "credit invisibles." The second group, the "unscored," includes consumers who do not have enough credit history to generate a credit score or who have credit reports that contain "stale" or not recently reported information. The exact definition of what constitutes insufficient or stale information differs across credit scoring models, as each model uses its own proprietary definition. Today's report is designed to shed more light on the number of consumers and the characteristics of those consumers who have little to no credit record at the nationwide consumer reporting agencies. The report found that: 26 million consumers are credit invisible: About one in 10 Americans can be considered credit invisible because they do not have any credit record. About 189 million Americans have credit records that can be scored. 19 million consumers have unscored credit records: About 8 percent of the adult population has credit records that are considered unscorable based on a widely-used credit scoring model. Those records are almost evenly split between the 9.9 million that have an insufficient credit history and the 9.6 million that lack a recent credit history. Consumers in low-income neighborhoods are more likely to be credit invisible or to have an unscored record: Of the consumers who live in low-income neighborhoods, almost 30 percent are credit invisible and an additional 15 percent have records that are unscored. These percentages are notably lower in higher-income neighborhoods. For example, in upper-income neighborhoods, only 4 percent of the population is credit invisible and another 5 percent are unscorable under the widely-used model. Black and Hispanic consumers are more likely to have limited credit records: Black and Hispanic consumers are considerably more likely to be credit invisible or have unscored credit records than White or Asian consumers. About 15 percent of Black and Hispanic consumers are credit invisibles compared to 9 percent of White consumers. An additional 13 percent of Black consumers and 12 percent of Hispanic consumers have unscorable records under the widely-used model compared to 7 percent of White consumers. CFPB analysis suggests that these differences across racial and ethnic groups materialize early in the adult lives of these consumers and persist thereafter. This analysis was conducted using information from the CFPB's Consumer Credit Panel, which is a random sample of de-identified credit records purchased from one of the nationwide credit reporting agencies and is representative of the population with credit records. By comparing information in the credit panel from December 2010 with 2010 Census data, the Bureau was able to estimate the number of consumers who were credit invisible or had unscored credit records.

New mortgage rules will boost lending to rural and underserved areas.

CFPB '15 (Consumer Financial Protection Bureau; 1/29/15; CFPB, "CFPB Issues Proposal To Facilitate Access To Credit In Rural And Underserved Areas" http://www.consumerfinance.gov/newsroom/cfpb-issues-proposal-to-facilitate-access-to-credit-in-rural-and-underserved-areas/)

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today proposed several changes to its mortgage rules to facilitate responsible lending by small creditors, particularly in rural and underserved areas. If finalized, the proposal issued today would increase the number of financial institutions able to offer certain types of mortgages in rural and underserved areas, and help small creditors adjust their business practices to comply with the new rules. "Responsible lending by community banks and credit unions did not cause the financial crisis, and our mortgage rules reflect the fact that small institutions play a vital role in many communities," said CFPB Director Richard Cordray. "Today's proposal will help consumers in rural or underserved areas access the mortgage credit they need, while still maintaining these important new consumer protections." In January 2013 and May 2013, the CFPB issued several mortgage rules, most of which took effect in January 2014. Among these rules, the Ability-to-Repay rule protects consumers from irresponsible mortgage lending by requiring that lenders generally make a reasonable and good-faith determination that prospective borrowers have the ability to repay their loans. Under the Ability-to-Repay rule, a category of loans called Qualified Mortgages prohibit certain risky loan features for consumers and are presumed to comply with ability-to-repay requirements. There are a variety of provisions in the rules that affect small creditors, as well as small creditors that operate predominantly in rural or underserved areas. For instance, a provision in the Ability-to-Repay rule extends Qualified Mortgage status to loans that small creditors hold in their own portfolios, even if consumers' debt-to-income ratio exceeds 43 percent. Small creditors in rural or underserved areas can originate Qualified Mortgages with balloon payments even though balloon payments are otherwise not allowed with Qualified Mortgages. Similarly, under the Bureau's Home Ownership and Equity Protection Act rule, small creditors that operate predominantly in rural or underserved areas can originate high-cost mortgages with balloon payments. Also, under the Bureau's Escrows rule, eligible small creditors that operate predominantly in rural or underserved areas are not required to establish escrow accounts for higher-priced mortgages. Since issuing the mortgage rules, the CFPB has continued to monitor the mortgage market and seek public feedback. In May 2013, the Bureau announced it would study whether the definitions of rural and underserved should be adjusted. In May 2014, the Bureau requested public comment regarding the origination limit for small creditor status. The proposal announced today reflects the Bureau's ongoing study of the market and extensive outreach to stakeholders including consumer advocates and industry groups. Today's proposed amendments would: Expand the definition of "small creditor": Under the proposal, the loan origination limit for small-creditor status would be raised from 500 first-lien mortgage loans to 2,000 and would exclude loans held in portfolio by the creditor and its affiliates. Include mortgage affiliates in calculation of small-creditor status: The proposal would not change the current asset limit for small-creditor status, which is set at less than $2 billion (adjusted annually) in total assets as of the end of the preceding calendar year. However, the proposal would include the assets of the creditor's mortgage-originating affiliates in calculating whether a creditor is under the limit. Expand the definition of "rural" areas: In addition to counties that are considered to be "rural" under the CFPB's current mortgage rules, the proposal would expand the definition of "rural" to include census blocks that are not in an urban area as defined by the Census Bureau. Provide grace periods for small creditor and rural or underserved creditor status: Creditors that exceeded the origination limit or asset-size limit in the preceding calendar year would be allowed to operate, in certain circumstances, as a small creditor with respect to mortgage transactions with applications received prior to April 1 of the current calendar year. The proposal would create a similar grace period for creditors that no longer operated predominantly in rural or underserved areas during the preceding calendar year. Create a one-year qualifying period for rural or underserved creditor status: The proposal would adjust the time period used in determining whether a creditor is operating predominately in rural or underserved areas, from any of the three preceding calendar years to the preceding calendar year. Provide additional implementation time for small creditors: Eligible small creditors are currently able to make balloon-payment Qualified Mortgages and balloon-payment high-cost mortgages regardless of where they operate, under a temporary exemption scheduled to expire on January 10, 2016. Today's proposal would extend that period to include balloon-payment mortgage transactions with applications received before April 1, 2016, giving creditors more time to understand how any changes will affect their status, and to adjust their business practices. The proposal would make several additional minor or technical changes to the rules. The proposed rule will be open for public comment until March 30, 2015.

2015 reforms are working to weed out discrimination in credit.

CFPB '15 (Consumer Financial Protection Bureau; 4/28/15; "We're making progress toward ensuring fair access to credit" http://www.consumerfinance.gov/blog/were-making-progress-toward-ensuring-fair-access-to-credit/)

We're releasing our third annual Fair Lending Report, which details the important strides we have taken over the last year to protect consumers from credit discrimination and increase access to credit. Our

Office of Fair Lending and Equal Opportunity continues to identify and tackle discrimination in different financial markets, such as mortgages, auto loans and credit cards. In 2014, our fair lending actions directed institutions to provide approximately $224 million in monetary relief to about 303,000 consumers. We've also ordered companies to provide non-monetary relief to consumers. Here is a look at the key supervision and enforcement priorities last year. Mortgage lending We focused on potential discrimination in mortgage lending, including redlining and underwriting disparities. This past year we worked closely with the Department of Justice and a financial institution and its settlement administrator to distribute $35 million to minority borrowers who were harmed by discrimination, in accordance with a 2013 settlement. We also looked at the integrity of mortgage information reported by mortgage lenders covered by the Home Mortgage Disclosure Act (HMDA). Auto lending Our Supervisory Highlights: Summer 2014 summarized our observations in the area of indirect auto lending and offered additional guidance to assist lenders in reducing fair lending risk and complying with Federal consumer financial law. When lenders have not followed the law, we've acted to direct institutions to provide remediation to harmed consumers. Consumer relief in the credit cards market Last June, we announced an enforcement action against a credit card company that failed to provide certain debt relief offers to consumers based on national origin, in addition to other violations. As a result, the company provided consumer relief to borrowers excluded from these debt relief offers. Helping recipients of disability income Seeking relief for harmed consumers is an important part of our work. We also strive to inform institutions about their responsibilities when serving consumers. Last year we issued a compliance bulletin to help lenders avoid imposing illegal burdens on consumers receiving disability income who apply for mortgages. By helping lenders comply with the law, we help recipients of Social Security disability income receive fair and equal access to credit. We also helped by providing information to consumers about their rights as recipients of Social Security disability income. These are just a few of the developments you can read about in our third Fair Lending Report. We look forward to continuing to advance our work to ensure a fair, equitable, and nondiscriminatory credit market, with equal opportunity for all. We want to hear from you We do our job best when we hear from you. You can submit a complaint online or by calling (855) 411-2372. You can also tell us your story, good or bad, about your experience with financial products and services. Learn more about how you can protect yourself from credit discrimination.

Mortgage changes will increase access.

Pemco '14* (*last cited date; Pemco Ltd's purpose – To provide customized scalable real estate solutions that maximize the potential value of the assets for commercial, government, and individual clients; "Credit Access Gets Boost with CFPB Change" http://pemco-limited.com/credit-access-gets-boost)

Minor changes to mortgage rules were recently finalized by the Consumer Financial Protection Bureau (CFPB) to help expand credit boxes. The changes were proposed in April 2014 and includes adjustments which would allow some non-profits to provide mortgage credit and servicing to underserved populations. Under the changes, lenders would be allowed to refund the excess amount plus interest to consumers when points and fee caps are exceeded, while still falling under the definition of Qualified Mortgage (QM). Several mortgage rules were finalized in January 2013 and became effective January 2014. While the ability to repay (ATR) rule protects borrowers by requiring lenders to make a good-faith determination as to whether prospective borrowers can repay the loan; the new rules strongly protect homeowners, including those facing the possibility of foreclosure. CFPB Director Richard Cordray said, "Our mortgage rules are protecting consumers from debt traps, runarounds, and surprises. These adjustments will maintain those strong protections, while ensuring consumers have access to credit. This includes helping nonprofits that provide working families with important pathways to affordable homeownership." See: New Mortgage May Increase Home-Ownership Rate See: How Easy Is It to Get a Mortgage? Highlights of the new finalized rules are: Non-profit servicer definition: The CFPB learned that some non-profits service loans for a fee from other non-profit lenders; they're unable to merge their servicing activities and continue to meet the CFPB small servicer exemption requirements. The alternate definition of a small servicer would allow certain 501(c)(3) non-profits to consolidate their servicing functions and still be exempt from some of the servicing rules. Non-profit Ability-to-Repay exemption

amendment: Non-profit ATR rule exemption amendment allows 501(c)(3) to continue offering interest-free, forgivable loans to low-to- moderate income borrowers, also known as "soft seconds" at a rate of more than 200 per year. Prior to the rule's change, these non-profits were only exempt from the ATR rule if they made fewer than 200 of the soft second loans per year. Refund of excess points and fees: Qualified mortgages (QMs) protect the borrower under the ATR rule and the points and fees are capped at three percent of the loan principal at the time it's made. There are a few circumstances that a lender can refund the excess amount to the borrower if it's discovered after the loan's closing that the three percent cap has been exceeded. The refund must be made within 210 days of the origination of the loan. The loan will still be considered a QM. This change to the rules will expire on January 10, 2021 and is designed to encourage lenders to expand credit access to include potential borrowers who are at or close to the points and fees limit.

The CEAC proves that working with policymakers to reform access to credit is possible.

DE '8 (Diversity Executive; 9/18/08; Talent Management = multimedia publication that provides in-depth editorial content to talent management and HR professionals; "Leading Minority Organizations, Officials, Issuers Meet to Propose Credit Card Reform" http://www.talentmgt.com/articles/leading-minority-organizations-officials-issuers-meet-to-propose-credit-card-reform)

Citizens for Equal Access to Credit (CEAC), a diverse, multicultural nonprofit coalition, joined with leading minority organizations, business groups, elected officials and credit card customers from across the nation to announce a comprehensive proposal for low limit credit card reform and a Statement of Principles regarding access to credit. The Code of Practices proposal for low limit credit providers is the product of a "Virtual Summit on Minority Access to Credit" held on Aug. 21. The summit was convened by CEAC to enable a direct dialogue between communities of interest and card issuers to discuss concerns and ideas for improving current practices. The Statement of Principles hopes to inform decision makers and the public about the sensitivities, goals and concerns of cardholders, minorities and businesses regarding credit card reform. One of the key principles in the statement is: "The Federal Government should understand, and remain sensitive to, the reality that low limit cards represent a bridge to the economic mainstream for persons from underserved and unbanked communities." The Code of Practices includes a number of important reform proposals, such as a requirement that no finance charges on account opening fees be posted to an account, provided initial payments could be applied to repay the fees. The Code also calls for clear disclosure of consumer's right to a full and immediate refund if a consumer changes their mind after receiving a credit card. "As the Federal Reserve Board and Congress move forward with their proposals, it is essential that underserved communities and minorities have a powerful voice in this process," said Dr. Juan Andrade Jr., president of the United States Hispanic Leadership Institute (USHLI). "Bringing leading minority organizations and low limit credit card customers together with providers of credit to develop a consensus proposal is a great way to provide a road map for reform that encompasses the priorities and concerns of underserved communities." Rep. Lois DeBerry of Tennessee said, "It is very important that as the Federal Reserve Board and Congress make decisions about how people gain access to credit they understand the financial realities that a great many in minority communities are facing right now and the full impact of their proposals on those communities," said. "I am very pleased that so many groups and individuals who would be directly affected by proposed changes have been able to make their voices heard about the need to protect and maintain access to credit." The groups and individuals that took part in the "Virtual Summit" had the opportunity to discuss ideas for credit reform and submit changes and recommendations to the Code. Elected officials also participated in the summit including the Hon. Pedro Marin, state representative OF Georgia; the Hon. Julio Guridy, Allentown, Pa., city councilmember and Dominican American National Roundtable board member. Other advocacy groups that were consulted included the League of United Latin American Citizens (LULAC); the Inter American Entrepreneurs Association (AIHE); Dominico-American Society; The Small Business Entrepreneurship Council (SBEC); and the Intertribal Agriculture Council (IAC).

The FHA has empirically helped low-income communities get access to credit.

HUD '12 (US Department of Housing and Urban Development; Fall 2012; "Paths to Homeownership for Low-Income and Minority Households" http://www.huduser.org/portal/periodicals/em/fall12/highlight1.html)

Making It Affordable Affordability assistance helps low-income families overcome wealth barriers and achieve favorable debt-to-income ratios that keep monthly payments low. Examples of this type of backing include down payment assistance, grants, subsidies, homeownership vouchers, forgivable loans, and soft second mortgages. Even small amounts of down payment assistance increase the probability of moving first-time buyers into homeownership.36 Although about one out of five first-time homebuyers receives such help from their families, low-income households are less likely to have this option available.37 One source of help for these households is the Federal Housing Administration (FHA), which facilitates first-time homeownership for low-wealth buyers. FHA's minimum down payment requirement is set at 3.5 percent of the contract sales price. Edward Szymanoski, HUD's associate deputy assistant secretary for economic affairs, notes that FHA's traditional role — serving creditworthy first-time homebuyers — is particularly important to families with young children, who may benefit most from early access to homeownership. "First-time buyers often lack cash to pay the down payment and closing costs charged by conventional lenders and would otherwise have to defer homeownership for many years," Szymanoski says.38 Eligible homebuyers can also obtain assistance with down payment and closing costs through the HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) programs. Through these programs, HUD awards block grants to cities and states, who then decide how to use the funds. HOME monies are dedicated to enhancing local affordable housing strategies that increase homeownership opportunities for low-income people. One study found that nearly all HOME programs offer assistance with down payment and closing costs in addition to other types of support such as loan guarantees, write-downs of the sales price, and interest rate buy-downs.39 Between 2004 and 2008, the American Dream Downpayment Initiative (now part of HOME) helped more than 26,000 low-income, first-time homebuyers with the biggest hurdle to homeownership: down payment and closing costs, plus rehabilitation expenses. Although the program capped assistance at the larger of $10,000 or 6 percent of the purchase price, the average amount was $5,000 per household.40 A 2005 HUD study concluded that small amounts of down payment assistance like this can be very effective in helping renters become homeowners and that as little as $1,000 can lead to a 19-percent increase in the number of low-income households buying a home. While the size of the increase declines as the level of assistance rises, assistance of up to $10,000 can lead to a 34-percent increase in overall homeownership, although the effect on underserved groups is greater — a 41-percent increase in low-income homeownership.41 Some buyers are able to lower their overall investment with sweat equity through HUD's Self-Help Homeownership Opportunity Program (SHOP). National and regional nonprofits and consortia receiving SHOP grantees developed 16,957 homeownership housing units for low-income families between 1996 and 2008. The grants are used to buy land and make infrastructure improvements that cannot exceed an average cost of $15,000 per unit; additional funds for construction or rehabilitation must be leveraged. Grantees may carry out SHOP activities themselves or contract with nonprofit affiliates to develop SHOP units, select homebuyers, coordinate sweat equity and volunteer efforts, and help arrange for interim and permanent financing for homebuyers. To significantly reduce purchase prices, homebuyers are required to put in a minimum number of hours of sweat equity, including painting, carpentry, trim work, and drywall, roofing, and siding installation. Without this sweat equity contribution, total development costs would range from 0.2 to 14.7 percent higher for each housing unit, according to an unpublished study by HUD's Office of Policy Development and Research.42 Renters of HUD-assisted units may become homeowners via the Housing Choice Voucher Homeownership program, which has been responsible for nearly 15,000 homeownership closings in the past decade. This program allows participating public housing agencies to offer residents the option to apply their rental voucher subsidy toward monthly ownership expenses. After satisfactorily completing a preassistance counseling program that covers home maintenance, budgeting and money management, credit counseling and credit repair, and mortgage financing, the purchaser finds an eligible home. In its analysis, Abt Associates found that the number of public housing agencies choosing to implement this program grew from 12 pilot sites in 1999 to more than 450 in 2006. Foreclosure, delinquency, and default rates were quite low for these buyers, who were mostly single mothers with children, minorities, and people with disabilities moving into neighborhoods with higher homeownership rates and slightly lower poverty rates than the neighborhoods where they had rented.43 An alternative form of assistance to low-income homebuyers, lease-purchase, is available through HOME, CDBG, and Housing Choice Voucher Homeownership funds. An evaluation of a low-income homeownership program that preceded HOME found that 10 percent of participating families became owners by leasing to buy. This option

allowed homebuyers who needed a little more time to accrue the savings needed for a down payment or to clear up credit problems while living in the home they would eventually purchase. One locality used lease-purchase in a transitional housing program as the final step to help formerly homeless families become homeowners.[44]

NSA Michigan 7

Safe Harbor Advantage

TTIP i/l turn

Turn – free flowing info undermines the TTIP – external actors are concerned about US-EU internet dominance

Aaronson, 4/13/15 – Research Professor at The George Washington University's Elliott School of International Affairs and the former Minerva Chair at the National War College (Susan, World Trade Review, "Why Trade Agreements are not Setting Information Free: The Lost History and Reinvigorated Debate over Cross-Border Data Flows, Human Rights and National Security", //11)

As of July 2014, trade officials are negotiating cross-border data flows in three very different trade agreements. The US and the 28 nations of the EU are negotiating the Transatlantic Trade and Investment Partnership (T-TIP); the US and ten other nations bordering the Pacific are negotiating the Transpacific Partnership (TPP); and some 50 members of the WTO (including the 28 EU states) are negotiating the Trade in Services Agreement of the WTO (TISA).4 Although many government officials around the world want to encourage these data flows, **many states have not responded positively to US and EU efforts to facilitate the free flow of information**. Officials and citizens from these states worry about their ability to control information flows as well as their dependence on US companies to provide web services (which must comply with US rules on privacy and national security).5 They are also concerned that the US continues to dominate not only the Internet economy, but also Internet governance institutions in ways that benefit US interests.6 Meanwhile, some activists in the US and EU noted that both governments restricted information flows through its punitive approach to online copyright and hence was hypocritical (Aaronson with Townes, 2012: 9, fn 81).

1nc – at: advantage solvency

Policies have already been reformed – those solve – prefer our evidence, it postdates

Aaronson, 4/13/15 – Research Professor at The George Washington University's Elliott School of International Affairs and the former Minerva Chair at the National War College (Susan, World Trade Review, "Why Trade Agreements are not Setting Information Free: The Lost History and Reinvigorated Debate over Cross-Border Data Flows, Human Rights and National Security", //11)

US and EU trade and foreign policymakers recognized that if they wanted to include free flow of information provisions in TTIP they had to change course. First, the EU and the US set up a **working group on privacy**, which provided answers to EU questions about the reach, methods, and effectiveness of the NSA programs.68 Second, the **US Department of Commerce took steps to show that Safe Harbor was effective**, and US companies that violated these policies would be punished. The US Federal Trade Commission doubled enforcement actions against 14 companies that claimed to participate in the Safe Harbor Framework but had not renewed their certifications under the program.69 The US also reassured businesses that the US remained committed to a **voluntary**, rather than a top-down regulatory approach to privacy. The two trade giants agreed to develop an interoperable system for data protection. Specifically, they agreed to strengthen the Safe Harbor program for the exchange of personal data for commercial purposes, as they also negotiated a framework agreement which would apply to personal data transferred between the EU and the US for law enforcement purposes. The EU has insisted and US

policymakers have reportedly concurred that the US grant EU citizens the same privacy rights as US citizens.70 While the EU's approach might protect EU citizens and facilitate data exchange among the US and EU, it would do little for citizens of other nations. Nor did it clarify whether the US would view privacy regulations as legitimate exceptions to the free flow of information or address the broader issue of how to deal with the multiplicity of privacy strategies among US and EU trade partners.

Safe Harbor is beyond repair – false membership, lack of transparency, and no review process

TNS, 13 – Targeted News Service ("EU and US NGOs Respond to EU Date Safe Harbor Report: Safe Harbor Program Should be Suspended Until US Protects Online Privacy", 11/27/13, ProQuest, //11)

Director General of The European Consumer Organisation, Monique Goyens, commented:

"The European Commission's report on the 'Safe Harbour' agreement confirms the longstanding concerns of consumer groups on both sides of the Atlantic. More than a decade after its establishment, the pact is riddled with problems.

"This agreement claims to reassure EU and US consumers when their personal data is exchanged for commercial purposes, but it has now been shown to retain only a fig-leaf of credibility. In practice, it is riven with **false claims of membership**, the process is **not transparent** and many signatories' lack even a privacy policy. In the wake of all this, there has been absence of effective enforcement by regulatory authorities over the years. Recent events have highlighted the obvious imprudence of **poorly designed** data exchange agreements. The question now will be: 'is Safe Harbour beyond repair?'

"The safety of European consumers' data needs to be paramount. Data flows must have a true harbour, not just a commercial port. US authorities may need to come to understand that Safe Harbour can no longer be used as a free pass for data exchange.

"The European Commission's 13 Recommendations are a welcome address of many of the issues. Better enforcement is crucial and we're glad to see that being examined. But the ability of companies to self-certify as offering 'Safe Harbour' is **unjustifiable** and remains inexplicably **outside the review**. It is hard to see the purpose of proceeding without tackling such basic flaws and perhaps the time has come to put the Safe Harbour agreement to one side and move on.

Circumvention

Safe-Harbor will be circumvented

WSGR, 13 – Wilson Sonsini Goodrich & Rosati: the premier provider of legal services to technology, life sciences, and growth enterprises worldwide ("Cloud Providers That Adhere to U.S.-EU Safe Harbor Framework Meet EU's Data Protection Adequacy Requirements, Says U.S. Commerce Department", 5/6/13, https://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert-cloud-providers.htm, //11)

While completing the required Safe Harbor application is relatively simple and quick, **it can be easy for organizations to overlook the program's compliance requirements**, including annual assessments and documentation of compliance. Given the increasing attention and focus by

customers on vendor and supply chain management in this area, increased investment in privacy and data security-related controls may yield quick returns by enabling deals to close more quickly and efficiently. Moreover, with the FTC's prosecution of a number of entities that claimed they were Safe Harbor-certified even though their certifications had lapsed, technical compliance with the Safe Harbor has taken on greater significance. A benefit of the program is that it helps encourage organizations to routinely and annually re-evaluate their privacy and data protection practices and to do so systematically. Many organizations also rely on and work with outside third parties, including law firms, to assist in these efforts. Such assistance can provide valuable benchmarking information and guidance on best practices, as well as assist with risk management.

not topical

Safe Harbor isn't topical – not national security, federal, or US persons

FPF, 13 – Future of Privacy Forum ("The US-EU Safe Harbor: An Analysis of the Framework's Effectiveness in Protecting Personal Privacy", December 2013, http://www.futureofprivacy.org/wp-content/uploads/FPF-Safe-Harbor-Report.pdf, //11)

Scrutinizing the Safe Harbor over concerns about government access misconstrues the purpose of the Safe Harbor. The Safe Harbor is intended to bring US data practices in line with the EU Data Directive. The Directive **does not apply to matters of national security** or law enforcement.173 Article 3 of the Directive states: "This Directive shall not apply to the processing of personal data…[with respect to] operations concerning public security, defen[s]e, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law." 174 Thus, the Safe Harbor always had been envisioned as protecting the **privacy of EU citizens** within **only the commercial privacy context**.175 It should come as no surprise then that the Safe Harbor specifically provides exceptions to the Safe Harbor's privacy principles "to the extent necessary to meet national security, public interest, or law enforcement requirements."176

Cybersecurity Advantage

Alt cause to failure

No incentive to protect cyber infrastructure – lack of understanding

Sales 13 – Associate Professor of Law at the Syracuse University College of Law, former professor at George Mason University School of Law (Nathan A., Northwestern University Law Review, "REGULATING CYBER-SECURITY", file:///C:/Users/Alana%20Levin/Downloads/SSRN-id2035069.pdf, //11)

The poor state of America's cyber-defenses is partly due to the fact that the analytical framework used to understand the problem is **incomplete**. The law and policy of cyber-security are under theorized. Virtually all legal scholarship approaches cyber-security from the standpoint of the criminal law or the law of armed conflict.19 Given these analytical commitments, it is inevitable that academics and lawmakers will tend to favor law enforcement and military solutions to cyber-security problems. These are important perspectives, but cyber-security scholarship need not run in such narrow channels. **An entirely new approach is needed**. Rather than conceiving of private firms merely as possible victims of cyber-crimes, or as potential targets in cyber-conflicts, we should think of them in regulatory terms.20 Many companies that operate critical infrastructure tend to underinvest in cyber-defense because of negative externalities, positive externalities, free riding, and public goods problems—the same sorts of challenges the modern administrative state encounters in a variety of other contexts.

Circumvention

NSA will circumvent cyber restrictions

Kehl 14 – policy analyst at New America's Open Technology Institute (Danielle, Open Technology Institute, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity", July 2014, https://www.newamerica.org/downloads/Surveilance_Costs_Final.pdf, //11)

One tactic for quietly scooping up vast amounts of data is to target the infrastructure around networks and network providers, including the **undersea fiber optic cables** that carry global Internet traffic from one continent to another. Leaked documents reveal that in February 2013 the NSA successfully hacked the SEA-ME-WE-4 cable system, which originates in France and connects Europe to the Middle East and North Africa.307 Reports also suggest that the NSA has hacked fiber optic links connecting Google and Facebook data centers located outside of the United States.308 For access to messages that are encrypted, the NSA maintains an internal database through its Key Provisioning Service which has encryption keys for a wide array of commercial products. A separate unit within the agency, the Key Recovery Service, exists for the purpose of trying to obtain keys that are not already a part of the NSA's database. According to The New York Times, "How keys are acquired is shrouded in secrecy, but independent cryptographers say many are probably collected by hacking into companies' computer servers, where they are stored."309

FCC Mechanism

At: FCC expertise

FCC sucks – evolving marketplace and lack of interbureau coordination undermine transparency and expertise

GAO, 9 – United States Government Accountability Office ("FCC Management: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning", December 2009, Google Ebook, //11)

What GAO Found

FCC consists of seven bureaus, with some structured along functional lines, such as enforcement, and some structured along technical lines, such as wireless telecommunications and media. Although there have been changes in FCC's bureau structure, developments in the telecommunications industry continue to create issues that span the jurisdiction of several bureaus. However, FCC **lacks written procedures** for ensuring the interbureau collaboration and communication occurs. FCC's reliance on informal coordination has **created confusion** among the bureaus regarding who is responsible for handling certain issues. In addition, the lack of written procedures has allowed various chairmen to determine the extent to which interbureau collaboration and communication occurs. This has led to instances in which FCC's analyses lacked input from all relevant staff. Although FCC stated that is relies on its functional offices, such as its engineering and strategic planning offices, to address crosscutting issues, stakeholders have expressed concerns regarding the chairman's ability to influence these offices.

Weaknesses in FCC's processes for collecting and using information also **raise concerns regarding the transparency and informed nature** of FCC's decision-making process. FCC has five commissioners, one of which is designated chairman. FCC lacks internal policies regarding commissioner access to staff analyses during the decision-making process, and some chairmen have restricted this access. Such restrictions may undermine the group decision-making process and impact the quality of the FCC's decisions. In addition, GAO identified weaknesses in FCC's processes for collecting public input on proposed rules. Specifically, FCC rarely includes the text of a proposed rule when issuing a Notice of Proposed Rulemaking to collect public comment on a rule change, although some studies have noted that providing proposed rule text helps focus public input. Additionally, FCC has developed rules regarding contacts between external parties and FCC officials (known as ex parte contacts) that require the external party to provide FCC a summary of the new information presented for inclusion in the public record. However, several stakeholders told us that FCC's ex parte process allows vague ex parte summaries and that in some cases, ex parte contacts can occur just before a commission vote, which can limit stakeholders' ability to determine what information was provided and to rebut or discuss that information.

FCC faces challenges in ensuring it has the expertise needed to adapt to a changing marketplace. For example, a large percentage of FCC's economists and engineers are eligible to retire in 2011, and FCC faces difficulty recruiting top candidates. FCC has initiated recruitment and development programs and has begun evaluating its workforce needs. GAO previously noted that strategic workforce planning should include identifying needs, developing strategies to address these needs, and tracking progress. However, FCC's Strategic Human Capital Plan does

not establish targets for its expertise needs, making it difficult to assess the agency's progress in addressing its needs.

FCC expertise is hype – their evidence is political self-praise

Engebreston, 13 – Executive Editor of Telecompetitor, former editor-in-chief of Telephony Magazine and America's Network Magazine (Joan, "Catch-Up Talk with Blair Levin Yields Some Surprises", Telecompetitor 5/6/13, http://www.telecompetitor.com/catch-up-talk-with-blair-levin-yields-some-surprises/, //11)

***Blair Levin = former FCC chief of staff

Currently with the Aspen Institute, Blair Levin headed up the team at the FCC that three years ago created the National Broadband Plan with the goal of spurring broadband deployment. But in a speech last week, Levin said, "The FCC is becoming more of a **political institution and less an expert agency**."

Like other D.C. political institutions, he said, the commission is "increasingly caught up in a one-note narrative . . . of **self-praise** rather than focusing on providing the expertise and analytic agility necessary to adjust programs to provide bandwidth abundance to constituencies it is meant to serve."

In an interview with Telecompetitor on Friday, Levin directed further criticism at the FCC's self-praise. "I would never invest in a company that had a CEO who behaved that way," he said.

Work undone

It was up to the FCC to implement the ideas recommended in the National Broadband Plan – and the way Levin sees it, much of that work has been left undone.

One of the most important pieces of information to emerge out of the NBP was that the majority of the homes that can't get broadband are in areas served by the nation's largest price cap carriers – and that hasn't changed much, he told Telecompetitor on Friday.

Although he noted that CenturyLink is doing some upgrades, he said "AT&T is doing zero, and Verizon sold some lines to Frontier but they're not doing anything with what they held on to." (AT&T would disagree with Levin's assessment, having touted its rural network upgrade plans last fall. But it's true that those plans rely heavily on mobile broadband rather than a fixed offering.)

Levin also argued in his recent speech that the FCC essentially "punted" on "the critical issue of contribution reform." In other words, the FCC's new broadband-focused Universal Service program appears to be doomed to be funded as a percentage of carriers' long-distance voice revenues – a methodology that is becoming increasingly unsustainable as long-distance voice revenues decline.

When I asked Levin what he'd like to see happen on that front, however, he declined to offer a specific suggestion. Instead, he said the commission should pull a lot of ideas together and run a proceeding. (The FCC has avoided taking even such an apparently innocuous step – perhaps

because it would then be expected to take action and, politically, it is afraid of taking any action on that controversial issue.)

Singing a different tune?

When the NBP was released, Levin made some enemies among rural telcos because of some of the Universal Service reforms proposed in the plan. The fundamental point of contention was that in targeting to bring broadband to unserved price cap territories without increasing the size of the fund, the corollary was that rate of return carriers would have to get by on less.

Over the past three years, the FCC has implemented some of the reforms proposed in the NBP – although not exactly as the NBP proposed. And some readers might be surprised by one of the things Levin said in another recent speech.

"In those areas where the fund was already driving broadband investment, **reform has stalled progress**," he said in Madison, Wisc. on April 4. He even cited a recent survey of small rural phone companies showing that 69% of respondents have cancelled or postponed investments due to uncertainty about restructuring.

Xt: no written procedures

Lack of interagency procedures gut efficiency

GAO, 9 – United States Government Accountability Office ("FCC Management: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning", December 2009, p.16-17, Google Ebook, //11)

FCC's lack of written policies and its reliance on informal interbureau coordination to address issues that span beyond the purview of a single bureau can result in **inefficiencies**. For example, one FCC official told us that while FCC was conducting a merger review of two major media companies, the review process was delayed because of confusion regarding which bureau was responsible. Since each of the companies merging had assets regulated by different FCC bureaus, it was unclear which bureau was the designated lead and would be responsible for a specific portion of the merger review process. Although the chairman eventually designated a lead bureau, the time it took for this to happen slowed down the process, and the overall lack of coordination made the process less efficient. Our International Control and Management Evaluation Tool emphasizes the importance of internal communications, specifically noting the need for mechanisms that allow for the easy flow of information down, across, and up the organization, including communications between functional activities.

Xt: no expertise

Funding constraints complicate the hiring process – difficult to update staff and expertise

GAO, 9 – United States Government Accountability Office ("FCC Management: Improvements Needed in Communication, Decision-Making Processes, and Workforce Planning", December 2009, p.41, Google Ebook, //11)

FCC faces multiple challenges in recruiting new staff. One challenge FCC faces (similar to other federal agencies) is the inability to offer more competitive pay. Additionally, not having an approved budget and working under congressional continuing resolutions has hampered hiring efforts for engineers and economists. Competing priorities may also delay internal decisions regarding hiring. For example, OSP has not received the budgetary allocation for hiring new economists in time for the annual American Economic Association meeting for at least the past 4 years. This meeting is the primary recruiting venue for recently-graduated economists. When the FCC is not able to hire economists at the annual meeting, the agency potentially loses out on skilled employees who have been offered employment elsewhere. FCC officials told us that OSP has received permission to attend the 2010 American Economic Association meeting and hire at least one economist.

Random

Zero Days

Disclosure of zero-days undermines non-proliferation efforts and there's no spillover

Sanger 14 – chief Washington correspondent of The New York Times (David E., New York Times, "Obama Lets N.S.A. Exploit Some Internet Flaws, Officials Say", 4/12/14, http://www.nytimes.com/2014/04/13/us/politics/obama-lets-nsa-exploit-some-internet-flaws-officials-say.html?_r=0)

The N.S.A. made use of four "zero day" vulnerabilities in its attack on Iran's nuclear enrichment sites. That operation, code-named "Olympic Games," managed to damage roughly 1,000 Iranian centrifuges, and by some accounts helped drive the country to the negotiating table.

Not surprisingly, officials at the N.S.A. and at its military partner, the United States Cyber Command, warned that giving up the capability to exploit undisclosed vulnerabilities would amount to "**unilateral disarmament**" — a phrase taken from the battles over whether and how far to cut America's nuclear arsenal.

"We don't eliminate nuclear weapons until the Russians do," one senior intelligence official said recently. "You are not going to see the Chinese give up on 'zero days' just because we do." Even a senior White House official who was sympathetic to broad reforms after the N.S.A. disclosures said last month, "I can't imagine the president — any president — entirely giving up a technology that might enable him some day to take a covert action that could avoid a shooting war."

NSA DDI

CASE NEG: NSA

Privacy

No NSA abuses – checks the internal link

Lowry 2015,
Rich, Editor, the National Review, 5-27-2015, "Lowry: NSA data program faces death by bumper sticker," Salt Lake Tribune, http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2557534

You can listen to orations on the NSA program for hours and be outraged by its violation of our liberties, inspired by the glories of the Fourth Amendment and prepared to mount the barricades to stop the NSA in its tracks — and still have no idea what the program actually does. That's what the opponents leave out or distort, since their case against the program becomes so much less compelling upon fleeting contact with reality. The program involves so-called metadata, information about phone calls, but not the content of the calls — things like the numbers called, the time of the call, the duration of the call. The phone companies have all this information, which the NSA acquires from them. What happens next probably won't shock you, and it shouldn't. As Rachel Brand of the Privacy and Civil Liberties Oversight Board writes, "It is stored in a database that may be searched only by a handful of trained employees, and even they may search it only after a judge has determined that there is evidence connecting a specific phone number to terrorism." The charge of domestic spying is redolent of the days when J. Edgar Hoover targeted and harassed Martin Luther King Jr. Not only is there zero evidence of any such abuse, it isn't even possible based on the NSA database alone. There are no names with the numbers. As former prosecutor Andrew C. McCarthy points out, whitepages.com has more personal identifying information. The NSA is hardly a rogue agency. Its program is overseen by a special panel of judges, and it has briefed Congress about its program for years.

Privacy violations inevitable – tech and corporations

Goldsmith, 2015
Jack the Henry L. Shattuck Professor at Harvard Law School, The Ends of Privacy, The New Rambler, Apr. 06, 2015 (reviewing Bruce Schneier, Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World (2015)). Published Version http://newramblerreview.com/images/files/Jack- Goldsmith_Review-of-Bruce-Schneier.pdf

The truth is that consumers love the benefits of digital goods and are willing to give up traditionally private information in exchange for the manifold miracles that the Internet and big data bring. Apple and Android each offer more than a million apps, most of which are built upon this model, as are countless other Internet services. More generally, big data promises huge improvements in economic efficiency and productivity, and in health care and safety. Absent abuses on a scale we have not yet seen, the public's attitude toward giving away personal information in exchange for these benefits will likely persist, even if the government requires firms to make more transparent how they collect and use our data. One piece of evidence for this is that privacy-respecting search engines and email services do not capture large market shares. In general these services are not as easy to use, not as robust, and not as efficacious as their personal-data-heavy competitors. Schneier understands and discusses all this. In the end his position seems to be that we should deny ourselves some (and perhaps a lot) of the benefits big data because the costs to privacy and related values are just too high. We "have to stop the slide" away from privacy, he says, not because privacy is "profitable or efficient, but because it is moral." But as Schneier also recognizes, privacy is not a static moral concept. "Our personal definitions of privacy are both cultural and situational," he acknowledges. Consumers are voting

with their computer mice and smartphones for more digital goods in exchange for more personal data. The culture increasingly accepts the giveaway of personal information for the benefits of modern computerized life. This trend is not new. "The idea that privacy can't be invaded at all is utopian," says Professor Charles Fried of Harvard Law School. "There are amounts and kinds of information which previously were not given out and suddenly they have to be given out. People adjust their behavior and conceptions accordingly." That is Fried in the 1970 Newsweek story, responding to an earlier generation's panic about big data and data mining. The same point applies today, and will apply as well when the Internet of things makes today's data mining seem as quaint as 1970s-era computation.

The right to security trumps the right to privacy – Individual ethics prove

Himma 2007 (KENNETH EINAR , "Privacy Versus Security: Why Privacy is Not an Absolute Value or Right" *San Diego Law Review*, http://poseidon01.ssrn.com/delivery.php?ID=946099113093066103077074112016017090015022028045089092075001073099001099109106114127011017012000106100015114101076020123093078010050012092072093113078096021081008038034055090107126078091116028103066027088072124015085097094100087114086001099009078&EXT=pdf&TYPE=2)

From an intuitive standpoint, the idea that the right to privacy is an absolute right seems utterly implausible. Intuitively, it seems clear that there are other rights that are so much more important that they easily trump privacy rights in the event of a conflict. For example, if a psychologist knows that a patient is highly likely to commit a murder, then it is, at the very least, morally permissible to disclose that information about the patient in order to prevent the crime—regardless of whether such information would otherwise be protected by privacy rights. Intuitively, it seems clear that life is more important from the standpoint of morality than any of the interests protected by a moral right to privacy. Still one often hears—primarily from academics in information schools and library schools, especially in connection with the controversy regarding the USA PATRIOT Act—the claim that privacy should never be sacrificed for security, implicitly denying what I take to be the underlying rationale for the PATRIOT Act. This also seems counterintuitive because it does not seem unreasonable to believe we have a moral right to security that includes the right to life. Although this right to security is broader than the right to life, the fact that security interests include our interests in our lives implies that the right to privacy trumps even the right to life—something that seems quite implausible from an intuitive point of view. If I have to give up the most private piece of information about myself to save my life or protect myself from either grievous bodily injury or financial ruin, I would gladly do so without hesitation. There are many things I do not want you to know about me, but should you make a credible threat to my life, bodily integrity, financial security, or health, and then hook me up to a lie detector machine, I will truthfully answer any question you ask about me. I value my privacy a lot, but I value my life, bodily integrity, and financial security much more than any of the interests protected by the right to privacy.

Surveillance reinforces the equal protection of the law – key to equitable morals

Taylor 05

[In Praise of Big Brother: Why We Should Learn to Stop Worrying and Love Government Surveillance; James Stacey Taylor; Public Affairs Quarterly Vol. 19, No. 3 (Jul., 2005), pp. 227-246 Published by: University of Illinois Press on behalf of North American Philosophical Publications Stable URL: http://www.jstor.org/stable/40441413] //duff

A system of constant State surveillance would have other advantages, too. Under the current criminal justice system a wealthy defendant who is innocent of the charges that she is faced with can use her wealth to hire private investigators to demonstrate her innocence, either by finding persons who witnessed the crime of which she

is accused, or by finding persons who can provide her with a legitimate alibi. This option is not open to poorer defendants who are similarly innocent, but who cannot afford to hire private investigators. Since this is so, innocent, poor defendants are more likely than innocent, wealthy defendants to accept plea bargains, or to be convicted of crimes that they did not commit. If, however, a poor person were to be accused of a crime in a State that subjected its citizens to constant surveillance, the judge in her case would be morally justified (indeed, would be morally required) in enabling the defense to secure information that would prove her innocence, and that would have been gathered by the State's surveillance devices. A State's use of constant surveillance could thus reduce the number of persons who are wrongfully convicted. This would not only be good in itself, but it would also lead to a more equitable justice system, for the disparity in wrongful conviction rates between the wealthy (who could use their wealth to prove their innocence) and the poor could be eliminated.

Mass surveillance is less discriminatory because it targets everyone equally.

Hadjimatheou 2014

Katerina Hadjimatheou, Security Ethics Group, Politics and International Studies, University of Warwick "The Relative Moral Risks of Untargeted and Targeted Surveillance" Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1

There are good reasons to think that both the extent to which surveillance treats people like suspects and the extent to which it stigmatises those it affects increases the more targeted the measure of surveillance. As has already been established, stigmatisation occurs when individuals are marked out as suspicious. Being marked out implies being identified in some way that distinguishes one from other members of the wider community or the relevant group. Being pulled out of line for further search or questioning at an airport; being stopped and searched on a busy train platform while other passengers are left alone; having one's travel history, credit card, and other records searched before flying because one fits a profile of a potential terrorist- these are all examples of being singled out and thereby marked out for suspicion. They are all stigmatising, because they all imply that there is something suspicious about a person that justifies the intrusion. In contrast, untargeted surveillance such as blanket screening at airports, spot screening of all school lockers for drugs, and the use of speed cameras neither single people out for scrutiny nor enact or convey a suspicion that those surveilled are more likely than others to be breaking the rules. Rather, everybody engaged in the relevant activity is subject to the same measure of surveillance, indiscriminately and irrespective of any evidence suggesting particular suspiciousness. Such evidence may well emerge from the application of untargeted surveillance, and that evidence may then be used to justify singling people out for further, targeted surveillance. But untargeted surveillance itself affects all people within its range equally and thus stigmatises none in particular.

Econ

OTHER MAJOR THREATS TO TECH LEADERSHIP

Jeff **Clark 13**, Master's and doctorate's degrees in engineering from Virginia Tech, 12-3-**2013**, "Maintaining U.S. Technology Leadership," The Data Center Journal, http://www.datacenterjournal.com/maintaining-technology-leadership/

The U.S. is generally **recognized as the world leader in technology, having founded the silicon industry and hosting many top universities in science and engineering.** Each year,

however, prognostications about the nation's demise into second-tier status crop up, usually in the context of demanding more government funding of various programs, reducing corporate tax rates or beefing up education. But truly **maintaining technology leadership** involves more than just throwing more (of other people's) money at the problem: it **requires recognition of the source, purpose and goals of technological development. Competition between the U.S. and, say, China** (a likely candidate to replace the U.S. as technology leader, should the U.S. falter) **is not** necessarily **bad; like any form of competition, in the right measure it can encourage each side to improve.** Unfortunately, much of the competitive spirit in the U.S. is more a reflection of jingoism and a sense of entitlement, as though the nation has some claim to a leadership position simply because of who it is (a nation that is much, much younger than many others around the world). All in all, **the greatest threat to U.S. leadership in technology is—the U.S. The nation's overfinancialization, educational inflation and IP laws hamper innovation, but calls for greater government spending on research and development or education simply feed the problems rather than solving them.** Partly to blame is the overemphasis on growth, which is ultimately an unsustainable policy. A turnaround in any of these destructive policies, however, is unforeseeable apart from a drastic change in conditions (i.e., another crash a la the Great Recession).

Surveillance is a drop in the bucket – too many reasons why countries want data localization

Business Roundtable 12 (group of chief executive officers of major U.S. corporations formed to promote pro-business public policy)
(Promoting Economic Growth through Smart Global Information Technology Policy The Growing Threat of Local Data Server Requirements,
http://businessroundtable.org/sites/default/files/Global_IT_Policy_Paper_final.pdf)

> Several justifications have been offered for imposing local data server requirements. In some cases, local data server requirements are viewed as necessary to advance national industrial policy and support national service providers. In other cases, the stated justification is to ensure that regulatory, law enforcement or national security personnel can access data residing on the servers. In still other cases, governments assert that they are protecting personal privacy or restricting access to banned or unlawful content. Although some of these various objectives may be legitimate if they are narrowly tailored to address the genuine harm, the blanket imposition of local data server requirements can unnecessarily damage service providers and consumers alike and slow economic growth. To avoid such disruption, governments should seek to narrowly tailor their regulatory requirements to meet essential needs and should avoid ill-advised, blanket local data server requirements. Governments should also ensure that their reviews, if any, of the national security implications of foreign investments focus exclusively on genuine national security risks.

The Internet's positive influence is overhyped – the washing machine has done more for our economy

Dave **Masko**, award-winning foreign correspondent and photojournalist, **7-16**-2015, "Internet's Impact Exaggerated, Washing Machine Does More," Read Wave,
http://www.readwave.com/internet-s-impact-exaggerated-washing-machine-does-more_s85070

Story and photo by Dave Masko EUGENE, Oregon — Data collected by the Pew Internet & American Life Project finds the Internet being hyped as something great when ITs not. Still, there are many University of

Oregon students admitting to spending lots of time surfing the Internet because they are "lonely or bored." "Are you kidding, if I had a girlfriend and in love I would hardly spend my weekends surfing the Net for what… for just more mind fxxx you know; it's just a way to think you are something when you are just another loser; lost and lonely online," admits senior Brian Kelleher. In turn, Kelleher points to a recent lecture he viewed online when researching an economics assignment. "The lecture by Nobel Prize nominee Ha-Joon Chang really opened my eyes to the power of Internet 'branding' and marketing over the past 25 years the Net has existed," Kelleher explained. "Basically, Professor Chang stated that the Internet's impact is vastly exaggerated; while showing how the washing machine has done way more for our society and various cultures worldwide than the Internet because not everyone on Earth today uses views online knowledge as something of value. Frankly, Professor Chang opened my eyes as to 'why' so many of us are blind when it comes to Internet hype being just more bullxxxx." Meanwhile, this interview with Kelleher took place a few months ago when this university senior was single. "After letting go of my Internet addiction, I met a like-minded student named Carol who got me outside in the real world when not in class. You know what, I feel really alive again thanks to Carol's view that we unplug from the machine we don't really need the Net. It's great to be offline and loving life again. Carol and I even go to the laundry and use our favorite new 'machine' the washing machine," joked Kelleher who is pictured walking around campus with Carol on a bright and beautiful April 30, 2015 spring day in Eugene. In fact, Kelleher said Professor Chang's lecture raised eyebrows here at the University of Oregon's famed "Wearable Computing Lab" that was founded in 1995 at the dawn of the so-called information-era. While Kelleher thinks digital-age fans here on campus view the Internet "as revolutionizing just about everything," they took pause when Professor Chang — a famed University of Cambridge, England, economist — presented interesting views on why the washing machine helps more people worldwide than the Net ever could." Professor Chang argues that the Internet's revolutionary is pretty harmless, noting that, "Instead of reading a paper, we now read the news online. Instead of buying books at a store, we buy them on-line. What's so revolutionary? The Internet has mainly affected our leisure life. In short, the washing machine has allowed women to get into the labor market so that we have nearly doubled the work force." Moreover, Professor Chang questions all the hype about the good stuff the Internet is doing for the poor. "Charities are now working to give people in poor countries access to the Internet. But shouldn't we spend that money on providing health clinics and safe water," writes Professor Chang. While the digital revolution has helped make the shift from traditional industry, the clothes washer technology also has been revolutionary because it reduces the drudgery of scrubbing and rubbing clothing, the professor added. Professor Chang is viewed as one of the foremost thinkers on "new economics and development." His economic textbook, "23 Things They Don't Tell You About Capitalism" also details his interest in how the washing machine is way more revolutionary than the Internet. Thanks to washing machine technology, "women started having fewer children, gained more bargaining power in their relationships and enjoyed a higher status. This liberation of women has done more for democracy than the Internet," states Professor Chang's lecture. "The washing machine is a symbol of a fundamental change in how we look at women. It has changed society more than the Internet." As one of the top economics professors in the world, Professor Chang likes to challenge his students to looking at things in a different way. For instance, he notes that "people like you and me have no memory of spending two hours a day washing our clothes in cold water." This is part 8 for an occasional series titled: "Tech: Hooked Into Machine," that is being offered to book and website publishers. DAVE MASKO is award-winning foreign correspondent and photojournalist who has published prolifically in top print newspapers and magazines online. He has reported on vital issues worldwide over the past 40 years. He accepts freelance work. Contact him at dpmasko@msn.com.

Decoupling means US isn't key to the global economy

Bloomberg 10 ["Wall Street Sees World Economy Decoupling From U.S.", October 4th, 2010, http://www.bloomberg.com/news/2010-10-03/world-economy-decoupling-from-u-s-in-slowdown-returns-as-wall-street-view.html, Chetan]

The main reason for the divergence: "Direct transmission from a U.S. slowdown to other economies through exports is just not large enough to spread a U.S. demand problem globally," Goldman Sachs economists Dominic Wilson and Stacy Carlson wrote in a Sept. 22 report entitled "If the U.S. sneezes..." Limited Exposure Take the so-called BRIC countries of Brazil, Russia, India and China. While exports account for almost 20 percent of their gross domestic product, sales to the U.S. compose less than 5 percent of GDP, according to their estimates. That means even if U.S. growth slowed 2 percent, the drag on these four countries would be about 0.1 percentage point, the economists reckon. Developed economies including the U.K., Germany and Japan also have limited exposure, they

said. Economies outside the U.S. have room to grow that the U.S. doesn't, partly because of its outsized slump in house prices, Wilson and Carlson said. The drop of almost 35 percent is more than twice as large as the worst declines in the rest of the Group of 10 industrial nations, they found. The risk to the decoupling wager is a repeat of 2008, when the U.S. property bubble burst and then morphed into a global credit and banking shock that ricocheted around the world. For now, Goldman Sachs's index of U.S. financial conditions signals that bond and stock markets aren't stressed by the U.S. outlook. Weaker Dollar The break with the U.S. will be reflected in a weaker dollar, with the Chinese yuan appreciating to 6.49 per dollar in a year from 6.685 on Oct. 1, according to Goldman Sachs forecasts. The bank is also betting that yields on U.S. 10-year debt will be lower by June than equivalent yields for Germany, the U.K., Canada, Australia and Norway. U.S. notes will rise to 2.8 percent from 2.52 percent, Germany's will increase to 3 percent from 2.3 percent and Canada's will grow to 3.8 percent from 2.76 percent on Oct. 1, Goldman Sachs projects. Goldman Sachs isn't alone in making the case for decoupling. Harris at BofA Merrill Lynch said he didn't buy the argument prior to the financial crisis. Now he believes global growth is strong enough to offer a "handkerchief" to the U.S. as it suffers a "growth recession" of weak expansion and rising unemployment, he said. Giving him confidence is his calculation that the U.S. share of global GDP has shrunk to about 24 percent from 31 percent in 2000. He also notes that, unlike the U.S., many countries avoided asset bubbles, kept their banking systems sound and improved their trade and budget positions. Economic Locomotives A book published last week by the World Bank backs him up. "The Day After Tomorrow" concludes that developing nations aren't only decoupling, they also are undergoing a "switchover" that will make them such locomotives for the world economy, they can help rescue advanced nations. Among the reasons for the revolution are greater trade between emerging markets, the rise of the middle class and higher commodity prices, the book said. Investors are signaling they agree. The U.S. has fallen behind Brazil, China and India as the preferred place to invest, according to a quarterly survey conducted last month of 1,408 investors, analysts and traders who subscribe to Bloomberg. Emerging markets also attracted more money from share offerings than industrialized nations last quarter for the first time in at least a decade, Bloomberg data show. Room to Ease Indonesia, India, China and Poland are the developing economies least vulnerable to a U.S. slowdown, according to a Sept. 14 study based on trade ties by HSBC Holdings Plc economists. China, Russia and Brazil also are among nations with more room than industrial countries to ease policies if a U.S. slowdown does weigh on their growth, according to a policy- flexibility index designed by the economists, who include New York-based Pablo Goldberg. "Emerging economies kept their powder relatively dry, and are, for the most part, in a position where they could act countercyclically if needed," the HSBC group said. Links to developing countries are helping insulate some companies against U.S. weakness. Swiss watch manufacturer Swatch Group AG and tire maker Nokian Renkaat of Finland are among the European businesses that should benefit from trade with nations such as Russia and China where consumer demand is growing, according to BlackRock Inc. portfolio manager Alister Hibbert. "There's a lot of life in the global economy," Hibbert, said at a Sept. 8 presentation to reporters in London.

Democracy does not affect whether or not a state represses.

Timmerman '12(Ashley M; B.A University of Central Florida; " WHEN LEADERS REPRESS: A STUDY OF AFRICAN STATES"; http://etd.fcla.edu/CF/CFE0005428/Masters_thesis_final.pdf)

Some studies (Davenport and Inman, 2012) present evidence that contradicts this, saying that while regime type is important, it is "not universally applicable across all concepts." Davenport and Armstrong (2004) argue that the previous studies showing negative linear relationships between democracy and levels of repression are flawed. According to them, there is a negative linear relationship, but only above a particular threshold, that varies due to the measure in question. In their study, the measures include international war, civil war, and military control, among others. However, below this threshold, democracy does not affect the levels of repression. Beer and Mitchell (2006) also present evidence that suggest democracy is 5 not the deciding factor in whether or not a state will repress. Using the case of India as an example, Beer and Mitchell (2006) suggest ethnic and religious factors for the high levels of repression within a democratic state. The study accurately accounts for the election of specific political parties and the electoral participation as factors for repression, within this democratic state. This contradicts most of the previous research that suggests democracies will not repress.

Democracies start more wars- statistical analysis proves

Henderson 2 (Errol Henderson, Assistant Professor, Dept. of Political Science at the University of Florida, 2002, Democracy and War The End of an Illusion?, p. 146)

Are Democracies More Peaceful than Nondemocracies with Respect to Interstate Wars? The results indicate that democracies are more war-prone than non-democracies (whether democracy is coded dichotomously or continuously) and that democracies are more likely to initiate interstate wars. The findings are obtained from analyses that control for a host of political, economic, and cultural factors that have been implicated in the onset of interstate war, and focus explicitly on state level factors instead of simply inferring state level processes from dyadic level observations as was done in earlier studies (e.g., Oneal and Russett, 1997; Oneal and Ray, 1997). The results imply that democratic enlargement is more likely to increase the probability of war for states since democracies are more likely to become involved in—and to initiate—interstate wars.

The act of democratizing leads to war.

Chojnacki 6 (Sven, Professor @ Berlin Freie, Democratic Wars, pg. 35)

Moreover, an active policy of democratization might not only accelerate violent processes but the norms of democracy and human rights may also be a pretext for pursuing power interests by military means (ct. Shannon, 2000; Schjelset, 2001). Taking into account the -growth in military intervention capabilities, unilateral options for action on the part of powerful states, and the existing power asym- metries in the international system on the one hand, and the relevance of violent intrastate and substate conflicts for international politics in an era of interdependence on the other, there is little reason to assume that the number of military interventions will decrease in the future. A final risk to democratic peace arises through norm- and value-based demarcation processes and war-promoting patterns of argumentation vis-a-vis non-democratic systems. The more democratic states identify themselves in contrast to potential adversaries and the less

the cost--benefit argument comes to hear in the face of technological superiority, the more the risk of war increases (d. Muller, 2002a, p. 58). At the same time, it should be noted that superior military capabilities, normative orienta- tions and global liberalization pressures could be regarded as potential threats to non-democratic states and regions. This could result in the emergence of new images of what an enemy is and a 'democracy- specific security dilemma' vis-a-vis the rest of the world (MUller, 2002a, pp. 59-60). The 'clash of civilizations' envisaged by Samuel Huntington could thus evolve as a self-fulfilling prophecy as it begins to inhabit the security policies of Western democracies. A policy of democratic interventionism would not only confront democracies with incalculable security risks but might also undermine their own nonnative claims.

Solvency

FISA will circumvent

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

> Even if Congress at some point enacted new restrictions on surveillance, the executive might ignore the law and continue to make policy unilaterally. The job of reviewing executive conduct would again fall to the FISA Court.56 In view of this court's history of broad deference to the executive, Congress would have a challenge to ensure that legislative policies were faithfully implemented.

Mass surveillance solves discrimination.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

More generally, broad-reach electronic mechanisms have an advantage in addressing the danger that surveillance will be unfairly concentrated on particular groups; targeting criteria, rather than reflecting rigorous efforts to identify wrongdoers, may reflect cognitive bias or group animus. Moreover, even when the criteria are optimally calculated to identify wrongdoers, they may be unfair to law-abiding people who happen to share some superficial characteristic with wrongdoers. Thus, law-abiding blacks complain that they are unfairly burdened by stop-and-frisk tactics, and law-abiding Muslims make similar complaints about anti-terrorism surveillance. Such problems are more tractable with broad-based electronic surveillance. Because it is broad-based, it distributes some of its burdens widely. This may be intrinsically fairer, and it operates as a political safeguard, making effective protest more likely in cases of abuse. Because it is electronic, the efficacy of the criteria can be more easily investigated, and their effect on law-abiding people can be more accurately documented. Thus, plaintiffs in challenges to stop-and-frisk practices analyze electronically recorded data on racial incidence and "hit rates" to argue that the criteria are biased and the effects racially skewed. Remedies in such cases typically require more extensive recording

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The president of the United States should *limit the scope of its domestic surveillance under Section 702 of the Foreign Intelligence Surveillance Act to communications whose sender or recipient is a valid intelligence target and whose targets pose a tangible threat to national security.*

Executive can take action to curtail surveillance

Straw 14 (Joesph Straw-Published: Friday, January 17, 2014, 6:58 AM Updated: Saturday, January 18, 2014, 1:01 AM "Obama calls for modest constraints on NSA surveillance programs" http://www.nydailynews.com/news/politics/obama-calls-constraints-nsa-surveillance-article-1.1582758)

Regardless of how we got here," Obama said, "the task before us now is greater than simply repairing the damage done to our operations or preventing more disclosures from taking place in the future."¶ National Security Agency leaker Edward Snowden revealed last year that the government legally — but secretly — forces phone companies to turn over billions of records on Americans' calls and stores them.¶ Obama said the NSA will continue to vacuum up billions of U.S. phone call logs, but the government will set up a new, outside entity to store the data.¶ "We have to make some important decisions about how to protect ourselves and sustain our leadership in the world while upholding the civil liberties and privacy protections our ideals and our Constitution require," he said in a speech at Justice Department headquarters.¶ Among his proposals:¶ - Require the government to get approval from a judge before it searches the data, except in emergencies.¶ - Continue NSA monitoring of foreign terror suspects' email accounts, but with protections for the privacy of data on innocent Americans caught in the dragnet.¶ - Establish a panel of public advocates, who would argue before the secret Foreign Intelligence Surveillance Court to protect civil liberties in high-profile cases.¶ Obama asked Congress to approve the establishment of the advocate panel. He would pursue the remainder of his plans by executive order, he said, but welcomed Congress to make his proposals law.¶ Responding to one of Snowden's most embarrassing revelations — that the NSA has eavesdropped on the personal cell phones belonging to close allies like German Chancellor Angela Merkel — Obama said that friendly leaders' phones will not be tracked except when doing so is critical to national security.

Executive orders increase presidential power

Risen 4 [Clay, Managing editor of *Democracy: A Journal of Ideas,* M.A. from the University of Chicago "The Power of the Pen: The Not-So-Secret Weapon of Congress-wary Presidents" The American Prospect, July 16, http://www.prospect.org/cs/articles?article=the_power_of_the_pen]

In the modern era, **executive orders have gone from being a tool largely reserved for internal** White House **operations** -deciding how to format agency budgets or creating outlines for diplomatic protocol -- to **a powerful weapon in defining, and expanding, executive power**. In turn, **presidents have** increasingly **used that power to** construct and **promote social policies on** some of the country's most **controversial issues, from civil rights to labor relations to**

reproductive health.

Presidential power is critical to sustain the vital functions of American leadership

Mallaby 2K (Sebastian, Member, Washington Post's Editorial Board, Foreign Affairs, Jan/Feb)

Finally, **some** will **object** that **the weakness of the presidency** as an institution **is not the main explanation for the inadequacies of American diplomacy, even if it is a secondary one**. The ad hominem school of thought argues instead that Bill Clinton and his advisers have simply been incompetent. Others make various sociological claims that isolationism or multiculturalism lies at the root of America's diplomatic troubles. All of these arguments may have merit. **But** the **evidence cited by both camps can be better explained by the structural weakness of the presidency**. Take, for example, one celebrated error: President Clinton's declaration at the start of the Kosovo war that the Serbs need not fear NATO ground troops. This announcement almost certainly cost lives by encouraging the Serbs to believe that America was not serious about stopping ethnic cleansing. The ad hominem school sees in this example proof of Clinton's incompetence; the sociological school sees in it proof of isolationist pressure, which made the option of ground troops untenable. But a third explanation, offered privately by a top architect of the Kosovo policy, is more plausible. According to this official, the president knew that pundits and Congress would criticize whichever policy he chose. Clinton therefore preemptively took ground troops off the table, aware that his critics would then urge him on to a ground war -- and also aware that these urgings would convince Belgrade that Washington's resolve would stiffen with time, rather than weaken. The president's stand against ground troops was therefore the logical, tactical move of a leader feeling vulnerable to his critics. Other **failings of American diplomacy can** likewise **be accounted for by the advent of the nonexecutive presidency**. Several commentators, notably Samuel Huntington and Garry Wills in these pages, have attacked the arrogance of America's presumption to offer moral leadership to the world. But American leaders resort to moral rhetoric largely out of weakness. They fear that their policy will be blocked unless they generate moral momentum powerful enough to overcome domestic opponents. Likewise, critics point to the hypocrisy of the United States on the world stage. America seeks U.N. endorsement when convenient but is slow to pay its U.N. dues; America practices legal abortion at home but denies funds to organizations that do the same abroad. Again, this hypocrisy has everything to do with the weak executive. **The president has a favored policy but is powerless to make Congress follow it.** Still other critics decry American diplomacy as a rag-bag of narrow agendas: Boeing lobbies for China trade while Cuban-Americans demand sanctions on Cuba. Here, too, **presidential power is the issue. A strong presidency might see to it that America pursues its broader national interest, but a weak one cannot**. This is why Clinton signed the Helms-Burton sanctions on Cuba even though he knew that these would do disproportionate harm to U.S. relations with Canada and Europe. What if America's nonexecutive presidency is indeed at the root of its diplomatic inadequacy? First, it follows that it is too optimistic to blame America's foreign policy drift on the weak character of the current president**. The institution of the presidency itself is weak**, and we would be unwise to assume that a President Gore or Bradley or Bush will perform much better. But it also follows that it is too pessimistic to blame America's foreign policy drift on cultural forces that nobody can change, such as isolationism or multiculturalism.

Prez Powers key to check global hotspots

South China Morning Post 2K (South China Morning Post 12/11/00 ProQuest [Newspaper] "Position of Weakness)

A weak president with an unclear mandate is bad news for the rest of the world. For better or worse, the person who rules the United States influences events far beyond the shores of his own country. Both the global economy and international politics will feel the effect of political instability in the US. The first impact will be on American financial markets, which will have a ripple effect on markets and growth across the world. A weakened US presidency will also be felt in global hotspots across the world. The Middle East, the conflict between India and Pakistan, peace on the Korean peninsula, and even the way relations between China and Taiwan play out, will be influenced by the authority the next US president brings to his job.¶ There are those who would welcome a weakening of US global influence. Many Palestinians, for example, feel they would benefit from a less interventionist American policy in the Middle East. Even within the Western alliance, there are those who would probably see opportunities in a weakened US presidency. France, for example, might feel that a less assertive US might force the European Union to be more outward looking.¶ But the dangers of having a weak, insecure US presidency outweigh any benefits that it might bring. US global economic and military power cannot be wished away. A president with a shaky mandate will still command great power and influence, only he will be constrained by his domestic weakness and less certain about how to use his authority. This brings with it the risks of miscalculation and the use of US power in a way that heightens conflict. There are very few conflicts in the world today which can be solved without US influence. The rest of the world needs the United States to use its power deftly and decisively. Unfortunately, as the election saga continues, it seems increasingly unlikely that the next US president will be in a position to do so.

DA

Terror risk is high- maintaining current surveillance is key

Inserra, 6-8-2015

David Inserra is a Research Associate for Homeland Security and Cyber Security in the Douglas and Sarah Allison Center for Foreign and National Security Policy of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation, 6-8-2015, "69th Islamist Terrorist Plot: Ongoing Spike in Terrorism Should Force Congress to Finally Confront the Terrorist Threat," Heritage Foundation, http://www.heritage.org/research/reports/2015/06/69th-islamist-terrorist-plot-ongoing-spike-in-terrorism-should-force-congress-to-finally-confront-the-terrorist-threat

On June 2 in Boston, Usaamah Abdullah Rahim drew a knife and attacked police officers and FBI agents, who then shot and killed him. Rahim was being watched by Boston's Joint Terrorism Task Force as he had been plotting to behead police officers as part of violent jihad. A conspirator, David Wright or Dawud Sharif Abdul Khaliq, was arrested shortly thereafter for helping Rahim to plan this attack. This plot marks the 69th publicly known Islamist terrorist plot or attack against the U.S. homeland since 9/11, and is part of a recent spike in terrorist activity. The U.S. must redouble its efforts to stop terrorists before they strike, through the use of properly applied intelligence tools. The Plot According to the criminal complaint filed against Wright, Rahim had originally planned to behead an individual outside the state of Massachusetts,[1] which, according to news reports citing anonymous government officials, was Pamela Geller, the organizer of the "draw Mohammed" cartoon contest in Garland, Texas.[2] To this end, Rahim had purchased multiple knives, each over 1 foot long, from Amazon.com. The FBI was listening in on the calls between Rahim and Wright and recorded multiple conversations regarding how these weapons would be used to behead someone. Rahim then changed his plan early on the morning of June 2. He planned to go "on vacation right here in Massachusetts…. I'm just going to, ah, go after them, those boys in blue. Cause, ah, it's the easiest target."[3] Rahim and Wright had used the phrase "going on vacation" repeatedly in their conversations as a euphemism for violent jihad. During this conversation, Rahim told Wright that he planned to attack a police officer on June 2 or June 3. Wright then offered advice on preparing a will and destroying any incriminating evidence. Based on this threat, Boston police officers and FBI agents approached Rahim to question him, which prompted him to pull out one of his knives. After being told to drop his weapon, Rahim responded with "you drop yours" and moved toward the officers, who then shot and killed him. While Rahim's brother, Ibrahim, initially claimed that Rahim was shot in the back, video surveillance was shown to community leaders and civil rights groups, who have confirmed that Rahim was not shot in the back.[4] Terrorism Not Going Away This 69th Islamist plot is also the seventh in this calendar year. Details on how exactly Rahim was radicalized are still forthcoming, but according to anonymous officials, online propaganda from ISIS and other radical Islamist groups are the source.[5] That would make this attack the 58th homegrown terrorist plot and continue the recent trend of ISIS playing an important role in radicalizing individuals in the United States. It is also the sixth plot or attack targeting law enforcement in the U.S., with a recent uptick in plots aimed at police. While the debate over the PATRIOT Act and the USA FREEDOM Act is taking a break, the terrorists are not. The result of the debate has been the reduction of U.S. intelligence and counterterrorism capabilities, meaning that the U.S. has to do even more with less when it comes to connecting the dots on terrorist plots.[6] Other legitimate intelligence tools and capabilities must be leaned on now even more. Protecting the Homeland To keep the U.S. safe, Congress must take a hard look at the U.S. counterterrorism enterprise and determine other measures that are needed to improve it. Congress should: Emphasize community outreach. Federal grant funds should be used to create robust community-outreach capabilities in higher-risk urban areas. These funds must not be used for political pork, or so broadly that they no longer target those communities at greatest risk. Such capabilities are key to building trust within these communities, and if the United States is to thwart lone-wolf terrorist attacks, it must place effective community outreach operations at the tip of the spear. Prioritize local cyber capabilities. Building cyber-investigation capabilities in the higher-risk urban areas must become a primary focus of Department of Homeland Security grants. With so much terrorism-related activity occurring on the Internet, local law enforcement must have the constitutional ability to monitor and track violent extremist activity on the Web when reasonable suspicion exists to do so. Push the FBI toward being more effectively driven by intelligence. While the FBI has made high-level changes to its mission and organizational structure, the bureau is still working on integrating intelligence and law enforcement

activities. Full integration will require overcoming inter-agency cultural barriers and providing FBI intelligence personnel with resources, opportunities, and the stature they need to become a more effective and integral part of the FBI. Maintain essential counterterrorism tools. Support for important investigative tools is essential to maintaining the security of the U.S. and combating terrorist threats. Legitimate government surveillance programs are also a vital component of U.S. national security and should be allowed to continue. The need for effective counterterrorism operations does not relieve the government of its obligation to follow the law and respect individual privacy and liberty. In the American system, the government must do both equally well. Clear-Eyed Vigilance The recent spike in terrorist plots and attacks should finally awaken policymakers—all Americans, for that matter—to the seriousness of the terrorist threat. Neither fearmongering nor willful blindness serves the United States. Congress must recognize and acknowledge the nature and the scope of the Islamist terrorist threat, and take the appropriate action to confront it.

Surveillance is critical to stopping terror threats

Lewis 14 [James Andrew Lewis, Director and Senior Fellow of the Technology and Public Policy Program at the CSIS, December 2014, "Underestimating Risk in the Surveillance Debate", Center for Strategic and International Studies, http://csis.org/files/publication/141209_Lewis_UnderestimatingRisk_Web.pdf pg 10-11 jf]

Assertions that a collection program contributes nothing because it has not singlehandedly prevented an attack reflect an ill-informed understanding of how the United States conducts collection and analysis to prevent harmful acts against itself and its allies. Intelligence does not work as it is portrayed in films—solitary agents do not make startling discoveries that lead to dramatic, last-minute success (nor is technology consistently infallible). Intelligence is a team sport. Perfect knowledge does not exist and success is the product of the efforts of teams of dedicated individuals from many agencies, using many tools and techniques, working together to assemble fragments of data from many sources into a coherent picture. Analysts assemble this mosaic from many different sources and based on experience and intuition. Luck is still more important than anyone would like and the alternative to luck is acquiring more information. This ability to blend different sources of intelligence has improved U.S. intelligence capabilities and gives us an advantage over some opponents. Portrayals of spying in popular culture focus on a central narrative, essential for storytelling but deeply misleading. In practice, there can be many possible narratives that analysts must explore simultaneously. An analyst might decide, for example, to see if there is additional confirming information that points to which explanation deserves further investigation. Often, the contribution from collection programs comes not from what they tell us, but what they let us reject as false. In the case of the 215 program, its utility was in being able to provide information that allowed analysts to rule out some theories and suspects. This allows analysts to focus on other, more likely, scenarios. In one instance, an attack is detected and stopped before it could be executed. U.S. forces operating in Iraq discover a bomb-making factory. Biometric data found in this factory is correlated with data from other bombings to provide partial identification for several individuals who may be bomb-makers, none of whom are present in Iraq. In looking for these individuals, the United States receives information from another intelligence service that one of the bombers might be living in a neighboring Middle Eastern country. Using communications intercepts, the United States determines that the individual is working on a powerful new weapon. The United States is able to combine the communications intercept from the known bomb maker with information from other sources—battlefield data, information obtained by U.S. agents, collateral information from other nations' intelligence services—and use this to identify others in the bomber's network, understand the plans for bombing, and identify the bomber's target, a major city in the United States. This effort takes place over months and involves multiple intelligence, law enforcement, and military agencies, with more than a dozen individuals from these agencies collaborating to build up a picture of the bomb-maker and his planned attack. When the bomb-maker leaves the Middle East to carry out his attack, he is prevented from entering the United States. An analogy for how this works would be to take a 1,000-piece jigsaw puzzle, randomly select 200 pieces, and provide them

to a team of analysts who, using incomplete data, must guess what the entire picture looks like. The likelihood of their success is determined by how much information they receive, how much time they have, and by experience and luck. Their guess can be tested by using a range of collection programs, including communications surveillance programs like the 215 metadata program. What is left out of this picture (and from most fictional portrayals of intelligence analysis) is the number of false leads the analysts must pursue, the number of dead ends they must walk down, and the tools they use to decide that something is a false lead or dead end. Police officers are familiar with how many leads in an investigation must be eliminated through legwork and query before an accurate picture emerges. Most leads are wrong, and much of the work is a process of elimination that eventually focuses in on the most probable threat. If real intelligence work were a film, it would be mostly boring. Where the metadata program contributes is in eliminating possible leads and suspects. This makes the critique of the 215 program like a critique of airbags in a car—you own a car for years, the airbags never deploy, so therefore they are useless and can be removed. The weakness in this argument is that discarding airbags would increase risk. How much risk would increase and whether other considerations outweigh this increased risk are fundamental problems for assessing surveillance programs. With the Section 215 program, Americans gave up a portion of their privacy in exchange for decreased risk. Eliminating 215 collection is like subtracting a few of the random pieces of the jigsaw puzzle. It decreases the chances that the analysts will be able to deduce what is actually going on and may increase the time it takes to do this. That means there is an increase in the risk of a successful attack. How much of an increase in risk is difficult to determine.

Terrorists will use bioweapons- guarantees extinction

Cooper 13

(Joshua, 1/23/13, University of South Carolina, "Bioterrorism and the Fermi Paradox," http://people.math.sc.edu/cooper/fermi.pdf, 7/15/15, SM)

We may conclude that, when a civilization reaches its space-faring age, it∂ will more or less at the same moment (1) contain many individuals who seek to cause large-scale destruction, and (2) acquire the capacity to tinker with its own genetic chemistry. This is a perfect recipe for bioterrorism, and, given the many very natural pathways for its development and the overwhelming∂ evidence that precisely this course has been taken by humanity, it is hard to∂ see how bioterrorism does not provide a neat, if profoundly unsettling, solution∂ to Fermi's paradox. One might object that, if omnicidal **individuals** are∂ successful in releasing **highly virulent** and **deadly genetic malware** into the∂ wild, they are still unlikely to succeed in killing everyone. However, even if∂ every such mass death event results only in a high (i.e., not total) kill rate and∂ there is a large gap between each such event (so that individuals can build up∂ the requisite scientific infrastructure again**), extinction would be inevitable**∂ regardless. Some of the engineered bioweapons will be more successful than∂ others; the inter-apocalyptic eras will vary in length; and post-apocalyptic∂ environments may be so **war-torn, disease-stricken, and impoverished of genetic variation that they may culminate in true extinction events even if the initial cataclysm 'only' results in 90% death rates**, since they may cause the∂ effective population size to dip below the so-called "minimum viable population."∂ This author ran a Monte Carlo simulation using as (admittedly very∂ crude and poorly informed, though arguably conservative) estimates the following∂ Earth-like parameters: bioterrorism event mean death rate 50% and∂ standard deviation 25% (beta distribution), initial population 1010, minimum∂ viable population 4000, individual omnicidal act probability 10−7 per annum,∂ and population growth rate 2% per annum. One thousand trials yielded an∂ average post-space-age time until extinction of less than 8000 years. This is∂ essentially instantaneous on a cosmological scale, and varying the parameters∂ by quite a bit does nothing to make the survival period comparable with the∂ age of the universe.

K

The aff's criticism of state surveillance reproduces neoliberal social relations – privacy protection is undergirded by the assumption of economic individualism – that papers over the coercive functions of the market and prevents use of the state to challenge corporate power

Fuchs 11

Christian Fuchs 11, Professor of Social Media at University of Westminster, "Towards an alternative concept of privacy," Journal of Information, Communication and Ethics in Society, Vol. 9, Iss. 4, p. 232-3, fwang

Etzioni (1999) stresses that **liberal privacy** concepts typically **focus on privacy invasions by the state, but ignore privacy invasions by companies**. **The contemporary undermining of public goods by overstressing privacy rights would not be caused by the state, but rather stem**:

[...] **from the quest for profit by some private companies**. Indeed, I find that these **corporations now regularly amass detailed accounts** about many aspects of the **personal lives of millions of individuals**, profiles of the kind that until just a few years ago could be compiled only by the likes of the East German Stasi. [...] **Consumers, employees, even patients and children have little protection from marketeers, insurance companies, bankers, and corporate surveillance** (Etzioni, 1999, p. 9f).

The task of a socialist privacy conception is to go beyond the focus of privacy concepts as protection from state interference into private spheres, but to **identify those cases, where political regulation is needed for the protection of the rights of consumers and workers**.

It is time to break with the liberal tradition in privacy studies and to **think about alternatives**. The Swedish socialist philosopher Torbjörn Tännsjö (2010) stresses that **liberal privacy concepts imply "that one cannot only own self and personal things, but also means of production" and that the consequence is "a very closed society, clogged because of the idea of business secret, bank privacy, etc**." (Tännsjo¨, 2010, p. 186). Tännsjö argues that **power structures should be made transparent and not be able to hide themselves and operate secretly protected by privacy rights**. He imagines based on utopian socialist ideas an open society that is democratic and fosters equality so that (Tännsjö, 2010, pp. 191-8) in a democratic socialist society, there is, as Tännsjö indicates, no need for keeping power structures secret and therefore no need for a liberal concept of privacy. However, this does in my view not mean that in a society that is shaped by participatory democracy, all forms of privacy vanish. **There are some human acts and situations**, such as defecation (Moore, 1984), **in which humans tend to want to be alone**. Many humans would both in a capitalist and a socialist society feel embarrassed having to defecate next to others, for example by using toilets that are arranged next to each other without separating walls. So **solitude is not a pure ideology, but to a certain desire also a human need that should be guaranteed as long as it does not result in power structures that harm others**. This means that it is necessary to **question the liberal-capitalist privacy ideology, to struggle today for socialist privacy that protects workers and consumers, limits the right and possibility of keeping power structures secret and makes these structures transparent**. In a qualitatively different society, we require a qualitatively different concept of privacy, but not the end of privacy. Torbjrn Tännsjö's work is a powerful reminder that **it is necessary not to idealize privacy**, but to **think about its contradictions and its relation to private property**

The aff uses the plan as a vehicle for Internet-based democracy promotion – their narrative of backsliding and freedom of information relies on an inaccurate historical reading of the fall of the Soviet Union that makes global failure of democracy inevitable, while re-entrenching global inequality – the Internet is not a vehicle for democracy, and their rhetoric only emboldens dictators and ensures massive violence

Morozov 11

(Evgeny Morozov, contributing editor at the New Republic and the author of To Save Everything, Click Here: The Folly of Technological Solutionism, *The Net Delusion*, pgs. ix-xvii)

For anyone who wants to see democracy prevail in the most hostile and unlikely environments, the first decade of the new millennium was marked by a sense of bitter disappointment, if not utter disillusionment. **The seemingly inexorable march of freedom** that began in the late 1980s has not only come to a halt but **may have reversed its course**.¶ Expressions like "freedom recession" have begun to break out of the think-tank circuit and enter the public conversation. In a state of quiet desperation, **a growing number of Western policymakers began to con- cede** that **the Washington Consensus**—that set of dubious policies that once promised a neoliberal paradise at deep discounts—**has been superseded** by the Beijing Consensus, which boasts of delivering quick- and-dirty prosperity without having to bother with those pesky institutions of democracy.¶ The West has been slow to discover that the fight for democracy wasn't won back in 1989. For two decades it has been resting on its laurels, expecting that Starbucks, MTV, and Google will do the rest just fine. Such **a laissez-faire approach to democratization has proved rather toothless against resurgent authoritarianism**, which has masterfully adapted to this new, highly globalized world. Today's authoritarianism is of the hedonism- and consumerism-friendly variety, with Steve Jobs and Ashton Kutcher commanding far more respect than Mao or Che Guevara. No wonder the West appears at a loss. While the Soviets could be liberated by waving the magic wand of blue jeans, exquisite coffee machines, and cheap bubble gum, one can't pull the same trick on China. After all, this is where all those Western goods come from.¶ Many of the signs that promised further democratization just a few years ago never quite materialized. The so-called color revolutions that swept the former Soviet Union in the last decade produced rather ambiguous results. Ironically, it's the most authoritarian of the former Soviet republics—Russia, Azerbaijan, Kazakhstan—that found those revolutions most useful, having discovered and patched their own vulnerabilities. My own birthplace, Belarus, once singled out by Condoleezza Rice as the last outpost of tyranny in Europe, is perhaps the shrewdest of the lot; it continues its slide into a weird form of authoritarianism, where the glorification of the Soviet past by its despotic ruler is fused with a growing appreciation of fast cars, expensive holidays, and exotic cocktails by its largely carefree populace.¶ **The wars in Iraq and Afghanistan**, which were **started**, if anything, **to spread the gospel of freedom and democracy, have lost much of their initial emancipatory potential** as well, further **blurring the line between "regime change" and "democracy promotion."** Coupled with Washington's unnecessary abuses of human rights and rather frivolous interpretations of international law, these two wars gave democracy promotion such a bad name that anyone eager to defend it is considered a Dick Cheney acolyte, an insane idealist, or both.¶ It is thus easy to forget, if only for therapeutic purposes, that the West still has an obligation to stand up for democratic values, speak up about violations of human rights, and reprimand those who abuse their office and their citizens. Luckily, by the twenty-first century the case for promoting democracy no longer needs to be made; even the hardest skeptics agree that a world where Russia, China, and Iran adhere to democratic norms is a safer world.¶ That said, **there is still very little agreement on the kind of methods and policies the West needs to pursue to be most effective in promoting democracy.** As the last few decades have so aptly illustrated, good intentions are hardly enough. **Even the most noble attempts may easily backfire, entrenching authoritarianism** as a result. The images of horrific prisoner abuse at Abu Ghraib were the result, if only indirectly, of one particular approach to promoting democracy. It did not exactly work as advertised.¶ Unfortunately, as the neoconservative vision for democratizing the world got discredited, nothing viable has come to fill the vacuum. While George Bush certainly overdid it with his excessive freedom- worshiping rhetoric, his successor seems to have abandoned the rhetoric, the spirit, as well as any desire to articulate what a post-Bush "freedom agenda" might look like.¶ But there is more to **Obama's silence** than just his reasonable attempt to present himself as anti-Bush. Most likely his silence **is a sign of an extremely troubling bipartisan malaise: the growing Western fatigue with the project of promoting democracy**. **The project suffers** not just **from** bad publicity but also from **a deeply rooted intellectual crisis**. The resilience of authoritarianism in places like Belarus, China, and Iran is not for lack of trying by their Western "partners" to stir things up with an expectation of a democratic revolution. Alas, **most** such **Western initiatives flop, boosting the appeal of** many **existing dictators, who excel at playing up the threat of foreign mingling in their own affairs**. To say that there is no good blueprint for dealing with modern authoritarian- ism would be a severe understatement.¶ Lost in their own strategizing, **Western leaders are pining for** something that has guaranteed effectiveness. Many of them look back to the most impressive and most unambiguous triumph of democracy in the last few decades: **the peaceful dissolution of the Soviet Union**. Not surprisingly—and who can blame them for seeking to bolster their own self-confidence?—they tend to exaggerate their own role in precipitating its demise. As a result, many of the **Western strategies tried back then**, like smuggling in photocopiers and fax machines, facilitating the flow of

samizdat, and supporting radio broadcasts by Radio Free Europe and the Voice of America, **are given much more credit than they deserve**.¶ **Such belated Cold War triumphalism results in an egregious logical fallacy**. **Since the Soviet Union eventually fell, those strategies are presumed to have been extremely effective**– in fact, crucial to the whole endeavor. **The implications** of such a view for the future of democracy promotion **are tremendous, for they suggest that large doses of information and communications technology are lethal to** the most **repressive** of **regimes**.¶ **Much of the present excitement about the Internet, particularly the high hopes** that are **pinned on** it in terms of **opening up closed societies**, **stems from such selective and**, at times, **incorrect readings of history, rewritten to glorify the genius of Ronald Reagan and minimize the role of structural conditions** and the inherent contradictions **of the Soviet system**.¶ It's for these chiefly historical reasons that the Internet excites so many seasoned and sophisticated decision makers who should really know better. **Viewing it through the prism of the Cold War, they endow the Internet with nearly magical qualities**; for them, it's the ultimate cheat sheet that could help the West finally defeat its authoritarian adversaries. **Given that it's the only ray of light in an otherwise dark intellectual tunnel of democracy promotion, the Internet's prominence in future policy planning is assured**.¶ And at first sight it seems like a brilliant idea. It's like Radio Free Europe on steroids. And it's cheap, too: no need to pay for expensive programming, broadcasting, and, if everything else fails, propaganda. After all, Internet users can discover the truth about the horrors of their regimes, about the secret charms of democracy, and about the irresistible appeal of universal human rights on their own, by turning to search engines like Google and by following their more politically savvy friends on social networking sites like Facebook. In other words, let them tweet, and they will tweet their way to freedom. **By this logic, authoritarianism becomes unsustainable once the barriers to the free flow of information are removed**. If the Soviet Union couldn't survive a platoon of pamphleteers, how can China survive an army of bloggers?¶ It's hardly surprising, then, that the only place where the West (especially the United States) is still unabashedly eager to promote democracy is in cyberspace. The Freedom Agenda is out; the Twitter Agenda is in. It's deeply symbolic that the only major speech about freedom given by a senior member of the Obama administration was Hillary Clinton's speech on Internet freedom in January 2010. It looks like a safe bet: Even if the Internet won't bring democracy to China or Iran, it can still make the Obama administration appear to have the most technologically savvy foreign policy team in history. The best and the brightest are now also the geekiest. The Google Doctrine—the enthusiastic belief in the liberating power of technology accompanied by the irresistible urge to enlist Silicon Valley start-ups in the global fight for freedom—is of growing appeal to many policymakers. In fact, many of them are as upbeat about the revolutionary potential of the Internet as their colleagues in the corporate sector were in the late 1990s. **What could possibly go wrong here**?¶ As it turns out, **quite a lot**. Once burst, stock bubbles have few lethal consequences; **democracy bubbles**, on the other hand, could **easily lead to carnage**. **The idea that the Internet favors the oppressed** rather than the oppressor **is marred by** what I call **cyber-utopianism**: **a naïve belief in the emancipatory nature of online communication** that rests on a stubborn refusal to acknowledge its downside. It stems from the starry- eyed digital fervor of the 1990s, when former hippies, by this time ensconced in some of the most prestigious universities in the world, went on an argumentative spree to prove that the Internet could deliver what the 1960s couldn't: boost democratic participation, trigger a renaissance of moribund communities, strengthen associational life, and serve as a bridge from bowling alone to blogging together. And if it works in Seattle, it must also work in Shanghai.¶ Cyber-utopians ambitiously set out to build a new and improved United Nations, only to end up with a digital Cirque du Soleil. Even if true—and that's a gigantic "if "—their theories proved difficult to adapt to non-Western and particularly nondemocratic contexts. Democratically elected governments in North America and Western Europe may, indeed, see an Internet-driven revitalization of their public spheres as a good thing; logically, they would prefer to keep out of the digital sandbox—at least as long as nothing illegal takes place. **Authoritarian governments**, on the other hand, **have invested so much effort into suppressing any form of free expression** and free assembly **that they would never** behave in such a civilized fashion. The early theorists of the Internet's influence on politics failed to **make any space for** the state, let alone a brutal authoritarian state with no tolerance for the rule of law or **dissenting opinions**. Whatever book lay on the cyber-utopian bed- side table in the early 1990s, it was surely not Hobbes's Leviathan.¶ Failing to anticipate how authoritarian governments would respond to the Internet, **cyber-utopians did not predict how useful it would prove for propaganda purposes**, how masterfully dictators would learn to use it for surveillance, **and how sophisticated modern systems of Internet censorship would become**. Instead most cyber-utopians stuck to a populist account of how technology empowers the people, who, op- pressed by years of authoritarian rule, will inevitably rebel, mobilizing themselves through text messages, Facebook, Twitter, and whatever new tool comes along next year. (The people, it must be noted, really liked to hear such theories.) Paradoxically, **in their refusal to see the downside of the new digital environment, cyber-utopians ended up belittling the role of the Internet**, refusing to see that it penetrates and re- shapes all walks of political life, not just the ones conducive to democratization.¶ I myself was intoxicated with cyber-utopianism until recently. **This** book **is an attempt to come to terms with this ideology as well as a warning against the pernicious influence that it has had** and is likely to continue to have **on democracy promotion**. My own story is fairly typical of idealistic young people who think they are onto something that could change the world. Having watched the deterioration of democratic freedoms in my native Belarus, **I was drawn to a Western NGO that sought to promote democracy and media reform in the former Soviet bloc** with the help of the Internet. Blogs, social networks, wikis: We

had an arsenal of weapons that seemed far more potent than police batons, surveillance cameras, and handcuffs.¶ Nevertheless, after I spent a few busy years circling the former Soviet region and meeting with activists and bloggers, I lost my enthusiasm. Not only were our strategies failing, but we also noticed a significant push back from the governments we sought to challenge. They were beginning to experiment with censorship, and some went so far as to start aggressively engaging with new media themselves, paying bloggers to spread propaganda and troll social networking sites looking for new information on those in the opposition. In the meantime, the Western obsession with the Internet and the monetary support it guaranteed created numerous hazards typical of such ambitious development projects. Quite **predictably, many** of the **talented bloggers and new media entrepreneurs preferred to work for the extremely well-paid but largely ineffective Western-funded projects instead of trying to create more nimble**, sustainable, **and**, above all, **effective projects** of their own. Thus, **everything we did**—with generous funding from Washington and Brussels—**seemed to have produced the results that were the exact opposite of what my cyber-utopian self wanted**.¶ It was tempting to throw my hands up in despair and give up on the Internet altogether. But this would have been the wrong lesson to draw from these disappointing experiences. Similarly, it would be wrong for Western policymakers to simply dismiss the Internet as a lost cause and move on to bigger, more important issues. Such digital defeatism would only play into the hands of authoritarian governments, who would be extremely happy to continue using it as both a carrot (keeping their populace entertained) and a stick (punishing those who dare to challenge the official line). Rather, the lesson to be drawn is that the Internet is here to stay, it will continue growing in importance, and those concerned with democracy promotion need not only grapple with it but also come up with mechanisms and procedures to ensure that an- other tragic blunder on the scale of Abu Ghraib will never happen in cyberspace. This is not a far-fetched scenario. How hard is it to imagine a site like Facebook inadvertently disclosing the private information of activists in Iran or China, tipping off governments to secret connections between the activists and their Western funders?¶ To be truly effective, the West needs to do more than just cleanse it- self of cyber-utopian bias and adopt a more realist posture. When it comes to concrete steps to promote democracy, **cyber-utopian convictions often give rise to an equally flawed approach that I dub "Internet-centrism."** Unlike cyber-utopianism, **Internet-centrism is not a set of beliefs**; rather, **it's a philosophy of action that informs how decisions**, **including those that deal with democracy promotion, are made and how long-term strategies are crafted**. **While cyber-utopianism stipulates what has to be done, Internet-centrism stipulates how it should be done**. **Internet-centrists** like to answer every question about democratic change by first reframing it in terms of the Internet rather than the context in which that change is to occur. They **are often completely oblivious to the highly political nature of technology**, especially the Internet, **and** like to **come up with strategies that assume that the logic of the Internet**, which, in most cases, they are the only ones to perceive, **will shape every environment** than it penetrates rather than vice versa.¶ While most utopians are **Internet-centrists**, the latter are not necessarily utopians. In fact, many of them **like to think of themselves as pragmatic individuals who have abandoned grand theorizing** about utopia **in the name of achieving tangible results**. Sometimes, they are even eager to acknowledge that it takes more than bytes to foster, install, and consolidate a healthy democratic regime.¶ **Their realistic convictions**, however, **rarely make up for their flawed methodology**, **which prioritizes the tool over the environment**, and, as such, is deaf to the social, cultural, and political subtleties and indeter-minacies. **Internet-centrism is a highly disorienting drug**; it ignores context and entraps policymakers into believing that they have a useful and powerful ally on their side. **Pushed to its extreme, it leads to hubris, arrogance, and a false sense of confidence**, all bolstered by the dangerous illusion of having established effective command of the Internet. All too often, its practitioners fashion themselves as possessing full mastery of their favorite tool, treating it as a stable and finalized technology, oblivious to the numerous forces that are constantly reshaping the Internet— not all of them for the better. **Treating the Internet as a constant, they fail to see their own responsibility in preserving its freedom** and reining in the ever-powerful intermediaries, companies like Google and Facebook.¶ As the Internet takes on an even greater role in the politics of both authoritarian and democratic states, the pressure to forget the context and start with what the Internet allows will only grow. **All by itself**, however, **the Internet provides nothing certain.** In fact, as has become obvious in too many contexts, **it empowers the strong and disempowers the weak**. **It is impossible to place the Internet at the heart of the enterprise of democracy promotion without risking the success of that very enterprise**. The premise of this book is thus very simple: **To salvage the Internet's promise to aid the fight against authoritarianism**, those of us in **the West** who still care about the future of democracy **will need to ditch** both **cyber-utopianism and Internet-centrism**. Currently, **we start with a flawed set of assumptions** (cyber-utopianism) **and act on them using a flawed**, even crippled, **methodology** (Internet-centrism). The result is what I call the Net Delusion. Pushed to the extreme, **such logic is poised to have significant global consequences that may risk undermining the very project of promoting democracy.** It's a folly that the West could do without.¶ Instead, we'll need to opt for policies informed by a realistic assessment of the risks and dangers posed by the Internet, matched by a highly scrupulous and unbiased assessment of its promises, and a theory of action that is highly sensitive to the local context, that is cognizant of the complex connections between the Internet and the rest of foreign policymaking, and that originates not in what technology allows but in what a certain geopolitical environment requires.¶ In a sense, **giving in to cyber-utopianism and Internet-**

centrism is akin to agreeing to box blindfolded. Sure, **every now and then we may still strike some powerful blows** against our authoritarian adversaries, **but in general this is a poor strategy if we want to win.** The struggle against authoritarianism is too important of a battle to fight with a voluntary intellectual handicap, even if that handicap allows us to play with the latest fancy gadgets.

U.S. primacy is based on an epistemologically flawed view of other nations as "competitors" – ensures endless war and economic collapse

Foster, 5

(John Bellamy Foster, prof of sociology @ Oregon, *Monthly Review*, "Naked Imperialism," http://www.monthlyreview.org/0905jbf.htm)

The unprecedented dangers of this new global disorder are revealed in the twin cataclysms to which the world is heading at present: nuclear proliferation and hence increased chances of the outbreak of **nuclear war, and planetary ecological destruction**. These are symbolized by the Bush administration's refusal to sign the Comprehensive Test Ban Treaty to limit nuclear weapons development and by its failure to sign the Kyoto Protocol as a first step in controlling global warming. As former U.S. Secretary of Defense (in the Kennedy and Johnson administrations) Robert McNamara stated in an article entitled "Apocalypse Soon" in the May–June 2005 issue of Foreign Policy: "The United States has never endorsed the policy of 'no first use,' not during my seven years as secretary or since. We have been and remain prepared to initiate the use of nuclear weapons—by the decision of one person, the president—against either a nuclear or nonnuclear enemy whenever we believe it is in our interest to do so." **The nation with the greatest conventional military force and the willingness to use it unilaterally to enlarge its global power is also the nation with the greatest nuclear force and the readiness to use it whenever it sees fit**—setting the whole world on edge. **The nation that contributes more to carbon dioxide emissions leading to global warming than any other** (representing approximately a quarter of the world's total) **has become the greatest obstacle to addressing global warming and the world's growing environmental problems**—raising the possibility of the collapse of civilization itself if present trends continue. **The United States is seeking to exercise sovereign authority over the planet during a time of widening global crisis: economic stagnation, increasing polarization between the global rich and the global poor, weakening U.S. economic hegemony, growing nuclear threats, and deepening ecological decline. The result is a heightening of international instability**. Other potential forces are emerging in the world, such as the European Community and China, that could eventually challenge U.S. power, regionally and even globally. Third world revolutions, far from ceasing, are beginning to gain momentum again, symbolized by Venezuela's Bolivarian Revolution under Hugo Chávez. U.S. attempts to tighten its imperial grip on the Middle East and its oil have had to cope with a fierce, seemingly unstoppable, Iraqi resistance, generating conditions of imperial overstretch. **With the United States brandishing its nuclear arsenal and refusing to support international agreements on the control of such weapons, nuclear proliferation is continuing**. New nations, such as North Korea, are entering or can be expected soon to enter the "nuclear club." **Terrorist blowback from imperialist wars** in the third world **is now a well-recognized reality**, generating rising fear of further terrorist attacks in New York, London, and elsewhere. **Such vast and overlapping historical contradictions, rooted in the combined and uneven development of the global capitalist economy along with the U.S. drive for planetary domination, foreshadow what is potentially the most dangerous period in the history of imperialism.** The course on which U.S and world capitalism is now headed points to global barbarism—or worse. Yet it is important to remember that nothing in the development of human history is inevitable. There still remains an alternative path—the global struggle for a humane, egalitarian, democratic, and sustainable society.

Competitiveness discourse reproduces neoliberalism – ensures economic and environmental collapse

Bristow 9

[Gillian Bristow, (School of City & Regional Planning @ Cardiff University), "Resilient regions: re-'place'ing regional competitiveness," Cambridge Journal of Regions, Economy and Society 2010, 3, 153–167, AX]

In recent years, **regional development strategies have been subjugated to the hegemonic discourse of competitiveness**, **such that the ultimate objective for all regional development policy-makers and practitioners has become the creation of economic advantage through superior productivity performance**, or the attraction of new firms and labour (Bristow, 2005). A major consequence is the developing 'ubiquitification' of regional development strategies (Bristow, 2005; Maskell and Malmberg, 1999). **This reflects the status of competitiveness as a key discursive construct** (Jessop, 2008) **that has acquired hugely significant rhetorical power for certain interests intent on reinforcing capitalist relations** (Bristow, 2005; Fougner, 2006). Indeed, the **competitiveness hegemony is such that many policies** previously considered only indirectly relevant to unfettered economic growth **tend to be hijacked in support of competitiveness agendas** (for example Raco, 2008; also Dannestam, 2008). **This** paper **will argue**, however, that **a** particularly narrow **discourse of 'competitiveness'** has been constructed that **has** a number of **negative connotations for the 'resilience' of regions**. **Resilience is defined as the region's ability to experience positive economic success that is socially inclusive, works within environmental limits and which can ride global economic punches** (Ashby et al., 2009). As such, resilience clearly resonates with literatures on sustainability, localisation and diversification, and the developing understanding of regions as intrinsically diverse entities with evolutionary and context-specific development trajectories (Hayter, 2004). In contrast, the dominant discourse of competitiveness is 'placeless' and increasingly associated with globalised, growth-first and environmentally malign agendas (Hudson, 2005). However, this paper will argue that the relationships between competitiveness and resilience are more complex than might at first appear. Using insights from the Cultural Political Economy (CPE) approach, which focuses on understanding the construction, development and spread of hegemonic policy discourses, the paper will argue that the dominant discourse of competitiveness used in regional development policy is narrowly constructed and is thus insensitive to contingencies of place and the more nuanced role of competition within economies. This leads to problems of resilience that can be partly overcome with the development of a more contextualised approach to competitiveness. The paper is now structured as follows. It begins by examining the developing understanding of resilience in the theorising and policy discourse around regional development. It then describes the CPE approach and utilises its framework to explain both how a narrow conception of competitiveness has come to dominate regional development policy and how resilience inter-plays in subtle and complex ways with competitiveness and its emerging critique. The paper then proceeds to illustrate what resilience means for regional development firstly, with reference to the Transition Towns concept, and then by developing a typology of regional strategies to show the different characteristics of policy approaches based on competitiveness and resilience. Regional resilience Resilience is rapidly emerging as an idea whose time has come in policy discourses around localities and regions, where it is developing widespread appeal owing to the peculiarly powerful combination of transformative pressures from below, and various catalytic, crisis-induced imperatives for change from above. It features strongly in policy discourses around environmental management and sustainable development (see Hudson, 2008a), but has also more recently emerged in relation to emergency and disaster planning with, for example 'Regional Resilience Teams' established in the English regions to support and co-ordinate civil protection activities around various emergency situations such as the threat of a swine flu pandemic. The discourse of resilience is also taking hold in discussions around desirable local and regional development activities and strategies. **The recent global 'credit crunch' and the accompanying increase in livelihood insecurity has highlighted the advantages of those local and regional economies that have greater 'resilience' by virtue of being less dependent upon globally footloose activities, having greater economic diversity, and/or having a determination to prioritise and effect more significant structural change** (Ashby et al, 2009; Larkin and Cooper, 2009). Indeed, resilience features particular strongly in the 'grey' literature spawned by thinktanks, consultancies and environmental interest groups around the consequences of the global recession, catastrophic climate change and the arrival of the era of peak oil for localities and regions with all its implications for the longevity of carbon-fuelled economies, cheap, long-distance transport and global trade. **This popularly labelled**

‘triple crunch’ (New Economics Foundation, 2008) **has powerfully illuminated the potentially disastrous material consequences of the voracious growth imperative at the heart of neoliberalism and competitiveness, both in the form of resource constraints** (especially food security) **and in the inability of the current system to manage global financial and ecological sustainability**. In so doing, it appears to be galvinising previously disparate, fractured debates about the merits of the current system, and challenging public and political opinion to develop a new, global concern with frugality, egalitarianism and localism (see, for example Jackson, 2009; New Economics Foundation, 2008).

The impact is extinction – neoliberal social organization ensures extinction from resource wars, climate change, and structural violence – only accelerating beyond neoliberalism can resolve its impacts

Williams & Srnicek 13

(Alex, PhD student at the University of East London, presently at work on a thesis entitled 'Hegemony and Complexity', Nick, PhD candidate in International Relations at the London School of Economics, Co-authors of the forthcoming Folk Politics, 14 May 2013, http://criticallegalthinking.com/2013/05/14/accelerate-manifesto-for-an-accelerationist-politics/)

At the begin-ning of the second dec-ade of the Twenty-First Cen-tury, **global civilization faces a new breed of cataclysm**. These com-ing apo-ca-lypses ridicule the norms and organ-isa-tional struc-tures of the polit-ics which were forged in the birth of the nation-state, the rise of cap-it-al-ism, and a Twen-ti-eth Cen-tury of unpre-ced-en-ted wars. 2. **Most significant is the break-down of the planetary climatic system**. In time, **this threatens the continued existence of the** present global **human population**. Though this is the most crit-ical of the threats which face human-ity, **a series of** lesser but **potentially equally destabilising problems exist along-side** and inter-sect with **it**. **Terminal resource depletion, especially in water and energy** reserves, **offers the prospect of mass starvation, collapsing economic paradigms, and new hot and cold wars**. **Continued financial crisis has led governments to embrace the** para-lyz-ing **death spiral policies of austerity, privatisation of social welfare services, mass unemployment, and stagnating wages. Increasing automation in production processes** includ-ing ‘intel-lec-tual labour’ **is evidence of the secular crisis of capitalism, soon to render it incapable of maintaining current standards of living** for even the former middle classes of the global north. 3. In con-trast to these ever-accelerating cata-strophes, **today’s politics is beset by an inability to generate the** new ideas and **modes of organisation necessary to transform our societies to confront** and resolve the **coming annihilations**. While crisis gath-ers force and speed, polit-ics with-ers and retreats. In this para-lysis of the polit-ical ima-gin-ary, the future has been cancelled. 4. Since 1979, **the hegemonic global political ideology has been neoliberalism**, found in some vari-ant through-out the lead-ing eco-nomic powers. In spite of the deep struc-tural chal-lenges the new global prob-lems present to it, most imme-di-ately the credit, fin-an-cial, and fiscal crises **since 2007 – 8, neoliberal programmes have** only **evolved** in the sense of deep-en-ing. **This continuation** of the neo-lib-eral pro-ject, or neo-lib-er-al-ism 2.0, **has begun to apply another round of structural adjustments**, most sig-ni-fic-antly in the form of encour-aging

new and aggress-ive incur-sions by the private sec-tor into what remains of social demo-cratic insti-tu-tions and ser-vices. **This is in spite of the immediately negative** eco-nomic and social **effects of such policies**, and the longer term fun-da-mental bar-ri-ers posed by the new global crises.

The alternative articulates a "counter-conduct" – voting neg pushes towards a cooperative conduct *that organizes individuals around a collectively shared* commons *– affirming this conduct creates a new heuristic that de-couples government from the demand for competition and production*

Dardot & Laval 13

(Pierre Dardot, philosopher and specialist in Hegel and Marx, Christian Laval, professor of sociology at the Universite Paris Ouest Nanterre La Defense, *The New Way of the World: On Neoliberal Society*, pgs. 318-321)

This indicates to what extent we must take on board in our own way the main lesson of neo-liberalism: **the subject is always to be constructed**. **The whole question is** then **how to articulate subjectivation with resistance to power**. Now, precisely this issue is at the heart of all of Foucault's thought. However, as Jeffrey T. Nealon has recently shown, part of the North American secondary literature has, on the contrary, stressed the alleged break between Foucault's research on power and that of his last period on the history of subjectivity.55 According to the 'Foucault consensus', as Nealon aptly dubs it, the successive impasses of the initial neo-structuralism, and then of the totalizing analysis of panoptical power, led the 'last Foucault' to set aside the issue of power and concern himself exclusively with the aesthetic invention of a style of existence bereft of any political dimension. Furthermore, if we follow this de-politicizing reading of Foucault, the aestheticization of ethics anticipated the neo-liberal mutation precisely by making self-invention a new norm. In reality, far from being oblivious of one another, the issues of power and the subject were always closely articulated, even in the last work on modes of subjectivation. If one concept played a decisive role in this respect, it was 'counter-conduct', as developed in the lecture of 1 March 1978.56 This lecture was largely focused on the crisis of the pastorate. It involved identifying the specificity of the 'revolts' or **'forms of resistance of conduct'** that are the correlate of the pastoral mode of power. If such forms of resistance are said to be 'of conduct', it is because they are forms of resistance to power as conduct and, as such, **are themselves forms of conduct opposed to** this **'power-conduct'**. **The term 'conduct'** in fact **admits of two meanings**: **an activity that consists in conducting others**, or **'conduction'**; **and the way one conducts oneself under the influence of this activity of conduction**.57 **The idea of 'counter-conduct'** therefore **has the advantage of directly signifying a 'struggle against the procedures implemented for conducting others', unlike the term 'misconduct', which only refers to the passive sense of the word**.58 **Through 'counter-conduct', people seek both to escape conduction by others and to define a way of conducting themselves towards others**.¶ **What relevance might this observation have for** a reflection on **resistance to neo-liberal governmentality**? It will be said that the concept is introduced in the context of an analysis of the pastorate, not government. **Governmentality**, at least **in its** specifically **neo-liberal form**, precisely **makes conducting others through their conduct towards themselves its real goal**. **The peculiarity of** this conduct towards oneself, **conducting oneself as a personal enterprise, is that it immediately and directly induces a certain conduct towards others**: **competition with others**, regarded as so many personal enterprises. Consequently, counter-conduct as a form of resistance to this governmentality must correspond to a conduct that is indivisibly a conduct towards oneself and a conduct towards others. One cannot struggle against such an indirect mode of conduction by appealing for rebellion against an authority that supposedly operates through compulsion external to individuals. If 'politics is nothing more and nothing less than that which is born with resistance to governmentality, the first revolt, the first confrontation',59 it means that ethics and politics are absolutely inseparable.¶ To the subjectivation-subjection represented by ultra-subjectivation, we must oppose a subjectivation by forms of counter-conduct. **To neo-liberal governmentality as a specific way of conducting the conduct of others, we must** therefore **oppose a no less specific double refusal**: **a refusal to conduct oneself towards oneself as a personal enterprise and a refusal to conduct oneself towards others in accordance with the norm of competition**. As such, the double

refusal is not 'passive disobedience'.60 For, **if it is true** that the **personal enterprise's relationship to the self immediately and directly determines a certain kind of relationship to others** – **generalized competition** – **conversely, the refusal to function as a personal enterprise**, which is self-distance **and a refusal to line up in the race for performance, can only practically occur on condition of establishing cooperative relations with others, sharing and pooling**. In fact, **where would be the sense in a self-distance severed from any cooperative practice**? At worst, a cynicism tinged with contempt for those who are dupes. At best, simulation or double dealing, possibly dictated by a wholly justified concern for self-preservation, but ultimately exhausting for the subject. Certainly not a counter-conduct. All the more so in that **such a game could lead the subject, for want of anything better, to take refuge in a compensatory identity**, which at least has the advantage of some stability by contrast with the imperative of indefinite self-transcendence. **Far from threatening the neo-liberal order, fixation with identity**, whatever its nature, **looks like a fall-back position for subjects weary of themselves**, for all those who have abandoned the race or been excluded from it from the outset. **Worse, it recreates the logic of competition at the level of relations between 'little communities'**. **Far from being valuable in itself**, independently of any articulation with politics, **individual subjectivation is bound up at its very core with collective subjectivation**. In this sense, sheer aestheticization of ethics is a pure and simple abandonment of a genuinely ethical attitude. **The invention of new forms of existence can only be a collective act**, **attributable to the** multiplication and **intensification of cooperative counter-conduct**. A collective refusal to 'work more', if only local, is a good example of an attitude that can pave the way for such forms of counter-conduct. In effect, it breaks what André Gorz quite rightly called the 'structural complicity' that binds the worker to capital, in as much as 'earning money', ever more money, is the decisive goal for both. It makes an initial breach in the 'immanent constraint of the "ever more", "ever more rapidly"'.61¶ **The genealogy of neo-liberalism** attempted **in this book teaches** us that **the new global rationality is** in **no** wise an **inevitable fate shackling humanity**. Unlike Hegelian Reason, it is not the reason of human history. **It is itself wholly historical** – that is, **relative to strictly singular conditions that cannot legitimately be regarded as untranscendable.** The main thing is to understand that nothing can release us from the task of promoting a different rationality. That is why the belief that the financial crisis by itself sounds the death-knell of neo-liberal capitalism is the worst of beliefs. It is possibly a source of pleasure to those who think they are witnessing reality running ahead of their desires, without them having to move their little finger. It certainly comforts those for whom it is an opportunity to celebrate their own past 'clairvoyance'. At bottom, it is the least acceptable form of intellectual and political abdication. Neo-liberalism is not falling like a 'ripe fruit' on account of its internal contradictions; and traders will not be its undreamed-of 'gravediggers' despite themselves. Marx had already made the point powerfully: 'History does nothing'.62 **There are only human beings who act in given conditions and seek through their action to open up a future for themselves**. **It is up to us to enable a new sense of possibility** to blaze a trail. The **government** of human beings **can be aligned with horizons other than those of maximizing performance, unlimited production and generalized control**. **It can sustain itself with self-government that opens onto different relations with others than** that of **competition between 'self-enterprising actors'**. The **practices of 'communization' of knowledge, mutual aid and cooperative work can delineate the features of a different world reason. Such an alternative reason cannot be better designated than by the term reason of the commons**.

NSA Circumvention JDI

Neg

1NC "Curtail" Spec

Our interpretation is that the affirmative plan must specify the precise ways in which domestic surveillance is curtailed. This is critical for disad links as well as counterplan competition.

And the aff can't solve - Precise specification of surveillance restrictions is key to solvency – vague restrictions guarantee NSA circumvention

Bloomberg, 3/28/**2015**, "Will Congress Rein in the NSA?" http://www.bloombergview.com/articles/2014-03-28/will-congress-rein-in-the-nsa, mm

Any legislation Congress settles on should follow Obama's lead in requiring a judge's approval before spies can access U.S. calling records. It **should clarify what limitations will be placed on the government's ability to search information** collected from innocent Americans who may be in the contact chain of a suspect. It must resolve technical challenges that could impede the phone companies from sharing information quickly when needed. **And the wording of the law must be explicit and precise: The NSA makes linguistic distinctions that would challenge a medieval Scholastic**.

This is a voter for competitive equity. Plan vagueness is a gateway issue that shapes every other argument in the debate.

NSA Circumvention – Rogue Agency

Reforms fail – the NSA is a rogue agency that can't be constrained

Glenn **Greenwald**, **2014**, No Place to Hide: Edward Snowden, the NSA, and the US Surveillance State. p. 130-131, mm

In the wake of our Snowden stories, a group of senators form both parties who had long been concerned with surveillance abuses began efforts to draft legislation that would impose real limits on the NSA's powers. But these **reformers**, led by Democratic senator Ron Wyden of Oregon, **ran into an immediate roadblock**: **counter efforts by the NSA's defenders** in the Senate to write legislation **that would provide only the appearance of reform**, **while in fact retaining or even increasing the NSA's powers**. As Slate's Dave Weigel reported in November: Critics of the NSA's bulk data collection and surveillance programs have never been worried about congressional inaction. They've expected Congress to come up with something that looked like reform but actually codified and excused the practices being exposed and pilloried. That's what's always happened **– every amendment or reauthorization** to the 2001 USA Patriot Act **has built more back doors than walls**. "We will be up against a 'business-as-usual brigade' – made up of influential members of the government's intelligence leaderships, their allies in think tanks [sic] and academia, retired government officials, and sympathetic legislators," warned Oregon Sen. Ron Wyden last month. "Their endgame is ensuring that any surveillance reforms are only skin-deep…Privacy protections that don't actually protect privacy are not worth the paper they're printed on." The "fake reform" faction was led by Dianna Feinstein, the very senator who is charged with exercising primary oversight over the NSA. Feinstein has long been a devoted loyalist of the US national security industry, from her vehement support for the war on Iraq to her steadfast backing of Bush-era NSA programs. (Her husband, meanwhile, has major stakes in various military contracts). Clearly, Feinstein was a natural choice to head a committee that claims to carry out oversight over the intelligence community but has for years performed the opposite function. Thus, **for all the government's denials, the NSA has no substantial constraints on whom it can spy on and how**. **Even when such constraints nominally exist** – when American citizens are the surveillance target – **the process has become largely hollow**. **The NSA is the definitive**

rogue agency: empowered to do whatever it wants with very little control, transparency, or accountability.

NSA Circumvention – Compliance Problems

The NSA frequently circumvents the law without consequence

Ben **O'Neill**, 8/29/**2013**, Mises Daily: Austrian Economics, Freedom, and Peace, "The NSA and Its "Compliance Problems," https://mises.org/library/nsa-and-its-%E2%80%9Ccompliance-problems%E2%80%9D, mm

After a long period of fervent denials, **the NSA has** now ackn**owledged that its analysts have often exceeded their legal limits even under the widest interpretations of the Patriot Act** by the NSA itself. **An internal audit of the agency found that in a single year there were 2,776 "incidents" of unauthorised collection**, storage, access or distribution **of communications of US citizens**, with many individual incidents covering large numbers of communications. **This included violation of court orders from the Foreign Intelligence Surveillance Court.¶ Rather than referring to these as instances of lawbreaking** as what they are, **the Director of National Intelligence** has instead **referred to these legal violations as "compliance problems**" with the programs. He has made a point to stress that these kinds of problems are monitored and assessed regularly by the agency and are to be expected in such a complex program. One consequence of this view is that **there is no actual sanction for unlawful activity by the NSA.** If "compliance problems" are just an expected part of government operations then there is no sense in having any sanction for these legal breaches. **The agency** then **operates above the law,** in the sense that its agents are pre-emptively acquitted of lawbreaking, **on the grounds that some degree of non-compliance with the law is expected.¶ Even for the Foreign Intelligence Surveillance Court,** tasked with supposed judicial oversight of the agency, **attempting to hold the NSA to the rule of law has been a farce**. Chief Judge Reggie Walton explained to the press that, "[**t]he FISC is forced to rely upon the accuracy of the information that is provided to the Court**. ... **The FISC does not have the capacity to investigate issues of noncompliance**, and in that respect the FISC is in the same position as any other court when it comes to enforcing [government] compliance with its orders."

The NSA breaks the law without consequence – it operates without effective legal constraints

Ben **O'Neill**, 8/29/**2013**, Mises Daily: Austrian Economics, Freedom, and Peace, "The NSA and Its "Compliance Problems," https://mises.org/library/nsa-and-its-%E2%80%9Ccompliance-problems%E2%80%9D, mm

¶ **One of the core principles of good governance** in society **is** the idea that the authority of law ought to prevail over the brute power of people — i.e., **that society should operate under the rule of law**, not the rule of men. Aristotle wrote that "[t]he law ought to be supreme over all ..." and argued that ... where the laws are not supreme, there demagogues spring up." The principle has many important ramifications for society, but the most important is the view that government agents and agencies must be bound by the same law as their subjects.¶ ¶ **This principle is of great relevance in the present NSA scandals, especially in light of recent NSA admissions of "compliance problems" with the legal constraints that are supposed to operate on the agency**. For ordinary citizens, "compliance problems" with the law are better known as "crimes" (or possibly civil wrongs) and these lead to judgment debts, fines, and possibly even jail time, depending on the severity of the lack-of-compliance. But **for government officials such notions are irrelevant** — legal compliance problems are just something you file a report about, and send to another bureaucrat higher up in the government chain, so that he can bury it on his desk.¶ ¶ Unfortunately, this is not a new phenomenon. The notion of the rule of law is the wellspring of an endless stream of hypocrisy in the modern social-democratic welfare-warfare state. It is difficult to find anyone who does not speak highly of the principle when it is presented in abstract form, yet it is simultaneously rare to find people who really take the idea seriously when applied to concrete situations involving government wrongdoing. **In**

the case of the NSA, the principle of rule of law has been jettisoned entirely, and the agency operates without any effective legal constraints.

The NSA is non-compliant – it frequently ignores FISA restraints

Ben **O'Neill**, 8/29/**2013**, Mises Daily: Austrian Economics, Freedom, and Peace, "The NSA and Its "Compliance Problems," https://mises.org/library/nsa-and-its-%E2%80%9Ccompliance-problems%E2%80%9D, mm

The collection of metadata and communication content occurs without any probable cause to believe that that the people targeted are a threat to anyone. It also occurs in violation of the U.S. Constitution and the already very broad requirements of the Patriot Act, which requires applications for access to records to have "a statement of facts showing that there are reasonable grounds to believe that the [records] sought are relevant to an authorized investigation." In **a recently declassified** (but still heavily redacted) **opinion from the Foreign Intelligence Surveillance Court, Judge** James **Bates wrote that "[t|his court is troubled that the government's revelations regarding NSA's acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program**." **In an earlier ruling the court had found that legal requirements for data queries had been "frequently and systematically violated**."

NSA Circumvention – Workarounds

FISA court decisions prove the NSA constantly finds ways to circumvent the law

Nadia **Kayyali**, 8/15/**2014**, Electronic Frontier Foundation, "what you need to know about the FISA Court - and how it needs to change," https://www.eff.org/deeplinks/2014/08/what-you-need-know-about-fisa-court-and-how-it-needs-change, mm

The "heightened duty of candor" is not enough. **FISC decisions** that have been made public **are full of descriptions of the NSA not fulfilling its duties and being very slow to inform the court about it**. Judge John Bates noted: "The court is troubled that the government's revelations regarding the NSA's acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program," and noted "repeated inaccurate statements made in the government's submission," concluding that **the requirements had been "so frequently and systematically violated that it can fairly be said that this critical element of the overall…regime has never functioned effectively**."¶ **Judges have consistently chastised the NSA for "inaccurate" statements, misleading or incomplete filings and for having "circumvented the spirit" of laws protecting Americans' privacy**.

NSA Courts JDI

No Spying CP

1NC

Text: The United States should offer to accede to a “no-spying” agreement with France and Germany, modeled on the “Five Eyes” pact.

No spying agreement solves credibility and EU relations

O’Donnell and Baker ’13 [JOHN O'DONNELL AND LUKE BAKER, Reuters, Oct 24, 2013, Germany, France demand 'no-spy' agreement with U.S.]

German Chancellor Angela Merkel demanded on Thursday that the United States strike a "no-spying" agreement with Berlin and Paris by the end of the year, saying alleged espionage against two of Washington's closest EU allies had to be stopped.¶ Speaking after talks with EU leaders that were dominated by allegations that the U.S. National Security Agency had accessed tens of thousands of French phone records and monitored Merkel's private mobile phone, the chancellor said she wanted action from President Barack Obama, not just apologetic words.¶ Germany and France would seek a "mutual understanding" with the United States on cooperation between their intelligence agencies, and other EU member states could eventually take part.¶ "That means a framework for cooperation between the relevant (intelligence) services.Germany and France have taken the initiative and other member states will join," she said.¶ In a statement issued after the first day of the summit, the EU's 28 leaders said they supported the Franco-German plan.¶ Merkel first raised the possibility of a "no-spying" agreement with Obama during a visit to Berlin in June this year, but nothing came of it. The latest revelations, part of the vast leaks made by former U.S. data analyst Edward Snowden, would appear to have renewed her determination for a pact.¶ The United States has a "no-spying" deal with Britain, Australia, New Zealand and Canada, an alliance known as "Five Eyes" that was struck in the aftermath of World War Two.¶ But there has traditionally been a reluctance to make similar arrangements with other allies, despite the close relations that the United States and Germany now enjoy.¶ Merkel said an accord with Washington was long overdue, given the shared experiences the countries face.¶ "We are in Afghanistan together. Our soldiers experience life threatening situations. They sometimes die in the same battles," she said.¶ "The friendship and partnership between the European member states, includingGermany, and the United States is not a one-way street. We depend on it. But there are good reasons that the United States also needs friends in the world."¶ COLLECTIVE ANGER¶ **As EU leaders arrived for the two-day summit there was near-universal condemnation of the alleged activities by the NSA**, particularly the monitoring of Merkel's mobile phone, a sensitive issue for a woman who grew up in East Germany, living under the Stasi police force and its feared eavesdropping.¶ Some senior German officials, and the German president of the European Parliament, have called for talks between the EU and United States on a free-trade agreement, which began in July, **to be suspended because of the spying allegations**.¶ Merkel, whose country is one of the world's leading exporters and stands to gain from any trade deal with Washington, said that was not the right path to take, saying the best way forward was to rebuild trust.¶ The series of Snowden-based leaks over the past three months have left Washington at odds with a host of important allies, from Brazil to Saudi Arabia, and there are few signs that the revelations are going to dry up anytime soon.¶

OSW Adv CP

Solves Tech Leadership

Europe has monopoly on OSW tech leadership – EWI proves

EWEA '13

(European Wind Energy Association, "The European Wind Initiative," *No date is specifically listed – but the plan in the article begins in 2013. http://www.ewea.org/fileadmin/files/library/publications/reports/EWI_2013.pdf SM)

To fight climate change, improve energy security, enhance Europe's competitiveness and maintain our technological leadership, the European wind industry — together with the European Commission and Member States — created a wind energy research and development programme covering the 2010 - 2020 period. The European Wind Initiative (EWI) has a planned budget of €6bn, more than half provided by the wind power industry. The **objectives are to: • maintain Europe's technology leadership in onshore and offshore wind power;** • make onshore wind the most competitive energy source by 2020, with offshore following by 2030; • achieve a 20% share of wind energy in EU total electricity consumption by 2020; • create 250,000 new skilled jobs in the EU by 2020. To achieve these objectives, the EWI prioritises R&D in new turbines and components, offshore technology, grid integration, resource assessment and spatial planning.

Too many alt causes to technological leadership – collapse inevitable

McCoy '10

(Alfred staff writer for Salon focusing on economic issues, "How America Will Collapse (by 2025)," 12/6/2010 http://www.salon.com/2010/12/06/america_collapse_2025/ SM)

Similarly, American leadership in technological innovation is on the wane. In 2008, the U.S. was still number two behind Japan in worldwide patent applications with 232,000, but China was closing fast at 195,000, thanks to a blistering 400 percent increase since 2000. A harbinger of further decline: in 2009 the U.S. hit rock bottom in ranking among the 40 nations surveyed by the Information Technology & Innovation Foundation when it came to "change" in "global innovation-based competitiveness" during the previous decade. Adding substance to these statistics, in October China's Defense Ministry unveiled the world's fastest supercomputer, the Tianhe-1A, so powerful, said one U.S. expert, that it "blows away the existing No. 1 machine" in America. Add to this clear evidence that the U.S. education system, that source of future scientists and innovators, has been falling behind its competitors. After leading the world for decades in 25- to 34-year-olds with university degrees, the country sank to 12th place in 2010. The World Economic Forum ranked the United States at a mediocre 52nd among 139 nations in the quality of its university math and science instruction in 2010. Nearly half of all graduate students in the sciences in the U.S. are now foreigners, most of whom will be heading home, not staying here as once would have happened. By 2025, in other words, the United States is likely to face a critical shortage of talented scientists.

Politics DA

Carney Link

Plan unpopular with Carney

Carney '13 – United States Congressman Democratic Representative of Delaware

(John, "Congressman Carney Statement On NSA Surveillance Programs," John Carney, http://johncarney.house.gov/index.php/press-releases0/470-congressman-carney-statement-on-nsa-surveillance-programs)

Since the revelations about the NSA's data collection practices came to light earlier this summer, I've been working with my colleagues to learn more about the scope of these programs. My goal has been to determine whether these programs maintain a proper balance between protecting our country from terrorist attacks and protecting our personal privacy. Here's what I've learned during this process: Close to a dozen terrorist plots on U.S. soil have been foiled due to the NSA's surveillance program. And while the government collects the phone records of calls made in the U.S., the government can only inspect these records with approval from a FISA Court judge. Even then, the government can only look at those records that are relevant to an ongoing terrorist investigation. It's also important to note that the data collected does not include the content of calls or other personal information – it's just a record of phone numbers and the dates and times of calls made. As many of my constituents have pointed out, this system asks Americans to put a lot of trust in their government. Part of the challenge is that most of the details surrounding the NSA's operations are classified, so Americans don't have the information they need to weigh the pros and cons of the program on their own. Frankly, I understand why this makes a lot of Americans uncomfortable. When the House considers the Intelligence Authorization Act this fall, I would like to see several changes made to the NSA's surveillance programs. First, we need to identify as many aspects of the program as possible that can be declassified and made available to the public. Second, we need to consider alternate ways to store and protect the data the government currently collects. Asking phone companies to keep the data instead of having the government do it is one option. Ultimately, I voted against yesterday's amendment to the Defense Appropriations bill because it would have effectively ended critical aspects of the NSA's programs instead of improving them. I do not believe that's the right approach. However, the amount of support the amendment received reflects the deep discomfort many Americans feel with the current system. I share those concerns, and feel strongly that we have to address them. Despite a series of classified briefings over the past few months, there's still uncertainty in Congress regarding the scope of the NSA's data collection efforts. We need a full debate on the House floor -- as public as our national security allows -- so my colleagues and I can assess these programs with input from our constituents. We need to make the changes that are necessary to ensure our privacy is protected while keeping our country safe. I look forward to having that debate, and making those changes, when Congress returns in the fall.

Carney has influence on the agenda – he controls the votes of the freshmen congressman

Carney '13 – United States Congressman Democratic Representative of Delaware

(John, "Delaware Rep. John Carney Deals With GOP Rule In House," John Carney, http://johncarney.house.gov/index.php/media-center/in-the-news/112-delaware-rep-john-carney-deals-with-gop-rule-in-house)

Carney's strongest relationships in Congress so far may be with other members of the Noble Nine. The group meets regularly for dinner. "You get a certain esprit de corps with just a small number," he said. Group members have come to rely on one another's counsel, said Rep. Karen Bass, D-Calif., one of the nine. Others are David Cicilline of Rhode Island, Hansen Clark of Michigan, Colleen Hanabusa of Hawaii, William Keeting of Massachusetts, Cedric Richmond of Louisiana, Terri Sewell of Alabama and Frederica Wilson of Florida. "If you look at the [House] floor, we're often sitting together," she said. "It's not because we feel alienated. More than any reason, it's because we like each other." But Carney spends a lot of time with Republican freshmen, too, partly because of his committee assignment. He's one of 14 freshmen on Financial Services, but the other 13 are Republicans. Carney has pursued relationships with Republicans such as Rep. Jim Renacci, R-Ohio, an accountant who spoke authoritatively during committee discussions of derivatives. Carney arranged a lunch meeting with Renacci to discuss what he wants to accomplish and offer help. Renacci called Carney "somebody that I know I can work with." "We can sit down and debate, and maybe not agree on everything, but come up with some conclusions that are very similar," Renacci said. "We've got to get spending reduced, we've got to get our deficit reduced. And when we talked, we both had those same thoughts and agreements." Winning a seat on Financial Services was no small feat for Carney. Because of the reduced size of all committees, Democrats were competing for only one vacancy.

McConnell Link

McConnell hates the plan – uniquely true in context of bulk collection

Rosenthal 6/2 – DC bureau covering national security and surveillance

(Max, "How Mitch McConnell Tried—and Failed—to Weaken NSA Reform," Mother Jones, http://www.motherjones.com/politics/2015/06/mitch-mcconnell-nsa-reform-freedom-act)

The USA Freedom Act, the bill that reforms the Patriot Act and stops the US government's bulk collection of phone records, finally passed the Senate on Tuesday after the chamber rejected three amendments from GOP Majority Leader Mitch McConnell (R-Ky.) aimed at weakening the bill's reforms. McConnell originally supported leaving the Patriot Act with all of its surveillance powers intact, but he faced resistance from both Democrats and Republicans, including die-hards such as Sen. Rand Paul (R-Ky.) who were happy to let bulk collection simply disappear without creating a replacement. So McConnell agreed to proceed with the USA Freedom Act, but proposed four amendments to address what he called the bill's "serious flaws." (He withdrew one of them.) Harley Geiger, chief counsel of the Center for Democracy and Technology, called McConnell's amendments "unnecessary for national security" and said that they would "erode both privacy and transparency." The Senate agreed, rejecting the three amendments that came to a vote on Tuesday afternoon. McConnell's proposed changes would have: Delayed the shutdown of bulk collection: The USA Freedom Act calls for bulk collection to shut down within six months of the law's passage. One of McConnell's amendments would have stretched that out to a full year. Kept arguments before the FISA court a one-sided affair: The FISA court reviews—and essentially always approves—requests for surveillance from government agencies. Its business is classified, and the only arguments presented are by government lawyers. The USA Freedom Act establishes a panel of experts to argue privacy concerns before the court, a move that one of McConnell's amendments would have tried to limit. Offered a potential backdoor for anti-reform efforts: Under the USA Freedom Act, bulk collection will be replaced by a "query-based" system, in which intelligence agencies would have to ask phone companies for records. That will take place six months after the bill is signed into law, but McConnell wanted to make the attorney general certify one month before the end of bulk collection that the new system would not harm national security. That may have given anti-reform lawmakers a final chance to scuttle the USA Freedom Act if the attorney general's certification didn't happen, or even raised any concerns at all. Even if the amendments had passed, McConnell faced an uphill battle in the House: House Judiciary Committee chairman Rep. Bob Goodlatte (R-Va.) and ranking member Rep. John Conyers (D-Ill.) said in a statement on Monday that "[t]he House is not likely to accept the changes proposed by Senator McConnell." Other House leaders also warned the Senate away from making changes to the bill. Geiger called the USA Freedom Act's passage "the most significant national security surveillance reform measure in the past three decades," and it may be only a matter of hours before President Barack Obama signs it into law. And while privacy advocates didn't get everything they wanted from surveillance reform, McConnell got nothing.

McConnell key to the agenda – can sway Senate votes

Boehner and McConnell 12/5/14 - Mr. Boehner (R., Ohio), is the House speaker; Mr. McConnell (R., Ky.) is currently the Senate minority leader

(John and Mitch, "Now We Can Get Congress Going," Wall Street Journal, http://www.wsj.com/articles/john-boehner-and-mitch-mcconnell-now-we-can-get-congress-going-1415232759)

Americans have entrusted Republicans with control of both the House and Senate. We are humbled by this opportunity to help struggling middle-class Americans who are clearly frustrated by an increasing lack of opportunity, the stagnation of wages, and a government that seems incapable of performing even basic tasks. Looking ahead to the next Congress, we will honor the voters' trust by focusing, first, on jobs and the economy. Among other things, that means a renewed effort to debate and vote on the many bills that passed the Republican-led House in recent years with bipartisan support, but were never even brought to a vote by the Democratic Senate majority. It also means renewing our commitment to repeal ObamaCare, which is hurting the job market along with Americans' health care. For years, the House did its job and produced a steady stream of bills that would remove barriers to job creation and lower energy costs for families. Many passed with bipartisan support—only to gather dust in a Democratic-controlled Senate that kept them from ever reaching the president's desk. Senate Republicans also offered legislation that was denied consideration despite bipartisan support and benefits for American families and jobs. These bills provide an obvious and potentially bipartisan starting point for the new Congress—and, for President Obama, a chance to begin the final years of his presidency by taking some steps toward a stronger economy. Editorial Page Editor Paul Gigot advises the President on how best to spend the next two years governing with a GOP-led Congress. Photo credit: Getty Images. These bills include measures authorizing the construction of the Keystone XL pipeline, which will mean lower energy costs for families and more jobs for American workers; the Hire More Heroes Act, legislation encouraging employers to hire more of our nation's veterans; and a proposal to restore the traditional 40-hour definition of full-time employment, removing an arbitrary and destructive government barrier to more hours and better pay created by the Affordable Care Act of 2010. We'll also consider legislation to help protect and expand America's emerging energy boom and to support innovative charter schools around the country. Enacting

such measures early in the new session will signal that the logjam in Washington has been broken and help to establish a foundation of certainty and stability that both parties can build upon. At a time of growing anxiety for the American people, with household incomes stubbornly flat and the nation facing rising threats on multiple fronts, this is vital work. Will these bills single-handedly turn around the economy? No. But taking up bipartisan bills aimed at helping the economy that have already passed the House is a sensible and obvious first step. More good ideas aimed at helping the American middle class will follow. And as we work to persuade others of their merit, we won't repeat the mistakes made when a different majority ran Congress in the first years of Barack Obama's presidency, attempting to reshape large chunks of the nation's economy with massive bills that few Americans have read and fewer understand. Editorial Page Editor Paul Gigot on why the Republican Senate victory is a rebuke of the President and his polices. Photo credit: Associated Press. Instead, we will restore an era in which committees in both the House and Senate conduct meaningful oversight of federal agencies and develop and debate legislation; and where members of the minority party in both chambers are given the opportunity to participate in the process of governing. We will oversee a legislature in which "bigger" isn't automatically equated with "better" when it comes to writing and passing bills. Our priorities in the 114th Congress will be your priorities. That means addressing head-on many of the most pressing challenges facing the country including: • The insanely complex tax code that is driving American jobs overseas; • Health costs that continue to rise under a hopelessly flawed law that Americans have never supported; • A savage global terrorist threat that seeks to wage war on every American; • An education system that denies choice to parents and denies a good education to too many children; • Excessive regulations and frivolous lawsuits that are driving up costs for families and preventing the economy from growing; • An antiquated government bureaucracy ill-equipped to serve a citizenry facing 21st-century challenges, from disease control to caring for veterans; • A national debt that has Americans stealing from their children and grandchildren, robbing them of benefits that they will never see and leaving them with burdens that will be nearly impossible to repay. January will bring the opportunity to begin anew. Republicans will return the focus to the issues at the top of your priority list. Your concerns will be our concerns. That's our pledge. The skeptics say nothing will be accomplished in the next two years. As elected servants of the people, we will make it our job to prove the skeptics wrong.

Deference DA

UQ

Courts defer to the executive all of the time – 9/11 has changed the legal game

Posner 12 – expert and professor in law and economics, and international law

(Eric A. Posner, "DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL", Harvard Journal of Law & Public Policy, http://www.harvard-jlpp.com/wp-content/uploads/2013/10/35_1_213_Posner.pdf)

According to the "deference thesis," legislatures, courts, and other government institutions should **defer to the executive's policy decisions during national security emergencies**.1 In this Essay, I will address two criticisms of the deference thesis. The first argument, which has been developed most powerfully by Professor Stephen Holmes, is that rules dominate standards at moments of crisis.2 An executive that is unconstrained, that is, not bound by rules, will make worse policy choices than an ex- ecutive that is bound by rules.3 This type of argument is usu- ally made in the context of urging legislatures and courts to constrain the executive during emergencies.4 Some commenta- tors, however, doubt whether it is possible for legislatures and courts to constrain the executive during emergencies.5 These doubts have led to a second argument that the executive should be bound by institutions within the executive branch such as (in the United States) the Office of Legal Counsel,6 or through the construction of new institutions that review the executive branch's actions.7 Both arguments criticize the defer- ence thesis but propose different solutions. The first argument proposes that Congress and the judiciary give the executive less deference; the second proposes that officials within the ex- ecutive branch give the President less deference. Thus, we can distinguish external constraints on the executive and internal constraints on the President. Both arguments are flawed. The external constraints argu- ment gets the normal analysis backwards: rules are better for routine, recurring situations. Although some emergencies are, in fact, routine, the type of emergency that calls for deference is not. The internal constraints argument, as normally presented, makes the fatal assumption that the President can be bound by his own agents against his own perceived interest, and relies on other questionable premises about the structure of government in the United States. I. THE DEFERENCE THESIS The deference thesis states that during emergencies the legis- lature and judiciary should defer to the executive.8 It assumes that the executive is controlled by the President, but to the ex- tent that the President could be bound by agents within the ex- ecutive, the deference thesis also holds that those agents should follow the President's orders, not the other way around. In normal times, the three branches of government share power. For example, if the executive believes that a new, dangerous drug has become available, but possession of the drug is not yet illegal, the executive may not act on its own to detain and prosecute those who deal and use the drug. The legislature must first enact a statute that outlaws the drug. The executive also depends on the legislature for financial appropriations and other forms of support. The executive also faces constraints from the courts. If the executive arrests drug dealers and seeks to imprison them, it must first obtain the approval of courts. The courts ensure that the executive does not go beyond the bounds of the new law, does not violate earlier-enacted laws that have not been superseded by the new law, and does not violate the Constitution. In emergencies, the executive often will contemplate actions that do not have clear legislative authority and might be consti- tutionally dubious. For example, after September 11, the U.S. government engaged in immigration sweeps, detained people without charges, used coercive interrogation, and engaged in warrantless wiretapping of American citizens.9 Many, if not all, of these actions would have been considered violations of the law and the U.S. Constitution if they had been undertaken against normal criminal suspects the day before the attacks. After September 11, both the legislature and the **courts gave the executive some deference**. The legislature gave explicit authori- ties to the executive that it had initially lacked;10 the courts did not block actions that they would have blocked during normal times.11 But neither body was entirely passive. Congress ob- jected to coercive interrogation and did not give the executive all the authorities that it requested.12 After a slow start, the courts also resisted some of the assertions the executive made. There is some dispute about whether this resistance was mean- ingful and caused the executive to change policy or merely re- acted to the same stimuli that caused the executive to moderate certain policies independently.13 In any event, no one disputes that the courts gave the executive a nearly **free pass over at least the first five to seven years** of the conflict with al Qaeda. The deference thesis, then, can be strong-form or weak-form. This ambiguity has had unfortunate consequences for debates about post-September 11 legal policies. Few people believe that the courts should impose exactly the same restrictions on the executive during an emergency as during normal times. Indeed, doctrine itself instructs courts to balance the security value of a course of action and its cost to civil liberties, implying that cer- tain actions might be legally justified to counter high-stakes threats but not to counter low-stakes threats.14 Nor does anyone believe that the executive should be completely unconstrained. The debate is best understood in the context of the U.S. gov- ernment's post-September 11 policies. Defenders of these poli- cies frequently invoked the deference thesis—not so much as a way of justifying any particular policy, but as a way of insisting that the executive should be given the benefit of the doubt, at least in the short term.15 The deference thesis rests on basic in- tuitions about institutional competence: that the executive can act more decisively and with greater secrecy than Congress or the courts because it is a hierarchical body and commands forces that are trained and experienced in countering security threats. The other branches lack expertise. Although they may have good ideas from time to time, and are free to volunteer them, the ability of the executive to respond to security threats would be unacceptably hampered if Congress and the courts had the power to block it to any significant degree. Secrecy is an important part of the argument. Policymaking depends on information, and information during emergencies often must be kept secret. Congress and the courts are by nature and tradition open bodies; if they were to act in secret, their value would be diminished. Meanwhile, the argument contin- ues, the fear of an out-of-control executive who would engage in abuses unless it was constrained by the other branches is exag- gerated. The President has strong electoral and other political incentives to act in the public interest (at least, in the United States). Even if the executive can conceal various "inputs" into counterterrorism policy, it cannot conceal the "output"—the ex- istence, or not, of terrorist attacks that kill civilians. Thus, it was possible for defenders of the Bush Administra- tion's counterterrorism policies to express discomfort with cer-tain policy choices, while arguing nonetheless that Congress and the courts should not try to block executive policymaking for the duration of the emergency—at least not as a matter of presumption. Critics of the Bush Administration argued that deference was not warranted—or at least not more than a lim-ited amount of deference was warranted, although again these subtleties often were lost in the debate—for a variety of rea- sons. I now turn to these arguments.

Judicial deference high now and observer effect means none of your offense applies

Deeks 10/21/13

(Ashley Deeks "Courts Can Influence National Security Without Doing a Single Thing", New Republic, http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching)

One of the most persistent fights in the national security arena since the September 11 attacks has been about the proper allocation of power between two branches of government: the Executive and the courts. Specifically, how much authority does and should the Executive Branch have to establish and implement national security policies and how much oversight can and should courts provide over these policies? People tend to divide into one of two schools of thought when answering these questions. The first school favors extensive deference to Executive branch national security decisions and celebrates what it sees as a limited role for courts. The Executive, this school contends, is constitutionally charged with such decisions and structurally better suited than the judiciary to make them. After all, Alexander Hamilton famously remarked that housing powers in a unitary executive provides the advantages of "[d]ecision, activity, secrecy, and dispatch"—qualities our federal courts simply don't have. The other school of thought bemoans such judicial deference, even as this school admits that it occurs. Members of this school fear that this deference will undercut individual rights, leaving the Executive to maximize security over liberty again and again. This school also worries more broadly about creating an imbalance in the separation of powers: an unchecked Executive can impose draconian security measures without a reliable counter-weight. But both sides assume that the courts' role in influencing security policy is minimal. Both sides are wrong. While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let's call this the "observer effect." Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the "observer effect" can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive's awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government's brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so. Other examples of the observer effect abound. In 2005, the Executive decided to reveal the processes by which it negotiated "diplomatic assurances" to return Guantanamo detainees to foreign countries, in an effort to fend off court decisions delaying those returns. The Government might well have won in court even without these revelations – the precedents suggested that it would have—but it hedged its bets by persuading the courts that it had in place a thorough process to ensure that the United States did not expose detainees to likely mistreatment in the receiving country. Here's another example: in the face of some adverse lower court decisions (which the Government ultimately won on appeal), the Government curtailed its own use of the "state secrets" privilege. That's a privilege the government may invoke when a lawsuit raises legal challenges that cannot be proven or defended without disclosing information that would jeopardize U.S. national security. And the Government altered the policies pursuant to which it uses secret evidence to deport aliens, due in part to critical language in court decisions, even though the Government likely would have won the cases on the merits. When should we expect to see the observer effect? In general, we should look for three things. First, there must be a triggering event. This ranges from the filing of a non-frivolous case, to some indication from a court that it may reach the merits of a case (i.e., ordering briefing on an issue, or rejecting the government's motion for summary judgment), to the court's consideration of the issue on the merits. The observer effect most clearly comes into play when a court becomes seized with a national security case after an extended period of judicial non-involvement in security issues, such as when federal courts started to consider the type of person the Executive lawfully may detain on the battlefield. The observer effect then kicks in to influence the Executive's approach to the policy being challenged in the triggering case, as well as to future (or other pre-existing) Executive policies in the vicinity of that triggering case. Second, future uncertainty plays a critical role in eliciting the observer effect. In some cases, the question for the Executive will be whether a court will conclude that it can or should exercise jurisdiction over a case. In other cases, Executive uncertainty will exist when it is not obvious what law will govern the dispute at issue, or where there is little precedent to guide the courts in resolving the dispute. It is this uncertainty that leaves the Executive with doubt about whether it will win the case, and that creates incentives for the Executive to alter its policies in anticipation of litigation or its outcome. After all, there are real advantages to the Executive in retaining the power to shape these national security policies, even under a potentially watchful eye of the courts The third factor that helps secure the observer effect's operation is the likelihood of future litigation on related issues. If a court declines to defer to the Executive in a particular case, that decision is unlikely to create an observer effect if the Executive has confidence that the factual and legal questions at issue in that case will not arise again. In contrast, when the Executive perceives that a set of policies is likely to come under sustained litigation (and thus under the potential oversight of multiple judges over time), it is more likely to concertedly review—and alter—those policies. When these three elements are present, the observer effect is likely to come into play. How does the Executive react? The Executive attempts to maximize the total value of two elements: a sufficiently security-focused policy and unilateral control over national security policymaking. To achieve this goal, the Executive often is willing to cede some ground on the first element to retain the second element.

Two conclusive cases proves courts defer to executive on NSA surveillance – a risk of national security threat means they deter

Chesney '9

(Robert - American lawyer and the Charles I. Francis Professor in Law at The University of Texas School of Law, where he serves as the Associate Dean for Academic Affairs and teaches courses relating to U.S. national security and constitutional law.[1] Chesney addresses issues involving national security and law, including matters relating to military detention, the use of force, terrorism-related prosecutions, the role of the courts in national security affairs, and the relationship between military and intelligence community activities. VIRGINIA LAW REVIEW, October 2009, "National Security Fact Deference," http://www.virginialawreview.org/sites/virginialawreview.org/files/1361.pdf SM)

Perhaps not surprisingly, no one appears to know quite what to make of this guidance despite decades of subsequent litigation involving the state secrets privilege. A recent oral argument before the Ninth Circuit in Hepting v. AT&T, a civil suit alleging that the telecommunications industry assisted the National Security Agency in conducting illegal surveillance in the United States, illustrates the point: Judge Harry Pregerson: Well, who decides whether . . . something's a

state secret or not? Deputy Solicitor General Gregory Garre: Ultimately, the courts do, Your Honor . . . . And they . . . apply the utmost deference to the assertion of the privilege and the judgments of the people whose job it is to make predictive assessments of foreign— Pregerson: Are you saying the courts are to rubberstamp the determination that the Executive makes that there's a state secret? Garre: We are not, Your Honor, and we think that the courts play an important role— Pregerson: What is our job? Garre: Your job is to determine whether or not the requirements of the privilege have been properly met. And that includes the declaration, the sworn declaration of the head of the agency asserting the privilege, and the assertion that that individual asserting it has personal knowledge of the matter [at hand]. Pregerson: So we just have to take the word of the members of the Executive Branch that tell us it's a state secret. Garre: We don't— Pregerson: [Because] that's what you're saying, isn't it? Garre: No, Your Honor, what this Court's precedents say is the court has to give the utmost deference to the assertion, and the second part of the— Pregerson: But what does "utmost deference" mean? We just bow to it? Judge Michael D. Hawkins: It doesn't mean abdication, does it? Garre: It does not mean abdication, Your Honor, but it means **the court gives great deference to the judgments of the individuals whose job it is to assess whether or not the disclosure** or nondisclosure **of** particular **information would harm national security** . . . .60 The Ninth Circuit ultimately remanded in Hepting without reaching the merits,61 but the same panel did proceed to the merits in a closely related case. In Al-Haramain Islamic Foundation v Bush, the panel began by asserting the independent nature of judicial review: We take very seriously our obligation to review the documents with a very careful, indeed a skeptical, eye, and not to accept at face value the government's claim or justification of privilege. Simply saying "military secret," "national security" or "terrorist threat" or invoking an ethereal fear that disclosure will threaten our nation is insufficient to support the privilege.62 **The court proceeded, however, to endorse a robust deference obligation:** "**we acknowledge the need to defer to the Executive on matters of foreign policy and national security and surely cannot legitimately find ourselves second guessing the Executive in this arena."**

Supreme Court can't challenge surveillance – Their own ruling proves

Kravets '13

(David, Staff Writer for Wired. "SUPREME COURT THWARTS CHALLENGE TO WARRANTLESS SURVEILLANCE," 2/26/2013, WIRED, http://www.wired.com/2013/02/scotus-surveillance-challenge/ SM)

A DIVIDED SUPREME Court halted a legal challenge Tuesday to a once-secret warrantless surveillance project that gobbles up Americans' electronic communications, a program that Congress eventually legalized in 2008 and again in 2012. The 5-4 decision (.pdf) by Justice Samuel Alito was a clear victory for the President Barack Obama administration, which like its predecessor, argued that **government wiretapping laws cannot be challenged in court**. What's more, the outcome marks the first time the Supreme Court decided any case touching on the eavesdropping program that was secretly employed in the wake of 9/11 by the President George W. Bush administration, and eventually codified into law twice by Congress. A high court majority concluded that, because the eavesdropping is done secretly, the American Civil Liberties Union, journalists and human-rights groups that sued to nullify the law have no legal standing to sue — because they have no evidence they are being targeted by the FISA Amendments Act. Some of the plaintiffs, which the court labeled "respondents," are also journalists and among other things claimed the 2008 legislation has chilled their speech and violated their Fourth

Amendment privacy rights. The act, known as §1881, authorizes the government to electronically eavesdrop on Americans' phone calls and e-mails without a probable-cause warrant so long as one of the parties to the communication is outside the United States. The communications may be intercepted "to acquire foreign intelligence information." The FISA Amendments Act generally requires the Foreign Intelligence Surveillance Court to rubber-stamp terror-related electronic surveillance requests. The government does not have to identify the target or facility to be monitored. It can begin surveillance a week before making the request, and the surveillance can continue during the appeals process if, in a rare case, the secret FISA court rejects the surveillance application. "Yet respondents have no actual knowledge of the Government's §1881a targeting practices. Instead, respondents merely speculate and make assumptions about whether their communications with their foreign contacts will be acquired under §1881a," Alito wrote. Joining Alito were Chief Justice John Roberts, and Justices Anthony Kennedy, Antonin Scalia and Clarence Thomas. In dissent, Justice Stephen Breyer said standing should have been granted. He said that the spying, "Indeed it is a s likely to take place as are most future events that commonsense inference and ordinary knowledge of human nature tell us will happen." Signing the dissent were Justices Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor. The legislation authorizing the spying was signed into law the first time in July 2008 and the ACLU immediately brought suit. Then-senator and presidential candidate Barack Obama voted for the measure, though he said the bill was flawed and that he would push to amend it if elected. Instead, Obama, as president, simply continued the Bush administration's legal tactics aimed at crushing any judicial scrutiny of the wiretapping program. Obama signed legislation in December that extended the measure's effectiveness for another five years. The case before the justices was a review of a surprising 2011 appellate court decision that reinstated the ACLU's lawsuit, which the Obama administration asked the Supreme Court to dismiss. A majority of the justices agreed with the government's contentions (.pdf) that the ACLU and a host of other groups don't have the legal standing to bring the case because they have no evidence they or their overseas clients are being targeted. A lower court, taking the same position as the high court's majority, had ruled the ACLU, Amnesty International, Global Fund for Women, Global Rights, Human Rights Watch, International Criminal Defence Attorneys Association, The Nation magazine, PEN American Center, Service Employees International Union and other plaintiffs did not have standing to bring the case. The groups appealed to the 2nd U.S. Circuit Court of Appeals, arguing that they often work with overseas dissidents who might be targets of the National Security Agency program. Instead of speaking with those people on the phone or through e-mails, the groups asserted that they have had to make expensive overseas trips in a bid to maintain attorney-client confidentiality. "They cannot manufacture standing by incurring costs in anticipating of non-imminent harms," Alito wrote. The appeals court in 2011 agreed with the ACLU, ruling that they had standing because they had ample reason to fear the surveillance program. But even if the Supreme Court sided with the ACLU on Tuesday, **that does not necessarily mean the constitutionality of the FISA Amendments Act would have been litigated**. That's because the only issue before the high court was whether the plaintiffs had the legal standing to bring the case. Because they don't, **the case is over**.

Supreme Court will Defer – Coming legislation

Braun '14

(Stephen, staff writer for AP politics, *Cites Stephen A Baker, former NSA general counsel and specialist in national security, "NSA Phone Surveillance Could Be Headed For Supreme Court," 7/1/2014,

http://www.huffingtonpost.com/2014/01/07/nsa-surveillance-supreme-court_n_4553990.html SM)

Legal experts caution that while the opposing lawyers are girding for a landmark Supreme Court decision, it is not certain the top court will intervene. They warn that the prospect of administration and congressional changes in the next few months could complicate the two appeals rulings that are still more than a year away. And several said the fact that the judges in both cases allowed challenges to the NSA programs to go forward could lead to a spate of new lawsuits questioning other government surveillance practices. In the Washington case, U.S. District Judge Richard Leon ruled last month that the NSA phone surveillance was "almost Orwellian" and likely violated constitutional protections against unreasonable search and seizure. But in a similar lawsuit filed last month by the ACLU in New York, U.S. District Judge William H. Pauley III validated the NSA operation as an effective "counterpunch" to terrorist acts and spurned the legal group's challenge. "**It's not at all inevitable that the Supreme Court takes these cases**," said Stewart A. Baker, a former NSA general counsel and specialist in national security law who has staunchly defended NSA surveillance programs. "If both appeals courts rule for the government, I'm skeptical we'd see the court get involved at all." Baker said surveillance legislation in Congress and the Obama administration's apparent plans to alter the phone surveillance could dim the Supreme Court's interest in taking up the case. The USA Patriot Act provision under assault in both lawsuits "is going to get tinkered with for sure," Baker said, "and if you're a Supreme Court justice, why would you take a case if the law might be revised before you reach your opinion?"

Links

Unique link- judicial deference specifically on surveillance is high- NSA is a core area and the Supreme Court is crucial to clarify

Cohen '13 [ANDREW COHEN, DEC 27, 2013, The Atlantic, Is the NSA's Spying Constitutional? It Depends Which Judge You Ask, http://www.theatlantic.com/national/archive/2013/12/is-the-nsas-spying-constitutional-it-depends-which-judge-you-ask/282672/]

Judge Leon last week questioned the effectiveness of the government's program, asserting that federal officials did not "cite a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack." Judge Pauley asserted the exact opposite: "The effectiveness of bulk telephony metadata collection cannot be seriously disputed."

Judge Leon peppered his lengthy opinion with expressions of great skepticism for the government's justifications. His lack of deference toward the executive branch and its intelligence operations was palpable. "I cannot imagine a more 'indiscriminate' and 'arbitrary invasion' than this systematic and high-tech collection and retention of personal data," he wrote.

Judge Pauley peppered his lengthy opinion with expressions of great respect for the government's surveillance efforts. His respect for the nation's intelligence operations was palpable. "While there have been unintentional violations of guidelines," he wrote, "those appear to stem from human error and the incredibly complex computer programs that support this vital tool."

Although the two rulings involve different plaintiffs, Judge Pauley's opinion reads as a pointed response to Judge Leon's ruling of 10 days earlier. In fact, I suspect the two rulings will soon be used side by side in law schools to illustrate how two reasonable jurists could come to completely different conclusions about the same facts and the same laws.

And that, of course, says a great deal about the nature of the NSA's program itself and its symbolic role in the conflict America faces as it teeters back and forth between privacy and security. Taken together, these two manifestos represent the best arguments either side so far has been able to muster. If you trust the government, Judge Pauley's the guy for you. If you don't, Judge Leon makes more sense.

That two judges would hold such contrasting worldviews is either alarming (if you believe the law can be evenly applied) or comforting (if you believe that each individual judge ought to be free to express his conscience). In any event, taken together, the two opinions say a lot about nature of legal analysis. The judge who gets overturned on appeal here won't necessarily be wrong—he'll just not have the votes on appeal supporting his particular view of the law and the facts. In the end, you see, there is no central truth in these great constitutional cases that rest at the core of government authority; there is just the exercise of judicial power.

Where does that leave the rest of us? The program still rolls on—unencumbered by the statutory and constitutional confusion that now reigns over it. We'll spend the bulk of 2014 watching the fight over it play out in at least two separate federal appeals courts. And then, unless there is a form of unanimity between and among those appeals courts that clearly is lacking between and among Judges Leon and Pauley, we'll see sometime in 2015 the first big terror law case in front of the Supreme Court since 2008.

Issues of national surveillance are a key issue for deference

Rosenthal 6/12/15

("Government's Secret Surveillance Court May Be About to Get a Little Less Secret The USA Freedom Act may foist some transparency on the notoriously opaque FISA court" Max J. Rosenthal a reporter at the Mother Jones DC bureau covering national security, surveillance Fri Jun. 12, 2015, https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&es_th=1&ie=UTF-8#q=mother%20jones&es_th=1)

When the USA Freedom Act was passed last week, it was hailed as the first major limit on NSA surveillance powers in decades. Less talked about was the law's mandate to open a secret intelligence court to unprecedented scrutiny. The Foreign Intelligence Surveillance Court, often known as the FISA court after the 1978 law that created it, rules on government requests for surveillance of foreigners. Its 11 federal judges, appointed by the chief justice of the Supreme Court, consider the requests one at a time on a rotating basis. In closed proceedings, they have approved nearly every one of the surveillance orders that have come before the court, and their rulings are classified. Privacy advocates say those secret deliberations have created a black box that keeps the public from seeing both why the government makes key surveillance decisions and how it justifies them. But the new law passed by Congress last week may shed some new light on these matters. "The larger step that the USA Freedom Act accomplishes is that it is bringing those things out to the public," says Mark Jaycox, a legislative analyst at the Electronic Frontier Foundation, a digital privacy advocacy group. The new law mandates that FISA court rulings that create "novel and significant" changes to surveillance law be declassified—and it is up to the judges to determine if the cases reach that threshold—though only after review by the attorney

general and the director of national intelligence. While FISA court rulings have been leaked and occasionally declassified, the new law marks the first time Congress has attempted to make the court's decisions available to the public. The law also requires the court to create an advisory panel of privacy experts, known as an amicus panel. When a judge considers what she considers a "novel or significant" cases, she will call on that panel to discuss civil liberties concerns the surveillance requests brings up. Judges can also use the panel in other cases as they see fit. The USA Freedom doesn't lay out how the amicus panel will work in detail. But privacy advocates say its mere existence will be an important step. "We know we will see the order and potentially that an amicus [a privacy panel member] is going to be there arguing against it. Those things are huge to us," Jaycox says. But while the USA Freedom Act calls for important FISA court rulings will be made public, there's no guarantee they will be. For one, final say on declassification still rests with the executive branch rather than the judges themselves. And while the judges' input on the cases will still be important—if not final—says Liza Goitein, co-director of the Liberty and National Security Program at the Brennan Center for Justice, they have already shown **a "sort of reflexive deference**" to the government. While FISA court rulings have been leaked and occasionally declassified, the new law marks the first time Congress has attempted to make the court's decisions available to the public. In fact, advocates say, judges have always had the powers outlined in the new law—to bring in consultants or recommend declassifying their opinions. "This is something the FISA court could have done all along," says Amie Stepanovich, the US policy manager for privacy advocacy group Access. "They always could have chosen to be more transparent in their proceedings." Privacy advocates hope that having these pre-existing powers now written into law means that judges will actually use them, but even that isn't for certain. "I think the transparency provisions are going to be effective for the judges who are inclined to support them and are going to be ineffective for the judges who aren't," says Steve Vladeck, a professor at American University's Washington College of Law. There are other procedural moves the government could use to limit what information is made public. The court could simply issue summaries of decisions that don't include their key parts, or the executive branch could heavily redact them. "In theory, the executive branch could comply with this part of the statute by redacting 99 percent—everything but one sentence, essentially—of an opinion," Goitein says. She admits that specific tactic is unlikely—it would be an obvious and public skirting of the law's intent—but stresses that even though the law makes important progress in disclosure, there are still many loopholes that could cut down on how much the public will get to see. "I think the history strongly suggests that the intelligence establishment will take every single little bit of rope it has," she says. "And then some."

Chief Justice Roberts ensures issues of national surveillance are deferred to the executive branch

New York Times July 25th 2013

(POLITICS Roberts's Picks Reshaping Secret Surveillance Court By Charlie Savage July 25th 2013, New York Times, http://www.nytimes.com/2013/07/26/us/politics/robertss-picks-reshaping-secret-surveillance-court.html?pagewanted=all)

The recent leaks about government spying programs have focused attention on the Foreign Intelligence Surveillance Court and its role in deciding how intrusive the government can be in the name of national security. Less mentioned has been the person who has been quietly reshaping the secret court: Chief Justice John G. Roberts Jr. In making assignments to the court, Chief Justice Roberts, more than his predecessors, has chosen judges with conservative and executive branch backgrounds that critics say make the court more likely to defer to government

arguments that domestic spying programs are necessary. Ten of the court's 11 judges — all assigned by Chief Justice Roberts — were appointed to the bench by Republican presidents; six once worked for the federal government. Since the chief justice began making assignments in 2005, 86 percent of his choices have been Republican appointees, and 50 percent have been former executive branch officials. Though the two previous chief justices, Warren E. Burger and William H. Rehnquist, were conservatives like Chief Justice Roberts, their assignments to the surveillance court were more ideologically diverse, according to an analysis by The New York Times of a list of every judge who has served on the court since it was established in 1978. According to the analysis, 66 percent of their selections were Republican appointees, and 39 percent once worked for the executive branch. "Viewing this data, people with responsibility for national security ought to be very concerned about the impression and appearance, if not the reality, of bias — for favoring the executive branch in its applications for warrants and other action," said Senator Richard Blumenthal, a Connecticut Democrat and one of several lawmakers who have sought to change the way the court's judges are selected. Mr. Blumenthal, for example, has proposed that each of the chief judges of the 12 major appeals courts select a district judge for the surveillance court; the chief justice would still pick the review panel that hears rare appeals of the court's decisions, but six other Supreme Court justices would have to sign off. Another bill, introduced by Representative Adam B. Schiff of California, would give the president the power to nominate judges for the court, subject to Senate approval. Chief Justice Roberts, through a Supreme Court spokeswoman, declined to comment. The court's complexion has changed at a time when its role has been expanding beyond what Congress envisioned when it established the court as part of the Foreign Intelligence Surveillance Act. The idea then was that judges would review applications for wiretaps to make sure there was sufficient evidence that the F.B.I.'s target was a foreign terrorist or a spy. But, increasingly in recent years, the court has produced lengthy rulings interpreting the meaning of surveillance laws and constitutional rights based on procedures devised not for complex legal analysis but for up-or-down approvals of secret wiretap applications. The rulings are classified and based on theories submitted by the Justice Department without the participation of any lawyers offering contrary arguments or appealing a ruling if the government wins. The court "is becoming ever more important in American life as more and more surveillance comes under its review in this era of big data," said Timothy Edgar, a civil liberties adviser for intelligence issues in both the Bush and Obama administrations. "**If the court is seen as skewed or biased, politically or ideologically, it will lose credibility."** At a public meeting this month, Judge James Robertson, an appointee of President Bill Clinton who was assigned to the surveillance court in 2002 by Chief Justice Rehnquist and resigned from it in December 2005, offered an insider's critique of how rapidly and recently the court's role has changed. He said, for example, that during his time it was not engaged in developing a body of secret precedents interpreting what the law means. "In my experience, there weren't any opinions," he said. "You approved a warrant application or you didn't — period." The court began expanding its role when George W. Bush was president and its members were still assigned by Chief Justice Rehnquist, who died in 2005. Midway through the Bush administration, the executive branch sought and obtained the court's legal blessing to continue secret surveillance programs that had originally circumvented the FISA process. The court's power has also recently expanded in another way. In 2008, Congress passed the FISA Amendments Act to allow the National Security Agency to keep conducting a form of the Bush administration's program of surveillance without warrants on domestic soil so long as only foreigners abroad were targeted. It gave the court the power to create rules for the program, like how the government may use Americans' communications after they are picked up. "That change, in my view, turned the FISA

court into something like an administrative agency that makes rules for others to follow," Judge Robertson said. "That's not the bailiwick of judges. Judges don't make policy." For the most part, the surveillance court judges — who serve staggered seven-year terms and take turns coming to Washington for a week to handle its business — do not discuss their work, and their rulings are secret. But the documents leaked by Edward J. Snowden, a former N.S.A. contractor, have cast an unusual spotlight on them. The first of the documents disclosed by Mr. Snowden was a top-secret order to a Verizon subsidiary requiring it to turn over three months of calling records for all its customers. It was signed by Judge Roger Vinson, an appointee of President Ronald Reagan who had previously achieved prominence in 2011 when he tried to strike down the entirety of President Obama's health care law. Chief Justice Roberts assigned Judge Vinson to the surveillance court in 2006, one of 12 Republican appointees, compared with 2 Democratic ones. While the positions taken by individual judges on the court are classified, academic studies have shown that judges appointed by Republicans since Reagan have been more likely than their colleagues to rule in favor of the government in non-FISA cases over people claiming civil liberties violations. Even more important, according to some critics of the court, is the court's increasing proportion of judges who have a background in the executive branch. Senator Blumenthal, citing his own experience as a United States attorney and a state prosecutor, said judges who used to be executive branch lawyers were more likely to share a "get the bad guys" mind-set and defer to the Justice Department if executive branch officials told them that new surveillance powers were justified. Steven G. Bradbury, who led the Justice Department's Office of Legal Counsel in the second term of the Bush administration, argued that it made sense to put judges who were executive branch veterans on the court because they were already familiar with the issues. And he challenged the claim that they would be more deferential. "When it comes to highly technical national security issues, I really think there is value in a judge being a former prosecutor or a former government lawyer who understands how the executive branch works," he said, adding that such judges "will be familiar with the process and able to ask the tough questions and see where the weak points are." Either way, an executive branch background is increasingly common for the court. When Judge Vinson's term ended in May, for example, Chief Justice Roberts replaced him with Judge Michael W. Mosman, who was a federal prosecutor before becoming a judge. Other current judges include Raymond J. Dearie, a United States attorney; Reggie B. Walton, a prosecutor who also worked on drug and crime issues for the White House; and F. Dennis Saylor IV, chief of staff in the Justice Department's Criminal Division. The only Democratic appointee, Judge Mary A. McLaughlin, was also a prosecutor. Stephen Vladeck, an American University law professor, said having executive branch veterans — including what he called "law-and-order Democrats" — on the court carried advantages because they brought experience with security issues. But the downside, he argued, is that they may also be unduly accommodating to government requests. "The further the court's authority has expanded from where it was in 1978, the greater the need has been for independent-minded government skeptics on the court," he said. Chief justices have considerable leeway in choosing judges — the only requirement is that they ensure geographic diversity. In practice, according to people familiar with the court, they have been assisted in evaluating whom to select by the director of the Administrative Office of the United States Courts. The counselor to the chief justice and the surveillance court's presiding judge also sometimes play a role. Judges sometimes volunteer for consideration, while chief justices and their advisers sometimes come up with their own ideas. Generally, the people familiar with the court said, evaluations have been based on reputation, workload, willingness to undergo an intrusive background check, and experience in security issues. Judges have served an average of 15 years before being assigned to the surveillance court.

Chief Justice Roberts has dealt with a small circle. His past two choices to direct the judiciary's administrative office have been Republican-appointed judges, Thomas F. Hogan and John D. Bates, whom he also appointed to the surveillance court. Representative Steve Cohen, Democrat of Tennessee, who has filed a bill that would let Congressional leaders pick eight of the court's members, said it was time for the court to have a more diverse membership. "They all seem to have some type of a pretty conservative bent," he said. "I don't think that is what the Congress envisioned when giving the chief justice that authority. Maybe they didn't think about the ramifications of giving that much power to one person.".

Courts empirically defer instances of national security

Posner 2007

("Terror in the Balance: Security, Liberty, and the Courts", Eric A Posner, Oxford University Press, Pg. 1-2, 2007, https://www.law.upenn.edu/institutes/cerl/conferences/ethicsofsecrecy/papers/reading/PosnerVermeule.pdf)

When national emergencies strike, the executive acts, Congress acquiesces, and courts defer. When emergencies decay, judges become bolder, and soul searching begins. In retrospect, many of the executive's actions will seem unjustified, and people will blame Congress for its acquiescence and courts for their deference. Congress responds by passing new laws that constrain the executive, and courts reassert themselves by supplying relief to anyone who is still subject to emergency measures that have not yet been halted. Normal times return, and professional opinion declares that the emergency policies were anomalous and will not recur, or at least should not recur. Then, another emergency strikes, and the cycle repeats itself. One can identify roughly six periods of emergency during American history, each with its own paradigmatic instance of alleged executive overreaching.1 The undeclared war with France at the end of the eighteenth century produced the Sedition Act, which permitted Federalist authorities to lock up Republican critics of the John Adams administration. The Civil War from 1861 to 1865 produced Lincoln's suspension of habeas corpus and imposition of military rule, which included prosecutions of war critics. World War I and the Red Scare generated Espionage Act prosecutions of war critics and the harassment of immigrants and aliens.

National Surveillance implicates deference to the Executive Branch

Goitien April 17th 2015

(Appointing Democratic Judges to the FISA Court Won't Solve Its Structural Flaws Elizabeth (Liza) Goitein April 17, 2015, Brennan Center for Justice and New York Law, https://www.brennancenter.org/blog/appointing-democratic-judges-fisa-court-wont-solve-its-structural-flaws)

Chief Justice Roberts recently named two new judges to the Foreign Intelligence Surveillance Court (FISC) — Judge James P. Jones from the Western District of Virginia and Judge Thomas B. Russell from the Western District of Kentucky. Roberts has now appointed three judges to the FISC since the Snowden revelations, and all three were originally nominated to the bench by a Democratic president (Clinton). This marks a stark departure from Roberts' thirteen pre-Snowden appointments, eleven of whom were appointed by Republican presidents. The question naturally arises: does this change in composition herald a change in the FISC's approach? Roberts' track record of selecting Republican-appointed judges came under fire when Snowden's disclosures trained a public lens on the FISC's operations. Critics argued that

conservative judges would be more likely to support government requests to conduct surveillance, and less solicitous of the civil liberties implications, than their progressive counterparts. Among the legislative proposals to reform NSA surveillance were measures to revamp the FISC, including changing the appointment process to guard against ideological bias. Ideological diversity is a good idea on any court. (Full disclosure: I don't know enough about either Jones' or Russell's rulings to say whether their appointment will affect the court's ideological balance, particularly since one of the FISC judges being replaced —Mary A. McLaughlin — is herself a Clinton appointee.) But as Steve Aftergood pointed out, there's no evidence that the ideological makeup of the FISC has influenced its rulings. To the contrary: the FISC's rate of approving government applications to conduct surveillance has always "hovered near 100%" (Aftergood's words) — before and after Roberts' streak of appointing conservatives. To be sure, there are applications and there are applications. A request to target a named individual based on a showing of probable cause (for communications content) or relevance (for business records) — which is what the FISC generally was reviewing in the pre-Roberts era — is very different from a request to collect Americans' phone records in bulk on the ground that relevant records may be buried within them. The FISC judge who first endorsed this strained theory of "relevance" to justify the bulk collection of phone records in 2006 was appointed by a Republican president, as were eight of the other ten judges on the court at that time. On the other hand, that decision was based on a 2004 FISC order justifying the bulk collection of Internet metadata that was issued by a Clinton appointee. Why the bipartisan acquiescence to a legal theory that may charitably be described as far-fetched? Most judges, regardless of their ideology, are happy to defer to the executive branch in matters of national security, whether by declining to exercise jurisdiction at all or by refusing to probe factual claims. There's a stark division of opinion on whether this is a good thing, but little dispute over the fact itself. Of course, there have always been exceptions — cases in which judges have refused to bow to executive claims of superior expertise and constitutional authority. Anecdotally, such pushback appears to have become more common among regular federal judges since the Snowden disclosures. It's too soon, though, to say whether this phenomenon signals a broader change in judicial philosophy and, if so, whether it will last. In any case, there's another reason why FISC judges, regardless of ideology, are likely to rule in the government's favor. Because no opposing party is present, FISC judges who rule against government applications are not occupying the familiar role of a neutral adjudicator in a contest between adversaries. Instead, they have effectively become the government's adversary — or, at least, they may create that perception. Especially in the national security context, few judges are eager to shoulder that role. Hence the iterative back-and-forth described by FISC judges and government officials, in which FISC staff work with Justice Department lawyers to craft an application that the FISC feels it can approve. The FISC is not a "rubber stamp," as some have suggested, but it clearly sees its job as working in partnership with the executive branch to get to "yes." Needless to say, that's not the role courts are supposed to serve under our constitutional system of checks and balances. The pro-government rulings that result from these dynamics tend to perpetuate themselves. Once a FISC judge has approved a new program or a new type of surveillance, that ruling becomes the only direct precedent on which the other FISC judges may rely. There is no developed body of controlling case law, as there would be in regular federal courts, and no system to resolve differences through ascending levels of appeal. In such circumstances, the natural tendency to

rely on the only available precedent would be difficult to overcome. Finally, even if all eleven FISC judges were determined to resolve any doubt or ambiguity against the government, the law that authorizes the most intrusive NSA surveillance ties their hands. Under Section 702 of the FISA Amendments Act, which authorizes programmatic surveillance of communications between foreign targets and US persons, the court is not allowed to probe the government's certification of a foreign intelligence purpose, and it has no role in approving the selection of individual targets. Its only substantive job is to approve agency procedures for determining whether a target is "reasonably believed" to be a foreigner overseas, as well as agency procedures for "minimizing" the retention and dissemination of US person information. To be clear, less deferential rulings on these procedures would be a major step forward. After all, when the FISC approved the NSA's 2011 minimization procedures, it approved "back door searches" — in which the government, having certified (as the law requires) that it has no interest in particular, known US persons, runs searches against the data it has collected using the phone numbers and e-mail addresses of particular, known US persons. A more searching judicial review also might balk at the provision of the NSA'stargeting procedures that equates the absence of any information about a person's nationality or location with a "reasonable belief" that the person is a foreigner overseas. The fact remains that the legal framework is stacked against meaningful judicial review, relegating the FISC to the role of approving general procedures that leave a great deal of discretion to the executive branch rather than applying the law to the specific facts of a particular case. Indeed, the FISC's role is watered down to the point that it's not clear whether the court's operations even square with the requirements of Article III. (That's the subject of a report I wrote with Faiza Patel, which we've also discussed on this blog and on Lawfare.) In short**, a pro-government tilt in FISC proceedings is almost inevitable in light of the deference courts show in national security matters**, the lack of an opposing party or an established body of precedent, and the constraints of the governing statute. The political leanings of the court's judges aren't the cause of these problems, and adjusting them will not be the solution.

SCOTUS deference is ruining the legality of the three branches of government

Lightman June 19th 2013

(Spy data disclosures show anew that executive branch holds all the cards BY DAVID LIGHTMAN National political correspondent and veteran congressional reporter for McClatchy NewspapersMcClatchy Washington Bureau June 19, 2013, http://www.mcclatchydc.com/2013/06/19/194377/spy-data-disclosures-show-anew.html#Intro) WASHINGTON — Disclosures about National Security Agency cyber-spying on millions of Americans vividly illustrates how the federal government's check-and-balance system is out of balance. Despite periodic attempts to assert itself, **the legislative branch over time has settled into a secondary role to the executive branch on questions of national security**. The dominance of the executive branch in the nuclear age – when presidents claimed the need to act on a moment's notice – continued into the age of terrorism with the claimed need for vast new spy powers handed over by Congress with the Patriot Act and renewed and extended ever since. Lawmakers offered little resistance to American intervention in Libya two years ago, or to the use of American troops in central Africa and Uganda. Nor was there much demand for changes in the use of drones aimed at suspected terrorists in foreign countries, even after the administration disclosed last month that four Americans had been killed by strikes abroad. Bowing to the

president in the interest of protecting the nation has been commonplace for a century, ever since the U.S. became a major international player and had to react quickly to crises. "**Presidents assumed power and got away with it,"** said Stephen Hess, a presidential historian at Washington's Brookings Institution who worked with four presidents. Some of Congress' inability to act like a co-equal branch of government is rooted in the institution's nature. The president can act quickly and speak with one voice. Congress, divided between two parties and two chambers and featuring political factions ranging across the spectrum, cannot. The executive branch has another built-in edge: The public routinely supports the president's ability to act decisively in times of crisis. Even those who once urged more congressional advice and consent see events differently from inside the Oval Office. In 2006, for example, Denis McDonough urged a more active role for Congress, in a study for the Center for American Progress, a liberal research group. "Recent news headlines that the National Security Agency is collecting the phone records of tens of millions of Americans without the knowledge of key congressional committees underscores the need for Congress to serve as the American public's watchdog in overseeing intelligence agencies," the 2006 study said. "Congress today has been negligent, with profound implications for the safety and security of America." Now White House chief of staff to President Barack Obama, McDonough argues that safeguards have been established so Congress has a stronger role. Indeed, members of Congress have had access to information about the spy programs. But few have shown up to read the material. "It's the perfect example of Congress handing over power to the executive branch and failing to keep up with it," said Jim Harper, a former congressional counsel and now director of information policy studies at the libertarian Cato Institute. Congress thought it had given itself nearly equal billing by passing the 1973 War Powers Resolution. Approved after years of political conflict over Vietnam, it aimed to place new restrictions on presidents' military initiatives. But "every president has taken the position that it is an unconstitutional infringement by Congress on the president's authority as commander in chief," Richard Grimmett, a Congressional Research Service international specialist, said in a report. Courts have not directly addressed the issue. "The war powers act is routinely violated these days," said Jim Manley, a former top aide to Senate Majority Leader Harry Reid, D-Nev. **"In recent years Congress has tended to defer to the executive branch when it comes to national security-related issues."** This much is clear: Congress has adjusted its role in recent years so that "Congress does its best job at the front end and the back end," said Gary Schmitt, co-director of the American Enterprise Institute's Marilyn Ware Center for Security Studies. The usual pattern is that as a crisis unfolds, lawmakers often raise serious questions. If something goes awry, they try to put curbs on presidential action, which usually take a long time to approve let alone implement. When President George W. Bush was considering invading Iraq in 2002, Democrats controlling the Senate held hearings on war and its aftermath. But when the Bush administration argued that Iraq had weapons of mass destruction – a claim later proven false – Congress gave Bush broad bipartisan authority to act against Iraq and any others threatening the United States. On the back end, though, Congress got assertive. As popular support dwindled, and the war turned ugly, lawmakers raised new questions and debated withdrawal deadlines. Just as the war demonstrated Congress' limits, so has the NSA controversy. Congress has offered little apparent resistance, though it did build some safeguards into the system. A secret court must approve NSA data collection. Congressional intelligence committees routinely scrutinize the effort, as evidenced by the lack of surprise members expressed when news of the programs surfaced. So, says Schmitt, don't think about Congress' role anymore in terms of what an equal branch of government might do. Think of the reality. "Congress wrote the law, amended it and

debated it," Schmitt said. "They wanted an executive who could act decisively and in secret. It's the kind of inevitable result of us being a world power."

Yes Spillover

Surveillance is a fundamental security issue in the post-9/11 security environment- it'll spill over

Scheppele '9 [KIM LANE SCHEPPELE, "The New Judicial Deference," Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University, 2009]

As the country attacked on 9/11, the United States sprang into action¶ immediately with a twinned strategy of aggressive military action and new understandings of law. From launching wars abroad89 to developing novel¶ strategies for rendition, detention, and interrogation of suspected terrorists¶ outside the United States90 and curtailing civil liberties through widespread¶ surveillance programs at home,91 the Bush Administration, with the active¶ participation of the Office of Legal Counsel (OLC) at the Department of¶ Justice, took a generous view of its own powers in wartime. The OLC¶ developed new legal understandings to underwrite the anti-terrorism¶ campaign.92¶ Some of the new legal understandings resulted from new law. Congress¶ quickly passed the Authorization of the Use of Military Force (AUMF), giving¶ the President a green light to use "all necessary and appropriate force against¶ those nations, organizations, or persons he determines planned, authorized,¶ committed, or aided the terrorist attacks that occurred on September 11,¶ 2001."93 Shortly thereafter, Congress passed the USA PATRIOT Act with¶ nearly unprecedented speed, broadening the definitions of terrorism offenses,¶ clamping down on financial support for terrorism, increasing domestic¶ surveillance capacities of the U.S. government, and adding a toxic mix of small¶ changes in U.S. law that allowed the government to operate secretly and to¶ commandeer private resources in the anti-terrorism campaign.94

Link Magnifier – Perception

National security deference issues will be in the political spotlight – guarantees a link

Chesney 9 (Robert M., Professor, University of Texas School of Law, October, "NATIONAL SECURITY FACT DEFERENCE", 95 Va. L. Rev. 1361, Lexis Law)

Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception - on the part of the public, the government, or judges themselves - of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response. This concern traditionally finds expression through the political question doctrine, which in its prudential aspect functions to spare judges such risks. But

just because a court determines that a case or an issue is justiciable does not mean that the institutional self-preservation concern has gone away or that a judge has lost sensitivity to it. National security fact deference provides a tempting opportunity for judges to accept the responsibility of adjudication [*1429] while simultaneously reducing the degree of interbranch conflict and hence the risk of political blowback. We cannot expect judges to attribute deference decisions to this motivation, of course, but we must account for the possibility - even the likelihood - that such concerns will play some role.

2NC Spillover

Plan changes the precedent and community doctrine that underlies all deference—independent military is key

Gilbert 98 – Lieutenant Colonel in the USAF Academy, MSBA from Boston University, JD from McGeorge School of Law, Harvard Law School (Michael H, 8 USAFA J. Leg. Stud. 197)

The federal judiciary, led by the United States Supreme Court, traditionally has avoided becoming the final reviewer of cases involving the military, particularly when the military is the defendant in a civil lawsuit. In the nineteenth century, the Supreme Court relied upon the separation of powers doctrine as the basis for refusing to review all administrative decisions by the executive branch. At the turn of the century, however, the Supreme Court began to review some executive decisions not dealing with the military when the allegation was that the official's actions exceeded statutory authority. At the same time, the Court continued to refuse to review military administrative decisions based upon the traditional separation of the military and civilian sector. The same philosophy thrives today. Courts are reluctant to enter the military house built by Congress because they consider the military a unique and separate community with special interests that transcend the usual constitutional standards. The United States Supreme Court interprets the three clauses in Article I of the Constitution (that assign Congress the authority to raise and maintain the armed forces) as the strongest indicator that the framers intended Congress to be free from interference in their conduct of military affairs pursuant to national security. Similarly, they give great weight and deference to the President in his assignment in the Constitution as Commander-in-Chief. The Court further sees that the roles of Congress and the President in this arena embody certain special factors that almost always preclude the judiciary from inserting their independent review into what are essentially matters or political questions outside of their domain and expertise. Moreover, the Court recognizes that Congress has established venues through which military members can attempt to resolve grievances n31 and that they also have established payment schemes, such as disability, for those who are physically or mentally injured during service. The fact that Congress has provided means by which aggrieved military members can seek redress and that Congress conducts hearings to consider the constitutionality of legislative options weighs heavily with the Court in granting virtually total deference to Congressional regulation of the military. Accordingly, the Supreme Court expressly recognizes the unique and special relationship between military subordinates and their superiors and their place in society, i.e., control by Congress and the executive branch.

Plan reverses strong precedent by having the Courts intervene in military policy—empirically, even the most serious constitutional challenges have been rebuffed due to blanket refusal

Gilbert 98 – Lieutenant Colonel in the USAF Academy, MSBA from Boston University, JD from McGeorge School of Law, Harvard Law School (Michael H, 8 USAFA J. Leg. Stud. 197)

Another important decision was Chappell v. Wallace, in which the Court unanimously ruled that enlisted military personnel may not sue their superior officers for damages for alleged constitutional violations suffered while in military service, specifically in this case, racial discrimination. n61 The plaintiffs argued that their superior officers assigned them to undesirable duties, threatened them, gave them low performance reports, and imposed unusually severe penalties based upon their race. The Court focused on the explicit plenary conferral to Congress to regulate the armed forces in the Constitution in finding that special factors counseled hesitation in permitting judicial relief because of the need for special regulations governing military discipline, and the concomitant need for a special and exclusive system of military justice. Noting that Congress had exercised this authority by establishing a comprehensive system of military justice, which of course addresses criminal acts rather than damages from civil wrongs as alleged in this case, the Court concluded that they would be wrong to provide enlisted members a judicial avenue by which to seek redress of wrongs committed by their superior officers. The Court further noted that many of the framers of the Constitution experienced the rigors of military life and, in drafting the Constitution, they anticipated this kind of issue by explicitly granting Congress "plenary control over the rights, duties, and responsibilities in the framework of the military establishment, including regulations, procedures and remedies related to military discipline; and Congress and the courts have acted in conformity with that view." n63 Finally, the Court admitted that they have long recognized two systems of justice, which are to some extent parallel, one for civilians and one for military personnel. By this statement, the Court concluded its creation of a military exception to the Constitution. Through a string of cases decided over several decades, each building upon the other, each accepting the dicta of the previous ones as well-established and time-honored fact and guiding principle, the Court has twisted and contorted the Constitution. To make the circle complete, the Court in Chappell relied upon the Feres doctrine and ruled that, as a matter of constitutional law, enlisted personnel may not maintain a suit for damages from alleged constitutional violations by superiors. In 1986, Chief Justice Rehnquist further cemented the great amount of deference owed to the military to the point that two justices expressed strong dissent. The dissenters criticized the Court's abdication "as principal expositor of the Constitution and protector of individual liberties in favor of credulous deference to unsupported assertions of military necessity." n66 In Goldman v. Weinberger, the Court examined whether the Air Force violated an Orthodox Jewish officer's First Amendment right to exercise his religious belief by prohibiting him through regulation from wearing his yarmulke while in uniform. The Court again emphatically supported the position of Orloff v. Willoughby in that the essence of military service "is the subordination of the desires and interests of the individual to the needs of the service," n67 and ruled that the military's need to have uniformity in dress is sufficient to warrant a regulatory prohibition against wearing religious articles outside the member's clothing. In short order, the Court affirmed the lower court's ruling that the appropriate level of scrutiny in reviewing a military regulation that clashes with the constitutional right of free exercise of religion was whether "legitimate ends are sought to be achieved." n69 Even when faced with one of the most serious challenges by a minority military member under the Constitution, the Court gave the greatest deference to the military in determining the regulations needed to ensure good order and discipline. Perhaps more interesting is the implicit basis within the Court's decision that the individual is totally subordinated to the needs of the service (reminiscent of a person in involuntary servitude). The Goldman decision, however, should not have been a surprise because it was consistent with precedent. In 1974, more than a decade before the Chief Justice penned the Goldman opinion for the Court, then Justice Rehnquist wrote the Court's opinion in Parker v. Levy, n70 which presented the Court with a suit for a habeas corpus

based upon a challenge under the First Amendment. Essentially, the Uniform Code of Military Justice (UCMJ) Articles proscribing "conduct [*216] unbecoming an officer and gentleman" and "all disorders and neglects to the prejudice of good order and discipline in the armed forces," n71 were alleged to be void for vagueness, when used to convict an Army physician (Capt. Levy) who had been critical of U.S. involvement in Vietnam. Levy was convicted by general court-martial and sentenced to three years confinement at hard labor, forfeiture of all pay and allowances, and a dismissal from the Army. Justice Rehnquist stressed that the Court has long recognized "the military is, by necessity, a specialized society separate from civilian society. We have also recognized that the military has, again by necessity, developed laws and traditions of its own during its long history." n72 He then characterized military officers as holding particular positions of responsibility and command in the armed forces that emanate from the commission the officers receive from the President. Moreover, he repeated the Court's position that, just as military society is a society apart from civilian society, "military law...is a jurisprudence separate and apart from the law which governs in our federal judicial establishment."

2NC Impact Overview Cards

Magnitude outweighs – these threats are unique

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

The terrible 9/11 attacks altered foreign affairs scholarship and magnified the importance of functionalist arguments for expansive executive power and limited judicial review. [n41] These arguments have generally focused on threats from terrorism and weapons of mass destruction. Scholars such as Eric Posner, Adrian Vermeule, and Bruce Ackerman argue that these threats are unique in history, that formalist understandings of the Constitution are inadequate to meet them, and that they require the speed, secrecy, and unity of decision-making found only in the executive branch. [n42] John Yoo, who had in the past made a comprehensive case for special deference using both formalist and functionalist methods, emphasized the importance of functional [*98] considerations after 9/11. [n43] Similar functional justifications lie at the core of Bush administration arguments against judicial review of executive policies regarding the interrogation, detention, and trial of suspected terrorists. [n44]

Timeframe outweighs – deference is essential to respond to crises

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

Returning to domestic deference standards as a baseline clarifies the ways in which foreign affairs are truly "special." The best response to the special nature of foreign affairs matters does not lie simply in adopting domestic deference on steroids. Instead, accurate analysis must also take into account the ways in which the constitutional separation of powers already accommodates the uniqueness of foreign affairs. Many of the differences between domestic and foreign affairs play

out not in legal doctrine, but in the relationship between the President and Congress. Under the hegemonic model, courts would still wind up deferring to executive branch interpretations much more often in foreign affairs matters because Congress is more likely to delegate law-making to the executive branch in those areas. [n390]

Only a risk it's good – democracy means that no matter what regulations are passed, deference will always be good

O'Connor 2 – Associate, Steptoe & Johnson LLP; B.A., University of Rochester; M.S.Sc., Syracuse University; J.D., University of Maryland School of Law (John F., Fall, 2000, "The Origins and Application of The Military Deference Doctrine", 35 Ga. L. Rev. 161, Lexis Law)

Thus, the military cases decided by the Supreme Court and the federal courts of appeals in the 1990s really were no different than the military cases of the 1980s, which in turn were no different than the military deference decisions issued by the Supreme Court from 1974-76. To the extent a constitutional challenge required a judgment as to the significance of the governmental interest involved in the legislation, courts must be exceedingly deferential to determinations by Congress and the President that they have struck the proper balance between military necessity and a respect for individual rights. The upshot of this manner of adjudication is that it remains extremely difficult for an individual litigant to argue successfully that his interest in individual rights is sufficient to overcome the considered judgment of the political branches with respect to military regulations. Unlike the Supreme Court's noninterference cases of the nineteenth and early-twentieth century, there will be a substantive review of the challenged regulations. However, so long as the American people elect leaders who are at all responsive to the desires of their constituencies, it is difficult to imagine Congress or the President approving regulations that are so oppressive to individual rights as to overcome the tremendous jurisprudential advantage afforded the political branches through the military deference doctrine. Moreover, and perhaps more properly, it is difficult to imagine military regulations oppressive enough to overcome the military deference doctrine without first triggering sufficient public opprobrium to cause Congress and the President to take corrective action before the courts are called upon to intervene.

Hegemony/Nuclear War

Deference key to heg – 5 reasons

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

1. **Flexibility** Because the world is inherently anarchic and thus unstable, flexibility is crucial. Because the meaning of international law changes with subtly shifting power dynamics, the United States must be capable of quickly altering its interpretation of laws in order to preserve its

advantage and avoid war if possible. [n295] Like Machiavelli's Prince, [n296] the U.S. government [*135] must be willing and able to bend with the shifting political winds and transgress norms if necessary. [n297] On this terrain, the executive branch appears to have clear advantages over the courts. The executive branch is more capable of altering its interpretation of the law when it suits U.S. interests. The courts must work within the confines of doctrine and stare decisis. [n298] Courts cannot weigh in on the vast majority of foreign affairs issues because they only hear the controversies that parties bring before them, and have only the power to adjudicate the issues raised. [n299] In short, courts' status as legal, rather than political, institutions limits their flexibility. Again, however, the anarchy-based argument for flexibility boils down to an argument for total discretion. How do the courts determine when and how much to cabin executive power? Jide Nzelibe has concluded that in cases involving individual rights, the courts should take into account their competence in adjudicating such issues while balancing the individual rights concerns against the need to defer to the executive branch's foreign policy requirements. [n300] But if the courts lack competence to evaluate the importance of a foreign policy need, how can they competently weigh that need against the importance of protecting individual rights? 2. **Speed** Since Curtiss-Wright, speed has been recognized as an important executive branch characteristic. The executive branch can reach a uniform interpretation of the law quickly, and the courts are, by comparison, quite slow. [n301] This is understandable in a world in which subtly-shifting alliances determine the balance of power. And in the age of terrorism, speed remains a crucial component of effective foreign policy. The ace card for defenders of special deference remains the national security emergency. How can we [*136] possibly take the risk that the courts will hobble the President's efforts to protect the United States in a time of crisis? [n302] It is important to separate the very slender category of true emergencies from the vast category of foreign relations in general. The great majority of foreign affairs controversies do not involve the President sending troops abroad or a threatened terrorist attack, and there is very little opportunity for courts to interfere with an executive response to a crisis situation. Courts typically review the legality of presidential decisions years later. [n303] Most of the "enemy combatants" detained at Guantanamo were captured within a few months of September 11, 2001, and arrived at Guantanamo in early 2002. [n304] The Supreme Court did not address the detainees' constitutional right to habeas review until 2008. [n305] The difficulty lies in situations where the courts are asked to use their equitable powers and issue injunctions or TROs before the issues have been fully adjudicated. Here it is the courts' institutional deliberativeness that is, arguably, the problem. [n306] 3. **Secrecy** Since Curtiss-Wright, secrecy has also been invoked as a rationale for deference to the executive in foreign affairs. [n307] Again, this evokes a multipolar world in which diplomacy is conducted in private by an elite cadre from the great powers. However, courts are capable of handling secrets - even more skillfully than Congress. [n308] The secrecy argument is really an argument about the potential consequences of revealing secrets to non-governmental parties and the collateral consequences that would result. [*137] 4. **Collateral Consequences** Many of the rationales for special deference - expertise, embarrassment, uniformity, and secrecy - have, at their core, the assumption that the courts' involvement in foreign affairs will risk serious collateral consequences in international relations that courts cannot anticipate, cannot fully understand, and do not have the power to adequately address. [n309] There are collateral consequences for court decisions in the domestic context as well. But the distinction drawn in foreign affairs reflects the tragic side of realism - that the world is inherently an unstable and dangerous place, an arena for clashes between great powers under constant threat of war. In an international system in which the balance of power is precarious and preserved only through delicate maneuvering by statesmen, the courts' involvement could risk provoking another great power and undermining these efforts.

But once again, this justification, taken to its logical conclusion, requires complete deference. If courts truly lack any sense of the collateral consequences of their foreign affairs decisions, they cannot competently weigh those consequences against competing constitutional values. Suppose that the U.S. government advances a novel interpretation of criminal statutes in order to prosecute a suspected terrorist whose release, the government insists, would create instability in a key U.S. ally in the Middle East. Under the collateral consequences justification, the court must always defer to the government's interpretation. This would eviscerate entirely the courts' statutory interpretation role whenever there is a claimed foreign affairs exigency. 5. **Legitimacy** Arguments for the courts' incompetence in foreign affairs also focus on legitimacy. Courts are said to lack legitimacy in this area because their ordinary power to bestow legitimacy on the other branches in the domestic context cannot function properly in the entirely political external realm. The political branches do not require the courts' blessing for their activities outside the U.S. [n310] Furthermore, the courts seem to face a dilemma: If they contravene the executive branch, the public will view this involvement with [*138] hostility, especially when national security is at stake. [n311] But if the courts side with the President, they risk being seen as mere cogs in the government's foreign policy apparatus. [n312] However, some deferentialists acknowledge that courts should adjudicate foreign affairs cases involving individual rights claims but balance the right in question against the government's asserted foreign policy needs. [n313] The difficulty with this approach is that, under the anarchy/realpolitik worldview, the government's arguments must always trump. If the courts are not competent to evaluate the importance of foreign policy necessity, then how can they weigh it against the value of individual rights? Similarly, if the courts lack legitimacy to evaluate foreign policy needs, their decisions will be perceived as lacking legitimacy whether individual rights are involved or not. Professors Ku and Yoo do not make a similar concession, at least with respect to non-citizens. They have concluded that, while the public may tolerate limited intervention to protect constitutional liberties in wartime, the public has no patience for the courts' interfering with executive prerogatives to reinforce the rights of aliens designated as enemies. [n314] But in any event, the realist model seems to leave little room for the consideration of individual liberties, even for citizens.

Impact is nuclear war

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. [n391] It is true that **the stable nature of American hegemony will prevent truly destabilizing events** from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. [n392] Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [*150] treaty negotiations, for example, which depend on adjusting positions quickly. The need for speed is particularly acute in crises. Threats from

transnational terrorist groups and loose **nuclear weapons are among the most serious problems** facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," [n393] but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

Readiness/Cohesion

Deference key to military cohesion and readiness—judicial interference kills it

Wilkinson 96 – Chief Judge US Court of Appeals (Thomasson v. Perry, Fourth Circuit, Majority Opinion, 80 F.3d 915, 4/5, http://www.ncgala.org/cases/thomasson.htm, AD)

Aside from the Constitution itself, the need for deference also arises from the unique role that national defense plays in a democracy. Because our nation's very preservation hinges on decisions regarding war and preparation for war, the nation collectively, as expressed through its elected officials, faces "'the delicate task of balancing the rights of servicemen against the needs of the military.'" Weiss, supra (quoting Solorio v. United States, 483 U.S. 435, 447-48 (1987)). To the degree that the judiciary is permitted to circumscribe the national security options of our elected officials, it "decreases the ability of the political branches to impose their will on another [nation and at] the worst, it permits the imposition of the will of another [nation] on the United States." James M. Hirschhorn, "The Separate Community: Military Uniqueness and Servicemen's Constitutional Rights," 62 N.C. L. Rev. 177, 237-238 (1983). After all, "unless a society has the capability . . . to defend itself from the aggressions of others, constitutional protections of any sort have little meaning." Wayte v. United States, 470 U.S. 598, 612 (1985). National defense decisions not only implicate each citizen in the most profound way. Such decisions also require policy choices, which the legislature is equipped to make and the judiciary is not. "Congress, working with the Executive Branch, has developed a system of military criminal and administrative law that carefully balances the rights of individual servicemembers and the needs of the armed forces." Sam Nunn, "The Fundamental Principles of the Supreme Court's Jurisprudence in Military Cases," 29 Wake Forest L. Rev. 557, 566 (1994). While Congress and the President have access to intelligence and testimony on military readiness, the federal judiciary does not. While Congress and the members of the Executive Branch have developed a practiced expertise by virtue of their day-to-day supervision of the military, the federal judiciary has not. The judiciary has no Armed Services Committee, Foreign Relations Committee, Department of Defense, or Department of State. As the Supreme Court has noted, "the lack of competence on the part of the courts [with respect to military judgments] is marked." Rostker, supra. In fact, It is

difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches. Gilligan v. Morgan, 413 U.S. 1, 10 (1973). Finally, the imprimatur of the President, the Congress, or both imparts a degree of legitimacy to military decisions that courts cannot hope to confer. Even when there is opposition to a proposed change --as when Congress abolished flogging in the 19th century or when President Truman ended the military's racial segregation in 1948, see Hirschhorn, supra -- the fact that the change emanates from the political branches minimizes both the likelihood of resistance in the military and the probability of prolonged societal division. In contrast, when courts impose military policy in the face of deep social division, the nation inherently runs the risk of long-term social discord because large segments of our population have been deprived of a democratic means of change. In the military context, such divisiveness could constitute an independent threat to national security. Parallel to the deference owed Congressional and Presidential policies is deference to the decision-making authority of military personnel who "have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy." Goldman v. Weinberger, 475 U.S. 503, 508 (1986). Judicial interference with the subordinate decisions of military authorities frustrates the national security goals that the democratic branches have sought to achieve. The Supreme Court has recognized the need for deference when facing challenges to a variety of military decisions: a policy that prohibited the wearing of headgear in certain circumstances, Goldman, supra (noting that the military is "a specialized society separate from civilian society"); an Air Force regulation that required service members to obtain permission before circulating petitions on bases, Brown v. Glines, 444 U.S. 348, 357 (1980) (noting that "the military must possess substantial discretion over its internal discipline"); a base policy that prohibited certain political activity on base premises, Greer v. Spock, 424 U.S. 828, 837 (1976) (noting "the special constitutional function of the military in our national life"); and military court-martial proceedings, Schlesinger v. Councilman, 420 U.S. 738, 757 (1975) (noting that "to prepare for and perform its vital role, the military must insist upon a respect for duty and discipline without counterpart in civilian life"). The need for deference also derives from the military's experience with the particular exigencies of military life. Among these is the attainment of unit cohesion--"the subordination of personal preferences and identities in favor of the overall group mission" and "the habit of immediate compliance with military procedures and orders." Goldman, supra. Should the judiciary interfere with the intricate mix of morale and discipline that fosters unit cohesion, it is simply impossible to estimate the damage that a particular change could inflict upon national security--"there is no way to determine and correct the mistake until it has produced the substantial and sometimes irreparable cost of [military] failure." Hirschhorn, supra.

Impact

Military effectiveness is key to deter large-scale aggression and prevent conflict escalation

Spencer 3 (Jack, Senior Defense Policy Analyst @ Heritage, "Focusing Defense Resources to Meet National Security Requirements," 3/21, www.heritage.org/Research/NationalSecurity/bg1638.cfm)

Be prepared to fight with little or no warning in unanticipated places**.** The emergence of global communications, advances in technology, and the globalization of terrorism provide many opportunities for surprise attacks against the United States and its interests. Maintaining the ability to fight and win wars in diverse situations and environments can **discourage many of America's enemies from hostile acts**. Maintain adequate capability to deter aggression against America's allies. America faces enduring threats beyond terrorism, as demonstrated by North Korea's nuclear weapons program. There are nations in every region of the world that threaten America's vital interests in the near term. Assuring stability in those regions and protecting U.S. interests requires the ability to defeat any nation or group that threatens America's allies, which itself provides **effective deterrence against large-scale aggression**. This should include both conventional forces and other capabilities such as an effective ballistic missile defense and reliable nuclear forces. The Administration should take every step to strengthen its important alliances and be ready to respond forcefully and immediately to aggression against America's allies.

Ext. Readiness

Deference key to military readiness and effectiveness

Hudson 99 – Major, Judge Advocate General's Corps of United States Army, and Instructor of the Criminal Law Dept (Major Walter M, Military Law Review Volume 159, March, AD)

By granting the elected branches plenary and command power over the military, the Constitution links military control to the democratic will and the democratic process. Because the people will feel the burden of war, the elected branches can best respond to that will.223 Furthermore, in granting power to the elected branches to control the military, the Constitution acknowledges that the elected branches grant a degree of legitimacy to military policy that courts cannot. These elected branches can best reflect and respond to the societal consensus, a particularly relevant and important concern when dealing with national security.224 Of the three branches, the judiciary has the least competence to evaluate the military's formation, training, or command. It has, as one court stated, "no Armed Services Committee, Foreign Relations Committee, Department of Defense, or Department of State" nor does it have the same access to intelligence and testimony on military readiness as does Congress or the President.225 The Supreme Court has thus repeatedly cited its own lack of competence to evaluate military affairs.226 To analyze the oft-criticized judicial deference to military matters, it is important to understand the structural differences between the ability of the elected branches and the courts to determine policy. The elected branches use regulatory decision making to determine policy. Regulatory decision-making, which is the creation of administrative policy through internal-rule formation, is a far more efficient means of policy making than adjudicated decisions.227 There are several problems with adjudication as a means of rule making. Adjudication is more costly and more time consuming. Years and millions of dollars can be spent in litigating one issue that involves

one individual.228 Adjudication concerns itself with an individual remedy based upon "a small set of controverted facts'' that are highly contextual and may or may not be applicable to a larger class of individuals.229 Furthermore, adjudication sets up elaborate procedures according to its ultimate goal-to determine whether a particular individual should prevail in a particular case.23o Dissenters, in particular Justice Brennan, have asserted that the Court decides issues that are far more technically complicated than adjudicating rather straightforward rules on di~cipline.~~' Yet that argument does not address rules formation in an administrative, as opposed to an adjudicative, system. Military policy-making is, by its nature, meant to do precisely what administrative policy-making does: allocate rights, benefits, and sanctions, among large groups using consistent standards.232 What makes military policy making along administrative rule-making lines even more advantageous is that the military's primary concern is ensuring military discipline and combat effectiveness of units, rather than focusing primarily on individuals themselves. Applying consistent and predetermined norms among large groups is what administrative rule making is best equipped to do.233 Where Brennan's argument may appear to be the most persuasive is where the potential "penalties" cut into the interests that the adjudicative process is best suited to protect-namely, constitutional protections. In dealing with constitutional protections, individual rights often trump majority concerns. Discerning whether individuals should be granted these protections may not be particularly complex, on the surface.234 When viewing the grant of constitutional protections in relation to the military's goal-successful combat operations-this argument loses force. This is because "simplicity" as defined in civilian contexts often does not have the same meaning in the military context. Clausewitz, the Prussian general and author of the military classic, On War, once famously stated: "Everything in war is very simple, but the simplest thing is Clausewitz terms all the uncertainties and problems that accompany wartime operations as Friction can be defined as the "realm of uncertainty and chance, even more [is] it the realm of suffering, confusion, exhaustion, and fear"237 that accompanies military wartime operations. All these exist to a much higher degree in war, because, as Clausewitz points out, in war, not only is chance and uncertainty a con- ~tant,*~* but also one side is trying to impose its will on its opponent, which is an "animate object that reacts."239 In other words, in war, you are seeking to overcome an opponent who is reacting to (and may be anticipating) your movements, who is trying not only to defeat but to destroy you, and who may not be constrained by your own laws, customs, and behavior. It is not thus simply the lack of judicial competence in military affairs, but the effects that the lack of competence may have that is an additional "friction" in the military environment. The problem in applying a standard of review similar to the kind used for civilian society is not just that the court may err, but the ramifications of such an error given the uncertainty of conflict.240 An error in military policy making could impede military effectiveness and thereby jeopardize national security.241 These judicial decisions put the courts squarely into the political arena. Judges unwittingly become "strategists"-unelected and ill-equipped officials deciding matters of potentially ultimate importance. Judicial deference, therefore, is generally appropriate to military decision- making, and in particular, a unit commander's decision-making on extremism. Extremism's disproportionate impact on the community where it occurs is an impact that can only be magnified in a military unit. The best way to appreciate that impact is to look at the gravest danger posed by racial extremists-the violent hate crime. If the courts rely solely on the statistics that compare the few numbers of bias crimes committed in relation to total crimes, they may be misled about the effect on good order and discipline.242 The courts may not be aware of the totality of information about extremist hate crimes. The vast majority of bias-oriented crimes are crimes against persons, not property. These crimes are also more likely to involve physical assault

than non-bias crimes.243 Usually, at least four or more individuals commit them.244 The median age group is among young Loosely associated individuals, not organized extremist groups, commit most hate crimes.246 Furthermore, the most explosive element about the crimes is not necessarily the criminal act. Rather, the race or bias motivation can cause a community to polarize and even to explode.247 This impact is essential to the military's need for judicial deference to extremist policies-at both the local commander policy level and the Army policy level.

More evidence—deference key to readiness

Crittenden 3 – Judge on Supreme Court of Kentucky (Roger L, 3/5, http://162.114.92.72/opinions/2001-SC-000761-MR.pdf, AD)

As early as 1953, the Supreme Court determined that "[t]he military constitutes a specialized community governed by a separate discipline from that of the civilian .'"5 Since that time, in reviewing issues which deal with the armed forces, the Supreme Court has regularly referred to the military as a "separate community" and reviewed claims against the military differently from claims against any other governmental agency. Restrictions on constitutional rights which might have no rational basis in civilian society will survive in the military context because the unique war-making purpose of the armed forces makes such restrictions compelling ." This attitude regarding constitutional rights is based upon the need to maintain an effectively operational fighting force ." The distinct purpose of the armed forces is to protect the United States, and its interests, against the actions of foreign nation- states, through the use of force." It is because of this unique purpose that the military demands a respect for duty and a commitment to discipline that is without counterpart in civilian society." Military effectiveness in wartime, however, requires peacetime preparation . In order for soldiers, airmen and seamen to utilize those qualities necessary for success on the battlefield, with all its stress and anxiety, those qualities must be instinctive . Success in war is therefore contingent upon the development of those qualities in peacetime. The Supreme Court has stated that, "to accomplish its mission the military must foster instinctive obedience, unity, commitment and esprit de corps."° This creates a "necessity," which the Supreme Court has recognized, for training and organizational latitude when dealing with military personnel and the military infrastructure . "The inescapable demands of military discipline and obedience to orders cannot be taught on battlefields; the habit of immediate compliance with military procedures and orders must be virtually reflex with no time for debate or reflection . . . . (C)onduct in combat inevitably reflects the training that precedes combat."" The Supreme Court has long recognized that: [T]he military is, by necessity, a specialized society separate from civilian society . We have also recognized that the military has, again by necessity, developed laws and traditions of its own during its long history. The differences between the military and civilian communities result from the fact that 'it is the primary business of the armies and navies to fight or be ready to fight wars should the occasion arise .'" A soldier in the Army is not free to quit his job, cannot be fired, and is subject to military discipline and military law. The climate of "discipline and unquestioned obedience" necessary to sustain an effective fighting force is determined primarily by the professional judgments and experience of people familiar with military needs, and the Court has determined itself incapable of mastering the complexities which are considered when balancing constitutional rights against military functional necessity ."

In Chappell , the United States Supreme Court stated that "the special relationships that define military life have 'supported the military establishment's broad power to deal with its own personnel . The most obvious reason is that courts are ill- equipped to determine the impact upon discipline that any particular intrusion upon military authority might have ."'" It would be imprudent to allow soldiers to sue superior officers because discipline and effectiveness would be seriously damaged . Permitting judicial intervention into such clearly administrative and personnel decisions would destroy the legitimacy and authority of command ."

More evidence—deference key to readiness.

Ray and Turner 3 - Counselors at Law for the Coalition of American Veterans (Ronald D & Edna J, United States Court of Appeals Fourth Circuit, Mellen & Knick v. Bunting, http://firstprinciplespress.org/digital/MELLENBRIEF.PDF, AD)

However, assuming arguendo that the decision to conduct a supper prayer is not totally unreviewable, then judicial review of constitutional challenges to such military regulations is sui generis. The supreme Court has consistently recognized that military interests in discipline and morale are of paramount national importance and that activities which are likely to have adverse effects on those interests may be regulated, even though the same activities, when engaged in by civilians, would be entitled to constitutional protection. Brown v. Glines, 444 U.S. 348, 354-57 (1980); Parker v. Levy, 417 U.S. 733, 758 (1974). The reason that military personnel lack the same degree of constitutional protection afforded to civilians is a direct consequence of the fundamental distinctions between military and civilian society. "While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections."5 Moreover, the divergence between military and civilian society is greatest in areas relating to the panoply of First Amendment rights that guarantee citizens the liberties essential to a self-governing people. Unlike civilian society, a "military organization is not constructed along democratic lines and military activities cannot be governed by democratic procedures . . . [M]ilitary decisions cannot be made by vote of the interested participants." Greer v. Spock, 424 U.S. 828, 843-844 (1976) (Powell, J., concurring, quoting EMERSON, The System of Freedom of Expression 57 (1970)). To the contrary, soldiers are expected to obey the directives of their superiors without question or hesitation, even when those orders may severely compromise a soldier's personal safety or comfort. As the Court stated in In re Grimley, 137 U.S. 147 (1890): An army is not a deliberative body . . . Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier. 137 U.S. at 153. Unswerving obedience in extreme circumstances arises not from rational discussion and conviction, but from discipline: "[The accomplishment of the military mission implies] the fundamental necessity for obedience, and the consequent necessity for imposition of discipline." Parker v. Levy, 417 U.S. at 758. Without this discipline, an effective military organization could not be maintained, and the existence of other civil liberties, and the State itself, could be jeopardized. For these reasons, the Court has recognized that the full ambit of constitutional protections is not compatible with the maintenance of a military organization, and that the special requirements of the military "may render permissible within the military that which would be constitutionally impermissible outside it." Ibid; see generally, Hirschborn, supra, 62 N.C. L.

REV. at 177. The High Court has expressly disavowed the utility of employing labels for the standards it applies in cases of this sort. Therefore, it is clear that the Plaintiffs' reliance on concepts such as "strict scrutiny" and "compelling governmental interest" has no bearing in the military context. However, the "rational basis" test most closely describes the Court's approach in practice. Cases considered by the Court include the military's criminal punishment (three years at hard labor) of an officer's spoken protest of the Vietnam War on the ground that the speech was "conduct unbecoming of an officer" (Parker v. Levy); the military's ban of political speech from military bases (Greer v. Spock); and the military's imposition of prior restraints on peti tions to Congressmen in the interest of maintaining order and discipline (Brown v. Glines). None will doubt that civilian society may not be so regulated. Yet in each of these cases, the military regulations were upheld without any judicial "balancing of interests" or "strict scrutiny" of the asserted military interests. Brown v. Glines most clearly exhibits the nature of this unique standard of review. There, Air Force regulations at issue forbade the circulation of petitions by soldiers on a military base without approval of the base commander, who was authorized to suppress the distribution of material that he judged would endanger the "'loyalty, discipline, or morale of members of the Armed Forces.'" 444 U.S. at 350. The regulation had been enforced against a soldier who had solicited signatures on petitions to congressmen, complaining about the Air Force's grooming standards. The court of appeals invalidated the regulation on the ground that it was overbroad and allowed commanders to suppress "virtually all controversial written material." 444 U.S. at 353. The high Court reversed. Although prior restraints on civilian speech may be justified only by the most certain evidence of immediate peril to the nation (see, e.g., New York Times Co. v. United States, 403 U.S. 713 (1971)), the Court in Glines engaged in no balancing, no weighing of interests. To the contrary, the Court recognized that "[l]oyalty, morale, and discipline are essential attributes of all military service," and held simply that "[s]peech likely to interfere with these vital prerequisites for military effectiveness therefore can be excluded from a military base." 444 U.S. at 357, n. 14 354 (emphasis added). The only caveat added by the Court was that the regulation of such expression must "restrict speech no more than is reasonably necessary to protect the substantial governmental interest." Id. at 355 (emphasis added). Thus, rights that are fundamental in civilian society may be curtailed in the military if their exercise is "likely to interfere" with the maintenance of good order or the instilling of discipline in military personnel. Plaintiffs' claims must be evaluated in the light of this unique standard. Not only are civilian precedents used to evaluate Free Exercise claims inapplicable because of the special nature of the military, but, in addition, the court must afford a significantly heightened degree of deference to professional military judgments concerning the need for a particular regulation promulgated to establish and maintain a disciplined and well-ordered military force. As the Court recently noted in Chappell v. Wallace, 462 U.S. 296, 301 (1983), the character of this deference was "summed up" in Orloff v. Willoughby, 345 U.S. 83 (1953): Judges are not given the task of running the Army . . . The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with the legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters. 343 U.S. at 93-94. This extraordinary deference is rooted partly in the express constitutional commitment of the governance of the nation's Armed Forces to the President and Congress, U.S. Const., Art. I § 8, and Art. II, § 2, Cl. 1.6

Naval Readiness

Failure to apply military deference would hurt naval readiness

McCarty 10- Recipient of the Jones Day Award for Best Researched and Summated Article (Richard T., "Note: Winter V. Nrdc: the Navy, Submarines, Active Sonar, and Whales - an Analysis of the Ninth Circuit Review and the Roberts Court Extension of the Military Deference Doctrine," 47 Hous. L. Rev. 489, Spring 10, Lexis)

a. Failure to Defer to Professional Military Judgments. Fundamentally, the Ninth Circuit failed to apply adequately the Supreme Court's well-developed military deference doctrine. [n273] The Court's historical deference to the military implies that the [*520] military should be given deference when supplying professional military judgments based upon years of military expertise. [n274] The Supreme Court chided the lower courts for failing to weigh properly the extensive testimony by experienced Naval officers. [n275] Seemingly, the circuit court ignored the Court's warning in Gilligan that federal courts should not intrude upon military judgments on training and maintaining military forces. [n276] The Ninth Circuit should have given great weight to professional estimates that the injunction threatened the effectiveness of ASW training. b. Failure to Defer to Congressional and Executive Decisions on the Military. Beyond simply giving weight to professional military judgments, the military deference doctrine also gives great weight to congressional and executive actions pertaining to the military. [n277] Drawing upon Rostker, the Ninth Circuit should have deferred to Congress's judgments on the relative importance of military operations compared to potential harm to marine mammals. [n278] By creating a military exemption to the MMPA in the wake of NRDC v. Evans, Congress provided its judgment on the importance of effective naval training. [n279] Although Congress values protection for marine mammals, it "also has determined that national security can trump marine mammal protection." [n280] In the conference report accompanying the National Defense Authorization Act for Fiscal Year 2004, [n281] [*521] Congress detailed the changes to the MMPA, explaining that they came about to address deficiencies highlighted in Evans. [n282] The conference report explains, "Such changes would ensure a credible and flexible regulatory process that properly balances the equities associated with military readiness and maritime species protection." [n283] Addressing the creation of military-specific definitions of harassment, "decisions regarding mitigation and monitoring would take into account safety, practicality of implementation, and impact on the effectiveness of a military readiness activity." [n284] Clearly, Congress weighed the equities between environmental conservation and military readiness, vested "responsibility for balancing marine mammal protection against military preparedness squarely with the political Branches," and "provided mechanisms for Congress's continuing oversight of the Secretary's exemption authority." [n285] As the Rostker Court explained, "perhaps in no other area has the Court accorded Congress greater deference" than "in the context of Congress' authority over national defense and military affairs." [n286] The Ninth Circuit should have weighed the right to an injunction against the public interest in national security, which was overtly favored by Congress and the President, representing the branches on which that burden falls.

Naval dominance is key to prevent the rise of global challengers

Stratfor 8 - the world's leading private intelligence service. ("U.S.: Naval Dominance and the Importance of Oceans," http://www.stratfor.com/analysis/u_s_naval_dominance_and_importance_oceans)

Our statement that control of the world's oceans is a cornerstone of U.S. geopolitical security and keeps any potential adversary half a world away sparked extensive comment. This is a long-standing Stratfor position, not a casual assertion, and is crucial to the way we see the world. In his 1890 classic "The Influence of Sea Power Upon History," U.S. Naval officer Alfred Thayer Mahan examines the decisive role superior sea power played in geopolitical competition and conflict from 1660 to 1783. His work has made him perhaps the foremost theorist of naval power in the United States. At the risk of oversimplification, Mahan's thesis is that control of the sea can be decisive in both peacetime and wartime, and has far-reaching military, economic and geopolitical ramifications. Mahan is required reading at Stratfor. The world has changed quite a bit since the time of Mahan, who wrote as sail was giving way to steam as the principal method of naval propulsion. Indeed, a common question from our readers has been about the applicability of the oceans to U.S. security in the 21st century, particularly in the context of globalization. In essence, readers have asked us whether oceans still matter after globalization has so reduced transit times and increased interconnectivity that transnational terrorism and cyberspace have come into existence. While aviation, the intercontinental ballistic missile, satellites and the Internet have all fundamentally altered the way the world interacts and how wars are fought, Mahan's analysis holds true. Over the course of a century, but particularly during and after World War II, the United States honed and perfected expeditionary naval operations. Washington's ability to function on the other side of the planet from home port is unparalleled and has surpassed the sea power of the British Empire that Mahan so admired. The importance of this cannot be overstated, and has broad applicability. Globalization has massively increased, not decreased seaborne commerce. As the dominant global naval power, Washington exercises a decisive influence over the principal avenue of both international trade and the flow of the world's oil (and, increasingly, natural gas). In addition to wielding this as a lever over other countries, the U.S. Navy is the guarantor of America's global supply lines. That Washington has claim to both the world's foremost navy and the world's foremost economy is no coincidence, and it is a key dynamic of the entire international system. From a military perspective, the last shooting war in the Western Hemisphere of any strategic significance for the United States was the Spanish-American War. That conflict resulted in the expulsion at the end of the 19th century of the last Eastern Hemispheric power from Washington's periphery. For more than a century now, the United States has fought its wars abroad, with the only strategic threat to the homeland being Soviet (and to a much lesser extent, Chinese) nuclear weapons. Indeed, the fundamental value of naval dominance was demonstrated in 1962. During the Cuban Missile Crisis, Washington was able to prevent the re-emergence of an outside power's beachhead in Cuba because U.S. naval dominance made the situation untenable for the Kremlin. The Russian navy was not in a position to sustain forces there in the face of concerted U.S. naval opposition. And while the notion of "invasion" in the 21st century may seem anachronistic in the U.S. perspective, the rest of the world sees things very differently. That apparent anachronism is symptomatic of fundamental U.S. geopolitical security. Across the oceans, even much of Europe still looks east over the open Northern European plain and remembers columns of Soviet armor. Nations the world over continue to struggle day in and day out with their neighbors. Pakistan, India and China continue to squabble over Kashmir, which they each consider core to their geographic security. Russia's foremost geopolitical struggle is the re-establishment of some semblance of a peripheral buffer in Europe and the Caucasus — necessary buffers, but a poor compensation for unfavorable geography. These issues — crucial geopolitical objectives — keep Eurasia divided and restrict (but obviously do not eliminate) other countries' bandwidth to deal with global issues farther afield. The ultimate consequence of this division is the prevention of the emergence of a potential challenger to the United States. By this, we mean the emergence of a country so secure in its geopolitical position that the mustering of resources necessary to project military force across the Atlantic or Pacific to meaningfully challenge the strategic security of the North American continent becomes a possibility. More simply, U.S. naval dominance allows Washington to keep the costs of projecting hostile military force across the world's oceans prohibitively high. The countries of the world are thus largely left confronting geopolitical challenges in their own backyards, unable to militarily challenge the United States in its backyard. All the

while, the U.S. Navy conducts operations daily in Eurasia's backyard. This is a secure and enviable geopolitical position.

Terrorism

Deference key to stop terrorism

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

[*142] The United States qualifies as a global hegemon. In many ways, the U.S. acts as a world government. [n341] It provides public goods for the world, such as security guarantees, the protection of sea lanes, and support for open markets. [n342] After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. [n343] Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. [n344] This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, the United States provides a public good through its efforts to combat terrorism and confront - even through regime change - rogue states. [n345] The United States also provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale. [n346] The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. [n347] Moreover, controlling international norms are [*143] sometimes embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law. For example, whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants." [n348] These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it. The transnational political and economic institutions created by the United States provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon" with the U.S. rather than seek to create alternative centers of power. [n349] American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. [n350]

Pres Powers

Judicial deference key to presidential powers and military decision-making

Masur 5 - Political Science Graduate from Stanford University, JD from Harvard Law School, Former Law clerk for Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit and for Chief Judge Marilyn Hall Patel of the U.S. District Court for the Northern District of

California, and currently is a Professor at the University of Chicago Law School (Jonathan, Hastings Law Journal, 56 Hastings L.J. 441, February)

The perceived duty of courts and judges to defer to the factual assertions and judgments of executive branch actors in times of war represents the unifying principle of all modern wartime cases. "Deference" has become a shibboleth that courts believe they must invoke if their wartime rulings are to have any hope of withstanding appellate (and public) scrutiny. Even a court that eventually concludes that no deference is due the executive branch often appears compelled to recite a statement of judicial fealty to the deference principle for fear of signaling an inappropriate lack of respect for the authority of the coordinate branches in wartime. 14 Judicial deference to administrative decision-making in times of war remains inescapably and intuitively attractive. This Article should not be understood to suggest that courts should exercise anything approaching de novo review over executive decisions in military situations. Yet within wartime jurisprudence, the doctrine of judicial deference has overwhelmed the legal strictures established to constrain the operation of executive power. Courts sitting in judgment of the Executive's wartime actions have permitted the military to effectively define the constitutional scope of its own authority. [Continued] For nearly one hundred and fifty years, the judiciary's conception of the reach of the Executive's war-making powers has known few bounds. Beginning with The Prize Cases 20 in 1862, the Supreme Court has read the President's commander-in-chief power broadly to encompass nearly any necessary war-related actions, even without a formal declaration of war. 21 The Court's maxim, gleaned from Hirabayashi v. United States, that "the war power of the Government is "the power to wage war successfully,"' 22 has given rise to an understanding of presidential power that encompasses activities that do not involve the deployment of troops in the field, 23 such as the Japanese-American internment, as well as [*449] foreign policy making authority not directly tied to national security or the military. 24 In some cases, the Supreme Court has refused even to entertain cases that attempt to demarcate limitations on the President's constitutional military powers. 25 This expansive understanding of the President's wartime authority has led the Executive to argue that an entire range of military questions or executive measures are entirely beyond the court' reach as either non-justiciable or otherwise unsuitable for judicial review. Courts have accepted this argument most decisively in areas that hew closely to the actual mechanics of armed conflict, such as presidential decisions committing American forces to battle or selecting the means and mechanisms of waging war. 26 Yet the judiciary has hardly confined its [*450] deferential posture to such intimately military questions. 27 Courts have concluded that even administrative decisions implicating traditional judicial authority and significant constitutional or statutory legal structures must command substantial judicial deference. Prominent among the actions receiving such deference are detentions of American citizens who have not been charged with crimes.

Nuclear Weapons

Deference guarantees disclosure of nuclear secrets—that causes first strikes and nuclear terrorism

Green 97 – Associate at McNair Law Firm, JD Magna Cum Laude at Univ of South Carolina (Tracey Cotton, South Carolina Environmental Law Journal, 6 S.C Envtl. L.J. 137, Fall)

The deployment of nuclear weapons, however, is a DoD action for which secrecy is crucial and, thus, is classified by Executive Order. 59 According to the American policy of deterrence through mutually assured destruction (MAD), nuclear weapons are essential to an effective deterrent. 60 If DoD disclosed the location of these weapons, disclosure would reduce or destroy the deterrent. An adversary could destroy all nuclear weapons with an initial strike, leaving the country exposed to nuclear terror. 61 Additionally, terrorists would know where to strike to obtain material for nuclear blackmail. In short, secrecy regarding nuclear weapons has enormous implications for national security. While the armed services must consider the environmental effects of maintaining nuclear weapons, they cannot release any information regarding the storage of these weapons. However, some public interest groups have an agenda at odds with DoD and see NEPA's review process as a method of achieving their goals. Environmental groups generally distrust the efforts of federal agencies, and arms control groups want to hamper or stop weapons deployment. These groups sue the Army or Navy in court, requesting that the judiciary review the agency's actions, review or order the preparation of an EIS, and order the agency to conform to NEPA. 62 Through the suit, public review accompanies judicial review. In these situations, a conflict arises between the judiciary's duty to avoid interfering with national security and its duty to enforce federal law passed by Congress. 63 [*145]

Ext. Secrets Internal Link

Rejecting deference would result in releasing secret information and undermine US hegemony

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

[11]A related argument, and a justification for the one-voice rationale, is that the United States will be "embarrassed" by conflicting pronouncements from different branches of government. The risk of embarrassment plays a key role in the Curtiss-Wright homily on superior executive competence, and has been frequently mentioned in foreign affairs political question decisions since Baker v. Carr. [n282] The core of the embarrassment justification is, possibly, that U.S. diplomats will be undermined in their delicate negotiations with other nations because court decisions that conflict with executive branch policy could baffle or even offend foreign officials. [n283] But it is difficult to argue that foreign dignitaries will fail to understand how the branches of the U.S. government can reach different interpretations of the law. America's current structure of government has existed for almost 230 years. In the past, "other nations [were] asked to understand our complex constitutional system of checks and balances and we somehow managed to survive as a nation." [n284] Other justifications that have been labeled as "embarrassment" are more compelling, however. Court proceedings could increase the risk of revealing sensitive information. Perhaps more importantly, judicial decisions could have unforeseen consequences that undermine U.S. interests, make the U.S. appear weak, and ultimately disrupt the delicate balance of power in international relations. This aspect is related to realpolitik, which I address in the next subpart.

The abandonment of the military deference doctrine would force the government to tell state secrets

Chesney 9 – Professor, University of Texas School of Law (Robert M., October, "NATIONAL SECURITY FACT DEFERENCE", 95 Va. L. Rev. 1361, Lexis Law)

Not all national security fact deference claims concern retrospective judgments as in Hamdi and Lindh. The executive branch also seeks deference on national security grounds in connection with predictions. Such claims rely on familiar themes of comparative institutional competence, however, and they prompt familiar objections sounding in terms of the judiciary's checking function. The debate regarding deference in the context of the state secrets privilege provides an apt illustration. The question of deference in the context of the state secrets privilege arose in United States v. Reynolds, a 1953 Supreme Court decision in which the government argued that "only the executive is in a position to estimate the full effects of ... disclosure," and that "unless the courts are to interfere in the administration of Government, they must trust in the judgment of the appointed administrator." [n55] The plaintiffs responded that such deference would be contrary to the separation of powers, since it would leave the [*1377] executive branch unchecked. [n56] The Supreme Court, for its part, expressed sympathy for the separation of powers critique, warning that "judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers." [n57] It therefore framed the question in terms of the government's obligation "to satisfy the court" that disclosure might harm security. [n58] But the Court then went on to state that "where necessity is dubious" a mere "formal claim of privilege ... will have to prevail," thus implying that judges should in fact give strong deference to the executive's claim in at least some contexts. [n59] Perhaps not surprisingly, no one appears to know quite what to make of this guidance despite decades of subsequent litigation involving the state secrets privilege. A recent oral argument before the Ninth Circuit in Hepting v. AT&T, a civil suit alleging that the telecommunications industry assisted the National Security Agency in conducting illegal surveillance in the United States, illustrates the point: Judge Harry Pregerson: Well, who decides whether ... something's a state secret or not? Deputy Solicitor General Gregory Garre: Ultimately, the courts do, Your Honor ... . And they ... apply the utmost deference to the assertion of the privilege and the judgments of the people whose job it is to make predictive assessments of foreign - Pregerson: Are you saying the courts are to rubberstamp the determination that the Executive makes that there's a state secret? Garre: We are not, Your Honor, and we think that the courts play an important role - [*1378] Pregerson: What is our job? Garre: Your job is to determine whether or not the requirements of the privilege have been properly met. And that includes the declaration, the sworn declaration of the head of the agency asserting the privilege, and the assertion that that individual asserting it has personal knowledge of the matter [at hand]. Pregerson: So we just have to take the word of the members of the Executive Branch that tell us it's a state secret. Garre: We don't - Pregerson: [Because] that's what you're saying, isn't it? Garre: No, Your Honor, what this Court's precedents say is the court has to give the utmost deference to the assertion, and the second part of the - Pregerson: But what does "utmost deference" mean? We just bow to it? Judge Michael D. Hawkins: It doesn't mean abdication, does it? Garre: It does not mean abdication, Your Honor, but it means the court gives great deference to the judgments of the individuals whose job it is to assess whether or not the disclosure or nondisclosure of particular information would harm national security ... . [n60] The Ninth Circuit ultimately remanded in Hepting without

reaching the merits, [n61] but the same panel did proceed to the merits in a closely related case. In Al-Haramain Islamic Foundation v. [*1379] Bush, the panel began by asserting the independent nature of judicial review: We take very seriously our obligation to review the documents with a very careful, indeed a skeptical, eye, and not to accept at face value the government's claim or justification of privilege. Simply saying "military secret," "national security" or "terrorist threat" or invoking an ethereal fear that disclosure will threaten our nation is insufficient to support the privilege. [n62] The court proceeded, however, to endorse a robust deference obligation: "we acknowledge the need to defer to the Executive on matters of foreign policy and national security and surely cannot legitimately find ourselves second guessing the Executive in this arena." [n63] This state of affairs has generated sharp criticism, [n64] and may yet result in legislative reforms. [n65] As things currently stand, however, deference in the state secrets scenario closely tracks the practice illustrated [*1380] in the other case studies. Courts are conscious that deference has costs in terms of reducing the judicial capacity to check the executive branch, but in some contexts they are loath to question the judgment of executive officials when push comes to shove.

Deference Good – War Powers/Stability

Judiciary intervening in war powers constrains the President – causes international instability

Nzelibe and Yoo 6 (Jide Nzelibe, Professor of Law at Northwestern and John Yoo, Professor of Law at UC Berkeley, "Rational War and Constitutional Design," The Yale Law Journal, Vol. 115, No. 9, The Most Dangerous Branch? Mayors, Governors, Presidents, and the Rule of Law: A Symposium on Executive Power (2006), pp. 2512-2541, http://www.jstor.org/stable/20455704)

D. The Dangers of judicial Intervention Faced with the prospect that congressional participation can sometimes play a salutary role in avoiding unnecessary wars, an antecedent question naturally arises. Should the courts decide if such a congressional role would be appropriate? Indeed, a recurring theme running through much of the Congress-first literature is that judicial intervention is necessary to vindicate the congressional role in initiating conflicts. But if one accepts the signaling model developed here, there are significant reasons why one ought to be wary of a judicial role in resolving war powers controversies. First, under our model of international crisis bargaining, judicial review would likely undermine the value of signals sent by the President when he seeks legislative authorization to go to war. In other words, it is the fact that the signal is both costly and discretionary that often makes it valuable. Once one understands that regime characteristics can influence the informational value of signaling, it makes sense that the President should have the maximum flexibility to choose less costly signals when dealing with rogue states or terrorist organizations. The alternative- a judicial rule that mandates costly signals in all circumstances, even when such signals have little or no informational value to the foreign adversary-would dilute the overall value of such signals. Second, judicial review would preclude the possibility of beneficial bargaining between the President and Congress by forcing warmaking into a procedural straitjacket. In this picture, judicial review would constrain the political branches to adopt only the tying hands type of signal regardless of the nature or stage of an international crisis. But the supposed restraining effect attributed to the tying hands signal can vary considerably depending on whether the democracy is deciding to initiate an international crisis or is already in the midst of an escalating crisis. Requiring legislative authorization may

make it less likely that the democracy will be willing to back out of a conflict once it starts. Thus, tying hand signals and judicial insistence that the President seek legislative authorization **will contribute to greater international instability** once a conflict has already started.

Ext. Deference k/t War Powers

Deference key to Presidential war powers

Murphy et al 3 (Walter Murphy, Professor Emeritus at Princeton University, former Professor of Jurisprudence; James E. Fleming, Professor of Law at Boston University School of Law; Sotirios A. Barber, Professor of Political Science at the University of Notre Dame; Stephen Macedo, Professor of Politics and Director of the University Center for Human Values at Princeton; Hamdi v. Rumsfeld, "American Constitutional Interpretation" 3rd edition, September 2003, http://www.princeton.edu/aci/cases-pdf/aci3.hamdi4thcir.pdf)

The importance of limitations on judicial activities during wartime may be inferred from the allocation of powers under our constitutional scheme. The war powers ... invest "the President, as Commander in Chief, with the power to wage war which Congress has declared, and to carry into effect all laws passed by Congress for the conduct of war and for the government and regulation of the Armed Forces, and all laws defining and punishing offences against the law of nations, including those which pertain to the conduct of war." These powers include the authority to detain those captured in armed struggle. These powers likewise extend to the executive's decision to deport or detain alien enemies during the duration of hostilities, and to confiscate or destroy enemy property. Article III contains nothing analogous to the specific powers of war so carefully enumerated in Articles I and II. "In accordance with this constitutional text, the Supreme Court has shown great deference to the political branches when called upon to decide cases implicating sensitive matters of foreign policy, national security, or military affairs." The reasons for this deference are not difficult to discern. Through their departments and committees, the executive and legislative branches are organized to supervise the conduct of overseas conflict in a way that the judiciary simply is not. The Constitution's allocation of the warmaking powers reflects not only the expertise and experience lodged within the executive, but also the more fundamental truth that those branches most accountable to the people should be the ones to undertake the ultimate protection and to ask the ultimate sacrifice from them. Thus the Supreme Court has lauded "[t]he operation of a healthy deference to legislative and executive judgments in the area of military affairs." Rostker v. Goldberg (1981). The deference that flows from the explicit enumeration of powers protects liberty as much as the explicit enumeration of rights. The Supreme Court has underscored this founding principle: "The ultimate purpose of this separation of powers is to protect the liberty and security of the governed." Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc. (1991). Thus, the textual allocation of responsibilities and the textual enumeration of rights are not dichotomous, because the textual separation of powers promotes a more profound understanding of our rights. For the judicial branch to trespass upon the exercise of the warmaking powers would be an infringement of the

right to self-determination and self-governance at a time when the care of the common defense is most critical. This right of the people is no less a right because it is possessed collectively.

AT Environment

No risk of environmental destruction—the military has built-in safeguards

Green 97 –University of South Carolina, Associate with McNair Law Firm (Tracy Colton, "Providing for the Common Defense versus Promoting the General Welfare: the Conflicts Between National Security and National Environmental Policy," *South Carolina Environmental Law Journal*, 6 S.C Envtl. L.J. 137, Fall, AD)

Because the preparation of EAs and EISs has been designated as the process through which environmental factors are included in decision making by governmental agencies, DoD--like other federal agencies--must follow the mandate of NEPA to prepare and use EAs and EISs. DoD regulations provide "policy and procedures to enable DoD officials to be informed of and take into account environmental considerations when considering the authorization or approval of major DoD actions in the United States." [n48] These regulations implement DoD's policy that actions, taken for the purpose of providing a strong national defense, must cause the least harm to the environment. [n49] To achieve this goal, the regulations require DoD agencies to assess the environmental consequences of actions that could affect the quality of the environment. Recognizing the unique nature of its responsibility, however, the regulations require that "national security classification issues" be considered in the decision-making process [n50]

No impact- the DOD consults the EPA

Latham 2 – Articles Editor, 1999-2000, Boston College Environmental Affairs Law Review. (Joshua E., 000, "COMMENT: The Military Munitions Rule and Environmental Regulation of Munitions", 27 B.C. Envtl. Aff. L. Rev. 467, Lexis Law)

The Munitions Rule has groundbreaking implications for the future of environmental regulatory oversight of the military establishment. [n177] With the enactment of the FFCA, Congress took an important first-step in holding the federal government accountable for the environmental consequences of its conduct under RCRA. [n178] In enacting the FFCA, however, Congress recognized the potentially debilitating effect that EPA regulation of military munitions might have on combat readiness and the DOD's fundamental national defense mission. [n179] Congress accounted for this conundrum by mandating that the EPA first consult with the DOD and promulgate regulations specifically determining when military munitions are hazardous waste subject to RCRA oversight. [n180] Congress's mandate to the EPA was to strike a balance between the competing interests of environmental compliance and national defense. [n181] There are questions as to the Munitions Rule's legal authority and the EPA's policy rationale. This controversy has prompted public opposition to the Munitions Rule, culminating in a 1998 judicial challenge mounted by the Military Toxics Project (MTP), a national advocacy [*489] coalition. [n182] While the D.C. Circuit affirmed the legality of the Munitions Rule, the policy and the

practicality of the Munitions Rule continue to incite skepticism. [n183] There remain several inconsistencies and potential loopholes within the Munitions Rule's regulatory framework that could prove problematic and arguably are in contravention to the congressional mandate.

AT Separation of Powers

Abdication of constitutional power is worse than loss of separation of powers

Henriksen 96 – J.D Candidate, 1996, Washington College of Law of The American University

(Kelly E., Winter 1996, "Note & Comment: Gays, the Military, and Judicial Deference: When the Courts Must Reclaim Equal Protection as Their Area of Expertise", 9 Admin. L.J. Am. U. 1273, Lexis Law)

Separation of powers often is cited as a justification for judicial deference to the military; but what does the principle of separation of powers say about abdication of constitutional authority? Separation should never reach the point of abdication. Abdication of constitutional authority is as egregious under the principle of separation of powers as are overreaching and aggrandizement. When the judiciary abdicates its power of constitutional review, the legislature's power is aggrandized. Review is rendered meaningless when the rulemaker reviews the rules; and when the one [*1306] charged with making the laws is also charged with ensuring their fairness, there is neither check nor balance. [n192] Equal protection is the courts' domain. The Ninth Circuit and the Able court were correct, and perhaps prophetic, in reclaiming equal protection and constitutional analyses as the courts' area of expertise. If constitutional review is the courts' function, then equal protection is its forte. The Supreme Court must reclaim constitutional review generally, and equal protection analysis specifically, as its own. As Justice Brennan asserted in Goldman, anything less would be an abdication of its constitutional authority.

No impact to separation of powers – already exists

Knowles 9 – Acting Assistant Professor, New York University School of Law (Robert, Spring, "American Hegemony and the Foreign Affairs Constitution", 41 Ariz. St. L.J. 87, Lexis Law)

The uniqueness of foreign affairs stems in part from a void in the text that has long bedeviled constitutional analysis in this area. [n23] Article II of the Constitution specifically allocates only a handful of foreign affairs powers to the President, [n24] but Article I fails to provide Congress with all, or even most, of the remaining powers necessary to conduct foreign policy. [n25]
This [*95] void is puzzling given that one clear purpose of the Constitution was to overcome the slow, fractured, and limp foreign policy power previously vested in Congress by the Articles of Confederation.

Court Aff Fails

Court war powers decisions just strengthen the government's hand over war powers without changing policy

Scheppele 12 (Kim Lane Scheppele, Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University, "The New Judicial Deference," Boston University Law Review, Volume 92 Number 1, January 2012, http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SCHEPPELE.pdf)

As we have seen, courts have slapped the government on the wrist and forced it to readjust its policies at the margins. But courts have not required the release of detainees, the immediate provision of evidence against them, or absolutely normal tribunals. It is much easier for governments to comply with court decisions when those court decisions do not in fact second-guess concrete decisions of the government to detain specific individuals in a crisis. In fact, **court decisions that issue a lot of smoke and noise but do little to require immediate action may appear to be upholding constitutional principles while in fact strengthening the hands of governments who can then rightly say that they are doing what the law requires.** After 9/11, then, courts have been willing to stand up to governments in times of crisis, using their substantial heft against the government's bulked-up war powers. Governments, in turn, have been willing to comply with court decisions because doing so has not really threatened the immediate actions they have already taken.

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International climate agreement and domestic ratification inevitable – the only risk of derailment is judicially enforced climate action

Borden 10-1 (Theresa, "A glboal solution to climate change: the possible impact of Bond v. United States," Harvard Environmental LAw Review, www3.law.harvard.edu/journals/elr/2013/10/01/bondvus/)

New legislation to deal with the global problem of climate change **may seem politically unrealistic** given the current inhospitable environment in Congress, but there are reasons to think that the prospect of reaching an international agreement may be **more viable now than it was in the past**. UN Secretary-General Ban Ki-Moon recently called for world leaders to meet in anticipation of the 2015 international climate meeting in Paris and the Intergovernmental Panel on Climate Change (IPCC) recently announced that humans are the dominant cause of global warming since the 1950s. Although climate change denial still exists in the U.S., **the international community generally accepts the science**. Interestingly, this could indicate that reaching an international agreement is easier than reaching a domestic agreement. Of course, Congressional action would still be necessary to ratify any treaty, but if the enumerated shortcomings of the Kyoto Protocol are addressed in the 2015 negotiations**, domestic action may be facilitated, especially if the President stands behind the agreement.**¶ But even if the legislature and the executive get behind an international climate change agreement, there is still the judiciary. The Supreme Court recently granted cert for Bond v. U.S., which challenges Congressional authority to enact a federal statute enforcing the Chemical Weapons Convention on the grounds that it intrudes on areas of police power reserved to the states. The Court found that Ms. Bond lacks standing to bring a claim that applying the chemical weapons treaty to her violated the Tenth Amendment, thus avoiding revisiting Missouri v. Holland. However, the Court did certify one question that may have implications for international climate change agreements: "Do the Constitution's structural limits on federal authority impose any constraints on the scope of Congress' authority to enact legislation to implement a valid treaty, at least in circumstances where the federal statute, as applied, goes far beyond the scope of the treaty, intrudes on traditional state prerogatives, and is concededly unnecessary to satisfy the government's treaty obligations?"¶ Although Bond may not have a direct effect on international climate change negotiations, it could provide some guidance on how to frame the scope of the treaty and the government's treaty obligations. If an international agreement is reached, the U.S. must promulgate implementing legislation that will pass not only the political process, but also judicial review — it is possible that climate change deniers will try to undermine any climate change agreement in court. Bond, along with EPA v. EME Homer City Generation,[1] will provide some insight into how the Court determines the scope of "traditional state prerogatives" and how such considerations play out in environmental regulation.¶ **Meaningful climate change regulation is inevitable**; the question is when it will come. Environmentalists must be aware of not only possible political solutions, **but also potential fallout of judicial determinations. If an international deal is brokered, it would be counterproductive to provide domestic dissenters with any fodder to challenge it.** Hopefully the Court will rule narrowly in Bond, and not make

any pronouncements that would confuse settled federal authority to regulate interstate pollution. Even if it would be preposterous for domestic dissenters to challenge federal authority on such grounds, the commerce clause challenge to the Affordable Care Act — which many commentators dismissed as irrelevant — cautions against completely ignoring the possibility.

NSA data collection ruling reverses PQD – shifts doctrine towards evaluation of political questions

Rasmus 14

Daniel, Founder and Principal Analyst at Insights, member of the Pinchot University faculty academy, Opinion: Snowden Leak about App Data Collection Leads to Question: 'What? Me Worry?', 2/13, http://www.iphonelife.com/blog/28823/snowden-leak-about-app-data-collection-leads-question-what-me-worry

The NSA, is not interested in details until the details matter. They are interested in patterns, and those patterns do not include you grilling a steak, going to a movie, or attending a school play. The complex algorithms used to sort this information are finely turned to identify potential threats and only when a potential threat is identified, does anybody look into personal information of people related to that threat (and from what I know of investigations, many threat identifications reinforce existing suspicions rather than revealing new ones). And believe them or not, the NSA is not targeting U.S. nationals unless they have clear ties to activity originating outside of the United States, or activity that will threaten the U.S. directly, or its assets or citizens in other countries. There is simply too much activity and too few people in response roles to target information that does not directly relate to the mission of the intelligence agencies.∂ What those missions are, and how they are carried out, are political and well within the purview of U.S. citizens to help shape through political action and elections.∂ In Fact, You're Probably Irrelevant∂ From a technical perspective, however, it is very difficult to form patterns with data that is "preconsidered." In other words, if an analyst decides some data isn't relevant ahead of time, then they may miss something crucial. Marketing organizations regularly look at too little data when creating what they call "customer segmentations." From many studies I've seen, the "customer segments" , sovlh sector look more like caricatures than real people because they have very limited attributes and few correlations to data that reflect the complexity of a real customer.∂ So on one hand, you have companies like Amazon, who may look scarily accurate when suggesting music or books or toys. Amazon, however, would be much less accurate in helping you select draperies or diagnosing a lawn ailment, because its data about you has sharp edges that when asked the wrong question, result in irrelevancy. We also saw this with IBM's Watson when it won Jeopardy. It could answer trivia questions, but Watson couldn't hold a conversation about its background. The same is true of the NSA; although they admittedly have huge amounts of information, they only process that information using algorithms seeking specific types of activities that imply certain types of behaviors. They are not in the business of suggesting reading to you, so they wouldn't be profiling the reading habits of all Americans (though Amazon would do that). Amazon, on the other hand, isn't looking for bomb makers so they can't suggest the latest in bomb-making materials. If the NSA gets any data from Amazon, they are looking for patterns Amazon isn't looking for and again, only acting on that data as it relates to their mission.∂ So does the NSA need to know anything about your Angry Birds scores or activities? Absolutely not. Does it mine data from some third-party advertisers? Perhaps, as implied by Rovio Entertainment CEO Mikael Hed in his statement:∂ "Our fans' trust is the most important thing for us and we take privacy extremely seriously. We do not collaborate, collude, or share data with spy agencies anywhere in the world. As the alleged surveillance might be happening

through third party advertising networks, the most important conversation to be had is how to ensure user privacy is protected while preventing the negative impact on the whole advertising industry and the countless mobile apps that rely on ad networks."∂ So Just How Worried Should You Be?∂ Should U.S. citizens be concerned about domestic spying? Perhaps. But again, that is a political question that speaks to how individuals think about their privacy, and the balance between privacy and national and personal security. To worry that an agency like the NSA is using phone information to track individual Americans not connected to suspicious foreign-related activity stretches the imagination and the credibility to those who profess it.∂ There is a huge difference between collecting data for pattern recognition and spying. If the government was constantly deploying hordes of mysterious operatives into suburban neighborhoods to pick-up people suspected of doing untoward things, however they mysteriously define "untoward," then we should be concerned. People who lived in Nazi occupied Europe and under the former Soviet Union know what domestic spying looks like, and the U.S. government doesn't behave like either of those regimes. The collection of data is only a problem if the intent is to spy on people for things other than what the U.S. government has, since 9/11, been very open about: who it is spying on and what types of activities it is trying to prevent.∂ If U.S. citizens were living under an oppressive blanket of domestic spying would two states have legalized marijuana? Would same-sex marriage be legal in many states and nationally recognized? Would the Seahawks have won the Super Bowl? The bottom line, the NSA and other agencies are too busy with their limited resources to spy on Americans just because they want to (not to say that individuals won't occasionally act beyond the bounds of propriety or authority). Even if they NSA does have your data somewhere in the big secured government cloud, the odds that anyone of any importance knows that, or that you've shown up as an output to any pattern search, is extremely minuscule. ∂ The real issue underlying this is a lack of trust not in the current state of the U.S. democracy, but some future state in which people in power redirect the mission of those holding the data. For that to happen, a majority of Americans would have to condone the election and the government would have to systematically dismantle checks-and-balances and silence the press. That we continue to have this discussion in public, that we get more data regularly, is an indication that it would be very hard to pull off a major conspiracy in the United States that involved all citizens. Something will leak. **People will get incensed and policy will change**. That we elect people, and that elected officials know their power derives from them being elected, means they want to remain elected. That is powerful leverage for the average American, and good reason not to piss off citizens by spying on them. And even if the NSA isn't really spying, that a lot of people think they are spying is probably enough to eventually make them stop gathering data. All sides will claim a victory in that, even the terrorists whom the data collection was really trying to identify. This debate is not exposing weakness in America's democracy, but rather highlighting its unique ability to **openly debate policy** in a way that ultimately reflects the values of its citizens.

The plan makes war powers a justiciable issue – this case-specific exception causes a slippery slope that breaks the entire doctrine

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, "The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims," Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims automatically be justiciable?

It **contravenes** the purpose and articulation of the political question doctrine to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded "discriminating" **case-by-case inquiries**, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73∂ [*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, such an extension is proper because cases like American Electric Power would **push** existing nuisance law to embrace a complex, qualitatively unique phenomenon that cannot be prudentially adjudicated. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.∂ [Continues to Footnore]∂ n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential **doctrinal "slippery slope"** - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

Erosion of the PQD crushes international coordination that's necessary to solve climate change

Tribe 10 (Laurence H., the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, "TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE," http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf)

The second argument that underlies the Courts of Appeal's holdings that climate change nuisance lawsuits present questions suitable for judicial resolution is one that seeks to minimize the importance of those lawsuits. Employing the same logic that led the Motor Fuel court astray, the Second Circuit emphasized that "[a] decision by a single federal court concerning a common law of nuisance cause of action, brought by domestic plaintiffs against domestic companies for domestic conduct, does not establish a national or international emissions policy."43 In concluding that the plaintiffs' modest ambitions insulate the claim from the political question doctrine, the court got it backwards. It is precisely courts' inability to "establish a national or international emissions policy" that renders judicial relief such a **conceptual and methodological mismatch** with climate change, since it is litigation's **inability to grapple with climate change at a systemic level** that deprives courts of "judicially manageable standards" for adjudicating climate change claims. The fact that courts are incapable, as a matter of due process, of binding anyone other than the litigants before them—even if judges were omniscient climate experts imbued with the wisdom required to trade off incommensurable values and interests—

automatically makes them institutionally ill-suited to entertain lawsuits concerning problems this irreducibly global and interconnected in scope.

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, **America is at a crossroads regarding its energy policy**. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 **By securing a modicum of international consensus**—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a **groundbreaking congressional overhaul** of¶ American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45

Against this backdrop, courts would be wise to heed the conclusion of one report that what "makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—**stand at the precipice of major systemic climate reform**, if not in the coming year then in the coming decade. It would be **disastrous** for climate policy if, as at least one commentator has predicted,47 courts were to "**beat Congress to the punch**" and begin to concoct common law "solutions" to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators' attempts to design coherent and systematic market- based solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, "[a]n insufficient number of participants will doom an emissions trading market."49 There is no doubt that the "Copenhagen Accord only begins the battle" against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord's audacious vision into concrete reality.50 But whatever one's position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle. ¶ CONCLUSION ¶ Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the **standing doctrine** could theoretically **suffice to prevent some of the most audacious judicial sallies into the political thicket**, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of

legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine's bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

The risk is existential

Mazo 10 – PhD in Paleoclimatology from UCLA

(Jeffrey Mazo, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, "Climate Conflict: How global warming threatens security and what to do about it," pg. 122)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be catastrophic for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilisation." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.

2nc uq

The court never violates PQD in war powers cases

Devins 10 - Professor of Law at William and Mary

(Neal, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs)

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited

reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, **the Court has never risked its institutional capital** either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

2nc link

Not a Constitutional question—nature of executive surveillance means there is not legal guidance to follow and Congress needs to give the yes/no

Katyal and Caplan 8 – Paul and Patricia Saunders Professor of Law @ Georgetown

Neal, Richard, Class of 2007, Georgetown University Law Center, The Surprisingly Stronger Case for the Legality of the NSA Surveillance Program: The FDR Precedent, Stanford Law Review, Vol. 60, No. 4 (Feb., 2008), pp. 1023-1077

In virtually all national security disputes, there are few judicial precedents to follow for reasons well articulated by Justice Jackson in the opening lines of his famous Youngstown concurrence.278 For that reason, executive branch tradition is often a touchstone for finding the limits of presidential power. If Presidents have historically acted in a particular way-such as by putting troops on the ground without a declaration of war by Congress-that practice is often compelling precedent for the legality of such behavior by modern-day Presidents. In this sphere, the text of the Constitution offers **little guidance** and executive branch precedent can be the most authoritative guide. (As Jackson would put it in Youngstown, "the practical working of our Government" can inform the boundaries of executive power.279) For that reason, we believe the FDR precedent will offer much comfort to defenders of the NSA program. We ultimately reject the defense, but our reasons for doing so are obviously debatable. The fact remains that one of our greatest Presidents did something quite similar to what President Bush has done.∂ There are three basic reasons why we reject the FDR precedent defense of today's NSA program. None of these reasons is the one offered by Dellinger, Kris, and others who have established the "conventional wisdom" that FDR's activity was limited to presidential action within the zone of silence and did not defy Congress. After the 1934 Telecommunications Act and its interpretation in Nardone, that reading of history is too weak. Instead of trying to isolate facial differences and artificially elevate their importance, we would do better to admit the parallels and learn from them.∂ First, while executive precedent is always important, it attains the bulk of its force when it is open. Justice Frankfurter's Youngstown concurrence put the point well, that before executive precedent can become a "gloss" on Article II, it must be "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned."280 Therefore, the actions of a previous President, while a helpful guide, should not settle a controversy-particularly when those actions took place in secret. Those of us who are Unitary

Executivists derive much of our position from the fact that the President is publicly accountable for his actions. That visibility prompts better decisions.281 But secret activity cannot be imbued with that level of credibility since it takes place without that critical check of public accountability. For that reason, a secret precedent like FDR's, read properly, should inspire caution instead of blind allegiance. After all, the full details of this story are still being dug out of the archives decades later; it is hardly the type of precedent that the nation's political processes have blessed over a long period of time.∂ This is not the proper place to develop a full taxonomy of when executive branch precedent should be authoritative. But we think a few guidelines, at this juncture, can be offered. Some of the factors in determining whether an executive branch precedent should have force are: (a) whether it was done openly and was the subject of public debate; (b) whether it was approved-or at least not rejected-by the legislature at the time; (c) whether it was approved by other Presidents, legislatures, and analysts in subsequent time periods; and (d) whether it concerns a practice as to which the **Constitution does not offer a clear guide**. There are solid normative reasons for considering these factors, such as the democratic legitimacy inherent in open decisions by major government actors. There are also epistemic reasons as well, chief among them that executive branch precedent can often be a powerful mechanism for learning what efficacious Presidents have needed to do. Since courts, Congress, and analysts each lack full information-and since there is no consensus in values on the proper boundaries of executive power-the actions of previous Presidents can be quite revealing, particularly in understanding those areas of the Constitution where the text does not offer clear answers. For that reason, transparency cannot function as an absolute requirement before executive branch precedent has force. Some executive precedents might have weight even when they are secret. But their weight must necessarily be reduced tremendously, since a secret precedent is imbued primarily with epistemic benefits rather than ones of democratic legitimacy.∂ Second, the fact that a President-even a great one-acted in a certain way does not mean that future Presidents are justified in following his lead. FDR is perhaps the most cautionary tale of all. As every law student knows, FDR was the President who ordered the internment of tens of thousands of JapaneseAmericans in camps-individuals who had no suspicion of disloyalty apart from being Japanese-Americans. And FDR's track record with civil liberties was not limited to this episode. Rather, "Franklin Roosevelt displayed a consistent lack of leadership in the area of civil rights and liberties."282 It is a simple category mistake to assume that a President who possesses exquisite judgment in one arena carries that judgment over into other areas. That may sometimes be the case, but it is not inexorably so.∂ Third, as a matter of constitutional governance, it is exceptionally dangerous to vest a President with the power to break the laws, at least at a time when Congress can act. If the 1934 Act was such a problem, FDR should have dispatched his staff to Congress to explain why new legislation was needed to modify it. Instead, they pursed the Janus-faced strategy of seeking legislation in public and then secretly wiretapping anyway. In one sense, that decision not to put all their eggs in one basket was understandable; had the legislation failed then its failure could be seen as an implicit acknowledgment that Congress was against wiretapping (thereby complicating subsequent executive efforts to engage in the practice).283 But that is the wrong way to look at the situation. The right way is this: if legislation does not pass, that failure is a pretty good indicator that such action is contravening the nation's norms. If the President is unable to persuade Congress to authorize a measure he believes necessary to national security, there is likely to be good reason for that refusal.∂ After all, **national security is not like other spheres of law** where relevant interests are being drowned out in the political process, in contrast to laws that impact "discrete and insular minorities."284 If anything, national security is the flip-side of such spheres, for it is inherently subject to overrepresentation in the political

process as legislators posture themselves as tough. The idea that a President, even a magnificent one, can reinterpret a statute to favor security over liberty should give us pause. The proper course of action is for him to ask Congress to remedy the situation, and not for him to issue a secret memo with a strained legal interpretation to get around a statutory restriction.

Courts are avoiding political questions concerning war powers now – making surveillance a constitutional question allows exception

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(David, "Judicial Review Under a British War Powers Act," 43 Vand. J. Transnat'l L. 611)

Nevertheless, as American experience suggests and despite understandable concerns over the role of judicial process, a statutory reform of the war prerogative in the United Kingdom would not [624] necessarily lead to undue judicial involvement in matters of war. In applying statutory requirements (at least openly worded ones subject to varying interpretations, in contrast perhaps to procedurally detailed ones leaving less room for political maneuvering), British courts would have to assess whether a war powers dispute indeed infringed discernible fundamental rights or led to a constitutional impasse - and so threatened the rule of law - in which political means of resolution had reached deadlock, were inadequate, or for some other reasons ought to give way to legal processes. 50 The latter occasion would likely be very rare in practice, thus ameliorating the risks of judicial interference in matters of war. Despite their power of judicial review, American courts have shown **remarkable self-restraint** in war powers cases. 51 They have taken the expansive language of the Constitution and the possibilities of branch conflict not as an invitation or opportunity for judicial intervention but as a warning that the **political arena** is the best place for resolution of such disputes. 52 Even the War Powers Act of 1973, setting out specific guidelines for presidential use of force without congressional pre-authorization, has not provoked a judicial change in habits of review. 53 U.S. courts clearly favor political solutions and defer to the political branches, which can better balance efficiency and accountability concerns, especially where the initiation and conduct of armed conflict is at issue. 54 The courts will assert themselves only in those extraordinary war powers cases when the rule of law is at [625] stake, and adjudication of a war powers dispute becomes both desirable and necessary for defining and maintaining outer **constitutional boundaries** for political action. 55¶ American courts have consistently based this deferential posture on the "political question doctrine," discussed in the next Part of this Article, which sets out criteria of justiciability for determining whether a particular constitutional question is indeed an issue more suitable for political or judicial resolution. 56 In war powers cases, the doctrine has most usually compelled the former conclusion. 57 This doctrine requires that a judge consider how a war powers dispute implicates operational efficiency, democratic accountability, and rule of law values. 58 He or she must then assess the institutional competency of a court to adjudicate a solution in light of those values' relative weight and the competencies of the political branches. The doctrine gives preference to the political processes in military matters, **excepting** again **cases** in which a political branch attempts to invoke war powers to infringe fundamental rights (seen in President Bush's unilateral attempt to designate, try, and imprison so-called "enemy combatants" without due process of law 59) or **when there arises a** potentially **dangerous constitutional conflict** between the other two branches (as with Congress' opposition to President Nixon's military actions in Cambodia 60). At times, these individual liberty interests and separation of powers concerns will closely coincide

and [626] heighten justiciability, as they did when President Truman attempted the unilateral executive nationalization of the steel industry during the Korean War without any statutory authority to do so. 61 In "run-of-the-mill" executive-legislative disputes over the authority to commit the nation to war or manage military operations, however, courts will accordingly abstain from review. 62 The end result, at first glance, is that the American political question doctrine appears not so different in substance from the British doctrine of justiciability, which already applies not only to review of the executive's statutory powers but also to its prerogative decisions. 63 There is no reason why these justiciability concerns would not continue to apply to cases arising under any future British war powers act. A closer look at just how and why American courts shy away from involving themselves in war powers cases is thus a good starting point for re-thinking how British courts might, would, or should one day apply a war powers act.

link – s/o climate change

Narrowing the PQD directly results in more successful climate change litigation cases

Jaffe 11(Jill Jaffe represents public utilities and agencies that provide public utility services in proceedings before the California Public Utilities Commission, including rate-setting and rulemaking proceedings, "The Political Question Doctrine: An Update in Response to Climate Change Case Law," Social Science Research Network, February 6, papers.ssrn.com/sol3/papers.cfm?abstract_id=1756484)

The district court decisions in Comer and American Electric Power demonstrate a misapplication of the political question doctrine.228 Since lower courts must hear cases properly before them, there may be issues that lower courts have dismissed under the political question doctrine where ―the Supreme Court has the luxury of simply denying review.‖229 Lower courts might use the doctrine to avoid deciding politically charged, cumbersome, and novel cases, such as the climate change nuisance cases. But, **this would be less likely to occur if the purposes of the doctrine were enumerated by the Supreme Court and if the doctrine was narrowed in scope**.230 This much-needed clarification would provide courts with guideposts upon which to apply the doctrine. Furthermore, **by narrowing the doctrine, it would be clearly inapplicable to cases which previously may have been dismissed under the prudential formulations of the doctrine.**

Broad PQD application is key to preventing climate litigation

Jaffe 11(Jill Jaffe represents public utilities and agencies that provide public utility services in proceedings before the California Public Utilities Commission, including rate-setting and rulemaking proceedings, "The Political Question Doctrine: An Update in Response to Climate Change Case Law," Social Science Research Network, February 6, papers.ssrn.com/sol3/papers.cfm?abstract_id=1756484)

In the wake of the government‘s failure to enact legislation, various private parties and states have initiated ―climate change nuisance‖ litigation for harms incurred due to climate change.5 In particular, the plaintiffs in Comer v. Murphy Oil USA filed suit against defendant energy production companies alleging that the defendants‘ emissions of greenhouse gases contributed to climate change and the intensity of hurricane Katrina.6 The plaintiffs in Comer sought monetary

damages for their property loss caused by hurricane Katrina.7 In Connecticut v. American Electric Power, the plaintiffs filed suit against electric power corporations claiming that the defendants‘ greenhouse gas emissions were contributing to climate change, causing harm to the plaintiffs‘ natural ecology, residents, and property.8 The plaintiffs sought an injunction, which would place a cap on the defendants‘ greenhouse gas emissions.9 Unfortunately, these cases were dismissed at the district court level due to a flawed application of t**he political question doctrine.10**¶ These cases exemplify the scholarly debate and discontent surrounding the current formulation of the political question doctrine, which was established in Baker v. Carr.11 Some scholars contend that the doctrine should be a prudential, or precautionary, tool that permits courts to dismiss a case when a judicial decision may impede on the province of the representative branches. Others scholars argue that the doctrine simply describes traditional Constitutional interpretation.12 Regardless of disagreement about the scope and application of the political question doctrine, scholars agree that as it stands, the doctrine is less useful in application than its lofty purpose—assuring that courts are subject to the constitutional requirement of separation of powers—suggests. Scholars also generally agree that contentious and politically charged disputes involving novel legal theories do not necessarily implicate the political question doctrine. However, **due to the broad nature of the doctrine in its current form**, it has been erroneously applied to politically charged, but judiciable, issues. This problem is illustrated by the district court decisions in both Comer and American Electric Power.13

Climate change is a PQD issue

Tribe 10 (Laurence H., the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf)

At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A **perfect exemplar** of such problems is the nest of puzzles posed by human- induced **climate change**. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5

AT Thumper

Link is unique—courts always follow PQD on national security surveillance

Katyal and Caplan 8 – Paul and Patricia Saunders Professor of Law @ Georgetown

Neal, Richard, Class of 2007, Georgetown University Law Center, The Surprisingly Stronger Case for the Legality of the NSA Surveillance Program: The FDR Precedent, Stanford Law Review, Vol. 60, No. 4 (Feb., 2008), pp. 1023-1077

This Article explains why the legal case for the recently disclosed National Security Agency surveillance program turns out to be stronger than what the Administration has advanced. In defending its action, the Administration overlooked the details surrounding one of the most important periods of presidentially imposed surveillance in wartime-President Franklin Delano Roosevelt's (FDR) wiretapping and his secret end-run around both the wiretapping prohibition enacted by Congress and decisions of the United States Supreme Court. In our view, the argument does not quite carry the day, but it is a much heftier one than those that the Administration has put forth to date to justify its NSA program. The secret history, moreover, serves as a powerful new backdrop against which to view today's controversy.∂In general, we believe that compliance with executive branch precedent is a critical element in assessing the legality of a President's actions during a time of armed conflict. In the crucible of legal questions surrounding war and peace, few judicial precedents will provide concrete answers. Instead, courts will tend to invoke the political question doctrine or other prudential canons to stay silent; and even in those cases where they reach the merits, courts will generally follow a minimalist path.1 For these and otiier reasons, the ways in which past Presidents have acted will often be a more useful guide in assessing the legality of a particular program, as Presidents face pressures on security unimaginable to any other actor outside or inside government. At the same time as Presidents realize these pressures, they are under an oath to the Constitution, and so the ways in which they balance constitutional governance and security threats can and should inform practice today. As Justice Frankfurter put it in Youngstown:∂[A] systematic, unbroken, executive practice, long pursued to the knowledge of me Congress and never before questioned, engaged in by Presidents who have also sworn to uphold me Constitution, making as it were such exercise of power part of me structure of our government, may be treated as a gloss on 'executive Power' vested in me President by [Section] 1 of Art. II.2

AT Gay Marriage thumper

Gay marriage was a test of the constitution not a PQD

David S. **Cohen and** Leonore **Carpenter**. "Five Things to Pay Attention to in Tuesday's Gay Marriage Arguments at the Supreme Court." Slate, 28 Apr. 2015. Web. 29 June 20**15**

There are two basic arguments for marriage equality. The first is that denying same-sex couples the right to marry is unconstitutional because it treats same-sex couples differently than opposite-sex couples; in other words, that the denial violates principles of equality. The second argument is that denying same-sex couples the right to marry infringes on their ability to make personal decisions about important parts of their lives; in other words, that the denial violates principles of liberty. Throughout the history of same-sex marriage litigation, both arguments have consistently been raised by proponents of same-sex marriage, but the courts have been erratic in choosing

between them. Some lower courts have favored the equality framework and others have preferred the liberty analysis. Supreme Court rulings based on these arguments would have different implications. For instance, a strongly-worded opinion based on equality would affect other aspects of anti-discrimination law, making it harder for the government to justify treating LGBT people differently in public housing, schools, and government services.

AT Obamacare Thumper

Obamacare was decided not on the political question but on the legal interpretation

Michaelson 6/25

(Dr. Jay Michaelson, author of five books and over four hundred articles on religion, sexuality, law, and contemplative practice, 06.25.15, "How Conservatism Kept Obamacare Alive", http://www.thedailybeast.com/articles/2015/06/25/how-conservatism-kept-obamacare-alive.html)

By a 6-3 decision, the Supreme Court leaves the Affordable Care Act standing. But not because they like the law. Today, the Supreme Court voted not to kill Obamacare because of a typo. More precisely, it ruled, 6-3, that the Affordable Care Act wasn't meant to kill itself: that a seemingly innocuous phrase ("established by the state") should not lead to the implosion of the entire health care system, and thus should be read in context, rather than purely literalistically. Thus, while media coverage is already calling this a "victory for the Obama administration," it really is a victory for sensible statutory construction. Which is why the case was 6-3, and the opinion was written by Chief Justice Roberts. Moreover, while conservative and liberal court-watchers are both remarking about the Roberts Court's "liberalism" that read is, at best, incomplete. First, let's remember that in other courts, this case might never have even made it to the Supreme Court in the first place. It began as an enterprising attempt by an obscure conservative policy wonk to poke holes in Obamacare, and the phrase at issue was recently revealed to be a drafting error, cut and pasted from an earlier version. So, while some may see the Chief Justice's legacy as twice saving Obamacare, one could just as easily see it as twice saving the Supreme Court. Second, and more interestingly, the King v. Burwell opinion is what real judicial conservatism—as opposed to ideological, political conservatism—looks like. This case was not, let's remember, a referendum on Obamacare's merits. It was about a quirk in the literal text of the law. Could people receive tax subsidies if they bought their insurance only on a state-run exchange, or could they qualify if they bought their insurance on a federal exchange, as well? The former reading hews literally to that phrase: "established by the state." But it does so at the expense of the entire statute, since not extending the subsidies would most likely cause the whole system to enter a "death spiral." Long-established conservative canons of judicial interpretation hold that courts should read laws as if they're meant to work—not in ways that would render them useless. Moreover, as the Chief Justice painstakingly described, there are other provisions in the ACA that only make sense if all "qualified individuals" are included, not just those in state exchanges. And as for those four words? "The meaning of that phrase may not be as clear as it appears when read out of context," the Chief Justice wrote. So, on one hand, it's a literalistic reading of one phrase. On the other, it's resolving internal contradictions and enabling the law to function. It is not a judicial innovation to choose the latter. Indeed, it is common sense—and conservative legal theory. You'll notice that the last several paragraphs have said nothing about whether it's a good idea for the government to manipulate the health care system. That's a political question, not a judicial one. (Whether it is constitutional was resolved in the earlier Obamacare case, NFIB v. Sebelius.) The judicial question is how statutes are to be interpreted. In today's polarized political environment, liberals

and conservatives alike miss this point completely. The Court is seen as voting on Obamacare, voting on gay marriage, or—in today's other major case—voting on civil rights laws. Indeed, particularly when it comes to marriage, courts get criticized for "overruling the will of the people." That is completely wrongheaded, and indeed, anti-democratic. Of course courts overrule the will of the people when that will is unconstitutional. That's the whole point of judicial review. And of course courts are not casting votes on the merits of the laws they review. (That being said, Chief Justice Roberts did spend the first part of his opinion cataloguing the state precedents to the Affordable Care Act, as if to remind political conservatives that it was originally a Republican idea. Not casting a vote is not the same as being politically oblivious.) Notably, Justice Scalia's dissent—while typically angry, invective, and coarse, at one point calling the ACA "SCOTUScare"—did not make some political argument for why Obamacare is a bad idea. He found fault with the majority's theory of judicial interpretation, arguing that courts must not "repair" bad laws, but simply review them as written. That seems odd and myopic in this case—but it's still judicial reasoning. Certainly, one might question Justice Scalia's motives; he is literalistic when it suits him, expansive when it doesn't. Just look at Hobby Lobby for a case that massively extended the plain meaning of the statute, defining corporations as people. However, even if justices are politically motivated, they are at the very least bound to do the work of judicial interpretation—as Justice Scalia did here. Not so on Fox News—or, to a lesser extent, on MSNBC. In conservative and liberal pundit-land, these decisions are mere referenda of nine people in robes. In the legal academy, this cynical view is known as "positivism"—the idea that, underneath all the rationalization, courts are just judges exercising power. It is a marginal view, as it deserves to be. No. Just as, a few months ago, the Supreme Court expanded the social safety net for pregnant women for conservative judicial reasons, it has now left the ACA standing for the same reasons. This decision is only "liberal" in the best way: It is part of the functioning of a small-"l" liberal democracy, subordinating one's personal political opinions to an institution's role in civil society. For that reason, it is conservative in the best way, as well.

Impact – turns economy

Judicial climate action tanks the economy – also kills the chemical, transportation, and airline industries

Schwartz et al 12 (Victor, Phil and Christopher, * Victor E. Schwartz is chairman of the Public Policy Group in the Washington, D.C. office of the law firm Shook, Hardy & Bacon L.L.P. He coauthors the most widely-used torts casebook in the United States, PROSSER, WADE & SCHWARTZ'S TORTS (12th ed. 2010). He has served on the Advisory Committees of the American Law Institute's Restatement of the Law (Third) Torts: Products Liability, Apportionment of Liability, General Principles, Liability for Physical and Emotional Harm projects. Mr. Schwartz received his B.A. summa cum laude from Boston University and his J.D. magna cum laude from Columbia University. ** Phil Goldberg is an attorney in the Public Policy Group in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. He has served as an aide to several Democratic members of Congress. Mr. Goldberg received his B.A. cum laude from Tufts University and his J.D. from The George Washington University School of Law, where he was a member of the Order of the Coif. *** Christopher E. Appel is an associate in the Public Policy Group in the Washington, D.C. office of Shook Hardy & Bacon L.L.P. He received his B.S. from the University of Virginia's McIntire School of Commerce and his J.D. from Wake Forest University School of Law, DOES THE JUDICIARY HAVE THE TOOLS FOR ¶

REGULATING GREENHOUSE GAS ¶EMISSIONS?, Valparaiso Law Review, www.shb.com/attorneys/SchwartzVictor/RegulatingGHGEmissions.pdf)

Through the nuanced approach discussed above, Congress can also emphasize reforms that are mindful of the fact that costs associated with implementing new regulations are borne directly by energy consumers, businesses that rely on affordable energy to survive and compete, and energy sector workers. As indicated, any isolated decision on GHG emissions will undoubtedly increase the costs of generating electricity,205 curtail energy output,206 and cause energy producers to relocate operations outside of the reach of the new "regulations."207 Unlike courts, Congress can find ways to reach these goals without infringing on the primary benefits of inexpensive energy, **which has been a driving force in America's economic success** and led to a major increase in people's standard of living and life spans for more than a century and a half.208¶As advocates for the poor and elderly have expressed over the past few years, limiting GHG emissions too much too quickly, whether through litigation, legislation, or regulation, would disproportionately impact their constituents.209 Already, American households earning between $10,000 and $30,000 are estimated to allocate twenty-three percent of their 2011 after-tax income to energy—a level more than twice the national average and a sixty-five percent increase over the past ten years.210 The Affordable Power Alliance,211 an umbrella organization of several advocacy groups, issued a report in 2010 showing that potentialEPA regulations on GHG emissions could cause gasoline and residential electricity prices to increase by fifty percent and industry electricity and natural gas prices to go up by seventy-five percent by 2030.212 EPA can consider these impacts during its notice and comment rulemaking, but courts cannot. Nor can courts consider the impact of their "regulations" on government assistance programs, such as the Low Income Home Energy Assistance Program, which would need to be increased significantly if home-heating oil prices had to incorporate costs allegedly related to global climate change.213¶Should utilities not be able to generate sufficient electricity in compliance with a court order, the brown-outs in California from a decade ago can give a glimpse as to the impact an electricity shortage could have on communities.214 During the March 2001 eight hour rolling blackouts, the average electricity shutoff period was ninety minutes, which was projected to translate into twenty hours of outage per customer if the crisis were to continue over the summer.215 This projected impact included a $4.6 billion reduction in household income for Californians, a loss of nearly 136,000 jobs, and a $21.8 billion hit to the gross state output.216 Fortunately, that crisis was avoided, in part, by the ability of energy policymakers to make adjustments. Policymakers would likely be hamstrung, though, if the brown-outs—whether more or less drastic than those projected for the summer of 2001—were caused by judicially-imposed limits that companies had to meet or be subject to massive, additional liability.¶Any such cost increases or energy shortages would have **broad ripple effects**. This is why GHG emissions have been a focal point of both national and international policymakers. If American businesses, from manufacturers to service companies, had to adjust to more expensive, less available energy, then they would be significantly disadvantaged. Already, the recent rise in energy costs has taken its toll on American companies' ability to compete internationally. **Thechemical industry**, for example, was once dominated by American businesses. But, as the Commerce Department has found, energy cost increases "have eroded the U.S. chemicals industry's competitive position,"217 with the United States' trade balance for chemicals declining from $16.8 billion in net exports in 1997 to $218 million in net exports in 2006.218 "Chemical plants are closing in the United States, as companies move their facilities and dollars to countries where natural gas is cheaper, particularly to the Middle East where natural gas prices are a fraction of prices in the United States."219 Metal, pulp, and paper

industries have had similar experiences.220¶Other sectors would be deeply affected, regardless of international competition. Consider the energy sectors themselves, as the natural gas industry alone employs over 600,000 workers directly and helps create an estimated three million other American jobs.221 The **transportation industry** would also be hit hard. Rising energy costs have been a significant factor in the recent challenges facing the **airline industry**; and for taxi cab and truck drivers whose incomes are modest, energy costs constitute a significant part of their expenses. Here, judicially-mandated reductions in GHGs could **directly determine their economic viability.222**

AT EU Advantage

Squo Solves

EU Relations High Now

David **O'Sullivan JUNE** 11**, 2015** David O'Sullivan is the EU ambassador to the U.S.

http://www.neurope.eu/blog/5-questions-with-david-osullivan-the-eus-ambassador-to-the-u-s/

The depth and breadth of the EU-US relationship. I already had a sense of the enormous scope of our relationship – recognizing the many transatlantic ties that bind Europe and the US together. But one thing is knowing about it; another is finding yourself in the midst of it all and realizing just how much work goes on between us on a daily basis. Of course, our ongoing trade talks remain one of our top agenda items, along with the close EU-US cooperation on solving the problem of Iran's nuclear proliferation and our sanctions on Russia in response to their illegal annexation of Crimea and interference in Eastern Ukraine. As a matter of fact, you will be hard-pressed to find a foreign policy hotspot where we don't at least consult with each other and often times find ourselves working hand-in-hand in close cooperation. And then you can start to look at all the other issues where on one level or the other we work together on a daily basis across the Atlantic – this ranges from research, science and space exploration to cooperation on **cyber security, counterterrorism and democracy promotion**. And relating to this, it has also struck me to what extent Americans "get the EU." We just had our Europe Day Celebration here and I was reminded of how America has steadfastly supported this unique European project of ours from the very beginning. And that US support for the EU and Americans' understanding of the need for Europe to unite is still there.

SQUO solves US commitment to NATO

Phil **Stewart 6/23** Phil Stewart is a Pentagon Correspondent and writer for Reuters

http://www.reuters.com/article/2015/06/23/us-usa-europe-defense-idUSKBN0P315620150623

The United States will pre-position tanks, artillery and other military equipment in Eastern and Central Europe, U.S. Defense Secretary Ash Carter announced on Tuesday, moving to **reassure NATO allies** unnerved by Russian involvement in Ukraine. Carter, during a trip to Tallinn, said the Baltic states — Estonia, Lithuania, Latvia — as well as Bulgaria, Romania and Poland agreed to host elements of this heavy equipment. Some of the equipment would also be located in Germany. The U.S. decision to stage heavy equipment closer to Russia's borders aims to speed deployment of rotating U.S. forces as NATO steps up exercises in Europe following Russia's annexation of Ukraine's Crimea region last year. Neighboring NATO countries, especially the former Soviet Baltic states with their Russian minorities, fear Russia could foment trouble on their territories. Moscow denies any such intention. Flanked by defense chiefs from the Baltic states, Carter quoted Obama during a visit to Estonia saying: "You lost your independence once before. With NATO, you will never lose it again." "That's because the United States and the rest of the NATO alliance are absolutely committed to defending the territorial integrity of Estonia, Latvia and Lithuania," Carter said. Under NATO's founding treaty, an attack on any member state

would constitute an attack on all parties. Russia accuses the West of violating post-Cold War arrangements by extending NATO to Russia's frontiers, something the West denies.

Estonian Defense Minister Sven Mikser welcomed the decision, on pre-positioning as did representatives from Latvia and Lithuania. Mikser said his nation was ready to host pre-positioned equipment and a rotational presence of U.S. forces. "We have reasons to believe that Russia views the Baltic region as one of NATO's most vulnerable areas, a place where NATO's resolve and commitment could be tested," Mikser said. The United States had not formally disclosed where in Europe the equipment would be stored before Tuesday but news reports about military planning triggered an angry response from Moscow ahead of Carter's trip to Europe this week. A Russian defense ministry official said stationing tanks and heavy weapons in NATO states on Russia's border would be the most aggressive U.S. act since the Cold War.

President Vladimir Putin, who denies any direct involvement in Ukraine and accuses the West of stirring tensions, announced Russia would add more than 40 intercontinental ballistic missiles to its nuclear arsenal this year. Carter has condemned Putin's return to what he considers Cold War-style rhetoric. A fact sheet provided by the U.S. military said the United States' pre-positioning would include about 250 tanks, Bradley infantry fighting vehicles and self-propelled howitzers. The amount of equipment that would be temporarily stored in each country would be enough to supply either a company, so enough for about 150 soldiers, or a battalion, or about 750 soldiers. Much of it is already in Europe, officials say. Carter said the equipment would move around as needed, to support exercises in Europe. U.S. officials say Ukraine has illustrated the importance of being able to counter "hybrid warfare", the blend of unidentified troops, propaganda and economic pressure that the West says Russia has used there. It also involves cyber warfare. Carter also announced plans on Tuesday to work with an Estonia-based NATO cyber center to help allies develop cyber defense strategies and critical infrastructure protection planning

Squo is solving U.S. German Relations

Elena **Berton 6/24** Elena is a journalist for USA Today.

http://www.usatoday.com/story/news/world/2015/06/24/france-wikileaks-hollande-reaction/29221613/

French officials may kick up a fuss publicly over allegations the United States spied on its leaders, but they are unlikely to take serious action against such eavesdropping. “These episodes highlight that dependency, highlight that powerlessness of the Europeans to really do anything more than reprimand the Americans," Jan Techau, director of Brussels-based Carnegie Europe, said Wednesday. "The Europeans rely on American security services to guarantee their security." Intelligence material from the U.S. is vital to European countries at a time when Islamic terrorism is on the rise in North Africa and the Middle East, and Russia is increasingly bellicose in Ukraine and Eastern Europe. WikiLeaks on Tuesday released documents claiming the National Security Agency in the U.S. spied on French President Francois Hollande and his two predecessors, Nicolas Sarkozy and Jacques Chirac. Obama to Hollande: You're not a spy target Michele Alliot-Marie, a former defense and foreign affairs minister under Sarkozy and Chirac, said on French TV that officials had long known the U.S. had the technical means to snoop into their conversations. "We are not naive," she said. Eric Denécé, director of the French Centre for Intelligence Studies, said the outcome from the current WikiLeaks scandal in France would likely

play out like the one in Germany. Denécé said he expected little more than angry comments from French politicians. Two years ago, NSA whistleblower Edward Snowden revealed the U.S. allegedly listened to German Chancellor Angela Merkel's cellphone calls. The disclosure led to a tense conversation between Merkel and President Obama, who denied the claims. WikiLeaks: U.S. wiretapped French presidents German prosecutors opened a probe into the allegations but dropped that investigation this month, saying it couldn't produce enough evidence to bring the case to court. "Even if Barack Obama tells Hollande, 'My dear friend, I won't listen to your calls,' we don't have any means to know it for sure," Denécé said. "If French and European top officials wanted to act, they would take far stronger positions against the U.S." But the latest WikiLeaks' release could also cause problems for German-French relations as Europe faces the possibility of a Greek exit from the eurozone. According to WikiLeaks, Hollande expressed disappointment over his recent talks with Merkel over Greece and sought to bypass her with secret meetings with minority members of her governing coalition. German government spokesman Steffen Seibert would not comment directly on Hollande's exchanges with Merkel, except to say the two leaders had not yet discussed the matter. Techau said Hollande's comments would probably not do serious damage to France's relations with Germany, unless "it turns out that German intelligence was helpful or somewhat helpful or reluctantly helpful with their American counterparts to spy on the French. That could have bigger ramifications."

Resilient

Relations resilient- spying didn't collapse them

Brown and Karnitschnig '15 [CARRIE BUDOFF BROWN AND MATTHEW KARNITSCHNIG, 6/7/15, Politico, Obama and Merkel make nice, http://www.politico.eu/article/obama-merkel-g7-alliance/]

President Barack Obama, sharing a breakfast of beer and pretzels with Chancellor Angela Merkel, declared the US-German relationship as "one of the strongest alliances the world has ever known."

By traveling here with Merkel and spending time with local Germans, Obama sought to put an end to almost two years of frosty public relations following a string of spying revelations. The visit capped an intensive effort by the two leaders to repair a relationship that grew tense after the disclosure that Washington had tapped the German chancellor's mobile phone.

"My message to the German people is simple: we are grateful for your friendship, for your leadership, we stand together as inseparable allies in Europe and around the world," Obama told a crowd of several thousand gathered in this small Bavarian village ahead of the G7 summit.

Much of the discord seemed to have been forgotten, at least on this bright sunny morning in the Bavarian Alps.

"Although it is true we sometimes we have differences of opinion from time to time, still the United States of America is our friend, our partner and indeed an essential partner with whom we cooperate closely," Merkel said. "We cooperate closely because **this is in our mutual interest**.

We cooperate because we need it. We cooperate because we want it, because we share this responsibility together.

EU-US relations resilant; no chance of breakdown

Xinhua 6/25/15. "What's after WikiLeaks Revelations of NSA Spying on Paris?" *CD*. China Daily, 25 June 2015. Web. 26 June 2015. Xinhua is the official press of the People's Republic of China(PRC)

Facing the National Assembly, **French** Prime **Minister** Manuel **Valls** **asked the U**nited **S**tates **to repair the damage that the tapping has caused. "The US must recognize** not only the **dangers** **such actions pose** to our liberties, but also do everything, **and quickly, to repair the damage it causes to the relations between allied countries and between France and the United States**," Valls said Wednesday. "**The reported spying creates a discomfort**, because there is a breach of trust. **But, it is absolutely important and vital for both countries to maintain their partnership, given that there are many sensitive issues** such as Ukraine, operations in Iraq **which** **remained** **unsolved**," Ulysse Gosset, journalist specialized in foreign politics told news channel BFMTV. To Edwy Plenel, French political journalist and editor-in-chief of news website Mediapart, which reported WikiLeaks revelations, it is "a real problem of loyalty in international relations between allies". French Foreign Minister Laurent Fabius summoned US ambassador Jane Hartley for an explanation on "Espionage Elysee" of WikiLeaks. Urging a strong answer to United States' spying on Paris, critics from the right and left wing parties called for retaliation. But, according to the ruling Socialists, a diplomatic spat is not in the air. "**In the face of threats that we face and given the historic ties linking us, we have to keep a perspective. We're not going to break diplomatic ties**," said Stephane Le Foll, the government's spokesman after a weekly cabinet meeting. Following the allegations of US spying on French interests, which had emerged for the second time in two years, Le Foll announced a senior French intelligence official would be dispatched to the United States "to verify this spying has finished." "Between allies, this is unacceptable and incomprehensible. France does not spy on its allies," he stressed. A statement from the US National Security Council said it was not targeting and would not target Hollande's communications, but did confirm that spying had taken place in the past. However, after a phone discussion between French president Francois Hollande and his American counterpart Barack Obama, Elysee seemed much calmer but hazy. "President **Obama reiterated unequivocally his firm commitment to end the practices that were allowed to happen in the past and that were unacceptable among allies**," said the statement of the Elysee, without clarifying France's reaction after the phone discussion. **But "the French intelligence officials will travel soon to Washington to deepen** the **cooperation**", according to the statement.

US-EU relations resilient, they need the military power

Ben **Knight** 13/09/**2010** Ben knight is a journalist for the Guardian and Deutsche Welle

http://www.dw.com/en/tension-in-us-eu-relations-is-real-but-not-new-experts-say/a-5988928

It's no secret that transatlantic relations have been slightly chilly in the two years of Obama's presidency. The US president ruffled feathers in Europe last May by backing out of a European summit in Madrid, and European diplomats have complained that under the Obama administration transatlantic issues have sometimes taken a backseat to US-Pacific region affairs. Henning Riecke, program director at the German Council on Foreign Relations (DGAP), argues that Obama's interest in Europe was always there, but has waned for different reasons. "In the first year of his presidency, Obama went over to Europe a few of times," he told Deutsche Welle. "It ended in a huge climax of travelling, when he went to NATO, to the London financial summit, as well as to Prague, to give his arms reduction speech. That was quite impressive. One could ask, why didn't he continue to do so? And I would argue that has something to do with his domestic agenda - the financial crisis, health reform, and so on."

But Riecke admits that the move away from Europe is part of a long-term trend. "The Americans look at partners with regard to the capabilities they have," he said. "The EU is a strong partner

economically, but when it comes to political questions - like Iran, coping with Russia, even the financial crisis, it was not easy to come to terms with the EU." But that does not necessarily mean that the US has spurned Europe. "Is this a move away from Europe and a move to new partners?" Riecke asks. "I wouldn't say so. It is clear that the partnerships with China and India are important for the US, but when it comes to doing things together - for instance in Afghanistan, the Europeans are still the first-choice partners." American soldiers in Afghanistan Europe is still the partner of choice for US military missions Perhaps it is the EU itself - as a diplomatic body - that has most hampered transatlantic relations. The EU's attempts to present itself as a unified bloc in its foreign relations are occasionally appear rather painstaking. Perhaps the US is simply tired of waiting while Europe tries to herd its diverse member states into a single strategy. Ulrike Guerot, senior research fellow at the European Council on Foreign Relations, suggests that the problem is much older and deeper than Obama's tenure. "It's only been since 1989 or 1990 that the EU has tried to professionalize, or even 'Europeanize' its foreign and security policy," she told Deutsche Welle. "Since then there has always been this effort to be taken seriously by the US. The problem is that it never managed to, and then came the Iraq war, which completely split the EU apart." In Bush's second administration, which began in 2004, the US did make clear efforts to recognize the EU as a serious player. But even then, the enduring tensions between NATO and the EU over security policy never failed to surface when actual issues arose. "Whenever the EU tried to establish its security policy, fears kept arising that it was trying to rival NATO and the US," said Guerot. Another problem is far more practical. "The EU does want to be more independent from the US in its foreign policy," said Guerot. "But it always comes up against the problem that it doesn't have the military capability to do so. That became clear in Bosnia. Whenever some kind of military intervention is needed, it can't be done without the US." This leads to persistent tensions within the EU about what should and shouldn't be done with US cooperation. The US, for its part, is also consistently in its own quandary about the EU. "On the one hand the US is always very anxious when the Europeans want to do something on their own," Guerot said. "But on the other it wants the EU to develop more independence, because the US simply doesn't want to worry about places like the Balkans and Georgia anymore." This, Guerot says, has been the central problem of US-EU relations ever since 1990, a year that marked the beginning of the decline of NATO and the start of the EU's constant struggle to assert itself. Seen from this perspective, whether Obama skips the odd EU summit or snubs a dinner party at Nicolas Sarkozy's presidential villa once in a while will not greatly affect the underlying tensions.

AT Germany Examples

Germany spies with us – no fallout from NSA tapping German phones

Eddy 4/30 (Eddy, Melissa. "Germany Is Accused of Helping N.S.A. Spy on European Allies." *The New York Times*. The New York Times, 30 Apr. 2015. Web. 24 June 2015. http://www.nytimes.com/2015/05/01/world/europe/germany-is-accused-of-helping-nsa-spy-on-european-allies.html) ʕ ⌒•ᴥ•ʔ⌒♥eve

BERLIN — Chancellor Angela Merkel's government is fending off allegations that the German secret service helped the United States to spy on European partners and companies, nearly a year after Ms. Merkel expelled the top American spy in a rare display of anger over revelations of widespread United States intelligence operations in Germany. Over the past week, the German news media has reported that the country's foreign intelligence agency, known by its German

initials, B.N.D., gathered information on European companies at the behest of the United States National Security Agency for years, citing confidential documents and government experts. The aviation giant Airbus said Thursday that it had filed a legal complaint against unknown persons over acts of criminal espionage and was seeking information from the German government in the wake of the reports. On Monday, the newspaper Bild named the aviation company as a target of the American agency. Continue reading the main story RELATED COVERAGE Obama Acknowledges Damage From NSA Eavesdropping on MerkelFEB. 9, 2015 Obama Sends Aide to Soothe German AlliesJULY 22, 2014 In Rome in March, people waved at the motorcade as President Obama went to meet Pope Francis at the Vatican.A Survey Says: Eavesdropping Hasn't Harmed Image of U.S.JULY 21, 2014 Germany Investigates Alleged NSA Merkel Phone TapJUNE 4, 2014 "We are aware that as a major player in this industry we are a target for intelligence activities. In this particular case there appears to be a reasonable suspicion of alleged industrial espionage," Airbus said in an emailed statement. "We are alarmed by this." Germans hold privacy in high regard, given their history of police states under the Nazis and, in the old East Germany, the Communist Party. In 2013, the country displayed a collective outrage over revelations that American intelligence agencies had been monitoring Ms. Merkel's cellphone conversations and German telecommunications. The German news media *have further said* that the **Merkel government knew of cooperation between the B.N.D. and the American spy services**, but withheld that information from a parliamentary committee assigned to investigate the affair. The chancellor says her office, which oversees B.N.D. operations, has cooperated fully with the lawmakers' inquiry, but one of her strongest allies, Thomas de Maizière, who was Ms. Merkel's chief of staff from 2005 to 2009, is facing allegations that he lied to Parliament about cooperation with American intelligence agencies. "I strongly reject allegations the government did not tell the truth," Steffen Seibert, Ms. Merkel's spokesman said Wednesday. Mr. Maizière, now the interior minister, has consistently denied misleading Parliament.

non-UQ -- Merkel and US have made up, no more in-fighting – our ev postdates

Davis, New York Times, 6/7 **Julie Hirschfield Davis, June 7th, 2015, "Over Beer, Obama and Merkel Mend Ties and Double Down on Russia"** http://www.nytimes.com/2015/06/08/world/europe/on-sidelines-of-g-7-meeting-obama-and-merkel-strengthen-ties.html?_r=0 PJL~KKF

KRÜN, Germany — President Obama sought to smooth over tensions with a crucial ally, bonding on Sunday with Chancellor Angela Merkel of Germany over beer, sausages and **their shared determination to confront Russia over its aggression in Ukraine**, as he declared her a "great friend and partner" during a summit meeting of world leaders Greeting Ms. Merkel with an embrace and kisses on both cheeks near Krün's picturesque town square at the foot of the Alps, Mr. Obama emphasized the ties that connect Germans and Americans despite a troubled history. **"The fact that all of us are here together today is proof that conflicts can end, and great progress is possible,"** Mr. Obama told about 800 townspeople, many of whom were wearing traditional dress. "We stand together as inseparable allies, in Europe and around the world." The meeting came at the start of the Group of 7 conference Ms. Merkel is hosting at a castle and luxury resort, where the leaders of seven major industrialized nations are meeting to discuss the global economy, climate change, terrorism and as Mr. Obama said, "standing up to Russian aggression in Ukraine." He and Ms. Merkel agreed that economic sanctions on Russia for its actions in Ukraine should not be lifted until a cease-fire accord there had been fully carried out and Moscow respected Ukraine's sovereignty. The White House intensified its criticism of President Vladimir V. Putin of Russia as Mr. Obama pressed for a firm commitment from Europe during the two-day gathering to preserve the sanctions, along with a broader statement of resolve to punish Russia for any further escalations in Ukraine. Russian-backed separatists have been clashing violently with Ukrainian forces and massing heavy weaponry near the border, prompting the White House to say that the cease-fire had been violated. The escalation apparently extended offshore on Sunday into the Sea of Azov, where a Ukrainian coast guard speedboat exploded after striking a mine near the port of Mariupol. With the European Union facing a vote this month on whether to continue the sanctions, Mr. Obama has made stiffening resolve on the issue an objective. "We think that there can be a peaceful, diplomatic resolution to this problem, but it's going to require that Europe, the United States and the trans-Atlantic partnership, as well as the world, stay vigilant and stay focused on the importance of upholding the principles of territorial integrity and sovereignty," Mr. Obama said during a meeting with the British prime minister, David Cameron. The meetings unfolded after a period of strain between Mr. Obama and Ms. Merkel. Though the two have an unusually close rapport and strong working relationship, their bond has been tested by complicated intelligence ties that have proved to be a political vulnerability for the chancellor. Those strains did not prevent her from inviting Mr. Obama to tour a historic village here before the summit meeting opened, a carefully choreographed event **showcasing their friendship**. "Although it is true we sometimes have differences of opinion today from time to time," Ms. **Merkel said, "the United**

States of America is our friend, our partner and, indeed, an essential partner." Ms. Merkel is facing harsh criticism here that she is doing the bidding of the National Security Agency, after allegations surfaced in April that Germany's foreign intelligence service was monitoring European companies and perhaps individuals at the American intelligence agency's behest. The uproar is not the first time spying has become a bone of contention between Mr. Obama and Ms. Merkel. In 2013, documents released by Edward J. Snowden, the former N.S.A. contractor, suggested that the agency had tapped Ms. Merkel's personal cellphone for a decade. That practice, once revealed, was halted by the president. And last summer, tensions grew when Ms. Merkel's government expelled the C.I.A. station chief in Germany after Berlin said it found evidence of American spies recruiting at least one German official. The N.S.A. surveillance issues have "obviously cast a very dark shadow on their personal relationship," said Julianne Smith, a former deputy national security adviser to Vice President Joseph R. Biden Jr. and now director of the Strategy and Statecraft Program at the Center for a New American Security in Washington. But there is little doubt that Mr. Obama, who tends to prioritize strategy and shared interests over personality in his relationships with world leaders, needs Ms. Merkel, and that she needs him. Ms. Merkel has been important in rallying Europe to stay united against Russia's interference in Ukraine, even as the economic sanctions designed to pressure Mr. Putin have placed political strain on her and many of her counterparts. "The commitment required by our European partners to implement and maintain these sanctions is significant," said Josh Earnest, the White House press secretary. "They have economies that are more integrated with Russia than the United States has, and so we recognize that many of the countries that we're counting on to continue to enforce these sanctions are countries who do so at some sacrifice to their own economy." The White House said Mr. Obama and Ms. Merkel also discussed their shared support for a major trans-Atlantic trade deal; the prospect of teaming up to reach an agreement on climate change by reducing global greenhouse gas emissions and countering the Sunni militant group the Islamic State. "These are the priorities in our relationship," Mr. Earnest said. During Mr. Obama's nearly 45-minute meeting with Ms. Merkel on Sunday, neither raised the issue of N.S.A. surveillance, Mr. Earnest said, while more than half of the session was taken up with talk of Russia and Ukraine. "They realize that they continue to share a common agenda on Russia, on a number of fronts," Ms. Smith said. The president "continues to reach out to her," she said, adding, "I think they still trust each other." At the same time, a year after the seven world powers banded together to kick Russia out of their group, the White House seemed determined to use the gathering to portray Mr. Putin as an international pariah. "Russia has essentially thumbed their nose at the commitments that they made" in a cease-fire agreement with Ukraine, Mr. Earnest said, indicating that Moscow was supplying, leading, training and otherwise backing separatists in Ukraine. "Russia's failure to live up to those commitments is what leads to their increasing isolation and the increasing costs being imposed on their economy." Any disputes seemed remote on Sunday as Mr. Obama and Ms. Merkel sampled local food and strolled through town greeting men wearing lederhosen and women in dirndls. The president halfheartedly asked Ms. Merkel if the meetings, which are being held at a resort nearby, could instead take place in the small alpine town's center, over beer. "It was a very fine beer," Mr. Obama said on his way out of the village. "I wish I was staying."

Non-UQ – Merkel has ended investigation against US NSA spying, forgiven Obama

World Bulletin 6/12 **June 6th, 2015, "Germany drops US spying probe over G7 friendship"** http://www.worldbulletin.net/news/160586/germany-drops-us-spying-probe-over-g7-friendship PJL~KKF

Germany's top public prosecutor closed a year-long investigation into the suspected tapping of Chancellor Angela Merkel's cell phone by U.S. spies, saying there was a lack of evidence that would stand up in court. Dropping its probe in a case that had caused strains between Germany and the United States, the prosecutor said it could not find evidence backing allegations from former National Security Agency contractor Edward Snowden that Merkel's phone was bugged. "The accusations made would not stand up in court with the means available for criminal proceedings," the federal prosecutors office in Karlsruhe said in a statement. "The vague remarks from U.S. officials about U.S. intelligence surveillance of the chancellor's cell phone - i.e. 'not any more' - are insufficient evidence". Merkel's spokesman Steffen Seibert declined to comment on the prosecutor dropping the probe. "The federal prosecutor has made his decision," he said. "Such a decision should not be commented on by the government." Federal Prosecutor Harald Range had launched the probe last June, saying there was preliminary evidence to show U.S. intelligence had tapped the phone. But he said at the time there was not enough clarity to bring charges. "The document presented in public as proof of an actual tapping of the mobile phone is not an authentic surveillance order by the NSA," he said in December. "It does not come from the NSA database. There is no proof at the moment which could lead to charges that Chancellor Merkel's phone connection data was collected or her calls tapped." Range also said neither a reporter for German news magazine Der Spiegel who presented the document, nor Germany's BND foreign intelligence agency, nor Snowden had provided further details to his office.

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NSA Spying doesn't collapse relations with Europe – Hypocrisy, Expected, Cooperation beneficial, Ukraine

EUCE '14

(European Union Center of Excellence – University of North Carolina, "The NSA Leaks and Transatlantic Relations," http://europe.unc.edu/wp-content/uploads/2014/07/Brief_1407.pdf SM)

Internationally, Snowden's leaks dealt a heavy blow to the US, significantly damaging relations with many countries, such as Brazil. International opinion weighted in heavily against the indiscriminate spying apparently being carried out by the NSA, and in December 2013 the UN General Assembly approved a resolution on the 'Right to privacy in the digital age'. **The fact that the leaks did not lead to a real fallout between the US and Europe is testimony to the strength of transatlantic bonds.** Negotiations over the TTIP began despite the European Parliament's calls for them not to; data sharing was not suspended, and Europe did not grant Snowden asylum. During his state visit to the US in February 2014, Hollande strove to emphasize the importance of bilateral relations, and concerning the NSA revelations he stated: '**Mutual trust has been restored'**.13 Merkel also sought to ease the tension caused by the NSA affair, despite growing sympathy for Snowden in Germany. In other European states, such as Poland and Estonia, there was only limited fallout in the first place, seeing as relations with the US were always prioritized. It is hard to find any evidence that co-operation thus far has been meaningfully affected: it continues on a daily basis on issues such as terrorism and organized crime, but also and in broader terms on issues of international diplomacy such as Ukraine, Syria and Iran. More broadly, the EU and US continue to promote good governance and the rule of law, seeking to

enhance the structures of global governance and to promote a rules-based global order. Despite this, it may be argued that a significant rift has opened between the US and the European Parliament. From the first days of the leaks the Parliament took a strong stance, calling for suspension of agreements with the US in various areas. Later on, it invited Snowden to present evidence on the NSA program, and the session was eventually held via video link in December 2013, despite attempts by some Conservative MEPs to prevent this. In March 2014, it passed a resolution to suspend a series of data sharing agreements with the US. 14 The European Parliament's resolutions are not legally binding, but its favorable vote will be necessary to approve the TTIP agreement. While the parliament is unlikely to reject an agreement that otherwise has full European backing, its critical stance could prove to be an obstacle to ratification, as shown by the resolution adopted in March. Four sets of factors explain why the revelations only caused limited fallout. Firstly, and as noted earlier, European grievances over the NSA's bulk data collection were somewhat hypocritical: indeed it quickly became apparent from the leaks that many European intelligence agencies were also involved in large-scale data mining. Moreover, many European intelligence agencies, including Germany's and France's, were involved in more or less extensive co-operation with the NSA itself. Mass data gathering may have shocked the European and American public, but for European governments it was less surprising. This explains why the first wave of revelations passed without causing significant tension between European capitals and Washington. Secondly, while the second and third waves of leaks were far more damaging than the first in diplomatic terms, they were not completely unexpected. In fact, although shocking, it did not in retrospect seem too surprising that states would spy on each other to better understand their intentions and predict their behavior. Thirdly, European capitals' room for maneuver was relatively limited: blocking co-operation with the US on counterterrorism issues would have been a symbolic but ultimately self-defeating step. The same is true for halting the negotiations on the TTIP. In fact, it has been estimated that an ambitious agreement could boost the EU economy by 120 billion euros a year, equivalent to about 500 euros per household.15 The EU simply cannot afford to lose the opportunity to make economic gains of such importance at a time when Europe's economy is ailing. European room for maneuver was also limited by internal divisions: the leaks had revealed that the British intelligence community (and GCHQ in particular) was practically working as part of the NSA and had been carrying out extensive surveillance operations on European partners. The British position, along with the unwillingness of many states in Eastern Europe to challenge the US, meant that a common European stance was difficult. Moreover, even if Europeans had decided to take self-defeating steps to symbolically condemn US actions, **there was no reason to believe American spying would have been curtailed** or terminated. The final factor in smoothing the European reaction and easing tensions was the start of the Ukrainian crisis in February/March 2014. The crisis was a sign of growing instability in Europe's neighborhood, and a reminder of the US's enduring importance in European security. From the start of the crisis, the EU and US have striven to emphasize transatlantic unity in view of an external challenge, and therefore tried de-emphasize the fallout

from the NSA affair.

Relations good now

U.S.-EU relations remain high- NSA spying had no affect

Mix 15 (Derek, 2-3, "The United States and Europe: Current Issues", Congressional Research Service, https://www.fas.org/sgp/crs/row/RS22163.pdf)

Other analysts argue that the purported U.S. surveillance operations remain a point of friction but∂ that tensions have proven manageable and do not pose a sustained threat to the overall∂ transatlantic relationship. Those holding this view contend that much of the outrage expressed by∂ European leaders has been for domestic public consumption. They also note that while senior∂ European officials may not have been familiar with the details of U.S. surveillance activities,∂ many were well aware that their own security services conduct various surveillance operations∂ and often work closely with U.S. intelligence services to help prevent terrorist attacks and other∂ serious crimes in Europe. In addition, especially given the potential threat posed by the Islamic∂ State and returning foreign fighters, officials indicate that **cooperation between U.S. and∂ European intelligence and security services has continued uninterrupted despite any loss of trust**∂ at the political level.

AT Relations Impacts

EU collapse inevitable- Franco-German collapse proves

Johnson 13 (Paul, 6-23, "United Europe- bad idea?", Forbes, http://www.forbes.com/sites/currentevents/2013/06/05/united-europe-bad-idea/)

The consensus is that the EU leadership's countless meetings on the issue have actually made matters worse. This is partly because of the characters of those involved. The French president, Francois Hollande, and the German chancellor, Angela Merkel, don't get along. Hollande is overwhelmed by his own internal problems, particularly the evidence of corruption and rule-breaking by members of his government. Merkel is disgusted by the way Hollande runs his affairs and can barely hold her temper when they meet. Hollande's failure has stiffened Merkel's resolve to stick to her formula of spending cuts and austerity, which, she insists, is the only way to eliminate the EU's enormous deficits.∂ The result has been a breakdown in Franco-German friendship, accompanied by acrimony and mud-slinging. **This is a very serious matter, for the Franco-German axis is the essential mechanism that allows the EU to work.** Unless it functions smoothly the Union is bound, sooner or later, to **dissolve**.∂ There isn't much chance of other members bringing the French and Germans together. Spain is crippled by its floundering economy. Italy has only recently managed to form a co alition ministry and is in no position to take its eyes off its own domestic woes. The smaller states, led by Greece, are bitterly anti-German and blame Merkel for all the sacrifices their previous profligacy is now forcing them to make.∂ The Germans themselves believe that if Germany were on its own and didn't have to bail out bankrupt states like Ireland, Portugal and Greece the banking crisis would be history by now– a pretty universal view among business leaders. Disillusionment among disgruntled voters is seen in the emergence of new and often extreme political parties, which are invading the cozy consensus that has hitherto kept countries loyal to rule by Brussels. Hence, no British leader can afford to be seen as being in favor of the EU as a working system. The Liberal Democrats remain keen but are in real danger of being wiped out at the next elections. The Labour Party, in order to solve its own disagreements, is quite capable of turning on the EU. And the Conservatives are mortally threatened by the U.K. Independence Party, which is ferociously anti-EU.∂ U.S. policy ought to take note of the general air of hostility toward Brussels. Mr. Obama faces the prospect of

Britain leaving the EU and of France, Germany, Italy and Spain all weakening their links. This will have little effect on American prosperity, but it is a return to realism that Washington should welcome, if quietly. The United States is a concept that works very well, even in bad times. But that's no reason to think its structure can be superimposed with success on any other part of the world, particularly when times are terrible.

Eurozone crushes all other foreign policy issues- no other focus possible

Popescu 11 (Nicu, Nicu Popescu, was senior research fellow at ECFR from 2007 to 2011, "how the Eurozone crisis affects EU power", European Council on Foreign Relations, http://www.ecfr.eu/article/commentary_how_the_eurozone_crisis_affects_eu_power)

It is clear that the euro crisis has had and will have huge implications for EU foreign policy. A lot depends on what happens in the next months – the solution to the Greek or Italian problems, the contours of a multi-speed Europe and how messy a solution or non-solution to the euro crisis will be. Things can get worse, or they can get better. But it is already possible to take a snapshot of the foreign policy implications of the Eurozone crisis. The picture contains a push to the background of all foreign policy issues, followed by fewer foreign policy resources and a coma for EU soft power, made worse by the fact that the EU understanding of power is so unhedged. ∂1) Less time for foreign policy ∂When your house is burning, this is a bad time to be chatting or engaging neighbours. When political leaders and administrations are engaged full time in managing the economy – saving the euro, reducing public spending or stemming the tide of unemployment, **foreign policy is pushed even more to the bottom of the list of priorities.** Leaders simply have less time and desire to understand or strategise about how to react to foreign policy events – be it Putin's return to the presidency, the latest turn in the political mess of Egypt, Tunisia or Ukraine. And foreign policy issues which sometimes need not just competent diplomatic management, but also high-level political drivers, is relegated to working level – where many issues cannot be solved. Foreign policy matters are then seen like issues that need to be put aside, postponed, thrown under the carpet and get out of the way until more urgent problems are solved.∂2) Less money ∂Foreign policy is costly. Some money need to be spent on military resources and other – on assistance. Both of these types of spending buy the EU various degrees of influence, power and diplomatic weight.∂The amount of EU spending for foreign policy is the result of a trade off between moral commitments (to help those in need of humanitarian assistance, post-colonial guilt), self-interest (stabilise countries, use political influence to promote economic interests, give aid to reduce emigration) and politicians' accountability to voters. With a growing pie – politicians and decision-makers could get a decent balance between these various imperatives. But with a shrinking pie, a more egoistic narrow-mindedly voter oriented behaviour is likely to come to the forefront. This will restrain EU member states' desire to spend money internationally. The increasing number of those affected by unemployment or salary cuts might suddenly become much less altruistic internationally and put increasing pressures on elites to spend money at home. At the end of the day foreign aid recipients don't vote and a generously funded foreign policy is likely to be increasingly seen as something of a luxury.∂All this is a huge problem for all great foreign policy powers, but especially for the EU, which in the absence of hard power has relied so much on economic power, conditionality and financial aid as its main foreign policy tools. On this the EU is like an investor with a shockingly undiversified portfolio of investments, to use Nick Witney's parallel.∂The EU takes a lot of pride in the fact that it is the biggest donor in the world. But even before the acute phase of the euro-crisis the political relevance of EU aid in the emerging world was undermined by alternative sources of funding for many of the emerging

countries –from China,Russia, or their own burgeoning economies. Now the EU not only has to compete for political influence with other aid donors which is debilitating in itself, but might also face the need to reduce foreign policy funding. This is EU's foreign policy double dip: the loss of relative influence compared to the other powers (due to their rise), supplemented now with loss of foreign policy resources not just in relative, but also absolute terms.∂ A side-effect of this problem also relates to market-access related conditionality. For decades the EU used access to the EU market as a carrot which is exchanged for all kinds of concessions – economic or political (such as the human rights conditionality in EU association agreements). But now, this tools might also become problematic on two accounts. First, the 'carrot' of EU's stagnating market might become less attractive in relative terms (again not least by comparison with faster growing alternative markets). And second, the 'carrot' might be put out of sight for some external partners as a result of potential protectionist backlashes inside the EU.∂ While other powers, such as the US or Russia are also affected by the crisis, in financial dire straits they are still left with raw military power or assertive high-quality diplomacy. The EU has little hard power, fewer money, a half-baked External Action Service and a disparaged collection of divided national foreign ministries. This is roughly like the saying (from 'don't-remember-which-country', but probably China) that 'in a famine a fat man looses weight, and ∂ a thin man dies'.∂ 3) The euro-crisis of soft power∂ The third serious effect of the euro-crisis is on EU soft power, which is supposedly based on EU attractiveness as a prosperous, well-functioning model. I have argued before that 'soft power' has an element of free-riding to it. For the last twenty years the EU's main foreign policy occupation has been teaching other how to live and making them want what the EU wants. This foreign policy model was reaching its limits already before the crisis as it was hitting the limits of cultural fascination with Europe which was much more valid in Central Europe in the 90s and the Balkans, than it is in the Middle East or much of the post-Soviet space (see ECFR report on the Limits of Enlargement-lite). But now this foreign policy model is evaporating. Few, if any foreign policy partners of the EU are likely to aspire to be like Europe. The fastest growing economies in Europe in 2010 were Turkey, Belarus and Moldova. Hardly a good advertisement for EU's economic model.∂ Again, the crisis of 'soft power' is costlier for the EU than for other powers like the US, whose 'soft power' also had to suffer as a result of the crisis. The US at least retains hard power, whereas the EU had no hard power, and its 'soft power' is in a coma.

EU faces too many internal problems to combat global issues

Menon 15 (Anand, Professor of European Politics and Foreign Affairs at King's College London in the United Kingdom, "the five things that everyone should know about the European Union, http://www.socialeurope.eu/author/anand-menon/)

Rather than being the all-powerful behemoth frequently alluded to by its critics, the European Union is a fragile – indeed perhaps uniquely fragile – political system. It relies on the consent of member states without whose acquiescence decisions would neither be taken nor implemented. It remains one of the great miracles of modern day international politics that these states acquiesce in respecting and implementing decisions they may have opposed and which then take precedence over national legislation. The EU is not a normal federal system. Its central institutions are weak, whilst its constituent parts are sovereign nation states. It cannot act like the United States and call up the National Guard in the event that a member state refuses to implement European law. It rests on consensus.∂ 2. The flip side of this is that member states decisively shape what the EU can and cannot do. For all the talk of qualified majority voting, of

member states being over-ridden either by their peers or by an all powerful and power hungry European Commission, the fact is that it is in no one's interests to steamroll national governments. Even where majority voting is possible, member states prefer to seek consensus. And in the event that a national government signals that important domestic interests are at stake, a search is launched for compromise. The growing power within the EU system of the European Council – the forum within which Heads of State and Government meet to thrash out difficult decisions – bears eloquent testimony to the growing importance of national governments in EU decision making.∂ 3. Whilst member states act as a powerful check on the EU's ability to trample over their interests, other factors militate against the Union over-reaching its authority. The most obvious of these is its limited democratic authority. The experiment of assuring democratic legitimacy via the European Parliament has failed, as voters either fail to vote or register their protests in ballots cast for insurgent parties. Member states remain the basis of democratic political accountability in Europe. As European decisions impact on more and more politically salient aspects of national political and particularly economic life, a sense of disempowerment serves to drive popular dissatisfaction with European integration. ∂One would hope that the travails of recent years have hammered home the pertinence of the aphorism 'integrate in haste, repent at leisure,' but it is hard to have the requisite degree of faith in our political leaders. All of which, of course, confronts these same leaders with a significant dilemma. Whilst structurally limited, European integration remains profoundly necessary. Europe is a continent of small states with highly interdependent economies. Yet a neat solution to the paradox of stubbornly national politics coexisting with a pressing need for regional collaboration has yet to be discovered.∂ 4. Frustration at a perceived lack of control over decisions that profoundly and intimately impact on national political and economic life has played its part in stoking a surge in popular euroscepticism across the continent. So too, has the fact that European integration does not necessarily serve the interests of all its citizens. Eurosceptics and Europhiles alike make grand claims about the costs or benefits of EU membership. But these vary dramatically both between and within member states. It is not hard to understand growing resentment in southern Europe. Nor, however, is it the case that the impact of regional integration has been uniformly beneficial even in the north. Economists accept that trade liberalization may well have the effect of hastening de-industrialization. This spawns losers as well as winners. In this sense, European integration has accelerated and accentuated the impact of globalization, favouring some sections of society over others. To date, social provision at the EU has failed to compensate for this adequately. Perhaps it will do so in the future. But for the moment, there is nothing irrational about skepticism concerning the EU's impact.∂ 5. Finally, the Union remains critically unable to address many of the most pressing challenges currently confronting it. Originally created to ensure that no European power would again wield hegemony over its partners, the EU remains lumbered with an institutional system designed to that end. We can debate later whether the EU has managed to ensure peace within Europe (it always seems to me that proponents of this view tend to overlook the role of the United States and, yes, Soviet Union in ensuring Europeans did not squabble too much amongst themselves). For now, its roots in a desire effectively to manage Europe's internal problems severely hamper the Union's ability to confront a world in which many of the most pressing challenges facing it are external. Whilst Russia uses military force to redraw European territorial borders in the east, the Middle East is in flames with, as a consequence, a wave of migrants seeking safety via desperately dangerous dashes across the Mediterranean. Simultaneously, the United States seeks to refocus its attentions on Asia, leaving Europeans to deal with problems in their own near abroad.∂

NATO Bad- War

NATO increases conflict and prevents peace

Prashad 12 (Vijay, Chair of South Asian History and director of International Studies at Trinity College in Hartford, Conn, 5-15, "why Nato is bad for the world", The Progressive, http://www.progressive.org/why_nato_bad_for_world.html)

With the demise of the Soviet Union, there has been no check on NATO's expansion. The organization serves as the military arm of the Western powers (Canada, France, Germany, Italy, Japan, United Kingdom and the United States). They called themselves the G7, until they welcomed Russia into what became the G8 in 1997, when under a pliant Boris Yeltsin it seemed to have been subordinated to the U.S. agenda. (Russia has since been a less reliable member of the group.) NATO and the G8 have used their political and military power to impose their social and economic vision on the planet. Their economic agenda (neoliberalism) has tilted the social wealth of the planet toward the global 1 percent and put the interests of finance above that of social needs. This is the reason why the Global Hunger Index of 2011 finds that every year 2 million children die of chronic malnutrition (that's four children every minute). It is the reason why one-fourth of the world's children do not get enough nutrients to grow properly, including to develop their intellectual capabilities. This combination of ideological and military power has helped deliver social wealth into the hands of the global 1 percent, which now owns 40 percent of global assets. NATO's guns and the G8's political power has allowed the 1 percent to push for privatization of social resources and a general austerity for the world's peoples. It is thanks to the G8 and NATO that bankers are first in line for bailouts while the people are held at bay. **Genuine peace and justice cannot come to the world through the agenda put forward by** the G8 and **NATO**. We demand an alternative world, a world founded on the principles of social justice and the social good.

NATO pulls U.S. into other countries' affairs- makes problems worse

Bandow 12 (Doug, Senior Fellow at the Cato Institute. A former Special Assistant to President Ronald Reagan, a Senior Fellow in International Religious Persecution with the Institute on Religion and Public Policy. The author and editor of numerous books, including Foreign Follies: America's New Global Empire, The Politics of Plunder: Misgovernment in Washington, and Beyond Good Intentions: A Biblical View of Politics. I am a graduate of Florida State University and Stanford Law School, 8-13, "How Nato expansion makes America less safe", Forbes, http://www.forbes.com/sites/dougbandow/2012/08/13/how-nato-expansion-makes-america-less-safe/3/)

Admittedly, Americans are constantly tempted to intervene to "fix" foreign problems. But the U.S. has no significant interests in the region. Why put Americans' lives, prosperity, future, and very existence on the line for the irresponsible government of another nation, no matter how worthy its people might be? Washington's first priority should be to protect the lives, freedoms, and territory of its own people. War should be a last resort, not just another policy choice. Georgians deserve Americans' friendship, not America's protection. With the end of the Cold War, the U.S. can go back to being a normal country with a defense policy based on defense. That means fewer military commitments, a smaller force structure, and lower military outlays.

That means leaving rather than expanding NATO. Washington should again make peace America's principal foreign policy objective.

NATO Bad- Russian Adventurism

Strong NATO relations leads to Russian Conflict

Polina **Tikhonova 6/24**

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http://www.valuewalk.com/2015/06/nato-russia-nuclear-weapons/

Last week, both Russia and the West threatened each other with steps that would bring them closer to stationing their permanent forces at the bordering areas and thus give life to a serious confrontation. The agreements that used to suppress any nuclear weapons race, are now at risk. It might seem that the current confrontation between NATO and Russia is just a show off, in which every side is trying to show its people and the other side that it is not going to back down. The leaders of both sides believe that this sort of confrontation can be easily contained and brought to an end any moment. However, it seems like this kind of confrontation begins to grow too big and might soon become beyond control. Pentagon has not dismissed the reports in the media that said the United States is coming up with a plan to station heavy military equipment in the states of Eastern Europe that neighbor with Russia. Russia, in turn, claims that this kind of activity violates the agreement of demilitarization in the region. Just a week ago, Russian President Vladimir Putin announced that Russia will add 40 new intercontinental ballistic missiles to its nuclear arsenal this year. The move was widely denounced in the West. Some might even say that many top Western officials started freaking out about it. "**Some of Russia's recent actions haven't been made since Nazis**" Jens Stoltenberg, secretary general of NATO, responded to the claims and announcements made at the conference by saying that Russia is unjustifiably spreading panic. "This nuclear sabre-rattling of Russia is unjustified," he said. "It's destabilizing and it's dangerous." Lt. Gen. Stephen Wilson, the man responsible for U.S. ICBMs and nuclear bombers, said at a recent briefing in London that Russia has "annexed a country, changing international borders, raising rhetoric unlike we've heard since the cold war times…" Wilson even went as far as comparing Russia to Nazis. "Some of the actions by Russia recently we haven't seen since the 1930s, when whole countries were annexed and borders were changed by decree." However, experts that oversee global armament note that both of the sides modernize their strategic nuclear arsenals. Following their logic, Putin was just 'informing' of Russia's plans to replace its old missiles with new, able to penetrate through the anti-missile shield of NATO in Europe, missiles. However, it more seemed like a threat and a response to NATO's increased presence in Eastern Europe, including the deployment of its heavy military equipment in the Baltic states and Poland to rapidly send 5,000 troops to counter Russia threat and aggression. It must also be pointed out that strategic weapons is one of the few military areas that are more or less under control. Both sides have agreements that limit the amount of such weapons, and both sides still comply with them. Europe's safety might be ruined However, the situation around short and medium-range nuclear missiles is much more dangerous. Russia has long been warning that it would station its Iskander-M missiles in Kaliningrad to counter NATO's anti-ballistic missiles systems. Washington is already accusing Moscow of violating the Intermediate-Range Nuclear Forces Treaty (INF) and has come up with an idea of stationing nuclear missiles in Europe. It must be pointed out that if the INF treaty is cancelled, Europe will regress to the nuclear confrontation of

the 1980s. However, nobody would win from cancelling the INF treaty, but both sides constantly refer to the treaty in an attempt to threaten the other side of the confrontation. It is crystal clear that the longer the confrontation between the West and Russia goes on, the more fragile the European safety becomes. If the leaders of both sides do not stop worsening their relations, the safety and stability in Europe that was achieved with blood and great efforts during the past centuries might be ruined. NATO gets serious about countering Russia with its military

For the past 65 years, NATO has carried out hundreds of military drills, but not a single one of them were as robust as the 'Noble Jump' exercises in Poland, which were completed at the end of the past week. The military drills were the first exercises of the recently created NATO's very high readiness Spearhead Force. The need to carry out such military drills clearly indicate the tense relations between NATO and Russia, which responds to every NATO's military drills with its own exercises.

No NATO Impact

Using NATO won't prevent conflict

Bromund 15 (Ted, the Margaret Thatcher senior research fellow at The Heritage Foundation , 6-7-15, "Addressing the future of the U.S.-U.K special relationship", The Daily Signal, http://dailysignal.com/2015/06/07/assessing-the-future-of-the-us-uk-special-relationship/)

Going forward, this means slower European growth (which must translate into even less influence, less defense spending, and a faster U.S. pivot to Asia) and further and even more serious strain on the U.K.-EU relationship, as the EU seeks to move into the citadel of national finance that has until now remained largely the province of the nation states. In short, the U.S. vision was that the EU would provide greater European security and prosperity. But as the drive for political unity has overtaken economic sanity, it has done the reverse.∂Even without this pressure for deeper integration, the U.K.-EU relationship will never rest easy. The fundamental incompatibility between the EU's supranational vision of European interests and Britain's worldwide interests and political culture can to an extent be managed, but cannot be resolved. Nor is there an easy escape in a referendum on the U.K.'s membership of the EU. The outcomes of both the Alternative Vote and Scottish referendums imply that the U.K. has a bias in favor of the status quo, but it is one thing to vote for the status quo, and entirely another to rest content with it. For the U.K., apart from everything else, the EU will always symbolize not postwar renewal, as it plausibly does for Germany, but national decline, and that is simply never going to be popular.∂The U.K. has often understood its role in the EU as being the bridge between the U.S. and the EU. But the lands at either end of the bridge are moving, and the U.K. will find that role steadily more challenging as the U.S. looks more to Asia—which, the vicissitudes of the Obama administration aside, it will do—and as the EU focuses on its own internal rescue project in ways that will be fundamentally unacceptable to the U.K. The idea that the Transatlantic Trade and Investment Partnership can replace the deep and broad structures of U.S.-European cooperation that were built during the Cold War, with NATO at their head, is a fantasy, and the idea th at the U.K. can lead the EU through TTIP is more fantastic still.∂Precisely because the U.S. is so reliably friendly to the U.K., the fate of the special relationship today rests with the U.K. And the fundamental problem with the relationship is that, if it is to endure, the U.K. needs to have a domestic political culture that is expansive and optimistic—in other words, traditionally liberal, because it was liberalism that created the U.K.'s understanding of its world role. But the popular

bias in favor of the status quo, the establishment's horror at the prospect of exiting the EU, and the difficulties the U.K. faced in sustaining even the modest "austerity" of the last five years imply that the U.K.'s political culture is neither expansive nor optimistic. Simply put, the U.K. is losing its liberalism.

Nato doesn't solve Afghanistan

NATO can't solve Afghanistan- can only make it worse

Hallinan and Wofsy 6/24 (Conn and Leon, Conn Hallinan is a columnist for Foreign Policy In Focus. A retired journalism professor, he previously was an editor of People's World when it was a West Coast publication, "toward a new foreign policy", People's World, http://www.peoplesworld.org/toward-a-new-foreign-policy/, June 24, 2015)

First, our preoccupation with conflicts in the Middle East - and to a significant extent, our tensions with Russia in Eastern Europe and with China in East Asia - distract us from the most compelling crises that threaten the future of humanity. Climate change and environmental perils have to be dealt with now and demand an unprecedented level of international collective action.∂ That also holds for the resurgent danger of nuclear war.∂ Second, superpower military interventionism and far-flung acts of war have only intensified conflict, terror, and human suffering. There's no short-term solution - especially by force - to the deep-seated problems that cause chaos, violence, and misery through much of the world.∂ Third, while any hope of curbing violence and mitigating the most urgent problems depends on international cooperation, old and disastrous intrigues over spheres of influence dominate the behavior of the major powers. Our own relentless pursuit of military advantage on every continent, including through alliances and proxies like NATO, divides the world into "friend" and "foe" according to our perceived interests. That inevitably inflames aggressive imperial rivalries and overrides common interests in the 21st century.

Multilat add-on answers

Surveillance is key to multilat- and multilat fails

Walter 09 (Andrew, October 13, Dr Andrew Walter is Reader in International Relations at the London School of Economics, specializing in the political economy of international money and finance, "the mismanagement of global imbalances: why did multilateralism fail?", Department of International Relations- London school of economics, http://personal.lse.ac.uk/wyattwal/images/mismanagement.pdf)

Multilateralism failed to manage global imbalances, I suggest, for two different∂ and deeply political reasons. First, the failure reflected a persistent unwillingness among∂ all major countries, not just China, to accept the political costs of adjustment and a∂ related shift to different models of economic growth. I argue below that China is indeed∂ an outlier among the G-4 (consisting of the US, EU, Japan, and China), but only because∂ it is relatively poor, unusually open, and has opted for exchange rate targeting rather than∂ inflation targeting. It does resist external policy constraint, but in this regard it is little∂ different to other major countries. Second, **the failure reflected the complete inadequacy∂ of the existing multilateral policy surveillance framework inherited from the era of G-7∂ dominance to facilitate the negotiation of the necessary domestic and international∂ political bargains**. In order for multilateralism to

become more effective in the future, these flaws would need to be resolved, but it is difficult to see how major governments will accept the constraints on domestic policy choices that this would entail.

AT Multilateralism Link

US-EU relations not key to global multilateralism

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http://www.internationalpolicydigest.org/2015/06/10/re-balancing-the-pivot-new-multilateral-approach-to-asia/

It's no secret that despite protests to the contrary, the Asia-Pacific region has not always been a high priority on the Obama administration's foreign policy agenda. A series of crises in other parts of the world—the rise of ISIS in the Middle East and the possibility of a destabilised, Greece-less Eurozone for instance—have consumed much of the administration's political capital. But in the midst of the Asia-Pacific's evolving maritime security issues, chiefly the contested maritime claims in the South China Sea, the region has once again become a priority. Only things are different this time around: the United States is taking a more multilateral approach to the 'pivot' to Asia. Before this point, the US 'pivot' to Asia's most noticeable feature was the transfer of military assets to the Asia-Pacific. Around 3,000 US marines have been posted to Darwin, Northern Australia. Three US navy littoral combat ships have been posted to Singapore for use in the largely littoral Southeast Asian waters. In addition to its permanent presence, the US military has been enhancing its cooperation with the armed forces of twelve Southeast Asian states through war-games and exercises. When video footage of an American P-8 Poseidon being told to 'leave immediately' was made public, the footage began with the surveillance plane lifting off from the Philippines. Clear, a significant number of military assets have been transferred and are continuing to be transferred to the Asia-Pacific region. Announcements and speeches over the past month suggest that the rebalance to Asia has shifted to a more multilateral approach which focuses more and more on alliance and institution building, rather than unilateral or bilateral actions. The best example of this is the US Secretary of Defence Ash Carter's comments on April 6th in Arizona. Carter remarked that: "[Y]ou may not expect to hear this from a Secretary of Defense, but in terms of our rebalance in the broadest sense, passing TPP is as important to me as another aircraft carrier. It would deepen our alliances and partnerships abroad and underscore our lasting commitment to the Asia-Pacific. And it would help us promote a global order that reflects both our interests and our values." Carter's point is that the United States cannot effectively rebalance towards Asia if that rebalance does not include stronger partnerships with Asian countries. This attitude is likewise supported by Carter's announcement of a new Southeast Asia Maritime Security Initiative during his speech at this years' Shangri-La Dialogue. Details on this initiative are thin. The only figure Carter mentioned was a $425 million budget and the fact that the United States would be appointing a new defence advisor to the ASEAN headquarters in Jakarta. This appointment suggests that the United States intends to implement its new initiative by way of multilateral institutions. That the initiative will be a multilateral approach also makes sense given the United States' past history of capacity building endeavours amongst South East Asian states. In the same speech, Carter noted 'we are partnering with the Philippines, Vietnam, Malaysia, and Indonesia to provide them with

additional assets for maritime security and disaster relief operations.' There is precedent aplenty for the United States to provide bilateral security assistance. The framing of the maritime security initiative announcement makes it sound like a bold new step, suggesting a break from precedent. Since it is clear that this initiative will not be purely unilateral, and since there is precedent for bilateral cooperation, one can conclude that **the bulk of the Southeast Asian Maritime Security Initiative will be multilateral**. Traditionally, the United States has laboured to create a 'hub and spokes' security architecture in the Asia-Pacific. With the new emphasis on alliance-building, it seems like the United States is moving on from that model. Carter removed all remaining doubt on the matter by saying: "To expand the reach of our alliances, we are building unprecedented 'trilateral' cooperation – in other words, we're networking our relationships. With Japan and Australia, for example, we're cooperating to strengthen maritime security in Southeast Asia and explore defence technology cooperation. And with Japan and Korea, we're building on a first-of-its-kind information-sharing arrangement that will help us collectively deter and respond to crises." When combined with the US mission to ASEAN's new staff, it seems clear that the focus has shifted to a regional security architecture which is less centred on the United States. Moreover, this approach is de-compartmentalising the United States' various interests in the Asia-Pacific: multilateral security institutions are beginning to line up with multilateral economic institutions. The new shift towards multilateralism in the 'pivot' to Asia is accompanied by negotiations for the Trans-Pacific Partnership between many of the United States' allies in the region. Such overlapping institutionalisation strengthens both of the relevant international organisations through issue linkages and repeated interactions. Nothing in this shift suggests that the United States will lessen the military facet of the rebalance, only that its multilateral engagement will grow relative to its military engagement. However, the United States is shifting to a new phase in the 'pivot' to Asia, a phase which will focus more on multilateral engagement than the previous phase. This change has been evidenced by several of Ash Carter's speeches, as well as his announcement of a new Southeast Asian Maritime Security Initiative.

Relations not key to NATO

EU irrelevant to NATO- only solves conflicts if U.S. alone takes the lead

Michta 15 (Andrew, professor of international studies at Rhodes College and an adjunct fellow at the center for strategic and international studies, "time for some straight talk on NATO", the American interest, http://www.the-american-interest.com/2015/03/01/time-for-some-straight-talk-on-nato/)

NATO only functions well when the United States firmly and unequivocally leads, **with its full attention and commitment.**♂ The fundamental problem with America's "leading from behind" on security in Europe is that it all but guarantees Europe will remain adrift, cleaved by competing interests and preferences, in the face of the Russian threat. Germany's leadership from the "Mitte", and its insistence that the conflict in Ukraine must be contained without the added risk of offering military aid to Kiev, are the key centrifugal variables preventing the emergence of a more stable European consensus on Russia. We constantly hear assurances from Berlin that NATO remains the dominant regional force, and that Russia wouldn't dare cross any significant red lines—and that in any case should a red line be crossed, Russia's armies would be defeated in short order. Perhaps it would play out just like that if Vladimir Putin was foolhardy enough to brazenly roll tanks towards Riga or Tallinn one fine morning. But given all that we have seen in Ukraine, this is not the likely scenario for anything Russia might venture in the Baltics. (Yet then again, how many predicted in the first place that Putin would take Crimea, or that he would

continue on to slice off a chunk of eastern Ukraine—all in one year?) And measuring NATO's strength today in sheer numbers of forces available in Europe is not grounds for particular optimism either. On the military side of the ledger, there has been a steady decline of NATO's European member-states' military capabilities, with only the UK and to some extent France and Poland retaining some military muscle. As for the spending targets agreed to at the Wales NATO summit the situation is even more dire, with only the United States and France fulfilling their pledges on military budgets. According to a study just released by the European Leadership Network, although Latvia, Lithuania, Norway, Poland, the Netherlands and Romania will increase their military expenditure this year, they will not meet the 2% target. Poland just pledged to do so by 2016.∂ In fact, the military capabilities of several key NATO members today are but shadows of their Cold War selves, with Germany's Bundeswehr ranking among the most severely degraded militaries in the alliance. All European NATO allies have significant deficiencies when it comes to lift, transport, logistics and most of all to sufficient numbers of trained soldiers to respond to emergencies. Add to this significantly reduced U.S. deployments in Europe and the alliance in fact lacks ready-made forces to respond quickly, despite the much advertised and discussed NATO rapid response force announced in Wales.∂ The modalities of the rapid response force debate are sobering: the several thousand NATO troops ready to be deployed in a potential crisis situation might be effective in a brewing crisis, but will quickly prove to be marginal at best in a rapidly escalating confrontation. Paradoxically, the same limited number of troops would have an incomparably greater deterrent value if permanently stationed at U.S. and NATO bases in countries along NATO's northeastern flank—a proposition consistently blocked by Germany. But in any case, the prepositioning of equipment and supplies will not suffice unless deficiencies in air and missile defenses in countries along the periphery are addressed, and this will inevitably take time.∂ Unfortunately, there is a direct link between the lack of political will in Europe to respond to hard power emergencies and the stark decline in countries' military capabilities and capacities. A number of smaller NATO members have degraded their militaries to the point where the routine training of personnel has become problematic. Some allied air forces today are so non-deployable that they are more reminiscent of glorified flight clubs, since they can only operate in their countries' skies and not much beyond.∂ It is unacceptable that with the Russian threat looming ever larger in the east, NATO's capabilities and military muscle rest on the United States, Canada, and to a much lesser extent the United Kingdom, France and Poland, with Germany both militarily marginal and politically obstructionist. And yet I suspect that unless the United States leads by example, both by articulating a new policy of permanent reinforcements and by increasing its deployments in Europe while at the same time demanding reciprocity from the largest European states, nothing∂ much will change. It is high time to return to the old principles of deterrence through permanent presence. And since the threat is being posed by a nuclear power, if NATO allies are serious about their treaty commitments, it is also time to revisit flexible response in the event of escalation for lessons that would apply in the new situation should the threat of a wider war indeed arise.∂ The point is not to debate whether Russia would defeat a fully mobilized and united NATO in an all-out military clash scenario—it would not. But Putin may decide to try to beat NATO by instead moving ahead with another Donetsk-type scenario, either in the Baltic States or elsewhere along the periphery: fomenting a crisis and stopping to test the allied response, gambling that this would expose the internal political fissures in NATO and ultimately paralyze its decision-making process. Politically NATO's consensus remains fragile, especially when it comes to moving from verbal assurances to actual physical reinforcements of it northeastern flank. The consensus will not gel unless the Obama administration leads with a clear commitment to reestablish a larger and more strategically

rational military footprint in Europe. The Cold War-era U.S. base infrastructure in Europe should be re-imagined, and both U.S. and European NATO member-states' physical assets augmented with permanent U.S. and NATO bases in the most exposed countries, specifically the Baltic States, Poland and Romania.∂ Otherwise, if the U.S. adheres to its "lead from behind Germany formula" while the latter is stuck in the "Mitte," NATO will continue to drift, and we will continue to lose precious time to refurbish the only institution with the means to bring combined Western power to bear in a crisis. And yes, that means also in war, should it come to that in Europe again.

No Russia Impact

Russian Conflict won't escalate

AFP 6/24 Agence France-Presse is an international news agency headquartered in Paris.

http://economictimes.indiatimes.com/news/defence/nato-wont-be-dragged-into-arms-race-with-russia-jens-stoltenberg/articleshow/47802046.cms

BRUSSELS: NATO Secretary General Jens Stoltenberg said Wednesday the alliance will not get dragged into an arms race with Russia but must counter Moscow's "aggressive actions" in Ukraine. "We will not be dragged into an arms race but we must keep our countries safe," Stoltenberg said ahead of a meeting of NATO defence ministers in Brussels. "There is no doubt Russia is responsible for aggressive actions in Europe," he said, citing Moscow's annexation of Crimea and its continued support for pro-Russian rebels in eastern Ukraine.

AT ISIS Impact

ISIS is losing territory- U.S. offensives working

BPR 15 (5-27, "ISIS is losing ground", Bellarmine Political Review, http://bpr.bcp.org/?p=2780)

A similar phenomenon is occurring with ISIS, as CNN reports. Though ISIS has secured unprecedented gains in land, resources, and support over the past year, it now seems to be losing ground as its fear tactics and ferocious tenacity falter. Make no mistake, ISIS will still be a name people talk about for years to come. However, over the past few months, it has lost nearly a quarter of its territory in Iraq. A coalition of Kurdish fighters, Iraqi troops, and American air squads have relentlessly fought ISIS, pushing it back from key cities like Kobani. Even though Kobani's victory came at a huge cost for the coalition forces, victories like Kobani seem to be slowly pushing back the monster that is ISIS. Furthermore, U.S. airstrikes have successfully destroyed crucial oil drilling stations in the territory of ISIS. This is crucial for the battle, because ISIS used to make an approximated $2 million every day from those oil fields and refineries. With the airstrikes, the oil exports and profits collected by ISIS have decreased by a whopping 90% in some areas, and by 70% on the whole.

Building up the threat of terrorism exploits and categorizes all Muslims and creates fear mongering that makes counter-terror efforts less effective

German 15 (Michael, Mike German is a fellow with the Brennan Center for Justice's Liberty and National Security Program. Previously he was policy counsel for national security and

privacy for the American Civil Liberties Union Washington Legislative Office. A sixteen-year veteran of federal law enforcement, German served as a special agent with the Federal Bureau of Investigation, where he specialized in domestic terrorism and covert operations, "Our Overreaction to Terrorist Attacks Like Paris Is Only Making Things Worse", Defense One, http://www.defenseone.com/ideas/2015/01/our-over-reaction-terrorist-attacks-paris-only-making-things-worse/103857/)

I am troubled by what the Paris terror attacks say about our country's continuing failure to properly understand terrorist methodologies and formulate more effective counterterrorism responses. I'm particularly troubled by the sensationalistic U.S. media coverage of them.∂ If we continue to aggrandize the violent acts of a handful of marginalized individuals into existential threats to western civilization, our over-reactions will to continue sapping our resources while empowering extremists of all sorts.∂ Anyone following the events in Europe as they unfolded would have seen familiar tropes playing out in the media. The first is that terrorism in the West is primarily, if not exclusively, a Muslim problem. Many commentators viewed the three Paris terrorists as representative of an alienated European Muslim population vulnerable to the call of terrorism. But the selfless courage displayed by the Muslim police officer they killed and the Muslim deli employee who helped save Jewish customers were more authentic examples of a larger, law-abiding and peaceful French Muslim community. No one pondered what their actions said about the nature of Islam.∂ In fact, Muslims account for only a small percentage of the terrorism in Europe over the last several years. Most politically-motivated violence there is carried out by nationalist and sectarian groups, yet the government and the media don't treat these threats the same. Anders Breivik killed 77 people in separate gun and bomb attacks in 2011, including many children. Many people in Europe share Breivik's xenophobic, ultra-nationalist, anti-Muslim ideology, but we don't hold them collectively responsible for his decision to employ violence to further those views. We don't call for a war on his beliefs; we demand his criminal prosecution.∂ A similar phenomenon occurs here in the United States, where most media outlets covered the distant Paris attacks far more closely than domestic shooting sprees by white supremacist Fraizer Glenn Miller, or anti-government extremists like Curtis Wade Holley, Eric Frein, and Jerad Miller, who assassinated four police officers in separate instances last year.∂ The Combatting Terrorism Center at West Point documented 3,053 injuries and 670 fatalities in the United States from far right violence from 1990 to 2012. A 2014 University of Maryland survey indicates U.S. law enforcement now view Sovereign Citizens as the greatest terror threat they face. Yet the federal government effectively treats these acts of politically-motivated violence as hate crimes or lone attacks rather than terrorism. This may explain why an attempted firebombing at a Colorado NAACP office building the day before the Paris attacks received little media attention.∂ I spoke with New York University adjunct professor Arun Kundnani, author of "The Muslims are Coming!: Islamophobia, Extremism, and the Domestic War on Terror," about the disparity between the way we treat different forms of political violence (we spoke before the Paris attacks):∂ The point of noting this disparity in reaction isn't to say one ideology presents more or less of a threat. All terrorism is reprehensible. But thankfully, it's also rare. Deaths attributable to terrorism here in the U.S. are a tiny fraction of the roughly 14,000 homicides committed each year, one-third of which go unsolved. Yet we devote far more resources to uncovering potential terrorists than to finding actual killers. The purpose of putting terrorist acts in context is to better understand how we might respond in a more effective manner.∂ The second prevalent theme in the early coverage of the Paris attacks was the tendency to exaggerate the capabilities of Muslim extremists. With very little information available — save a brief video

showing the execution of a wounded police officer — many counterterrorism officials and policy makers didn't hesitate to call it a "sophisticated" attack that represented a new and "more complex" threat. The FBI and DHS backed this description in a law enforcement bulletin, claiming the Paris attacks "demonstrated a greater degree of sophistication and advanced weapons handling than seen in previous coordinated small-arms attacks, such as the 2013 Westgate Mall attack" in Nairobi, Kenya. The Somali militant group al-Shabaab claimed credit for the armed assault on Westgate Mall, which killed sixty-seven people. Details regarding the attack and whether some perpetrators escaped are still mired in controversy.∂ The facts don't support the hasty conclusion that the Paris attack was as sophisticated as originally claimed. While one or both of the Kouachi brothers may have travelled to Yemen and received some training from al-Qaeda in the Arabian Peninsula, their attack on the Charlie Hebdo offices was almost derailed because they went to the wrong address. They had to ask a maintenance man for directions. They caught a lucky break by finding an employee outside the office who they forced to punch the code necessary to enter the building. After the shooting, they crashed their escape vehicle and left identification papers behind when they abandoned it.∂ Co-conspirator Amedy Coulibaly's spree appeared even less organized, shooting a police officer, a street sweeper and a jogger before storming the kosher supermarket. The weapons Coulibaly and the Kouachi's used weren't financed or provided by organized terrorist groups, but purchased from a known criminal for less than 5,000 euros, which Coulibaly obtained through a fraudulent bank loan.∂ They did succeed at killing 17 people, which is tragic. But spree shooters here in the United States racked up similar death tolls, in some cases before graduating high school, or saddled with serious mental illnesses. It doesn't take sophisticated training to pick up a gun and kill lots of unarmed people.∂ Presenting Muslim terrorists as lurking super-villains generates unwarranted public fear, which benefits governments and security officials who exploit it for their own benefit. I talked with Ben Friedman of the Cato Institute about Americans' security demands, the politics of fear, and the difference between risk and vulnerability:∂ As Friedman has argued, accurate information about the nature and probability of threats, and the cost-effectiveness of various solutions could help correct the impulse toward the overwrought fear of remote threats like terrorism. In a perfect world, the intelligence community would provide that reliable threat information to the public, so overreaction could be avoided. We don't live in that perfect world, as Friedman suggests, because the intelligence agencies are also incentivized to inflate threat assessments:∂ Threat inflation benefits intelligence officials by making it easier for them to obtain new resources and authorities. A perfect example is Director of National Intelligence James Clapper's 2014 threat assessment, in which he claimed the United States is "beset by more crises and threats" than any time in his 50-year career. He makes the same claim every year, but the idea that current threats compare to the possible global nuclear annihilation faced during the height of the Cold War is almost laughable. In fact the world is measurably safer.∂ Driving up public fear also dissuades demands for accountability for intelligence or operational failures. Indeed, as was the case in several recent terrorist events, the perpetrators of the Paris attack were well known to law enforcement and intelligence officials long before they acted. Two had only recently been released from prison after serving time for terrorism-related offenses. All three were under government surveillance, and were on the U.S. no-fly list. Yet instead of being called to the carpet to explain why the expanded intelligence authorities and aggressive counterterrorism measures adopted since 9/11 didn't work, America's European intelligence partners are demanding even greater powers.∂ Treating terrorism committed by Muslims as categorically different from other terrorism forfeits the ability to learn what responses are effective in other contexts. When a far right extremist like Tim McVeigh, Eric Rudolf or Frazier Glenn Miller

commits mass murder, government officials and media commenters rarely suggest they were extremely sophisticated, even though these three Army veterans had far better military training than anything offered in Yemen. We treat these terrorists as the common criminals they are. We don't fear their ideologies, which earn every bit of their unpopularity. We wrap up their co-conspirators using traditional law enforcement tools and we try them openly in criminal courts, where their weakness, cruelty and bankrupt ideas can be exposed for public opprobrium.∂When current and former government officials go on television or through the halls of Congress to exaggerate the impact and meaning of terrorist attacks, whether here or abroad, they only encourage more violence. Telling every anti-social misfit and petty criminal that they can achieve notoriety and influence government policy by acting out violently with whatever tools are at hand isn't an effective counterterrorism strategy.∂The terrorists' goal is to spread irrational fear and cause costly overreactions that divide society along the lines they choose. Our intelligence officials shouldn't be helping them. There will always be those that use violence to make political points. Recognizing this is a sign of weakness rather than strength will help us build a stronger and more resilient society that fear could never defeat.

AT: Russia will invade Baltic States

The U.S. and NATO have created the Russian threat- Russia won't invade the Baltic States

MacDonald 15 (Bryan, Irish writer and commentator focusing on Russia and its hinterlands and international geo-politics, 6-25, Despite NATO propaganda, Russia not planning to invade Baltic States, RT, http://rt.com/op-edge/269746-nato-russia-baltics-invasion/)

The latest US narrative on Russia is straight from the plot of a Hollywood fantasy: US superheroes versus a Russian villain. Sadly for the Baltic States, they are being used by Uncle Sam as bait.∂Here's a starter for ten question: Russia's reunification with Crimea last year was prompted by which of the following… a.) a very particular set of historical circumstances, allied to the will of the overwhelming majority of the local population. b.) Vladimir Putin's desire to launch a blitzkrieg military campaign, complete with goose-stepping Russian soldiers marching across Europe?∂If you are not a raving-mad neocon or someone who has difficulties with reality, the correct answer is a. Crimea was Russian territory for centuries and had been transferred to Ukraine as part of an administrative re-alignment at a time when both states were part of the Soviet Union. The peninsula is as Russian as Cornwall is British or Texas is American. Furthermore, not even the most myopic anti-Russia activist questions the fact that most Crimean residents wished to join the Russian Federation.∂Given what has happened in Ukraine since, it's unlikely that many people in Simferopol or Yalta would change that stance. Certainly, Crimean integration into the Russia state has been far from straightforward. Western sanctions targeted at local denizens haven't helped in that regard and neither has the lack of a physical connection with the Russian mainland.∂However, the alternative would have been far worse. Ukraine is now a failed state. Its economy has been decimated, corruption is arguably even more rampant than before the Maidan coup and a civil war rages sporadically in the east. Compared to Ukraine, Crimea is Narnia. Then again, almost every place on the planet, outside of Africa, probably looks attractive to those desperate to flee from Ukraine.∂According to elements in the Western media and the US propaganda machine, the original poser ought to be answered with option (b). Crimea's 'annexation' was the first phase of an embryonic Russian plan to sweep across Europe, gobbling up lebensraum with gay abandon. Anybody who objects to this narrative is a "Kremlin

troll," or "Putin apologist." If old Joseph McCarthy could return to earth for five minutes, he'd be doing cartwheels. Demagogic, reckless, and unsubstantiated accusations have never been as fashionable as they are today. In fact, don't be surprised if Vogue's Anna Wintour soon declares them as the trend for autumn-winter 2015.∂ Despite the relish with which lazy Western journalism and a highly-organized NATO "information campaign" lambasts "Putin's Russia" as a warmongering 'rogue' state, the facts tell another tale. During the past 15 years, the Russian army has only entered the sovereign territory of two foreign states, with Crimea counting as one of those occasions.∂ In 2008, former President Medvedev sent his forces into Georgia in response to Tbilisi's aggression against South Ossetia. After five days of fighting, Russian troops controlled much of Georgia's territory. Nevertheless, within two months, the Kremlin had withdrawn all its soldiers. This scenario doesn't sound very Hitler-esque.∂ At this time, Georgia was ruled by pro-Washington Mikhail Saakashvili, who subsequently abandoned his citizenship to obtain a Ukrainian passport. A move almost unheard of globally for a former head of state, for the precise reason that it's gravely insulting to his homeland. Saakashvili is now a wanted criminal suspect in Georgia. He remains a fugitive.∂ By contrast, since the turn of the century, the US has intervened in Yemen, Liberia, Haiti, Libya and Syria. In addition, 'Uncle Sam' has invaded Iraq and Afghanistan. A 2011 study suggests that 500,000 people have died as a result of the Iraq war. As it happens, according to the United Nations, George Bush and Tony Blair's bloodthirsty campaign of violence was illegal under international law.∂ Despite the obvious fact that Washington's military has been much busier than that of Russia so far this century, we rarely hear of "US belligerence" in the Western media. However, they are falling over themselves to decry "Russia aggression," so much so that the phrase has become something of a catchphrase du jour.∂ According to American propaganda, this alleged Russian hostility is apparently focused on the goal of subjugating Eastern Europe. Indeed, Hillary Clinton, currently the bookmaker's favorite to be the next US President, has already compared Putin to Hitler.∂ In order to sell the 'Hollywood' notion of Russia as global arch villain, the State Department needs to create targets for this imaginary Russian military jaunt around Europe. They've chosen the Baltic States - Estonia, Lithuania and Latvia. Three countries so harmless and innocuous that the only interaction most Westerners have with them is when their citizens migrate to find work. Which they do in huge numbers.∂ Unlike Crimea, which was of hugely significant strategic importance (hosting Russia's largest Black Sea base for instance), there is nothing especially interesting about any of the Baltic countries. All remain poor, to varying degrees, with Estonia the most prosperous. Lithuania has lost 32 percent of its population since 1989 and Latvia, in particular, remains riddled with corruption.∂ The leaders of Latvia and Lithuania tend to use Russia as a bogeyman to distract attention from their own graft and ineptitude. Also, the attention currently lavished upon them from Washington and Brussels could bring with it some much needed investment capital. Vilnius' opportunistic President Dalia Grybauskaitė, a former member of the Communist Party, is a master of anti-Kremlin rhetoric.∂ Estonia's President, Toomas Hendrik Ilves, is a very interesting character. An American, Ilves was once the head of the Estonia desk of Radio Free Europe, which was funded by the CIA in its early days. His Twitter account features a regularly updated stream of support for neocon positions and paranoia about a perceived 'Russian threat.'∂ Let's just imagine for a moment that Russia did invade one or all of the Baltic States. What would it do with this newly acquired territory? The Kremlin would be faced with an enraged local population and a very angry wider world. That is assuming that this imagined Russian assault didn't trigger a full-scale nuclear conflict with NATO. In which case, as the mushroom cloud envelops your nearest city, you can assume that Putin's 'dastardly plan' has failed.∂ Even if Brussels and Washington, and this is very unlikely, rolled over and accepted

Russian dominion over the Baltic countries, what then? With the greatest respect to the locals, there is little more of economic worth than fields and forests. There is no oil, no gas and no hidden deposits of rare-earth minerals.∂ Some NATO propaganda claims that Putin's government wishes to use the Estonia, Lithuania and Latvia as staging posts for a wider invasion of Europe. The main problem with this theory is that it's insane; aside from that, Russia already has a Baltic exclave, Kaliningrad. Additionally, Western media frequently runs scare stories about Russian military drills in the region. These take place on Russian territory. Now, guess what? Almost every country in the world, even neutral Switzerland, conducts armed forces training from time to time on its own soil.∂ The reality is that the Western media is feeding readers, viewers and listeners a lazy narrative driven by the US State Department and NATO for reasons known only to themselves. But one assumes it comes from a desire to ratchet up military spending in Europe allied to anger over Russia's stance on Syria. Now, the neocons have decided that Russia is the new bugaboo.∂ Meanwhile, Vladimir Putin, in the mind of the western media, is the new Saddam/Bin Laden/Joker/Riddler or whatever comic book bad guy you may fancy. If it wasn't so tragically serious, it'd be funny. However, rather than bellicose laughter, there's a danger that this particular farce could end in tears.

AT Modeling Adv

AT UQ

Radical right parties in Europe are being suppressed sufficiently now – all their claims are alarmist

Art 15

(David, Associate Professor of Political Science at Tufts University, 2/3, Ethnic and Racial Studies, 2015 Vol. 38, No. 8, 1347–1354, The containment of the radical right in Western Europe: a response to Carvalho, http://www.tandfonline.com/doi/pdf/10.1080/01419870.2015.1015932)

My first claim is that Carvalho's analysis is consistent with what one might call the general 'containment' of radical right parties in Europe over the last quarter of a century. After millions of votes and multiple cabinet positions in governments across Europe, it is still intellectually defensible to come to the conclusion that (with apologies to those who are already growing weary of overused Shakespearean lines) it has indeed been 'much ado about nothing'. I use the term containment loosely here, and choose it not to suggest that there has been a coordinated strategy to roll back the radical right in Europe or to invoke any parallels with the US Cold War foreign policy. I think of it more like the counterpoint to the 'contagion' frame that many analysts implicitly use to interpret radical right influence. By suggesting that containment has occurred, I do not mean to imply that is has not mattered. In fact, I think it has been a massively underappreciated phenomenon by both ordinary Europeans and politicians alike. It is easier, both academically and in many cases politically, for an American to take a contrarian approach to developments in Europe, and there is an interesting story to be written at some point about how American and European academics viewed the radical right through their own cultural lenses. Which leads to my second claim: in comparison to Europe, there has been no containment of radical right-wing populism in the USA. The second half of this article asks far more questions than it answers, but I submit that merely posing the question 'Why do right-wing populists have dramatically more power in the USA than in Europe?' could lead the study of the radical right in advanced industrial societies in potentially more interesting directions. The containment of the European radical right Radical right parties usually do not come close to realizing their policy desires, even when they appear ideally positioned to do so. Some of the factors that mediate their influence (size and type of the governing coalition, the policy preferences of larger coalition partners, the difficulties of populist insurgents in transitioning to government ones) have been covered elsewhere in the literature, and in this sense Carvalho provides both a necessary update and another direct challenge to many of the structural arguments in the field. The sustained look at the policymaking process itself is both an added twist and a profitable venture, although even the most motivated reader will need to pay careful attention if they want to be in a position to summarize the book's findings in the end. Part of this has to do with the inherent messiness of the subject matter, and one important contribution is the simple reminder that the policymaking process is both contingent on and mediated through national-level institutions. But there are also several theoretical concepts that go under-specified. The role of critical discourse analysis in the argument is not developed enough to make it clear how the evidence is being selected and used. The quantitative aspects are also unlikely to attract much notice from students of public opinion as there is minimal effort to engage with that literature in the book. One upside is the case selection, both for the methodological defence itself and for inclusion of three of four 'big' states

in Western Europe. Given that Europe is not simply a laboratory for social science (although it remains an excellent one) but a collection of powerful actors on the world stage, books that tackle important policy issues in France, Italy and the UK will continue to take up valuable shelf space in academic and political offices. Yet, the case selection itself actually privileges the no-impact school of the radical right from the outset. Simply put, if the radical right has been unable to have its policy preferences translated into policy outcomes in the two states in Western Europe where it has long been a powerful actor (France and Italy), then it is unlikely to have much influence anywhere. The French Front National (FN) is the most researched radical right party for a reason: it was the first to break through electorally in the 1980s, has served as a model for other parties across Europe, and has been shaping French presidential races in dramatic ways for over three decades now. At the same time, its complete isolation from the political system since the 1990s necessarily forces political scientists to craft sophisticated arguments about indirect influence. Carvalho did not quite meet the standard for carefully formed and testable propositions that Williams set in her 2006 book on the same basic subject, but anyone working in this field is sympathetic to the problem of measurement (Schain 2006). Carvalho relies heavily for co-optation of message to make a convincing case for FN influence, which is not that far removed from citing Le Pen's perpetual claim that he is the original and other politicians are the copies when it comes to national identity and immigration politics. But this can also be read as a discursive weapon of the weak in the sense that it continues to mobilize resentment and allows FN politicians to claim victory in the absence of tangible deliverables. It also has the virtue of being a non- falsifiable claim.

While radical right parties are gaining power, intelligence and surveillance are key to prevent domestic terror by these groups

Art 13

(David, Associate Professor of Political Science at Tufts University, March, Why 2013 Is Not 1933: The Radical Right in Europe, http://search.proquest.com/openview/8bd4fe23f1c2461834efab576c271b2f/1?pq-origsite=gscholar)

To many observers, Europe appears to be revisiting the 1930s. The sovereign debt crisis that exploded in 2009 and still threatens to destroy the euro has intensified the most severe economic downturn since the Great Depression. Today, as in the 1930s, orthodox economic policies have exacerbated the misery for millions of people across the continent and left them both disillusioned and enraged with the politicians who ruined their prosperity. Today, as then, many citizens not only reject their political class but also embrace extremist ideas that explicitly invoke fascism. In this view, then, a massive economic crisis has once again generated extremist politics. And while long-standing democracies appear unlikely to collapse, or European states to go to war with one another, those who view the current situation through the lens of the 1930s worry nonetheless that the political backlash will undermine many of the achievements of the postwar European order. Norms of tolerance, the quality of liberal democracy, and European integration all seem to be at stake. In challenging this common view, I do not mean to trivialize the phenomenon of contemporary right-wing extremism. The ranks of far right political parties include Holocaust deniers, as well as thugs who intimidate foreigners, antiracism activists, and politicians from other parties. There are neighborhoods in major cities and small towns across Europe in which it is not safe for ethnic minorities to live or travel. As a source of criminality and domestic terrorism, right-wing extremism is a real problem that authorities across Europe must continue to

monitor. Intelligence breakdowns in this area can have tragic consequences, as the July 2011 massacre committed by Anders Behring Breivik in Norway, and serial murders in the previous decade by a neo-Nazi cell in Germany, have demonstrated. Yet for all the attention they receive in the press, far right parties do not have the political influence one might expect. One could be for-given for believing that they were spontaneously generated by the current sovereign debt crisis, but they actually have been a feature of the party landscape in many European states since the late 1980s. During this period, some of them have attracted vote shares of close to 25 percent of the electorate, and some have been part of national governing coalitions. One may disagree with the platforms of these parties—which are alternatively referred to as far right, radical right, extreme right, and right-wing populist—but it is impossible to claim that the parties have undermined democracy to a measurable extent anywhere. More often than not, radical right parties (this is the term I choose to use) have been more consumed with keeping their various factions together and trying to appear politically competent than with designing xenophobic or otherwise exclusionary policies. And while these parties in some small countries have threatened to stymie any further attempts at European integration—the True Finns in Finland and Golden Dawn in Greece would be the primary examples—it is important to note that they either are marginal players or have been effectively marginalized in the five biggest European Union member states:

EU Surveillance Inev

5 Eyes will continue to function without NSA – infrastructure already exists and it isn't controversial in Europe

Campbell 5/28

(Duncan Campbell, a British freelance investigative journalist writing for Wired, 5/28/2015, "Torus": has one word in a Snowden leak revealed a huge expansion in surveillance?, http://www.wired.co.uk/news/archive/2015-05/28/torus-duncan-campbell-report)

Torus is a brand new kind of satellite espionage, capable of soaking up calls and messages and data from 35 satellites at once. The dishes themselves don't look too different to familiar space tracking dishes, and can be hidden inside giant white globes -- radomes. But look more closely and the power of the doughnut emerges. Specifically, a Torus dish can monitor 70 degrees of the sky, without moving. Mathematically, the dishes are a combination of a parabola with a sphere, shaped to relay multiple signals focussed from space into an array of different listening horns. Once collected all the different facets of modern communications, from Facebook to fax, are separated and sifted and filed away in giant data centres, such as NSA has recently built near Salt Lake City. Over the last eight years, we believe our research shows, western spy agencies have built six new Torus collectors in the UK, Cyprus, Oman, Australia and New Zealand. Their locations are diverse: deep in the Australian outback, in Lord of the Rings territory in New Zealand's South Island, and on the Devon coast in England. About 400 commercial communications satellites now orbit over the equator 24,000 miles above the Earth's surface, carrying data and telephone signals to remote areas, ocean cruise liners, and privileged passengers in the air. All are targets for what a leaked NSA document calls the "New Collection Posture". The agencies already have more than 200 traditional tracking dishes scattered around the planet -- we counted them all, using Google Earth and other online image sites. The online images show

that numbers of listening dishes have doubled since about 2000. The six new doughnut dishes can double this up again, and "collect-it-all", as claimed in Top Secret Snowden slides, potentially increasing snooping capacity by up to 200 satellites. THE LONG HISTORY OF TORUS But the Russians got there first, we found. The grandmother of all doughnut dishes had been built first by the former Soviet intelligence service in the final years of the Cold War, before 1990. Lurking in Ukraine wheat fields 15 kilometres from the Black Sea port of Odessa, the Ovidiopol-2 spy base may once have been the electronic jewel in the KGB's crown. Former Russian spies say they called it "the Comb". Standing 10 storeys high and 80 metres across, the Ovidiopol-2 listening antenna appears to have been equipped to track at least 20 western satellites at once. After the USSR broke up, it was handed over to the Ukraine government's foreign intelligence service (SZRU). The site is still in use, and now includes a second Torus. Meanwhile Britain's own satellite intelligence gathering is less secret than ever; the original "Five Eyes" satellite monitoring project -- ECHELON -- has become widely known after European Parliament enquiries into satellite monitoring from 1999 to 2001. After the controversies subsided, however, the stations kept getting larger. In 2004, the German foreign intelligence agency BND took over NSA's large FORNSAT site at Bad Aibling, Bavaria), but continued to allow NSA remotely to task "selectors" to the equipment operated at the site. In April this year, a German parliamentary enquiry determined that BND had improperly allowed NSA to use tens of thousands of selectors to collect intelligence on the European Commission, and other European government and commercial targets. Other reports quote claims by BND staff that some improper and potentially unlawful targeting by NSA had been detected and blocked. Our research has uncovered how mass surveillance of satellite communications has grown. There are now 232 antennas available at the sites identified, almost double the capacity before 2001.

The remaining members of five eyes won't stop is NSA is shut down – too much unchecked power internationally

Christopher 5/21

(David **Christopher**, Communications manager at OpenMedia, **5/21**/15, CSE and Five Eyes revealed to be targeting popular mobile browsers and mobile App Stores - leaving millions at risk of having their private data hacked, https://openmedia.ca/news/breaking-cse-and-five-eyes-revealed-be-targeting-popular-mobile-browsers-and-mobile-app-stores-leavi)

Canadian spy agency CSE and its Five Eyes partners planned to compromise popular mobile App Stores to implant spyware on smartphones, and targeted a popular mobile web browser used by millions globally. Accordingly to reports published this morning by CBC News and The Intercept, CSE deliberately sought security vulnerabilities, but failed to inform companies or the public – leaving the private data of millions at risk. The reports come just a day after OpenMedia released a pro-privacy action plan, crowdsourced from over 125,000 Canadians, that sets out strict new rules that would ban these kind of mass surveillance activities, place spy agencies like CSE under much tighter oversight, and ensure Canadian spy agencies comply with international human rights principles when it comes to privacy. Responding to this morning's news, OpenMedia's communications manager David Christopher had this to say: "Let's be clear about one thing: CSE claims they will safeguard Canada's security, but instead they deliberately left millions of innocent people at risk of having their private data hacked. These reckless activities weaken the Internet security Canadians rely on to conduct business and communicate online. CSE claims they don't target Canadians, but there is no way they could have excluded Canadians from spying activities. Remember, they targeted people all around the world, including anybody who

interacted with compromised devices." Christopher continued: "This news reinforces the need to rein in CSE. Canadians are clear about what's needed: if taken up, our crowdsourced privacy plan would put a stop to these abuses, end mass surveillance, place CSE under desperately-needed effective independent oversight, and ensure they respect international human rights principles. It's past time for decision-makers in Ottawa to implement these proposals and put a stop to these activities that are doing such harm to our democratic values and Canada's reputation overseas." Details revealed by CBC News and The Intercept this morning include: CSE and its partners deliberately planned to hijack links to popular App Stores, including those run by Google and Samsung, to implant spyware on smartphones. Canada and its spying partners exploited weaknesses in one of the world's most popular mobile browsers, the UC Browser. This app is hugely popular in China and India, and its popularity is growing in North America. Spy agencies did not inform citizens or businesses of the weaknesses they unearthed in devices, leaving millions of users around the world (and all of those who interact with these users) at risk of having their information hacked. Canada worked closely with it's Five Eyes intelligence alliance (the U.S., Britain, Australia and New Zealand) to find and compromise data vulnerabilities in servers used by Google and Samsung's mobile app stores.

Treaties are unlikely – failed in the past and lack of governmental support in Europe

Deutsche Welle 5/27

(Deutsche Welle, Germany's international broadcaster, 5/27/15, Merkel knew 'no spy' agreement with the NSA was a no-go, says German daily, http://www.dw.com/en/merkel-knew-no-spy-agreement-with-the-nsa-was-a-no-go-says-german-daily/a-18477795)

A German newspaper has reported that the Merkel administration exaggerated the possibility of an anti-spy deal with the US in 2013. The government has said it spoke according to what it believed to be true at the time. Germany's federal government told the public in 2013 about an upcoming "no spy" deal with the United States despite having no clear promise from the Americans that they were willing to enter into such an agreement, according to the Wednesday edition of the German daily "Süddeutsche Zeitung." The newspaper report said that Chancellor Angela Merkel and then vice-chancellor Guido Westerwelle knew since August 7 2013 that the Obama administration had agreed only to review such a possibility, yet on August 12 former Chief of the Chancellery Ronald Pofalla announced that the US had offered to create an anti-espionage deal with Germany. According to government documents obtained by the "Süddeutsche Zeitung" in collaboration with German broadcasters NDR and WDR, John Kerry appeared "willing, without making a concrete promise" to discuss the possibility with Westerwelle. Government acted "to the best of [its] knowledge" Following revelations made public by Edward Snowden in June 2013 that the NSA had spied in Germany and on German citizens, an outcry prompted a German delegation to travel to Washington on August 5 2013 to try and negotiate an agreement between the NSA and Germany's intelligence agency, the BND. Despite the lack of solid American consent, on August 14, 2013 another announcement was made, this time by Chancellor Merkel's spokesman Steffen Seibert that "there will be a no-spy deal between the BND and the NSA." As no agreement ever materialized, and allegations began to arise last month that , Seibert was forced to admit two weeks ago that the government had spoken "to the best of [its] knowledge" in the summer of 2013. The Social Democrats (SPD), rivals and coalition members to Chancellor Merkel's Christian Democrats (CDU), along with the opposition parties have accused the CDU of exaggerating the likelihood of the deal to the public ahead of the fall 2013 general election.

AT Internal Link

Empirically don't model- FREEDOM Act proves

Rampell '15 [Catherine Rampell The Washington Post, May 24, 2015, Big Brother finds home in Europe, http://lacrossetribune.com/news/opinion/catherine-rampell-big-brother-finds-home-in-europe/article_ecd5c6c8-a886-5b88-ad05-55eb8b5e06c0.html]

Over in Washington, supposedly the great innovator in "1984"-style surveillance, Sen. Rand Paul, R-Ky., just spoke for 11 hours against the reauthorization of the Patriot Act. A week earlier, the House overwhelmingly voted to limit the National Security Agency's bulk data collection, which might force the agency to shut down, at least temporarily, its most controversial surveillance programs. And earlier this month, a federal appeals court unanimously declared much of the NSA's work to be illegal.

The United States, in other words, seems to be in the process of modestly scaling back its surveillance state. But here in France — and in other European countries that have so fastidiously guarded privacy rights and so roundly condemned U.S. violations of those rights — **the surveillance state is growing**.

No model – privacy governance different in US and Euro

Bowden '13

(Caspar Bowden, Independent Privacy Researcher for the European Parliament with oversight from Alessandro Davoli – Policy Department Citizens' Rights and Constitutional Affairs for the European Parliament. Requested by European Parliament's committee on Civil Justice and Home Affairs. "The US surveillance programmes and their impact on EU citizens' fundamental rights," September 2013 http://www.europarl.europa.eu/meetdocs/2009_2014/ documents/libe/dv/briefingnote_/briefingnote_en.pdf SM)

The EU Data Protection framework in theory is categorically better than the US for privacy, but in practice it is hard to find any real-world Internet services that implement DP principles by design, conveniently and securely. Privacy governance around the world has evolved around **two competing models**. Europe made some rights of individuals inalienable and assigned responsibilities to Data Controller organizations, **whereas in the United States companies inserted waivers of rights into Terms and Conditions6 contracts** allowing exploitation of data in exhaustive ways (known as the 'Notice-and-Choice" principle). The PRISM crisis arose directly from the emerging dominance over the last decade of "free" services operated from remote warehouses full of computer servers, by companies predominantly based in US jurisdiction, that has become known as Cloud computing. To explain this relationship we must explore details of the US framework of national security law.

French surveillance is continuing to expand – independent of US signal

Ramandi 5/26

(Nabila Ramandi, French-Algerian journalist specializing in Anglo-French issues, 5/26/15, France Moves To Vastly Expand Surveillance In Wake Of Charlie Hebdo Attacks, https://hereandnow.wbur.org/2015/05/26/france-surveillance-charlie-hebdo)

In less than a week, on June 1, key sections of the Patriot Act are set to expire in the U.S., including the sections that authorize the National Security Agency's bulk collection of phone records. Congress has so far failed to reach a deal to either reauthorize or revise those sections. Although there is still time for a last-minute agreement, an Obama administration official says the government has already begun to shut down the program. Meanwhile, in France, which has long been critical of the Patriot Act, lawmakers are now moving to vastly expand government surveillance. Earlier this month, the lower house of French Parliament overwhelmingly passed a bill that would expand the government's ability to tap phones, read emails and gather other kinds of data and intelligence. This comes just a few months after the terrorist attacks on the satirical magazine Charlie Hebdo and a kosher market in Paris that left 17 people dead.

French surveillance is unaffected by US policy shift – they won't follow our lead

Beardsley 6/9

(Eleanor Beardsley, NPR French Correspondent, 6/9/15, French Government Expected To Expand Power Of Surveillance, http://www.npr.org/2015/06/09/413069544/french-government-expected-to-expand-power-of-surveillance)

ARI SHAPIRO, HOST: Government surveillance is a big topic on both sides of the Atlantic. Here in the U.S., it was recently limited by Congress. In France, Parliament is expanding the government surveillance powers. A bill that easily passed the Lower House is expected to be approved by the French Senate today. NPR's Eleanor Beardsley reports. ELEANOR BEARDSLEY, BYLINE: Prime Minister Manuel Valls introduced the surveillance bill in the wake of January's deadly terrorist attacks on the satirical magazine Charlie Hebdo and a kosher supermarket. But the prime minister reminded lawmakers the bill had already been in the works to monitor French citizens traveling to and from Syria. (SOUNDBITE OF ARCHIVED RECORDING) PRIME MINISTER MANUEL VALLS: (Through interpreter) This law is not a hasty response to an emergency. It's the result of a long and well-thought-out process. It will help protect our citizens from terrorism and guarantee public liberties by setting clear rules. There will be no more gray zones. BEARDSLEY: France has been engaged in vast surveillance since attacks in the 1980s by radical Algerian groups, says Sylvie Kauffmann, editorial director of Le Monde. SYLVIE KAUFFMANN: France was one of the first Western democracies to take very active anti-terrorism measures. But strangely enough, there was no law on intelligence services. BEARDSLEY: The new law will permit police to hide microphones in suspects' cars and houses and place antennas to monitor cell phone calls. But the most contentious point is the collection of raw data or metadata on regular citizens using black boxes attached to Internet servers. JEAN DANIEL GUYOT: (Speaking French). BEARDSLEY: Entrepreneur Jean Daniel Guyot says he'll never allow the French government to take his customer data. Guyot founded an Internet company called Captain Train that allows customers to buy train tickets across 19 European countries. He says his company has financial and travel information on millions of people. GUYOT: They want to put black boxes in the data centers. BEARDSLEY: So in your data center? GUYOT: Yes. But we can move the data in another data center in other countries. BEARDSLEY: Guyot says plenty of companies will move their servers out of France. The black boxes are supposed to be able to pick out terrorist-related patterns in the data with a special

algorithm. But Frederick Douzet with the French Institute of Advanced National Defense says no one even knows if the algorithms work. FREDERICK DOUZET: The bill was rushed through accelerated procedures. Representatives are not too familiar with these issues and have just followed the government because of the trauma of the terrorist attacks. BEARDSLEY: Douzet says mass data collection also raises concerns about civil liberties. (SOUNDBITE OF ARCHIVED RECORDING) BERNARD CAZENEUVE: (Speaking French). BEARDSLEY: Interior Minister Bernard Cazeneuve told Parliament that he doesn't understand how powerful private companies such as Facebook get away with collecting vast quantities of personal data. (SOUNDBITE OF ARCHIVED RECORDING) CAZENEUVE: (Speaking French). BEARDSLEY: "But when it comes to a government wanting to fight terrorism, all of a sudden we're Big Brother," said Cazeneuve. To placate critics, the French government will give the bill for review to the nation's constitutional court after it passes the Senate. Prime Minister Valls says he expects the measure to become law this summer. Eleanor Beardsley, NPR News, Paris.

Germany actually seeks to be free of NSA control – banning in US emboldens the German BND

Sauerbrey 6/13

(Anna Sauerbrey, lead editor of the Tagesspiegel, 6/13/15, The German Govt's Surveillance Hypocracy, http://www.nytimes.com/2015/06/11/opinion/the-german-governments-surveillance-hypocrisy.html)

The Germans have secretly helped the NSA, even as they condemned US spying in Europe OVER the last few weeks Germany has been rocked by a series of leaked government documents revealing extensive cooperation between the German foreign intelligence service and the National Security Agency, including spying on other European governments. At the same time, emails leaked to the news media have revealed that a promised"no spy" agreement, under negotiation since the revelation in 2013 of NSA surveillance on German government officials, was nowhere close to completion, contrary to explicit claims by the office of Angela Merkel, the chancellor. These revelations have fuelled a bitter debate in the Bundestag, with distinctly anti-American overtones. Yasmin Fahimi, the secretary- general of the left-of-centre Social Democratic Party, told an interviewer that a German chancellor should not be"subservient" in dealing with the United States."We should not render ourselves vassals to the United States and ignore the rights of the Bundestag." Such statements are an attempt to gain sympathies in a certain spectrum of the political left. But there is more to the anti-Americanism in the current spying affair. It is a symptom of the great delusion of German security policy in the post-9/11 era, a delusion maintained by both Merkel's right-of-centre Christian Democrats and the Social Democrats: For at least a decade, while all German governments have publicly upheld a more or less critical attitude toward American security policy, Germany has secretly cooperated with it and has privately supported much of what it has publicly condemned. Spying on friends is a poignant example. In 2013, when news broke that Merkel's cellphone had been tapped by the NSA, the chancellor reacted indignantly."Spying amongst friends that's a no-go," she said that October, and seemed to promise that Germany would never spy on its allies. And yet, as the leaked documents and a Bundestag investigation have shown, her public indignation hid an inconvenient truth: that the German intelligence service, known by its German acronym BND has helped NSA spy in Europe, in part unwittingly, but also knowingly. In fact, a 2002 memorandum of agreement founding the American-German cooperation explicitly allowed for the surveillance of European institutions, an interesting detail also brought to light by the Bundestag's investigation. It's an awkward document, not only because it shows the depth of BND cooperation, but also because

when it was signed, in 2002, the head of the chancellor's office, and thus the intelligence service, was the Social Democratic politician Frank-Walter Steinmeier, who is now the foreign minister. The hypocrisy in dealing with the spying affair is not just embarrassing; it has been an effective means to avoid change. It is telling to compare where Germany and the United States stand, two years after Edward J Snowden's leaks set off a debate about security and civil liberties, on both sides of the Atlantic. Just a few days after Snowden released his first documents, President Barack Obama stepped up and defended America's surveillance programmes. It was impossible to have"100 percent security and also then have 100 percent privacy and zero inconvenience," he said. But as the different sides in the argument have faced off in the American media and in Congress over the last two years, President Obama has shifted his position, becoming more open to reform. Things may not be where civil libertarians would like them, but with the USA Freedom Act now law, a new balance of government practice and democratic values has been struck. In contrast, in Germany, which is ostensibly anti-surveillance, the prospects for a similar reform, one that would adapt the legal basis of the intelligence agencies to the digital age, are vague at best. Merkel is clearly willing to cooperate with the NSA, but she has managed to avoid entering the debate, on either side. Her administration has managed to portray itself as the ing'nue."The Internet is new to us all" was one of her first statements in reaction to the 2013 leaks. Meanwhile, on June 1, a few weeks into the latest BND scandal, Merkel opened a"citizen dialogue" on"the good life." Sitting with 60 Germans chosen to represent different age and income groups, she said,"I want to know what is important to you, what your burdens are." Their responses covered everyday things, like pensions or the decline in grocery shops in rural areas. These worries are serious, but petty, especially in light of the nondialogue on surveillance. And yet discussing"the good life," while at the same time suffocating the public debate on Germany's security policy, is yet another variant of Angela Merkel's paternalistic way of governing. You guys take care of your jobs and kids, goes her message. Let me take care of the rest. But democracy is about the painful questions, too. It is true that the BND and the NSA are different beasts, and that a programme like the NSA's bulk phone-data collection has never existed in Germany. But in managing to avoid debate, Merkel has ensured that Germany has not faced some painful questions. Should the BND be allowed to ignore the civil liberties that Germans enjoy at home when acting abroad? How much do we want to spend on our intelligence agencies or are we willing to accept the price that comes with depending on powerful partners like the NSA? If **Germany wants to play the spy game by its own rules and not be a lackey of the NSA, it must strengthen its agencies with a lot of money**. **The German population would** most likely **support this**. Indeed, for all the concern about American snooping, **hardly any political figure in Germany questions the BND's right to exist or the need for telecommunications surveillance**. If strengthening the agencies comes with strengthening the oversight of the Parliament, Germans are likely to approve. But to really find out, Merkel must have the guts to actually start talking about it.

US-France relations resilient – spying scandal will blow over

McPartland 6/24

(Ben McPartland, political analyst for thelocal French news network, 6/24/15, Obama tells Hollande: Snooping will stop, http://www.thelocal.fr/20150624/live-us-spying-france-nsa-united-states-snowden)

So Hollande and Obama have had their chat and a brief statement from the Elysée Palace suggests everything remains cordial. "President Obama reiterated without ambiguity, his firm commitment to end the practices that may have taken place in the past and that are unacceptable between allies." The Elysée also said that French intelligence chiefs would visit their counterparts in the US in the coming months to "deepen their cooperation". 17:27 - French intelligence services 'knew of embassy spy den' According to a source in the French intelligence services who has spoken to AFP, Paris knew all about the "secret spy den" on top of the US embassy. "It's common knowledge that the monitoring system had been installed on the roof of the embassy," said the source. "Since this system is not intrusive and on US soil, there's not much France can do" This type of monitoring station "is a common practice in Anglo-Saxon intelligence services and the choice of the location of the embassy near the Elysee and several ministries is not innocent." 16:52 - "It's all just a storm in a tea cup" While there's been plenty of outcry in France about the spying revelations, most experts suggest it will all blow over in a couple of days and France and the US can get on with being best of buddies. “It’s a storm in a tea cup. Nothing will happen and it will be allowed to blow over,” Nicolas Dungan, a senior fellow at the Atlantic Council tells The Local. “Hollande has no choice but to say publicly ‘the president of the United States has no business spying on me, but he knows what is happening. “When it comes to spying, the French know exactly what the US can do and the US knows what the French can do and they probably both expect the other side do everything they can,” says Dungan.

Germany is cutting ties with Russia – stifles far-right Kremlin influence

Lüttike 14

(Markus Lüttike, analyst for DW, 4/29/14, Serious tensions in German-Russian relations, http://www.dw.com/en/serious-tensions-in-german-russian-relations/a-17601809)

From the warmth of the embrace, one would think that there were no shadows on the relations between Germany and Russia. Even if Schröder is no longer involved actively in politics, his Social Democratic party is part of the government. One of his closest political allies, Frank-Walter Steinmeier, is foreign minister - and the Ukraine crisis has changed German-Russian relations for the worse. Once, Germany was seen as Russia's most important partner in the West. "Germany was Russia's privileged contact within NATO and the EU, says Hans-Joachim Spanger of the Hessian Foundation for Peace and Conflict Research. "That gave Germany a somewhat more prominent position." But now, with a "newly activated Cold War," Spanger sees a need "for solidarity within the alliance and not for a special relationship." Germany's allies mistrust any such privilege. "The German foreign minister is making a lot of effort to maintain a moderate tone in the very shrill exchange, so that channels of communication and bridges of understanding can be maintained," says Spanger. "That's all that's left of the German special relationship." But Alexander Dynkin, director of the Institute for the Global Economy and International Relations at the Russian Academy of Sciences, is critical of Germany's role: "Germany has not exactly demonstrated its leading role in settling this crisis," he says. Normal people in Russia don't allot any privileged role to Germany compared with the rest of the West. Experts might see it a bit differently, but Dynkin says he does not see any "European activity that is independent from Washington." Agreement without effect The German government coordinator for Russian affairs, Gernot Erler, said on Tuesday that he would like to see a new round of Geneva talks with Russia: "There's plenty to talk about: why haven't the commitments which were made then been implemented?" Dynkin agrees that such talks are right in principle, but says the Geneva talks failed to develop mechanisms to ensure implementation: "Signing pretty documents without

having the instruments to impose them only highlights failures." Steinmeier between Vitaly Klitschko and Yanukovych Steinmeier, center, failed to reach a binding agreement between Vitaly Klitchko, left, and Yanukovych Dynkin remembers that Steinmeier had signed an agreement in Kyiv on February 21 "that landed in the trash not 24 hours later." That was when the foreign ministers of Germany, France and Poland got the opposition to agree with then-President Viktor Yanukovych on the way forward. Shortly afterwards, Yanukovych was overthrown.

NATO is united against Russia – ridiculous to think the US would leave Europe now

Schmitt and Myers 6/24

(Eric Schmitt and Steven Lee Myers, political correspondants for the NYT, 6/24/15, NATO forces boost efforts, with sights set on Russia, https://www.bostonglobe.com/news/world/2015/06/23/nato-returns-its-attention-old-foe-russia/IA30OdOvYUJNpzGcYap0aM/story.html)

After years of facing threats far beyond its borders, NATO is reinvigorating plans to confront a much larger and more aggressive threat from its past: Moscow. This seismic shift has been apparent in military training exercises in this former Soviet republic, which is now a NATO member and on the alliance's eastern flank, bordering Russia. On a recent day, Latvian soldiers conducted a simulated attack on dug-in enemy positions in a pine forest here as A-10 attack planes from the United States roared overhead and opened fire with 30-mm cannons. Two days before, a B-52 dropped nine dummy bombs radioed in by the Latvians on the ground — all just 180 miles from the Russian border. The symbolism of the B-52s, stalwarts of the Cold War arsenal, was lost on no one. At one time, the bombers' main mission was to deliver a nuclear knockout punch to Soviet forces, but they were put to use for the first time over this former Soviet republic to show resolve on the new front between NATO and Russia, the heir of the Soviet war machine. "If the Russians sense a window of opportunity, they will use it to their advantage," said Estonia's chief of defense, Lieutenant General Riho Terras, who recently mobilized 13,000 soldiers across his tiny country in a separate exercise. "We must make sure there's no room for miscalculation." The military drills that unfolded here, part of a series of exercises planned over the coming months to demonstrate the alliance's readiness to confront Russia, emphasize the depth of the challenge facing an alliance that for a quarter-century turned its attention to threats much farther afield. 'Putin's not going to change his position, and he's not going away. You've got to be in this for the long haul.' Michael McFaul, former US ambassador to Russia Quote Icon After years of reducing military spending and conducting expeditionary missions from the Balkans to Afghanistan to the Horn of Africa, NATO has had to reinvigorate plans that commanders and political leaders had largely consigned to the past. This week, Defense Secretary Ash Carter was scheduled to travel through several NATO capitals before sitting down Wednesday and Thursday with other defense ministers in Brussels to debate how to counter a resurgent Russia. Russia's annexation of Crimea — and its role in the war in eastern Ukraine — has already resulted in what NATO's secretary general, Jens Stoltenberg, recently called "the biggest reinforcement of NATO forces since the end of the Cold War." It has involved a marked increase in training rotations on territory of the newer NATO allies in the east, and stepped up patrols of the air and seas from the Baltic to the Black Sea intended to counter increased patrols by Russian forces around NATO's periphery. Most of those are temporary deployments. But in February, NATO announced it would set up six new command units within the Eastern allies and create a 5,000-strong rapid reaction "spearhead" force. And the Pentagon

now plans to pre-position US tanks and other weaponry in Eastern Europe for the first time, prompting unease in some quarters ahead of the NATO defense ministers' meetings, and strong protests from Moscow that coincided with an announcement by President Vladimir Putin that he was bolstering Russia's arsenal of strategic nuclear weapons. With the leaders of NATO's 28 members scheduled to gather in Warsaw for an important summit meeting next year, the alliance is already considering what other measures are needed to adjust its forces, to increase spending that had plummeted as part of a "peace dividend," and to revisit NATO's military strategy and planning. "During the Cold War we had everything there in the neighborhood we needed to respond," said Julianne Smith, a former defense and White House official who is now a senior fellow at the Center for a New American Security in Washington. "It's all atrophied. We haven't gone through the muscle movements of a conventional attack in Europe for decades."

US is moving now to deter Russian influence in Europe – prevents neo-nazi Europe takeover

Stewart and Mardiste 6/23

(PHIL STEWART AND DAVID MARDISTE, pentagon correspondents for Reuters, 6/23/15, U.S. to pre-position tanks, artillery in Baltics, eastern Europe, http://www.reuters.com/article/2015/06/23/us-usa-europe-defense-idUSKBN0P315620150623)

The United States will pre-position tanks, artillery and other military equipment in Eastern and Central Europe, U.S. Defense Secretary Ash Carter announced on Tuesday, moving to reassure NATO allies unnerved by Russian involvement in Ukraine. Carter, during a trip to Tallinn, said the Baltic states — Estonia, Lithuania, Latvia — as well as Bulgaria, Romania and Poland agreed to host elements of this heavy equipment. Some of the equipment would also be located in Germany. The U.S. decision to stage heavy equipment closer to Russia's borders aims to speed deployment of rotating U.S. forces as NATO steps up exercises in Europe following Russia's annexation of Ukraine's Crimea region last year. Neighboring NATO countries, especially the former Soviet Baltic states with their Russian minorities, fear Russia could foment trouble on their territories. Moscow denies any such intention. Flanked by defense chiefs from the Baltic states, Carter quoted Obama during a visit to Estonia saying: "You lost your independence once before. With NATO, you will never lose it again." "That's because the United States and the rest of the NATO alliance are absolutely committed to defending the territorial integrity of Estonia, Latvia and Lithuania," Carter said. Under NATO's founding treaty, an attack on any member state would constitute an attack on all parties. Russia accuses the West of violating post-Cold War arrangements by extending NATO to Russia's frontiers, something the West denies. Estonian Defense Minister Sven Mikser welcomed the decision, on pre-positioning as did representatives from Latvia and Lithuania. Mikser said his nation was ready to host pre-positioned equipment and a rotational presence of U.S. forces. "We have reasons to believe that Russia views the Baltic region as one of NATO's most vulnerable areas, a place where NATO's resolve and commitment could be tested," Mikser said. Condemnation in Moscow The United States had not formally disclosed where in Europe the equipment would be stored before Tuesday but news reports about military planning triggered an angry response from Moscow ahead of Carter's trip to Europe this week. A Russian defense ministry official said stationing tanks and heavy weapons in NATO states on Russia's border would be the most aggressive U.S. act since the Cold War. President Vladimir Putin, who denies any direct involvement in Ukraine and accuses the West of stirring tensions, announced Russia would add more than 40 intercontinental ballistic missiles to its nuclear arsenal this year. Carter has condemned Putin's return to what he considers Cold War-style rhetoric. A fact sheet provided by the U.S. military said the United States' pre-positioning

would include about 250 tanks, Bradley infantry fighting vehicles and self-propelled howitzers. The amount of equipment that would be temporarily stored in each country would be enough to supply either a company, so enough for about 150 soldiers, or a battalion, or about 750 soldiers. Much of it is already in Europe, officials say.

AT Credibility Adv

Mid East Alt Cause

Link is non-uq - Mideast policy is alt cause to credibility loss

Memoli 3/24 (Memoli, Michael. "Obama Says U.S. Credibility Requires Reevaluation of Mideast Stance." Los Angeles Times. Los Angeles Times, 24 Mar. 2015. Web. 25 June 2015. <http://www.latimes.com/world/middleeast/la-fg-us-israel-spying-20150324-story.html>.) ʕ ⊃•ᴥ•ʔ⊃ ♥eve

President Obama said Tuesday that preserving the nation's credibility internationally requires reevaluating the U.S. stance on Mideast peace talks and that recent comments by Israeli Prime Minister Benjamin Netanyahu have severely hurt chances for progress.Obama said Netanyahu's pledge on the eve of Israeli elections last week to oppose a two-state solution for Israelis and Palestinians made hope for progress "very dim." Netanyahu later backed off the comment, but Obama appeared to remain unconvinced that the prime minister is serious about negotiating with the Palestinians. "What we can't do is pretend that there's a possibility of something that's not there," Obama said during a news conference. "We can't continue to premise our public diplomacy based on something that everybody knows is not going to happen, at least in the next several years.... For the sake of our own credibility, we have to be able to be honest."

Squo solves

New US polices will solve

Reuters 6/23/15

Is an international news agency headquartered in Canary Wharf, London, England"U.S. Offers Troops to NATO Force Tasked With Deterring Russian Aggression | News." The Moscow Times. Reuters, 23 June 2015. Web. 23 June 2015. <http://www.themoscowtimes.com/news/article/us-offers-troops-to-nato-force-tasked-with-deterring-russian-aggression/524193.html>.

MUENSTER, Germany — The United States has said it will contribute special operations forces, intelligence and other high-end military assets to a new NATO rapid response force that aims in part to deter any future actions by Russia. U.S. Defense Secretary Ash Carter made the announcement on Monday during a trip to Germany, where he delivered an address accusing Moscow of trying to re-create a Soviet-era sphere of influence. "We do not seek a cold, let alone a hot war with Russia. We do not seek to make Russia an enemy," Carter said in an address in Berlin. "But make no mistake: We will defend our allies, the rules-based international order, and the positive future it affords us all." Russia's intervention over Ukraine has put NATO allies in eastern Europe on edge and triggered a series of military moves by the NATO alliance, including an acceleration of exercises and the creation of a Very High Readiness Joint Task Force (VJTF). Moscow denies providing troops or arms to pro-Russian separatists in eastern Ukraine. But neighboring NATO countries, especially the Baltic states of Latvia, Lithuania and Estonia, fear Russia could foment trouble on their territories. Carter, who met European members of the VJTF in Muenster, Germany before flying to Estonia, said he was preparing to discuss planned U.S. contributions to the force with NATO defense chiefs later this week in Brussels. The U.S. support would include intelligence, surveillance and reconnaissance assets — which can include drones or manned aircraft — as well as special operations forces, logistical expertise and high-end U.S.

military assets. Carter also said it would include airlift and precision joint fire capabilities, which could include anything from land-based artillery to air support or naval firepower. "We're making this commitment to the VJTF because the United States is deeply committed to the collective defense of Europe," Carter said, speaking alongside his Dutch, German and Norwegian counterparts in Muenster. Although many of the contributions announced on Monday could be drawn from within Europe, a defense official said the announcement could mean a temporary increase in U.S. forces in Europe in a crisis situation. Still, U.S. defense officials stressed that the United States was mainly providing high-end support to enable European land forces that form the bulk of the VJTF. Russian Reaction During his trip this week, Carter will climb aboard a U.S. warship in Estonia fresh from Baltic Sea drills. He could offer more details in Europe this week on plans to pre-position heavy military equipment, officials say. Moscow has decried the new steps by NATO and threatened to strengthen its own forces and to add more than 40 intercontinental ballistic missiles to its nuclear arsenal this year. U.S. officials say Ukraine has illustrated the importance of being able to counter "hybrid warfare," the blend of unidentified troops, propaganda and economic pressure that the West says Russia has used there. Moscow accuses the West of engineering the overthrow of a pro-Kremlin president last year in order to bring Kiev under its sway and try to isolate Russia. NATO's historic focus had been the conventional threats of the Cold War, which effectively ended with the collapse of the Soviet Union in 1991. But Carter said NATO "will not rely on the Cold War playbook," citing instead a combination of military and non-military tools, including sanctions. European Union foreign ministers extended economic sanctions on Russia until Jan. 31 on Monday, keeping up pressure on Moscow to help resolve the Ukraine conflict. Carter encouraged Europe to keep up the sanctions — which he called the best tool — for as long as it takes to change Russia's calculations. "The United States will not let Russia drag us back to the past," he said.

SQ solves - Obama has vowed to not spy on allies

Rubin 6/24 (Rubin, Alissa. "France Denounces Revelations of Spying by N.S.A." The New York Times. The New York Times, 24 June 2015. Web. 24 June 2015. <http://www.nytimes.com/2015/06/25/world/europe/wikileaks-us-spying-france.html?_r=0>)ʕ ⊃ •̀.•́?⊃♥eve

The administration did not disclose at the time how many foreign leaders would be removed from routine eavesdropping, but Mr. Obama said in a January 2014 speech on surveillance policy that he had put significant new curbs in place. "The leaders of our close friends and allies deserve to know that if I want to know what they think about an issue, I'll pick up the phone and call them, rather than turning to surveillance," Mr. Obama said in the speech. He added, "Given the understandable attention that this issue has received, I have made clear to the intelligence community that unless there is a compelling national security purpose, we will not monitor the communications of heads of state and government of our close friends and allies."

SQ restrictions and security needs solve foreign relations

The Hindu 1/19 ("U.S. Will Continue to Spy on Foreign Govts: Obama." *The Hindu*. 18 Jan. 2014. Web. 24 June 2015. <http://www.thehindu.com/news/international/world/us-will-continue-to-spy-on-foreign-govts-obama/article5592931.ece>.)ʕ ⊃ •̀.•́?⊃♥eve

The United States will continue to spy on foreign governments, President Barack Obama has said even as he assured Chancellor Angela Merkel that he would not allow the surveillance mechanism to harm their bilateral relations. Seen as the first step to win back trust of its allies,

Mr. Obama defended the controversial spying programme as necessary to safeguard the security of America and its allies, including Germany. "Our intelligence agencies, like German intelligence agencies, and every intelligence agency out there, will continue to be interested in the government intentions of countries around the world. That's not going to change," Mr. Obama said. "There is no point in having intelligence agencies if you are restricted to the things which you can read in the *New York Times* or in the Spiegel," he said in an interview to the German network ZDF. Seeking damage control in the wake of global public outrage over the widespread snooping revealed by whistleblower Edward Snowden, Mr. Obama announced on Friday restrictions on NSA's intelligence gathering capabilities to put an end to the surveillance of "foreign leaders of friendly nations" but ruled out scrapping the controversial programme altogether. In that major policy speech, Mr. Obama had asked to balance between civil liberties of Americans and people across the globe and meeting the US security and intelligence needs. The speech aimed at allaying global public outrage over the widespread eavesdropping revealed by whistleblower Edward Snowden, which showed that US collected massive amounts of electronic data from communications of private individuals around the world, and has spied on foreign leaders including Ms. Merkel. The U.S. President, however said he would not allow the surveillance to harm his relationship of "friendship and trust" with Ms. Merkel. "I don't need and I don't want to harm that relationship by surveillance mechanism that has somehow impeded the kind of communication and trust we have," Mr. Obama said. "As long as I am the president of the US, the chancellor and Germany will not have to worry about this," Mr. Obama said. In a latest revelation reported by the Guardian newspaper and Britain's Channel 4 News based on documents leaked by Mr. Snowden, NSA has collected and stored almost 200 million mobile text messages every day across the globe. However, Mr. Obama in a presidential decree has ordered that telephone and Internet surveillance will be carried out abroad only if US security threats are involved and to extend US rules on privacy protection to foreign citizens. He had also ordered restrictions on the use of the metadata — information on the telephone numbers, time and duration of calls — collected by the intelligence services.

Trust Resilient

Allies trust Obama and want to cooperate on privacy

Bevins 6/16 ("Why Did Brazil's President Change Her Tune on Spying?" Foreign Policy Why Did Brazils President Change Her Tune on Spying Comments. Web. 24 June 2015. <http://foreignpolicy.com/2015/06/16/brazil-nsa-spying-surveillance-economy-dilma-rousseff-barack-obama/>)ʕ ⌒•ᴥ•ʔ⌒♥eve

"The American government's posture did change. The [U.S.] president made it clear in his last conversation with Rousseff in Panama that if he wanted to know something about Brazil or the president, he will call her and not use other means," he said. "And we have to trust in the word of the head of state." "She communicated that it was central that she couldn't [again] be surprised by revelations that the U.S. is spying Brazil," he added, noting that Obama may not have been able to apologize or make public promises due to internal political concerns. The Obama administration has been pushing a modest intelligence reform agenda in Washington. Earlier this month, Congress passed the USA Freedom Act, which reversed some of the more invasive provisions of the 2001 Patriot Act. But experts on U.S.-Latin America relations note that the White House has not publicly mentioned anything about the NSA changing the way it deals with

citizens of foreign countries. Nevertheless, many believe that the reconciliation with Brazil could provide an opportunity to work more productively with the region's largest power.

Ally spying is mutual – no collapse in relations or credibility

Martinez 13 ("Allies Spy on Allies Because Friends Today May Not Be Friends Tomorrow - CNN.com." CNN. Cable News Network. Web. 25 June 2015. <http://www.cnn.com/2013/10/30/us/spying-on-allies-everybody-does-it/>.) ʕ ⊃•̤̮•ʔ⊃♥eve

To those who study or even practiced espionage, U.S. spying on allies is hardly new. Friendly nations spy on one another, if only for this reality: a friend today may not be a friend tomorrow, experts say. "Even among friends, a lot of espionage takes place, and some of that espionage is targeted against threats to national security," said Charles Kupchan, international affairs professor at Georgetown University and a senior fellow at the Council on Foreign Relations. "Then there is more mundane day-to-day intelligence gathering, which is focusing on intelligence that would be relevant to American statecraft: who is likely to be the next foreign minister, what's Germany's position on negotiations with Iran?" Kupchan said. The mutual spying is "common knowledge" among practitioners and scholars, sometimes confirmed years later with a disclosure, Kupchan said. "It's been going on for centuries," he said. Embassies can be an arm of such espionage. Countries allow the missions to exchange information formally but they're used to gather intelligence covertly, too, said Peter Earnest, who worked for the CIA for 36 years, including about 25 years in the agency's clandestine service. "I think there's a degree of hypocrisy among the Europeans to say, 'Oh, my gosh, the Americans are spying!' Well, so are they," said Earnest, the founding executive director of the International Spy Museum in Washington. EU delegation meeting at White House over NSA spying concerns The former spy was referring to the uproar across Europe in the wake of news accounts that the U.S. National Security Administration has been spying on the continent: on German Chancellor Angela Merkel's official cellphone; on millions of France's phone calls; and on millions of Spain's phone calls and its politicians and officials. The NSA also has eavesdropped on the Mexican government and hacked the public e-mail account of former President Felipe Calderon and his presidency's e-mail domain that also was used by Cabinet members, according to German news magazine Der Spiegel. Most of the news accounts are relying on documents provided by former NSA contractor Edward Snowden. Glaring spotlight on intelligence committee "It's the leak that keeps on giving on damage," Earnest said. "I'm glad I'm not in the community right now. It must be a nightmare." He retired from the Central Intelligence Agency in 1994. In describing the espionage among friends, Earnest referred to a famous quote by 19th century British statesman Henry Temple, or Lord Palmerston, who stated in Parliament: "We have no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow." "The fact is, we do collect a lot of intelligence, without speaking about any particular target or group of targets," Cheney told CNN. "That intelligence capability is enormously important to the United States, to our conduct of foreign policy, to the defense matters, to economic matters. And I'm a strong supporter of it." Europe falls out of love with Obama over NSA spying claims On the matter of national economies, experts agreed that intelligence agencies also examine an ally's commerce and industry. "If the French were to be gathering intelligence in the United States, it's not that they were anticipating an American invasion in Normandy. It's to gather intelligence on American politics, maybe to do a little industrial espionage," Kupchan said. "It's standard fare for intelligence agencies to do these type of things. That's why they're there. That's their raison d'etre." One U.S. analyst had a blunt message for friends in Europe and elsewhere.

No Uniq

NATO strong and cohesive

Mukhopadhyay, 6/18/2015

Sounak. "NATO To Implement 'Biggest' Military Reinforcement In Europe Since Cold War." International Business Times. N.p., 18 June 2015. Web. 24 June 2015. <http://www.ibtimes.com/nato-implement-biggest-military-reinforcement-europe-cold-war-1973611>.

NATO is undertaking the biggest military reinforcement in Europe since the Cold War. The announcement comes after NATO Secretary-General Jens Stoltenberg's charge that Russia has been using "force to change borders, to annex Crimea and to destabilize eastern Ukraine." Stoltenberg attended the first deployment exercise of the Alliance's Spearhead Force in western Poland Thursday. Top NATO military commanders as well as Polish Deputy Prime Minister and Minister of Defense Tomasz Siemoniak were also present at the event. Stoltenberg met Polish President-elect Andrzej Duda as well. "This is a strong expression that NATO stands ready to protect and defend Poland and all allies against any threat," Stoltenberg said, "Troops from nine different countries working together as one - this is really the strength of NATO." He appreciated the dedication and professionalism of the troops and said that he was "impressed" by what he had seen. The event was also attended by defense ministers from Norway, Germany and the Netherlands. Stoltenberg met with Norwegian Defense Minister Ine Eriksen Søreide, German Defense Minister Ursula von der Leyen and Dutch Defense Minister Jeannine Hennis-Plasschaert. Iran's Press TV reported that Siemoniak had resorted to anti-Russian rhetoric Thursday. He asked NATO for an expansion of its military presence in the region. According to Brig. Gen. Kees Matthijssen, nine countries deployed 2,100 troops within four days. The brigade commander of the interim VJTF said there were nine trains, 30 military convoys, 440 vehicles, 17 flights and more than 100 containers. Stoltenberg earlier had a meeting in Warsaw with Polish President Bronislaw Komorowski. He praised Komorowski's commitment and leadership to develop a strong military force. Poland is going to spend 2 percent of GDP on defense in 2015. It will also host the Warsaw Summit in July 2016.

I/L Turn

I/L turn Threat of Russian aggression is uniting NATO

Lee and Schmitt, 6/23/15

Eric, and Steven Lee Myers. Eric Schmitt and Lee are senior writers who cover terrorism and national security issues for The New York Times. "NATO Refocuses on the Kremlin, Its Original Foe." The New York Times. The New York Times, 23 June 2015. Web. 24 June 2015.

<http://www.nytimes.com/2015/06/24/world/europe/nato-returns-its-attention-to-an-old-foe-russia.html?_r=0>.

CAMP ADAZI, Latvia — After years of facing threats far beyond its borders, NATO is now reinvigorating plans to confront a much larger and more aggressive threat from its past: Moscow.

This seismic shift has been apparent in military training exercises in this former Soviet republic, which is now a NATO member and on the alliance's eastern flank, bordering Russia. On a recent day, Latvian soldiers conducted a simulated attack on dug-in enemy positions in a pine forest here as two United States A-10 attack planes roared overhead and opened fire with 30-millimeter cannons. Two days before, a B-52 dropped nine dummy bombs radioed in by the Latvians on the ground — all just 180 miles from the Russian border. Continue reading the main story RELATED COVERAGE President Vladimir V. Putin in Moscow on Monday marking the anniversary of the Nazi invasion of the Soviet Union in 1941.Russia Assails Extension of E.U. Sanctions in Ukraine CrisisJUNE 22, 2015 E.U. Agrees to Extend Economic Sanctions Against RussiaJUNE 17, 2015 Russia Urges U.S. Not to Deploy Weapons to Border AreasJUNE 15, 2015 A Russia-backed rebel in eastern Ukraine on Tuesday. Russia has used "hybrid war" tactics to mask its operations there.Survey Points to Challenges NATO Faces Over RussiaJUNE 10, 2015 The symbolism of the B-52s, stalwarts of the Cold War arsenal, was lost on no one. The bombers' main mission once was to deliver a nuclear knockout punch to Soviet forces, but they were put to use for the first time over Latvia to show resolve on the new front between NATO and Russia, the heir of the Soviet war machine. Photo Lithuanian and American soldiers at the start of the exercise, intended to show resolve on the new front between NATO and Russia. Credit Bryan Denton for The New York Times "If the Russians sense a window of opportunity, they will use it to their advantage," said Estonia's chief of defense, Lt. Gen. Riho Terras, who recently mobilized 13,000 soldiers across his tiny country in a separate exercise. "We must make sure there's no room for miscalculation." The military drills that unfolded here, part of a series of exercises planned over coming months to demonstrate the alliance's readiness to confront Russia, emphasized the depth of the challenge facing an alliance that for a quarter of a century turned its attention to threats much farther afield. After years of reducing military spending and conducting expeditionary missions beyond NATO's border, from the Balkans to Afghanistan to the Horn of Africa, the alliance has had to reinvigorate plans that commanders and political leaders had largely consigned to the past. This week, Defense Secretary Ashton B. Carter is traveling through several NATO capitals before sitting down on Wednesday and Thursday with other defense ministers in Brussels to debate how to counter a resurgent Russia. On Tuesday in Tallinn, Estonia, Mr. Carter confirmed plans to position heavy American tanks and other weaponry in the Baltics and Eastern Europe for the first time. The plan has prompted unease in some quarters ahead of the NATO defense ministers' meetings, and strong protests from Moscow that coincided with an announcement by President Vladimir V. Putin that he was bolstering Russia's arsenal of strategic nuclear weapons. Revising Strategies Russia's annexation of Crimea, and its role in the war in eastern Ukraine, has already resulted in what NATO's secretary general, Jens Stoltenberg, recently called "the biggest reinforcement of NATO forces since the end of the Cold War." It has involved a marked increase in training rotations on territory of the newer NATO allies in the east, and increased patrols of the air and seas from the Baltic to the Black Sea intended to counter an increase of patrols by Russian forces around NATO's periphery. Most of those are temporary deployments. But in February, NATO announced that it would set up six new command units within the Eastern allies and create a 5,000-strong rapid reaction "spearhead" force. With the leaders of NATO's 28 members scheduled to gather in Warsaw for an important summit meeting next year, the alliance is now considering what other measures are needed to adjust its forces, to increase spending that had plummeted as part of a "peace dividend," and to revisit NATO's military strategy and planning. "During the Cold War, we had everything there in the neighborhood we needed to respond," said Julianne Smith, a former defense and White House official who is now a senior fellow at the Center for a New American Security in Washington. "It's all atrophied. We haven't gone through the muscle movements of a conventional attack in Europe for decades." NATO's steps, and its deliberations over future ones, have exposed internal tensions within the alliance over the extent of the threat Mr. Putin's Russia poses. That, in turn, has colored the debate over how vigorously the allies should prepare. Some view the threat as imminent, while others view Russia as less a threat than the instability, the flood of migrants and the rise of extremism emanating from North Africa. A recent poll suggested that residents in some member nations were far from committed to the notion of going to war to protect the other NATO allies — let alone Ukraine. Continue reading the main story 200 MILES Baltic Sea ESTONIA Adazi LATVIA Moscow LITHUANIA Rukla RUSSIA BELARUS POLAND UKRAINE SLOVAKIA MOLDOVA HUNGARY ROMANIA CRIMEA Black Sea By The New York Times NATO's response to the events in Ukraine has required a shift in strategic thinking as profound as the one that accompanied the collapse of the Soviet Union, when the alliance's main adversary suddenly no longer existed. For years, the Russia that emerged from the Soviet ruins seemed destined to be a partner if not an ally, something Mr. Putin himself did not rule out when he first came to office in 2000. "I don't think we're in the Cold War again — yet," said James G. Stavridis, the retired admiral and NATO military commander, now dean of the Fletcher School of Law and Diplomacy at Tufts University, who served on a destroyer as a "thorough seagoing cold warrior" when the Soviet Union collapsed in 1991. He added, however, "I can kind of see it from here." While some do not rule out a conventional confrontation — something Mr. Putin himself rejected as "insane" — others point to the potential threats shrouded in subterfuge and subversion, much like Russia's annexation of Crimea in March 2014 and its continuing support for ethnic Russians in the war in eastern Ukraine, which has claimed more than 6,000 lives. A confidential assessment of the risk of Russia destabilizing the Baltic States is expected to be presented at the NATO meetings this week. But the potential for such an attack has implicitly been the focus of much of the training and planning going on in places like this. In private and in public, some officials and commanders argue that much more is needed to reverse two decades of policy, particularly to shore up an eastern flank that to many, especially here in the Baltics, feels gravely exposed to a Russian attack. Poland's defense minister, Tomasz Siemoniak, said that NATO had to undertake a "strategic adaptation" that accounted for the fact that Russia's hostility toward the alliance was "a change in climate and not a summer storm." It is time, he said, to consider significant deployments of heavy weapons in Eastern Europe, brushing aside the worry that such a move would provoke Russia. "I think the caution expressed by some of our European allies is excessive," Mr. Siemoniak said in a speech at the Center for Strategic and International Studies in Washington in May. Some believe that stoking divisions among the allies is simply another of the tactics that

Mr. Putin has employed. Lt. Gen. Ben Hodges, the commander of United States Army forces in Europe, said in an interview, “I am sure they want to create doubts in the minds of some members of the alliance that the other 27 members won’t be there for them.” The rising tensions between NATO and Russia coincide with a sharp decline in the United States military presence in Europe: to 64,000 troops now, including just 27,000 soldiers, from more than 400,000 at the height of the Cold War. Other nations’ militaries have shrunk, too. Britain now has a smaller army than during the Crimean War in the mid-19th century. The notion of a more robust NATO has encountered inertia that has built over the last two decades. The “peace dividend” that followed the collapse of the Soviet Union could prove hard to reverse, said David Ochmanek, a former senior Pentagon official who is a senior analyst at the RAND Corporation. NATO’s militaries drew down so precipitously that it has become a regular challenge for members to maintain military spending at 2 percent of gross domestic product, a level considered minimal for effective defense. Photo Lithuanian troops dig in defensive positions during the annual Saber Strike training exercise in the Baltics and Poland that ended Friday. Credit Bryan Denton for The New York Times At the same time, few of the NATO allies are looking to increase military spending significantly. “Nobody in any military establishment is looking for more bills to pay right now,” Mr. Ochmanek said. A Message of Solidarity Even before the annexation of Crimea, NATO had watched Russia warily. “NATO has reduced defense spending over a long period of time, especially European NATO allies,” Mr. Stoltenberg said in an interview in Washington in May. “Russia has increased substantially. So they have modernized their forces. They have increased their capacity. And they are exercising more. And they are also now starting to use nuclear rhetoric, nuclear exercises and nuclear operations as part of their nuclear posture. This is destabilizing.” While American officials say that exercises like the one at this former Soviet tank base are mainly to allow NATO and Baltic States to hone their training together, they are also intended to send a strong message of solidarity. More than 6,000 troops from 14 allied nations — three times the number of soldiers that joined the same exercise two years ago, before Russia’s invasion of Crimea and eastern Ukraine — conducted the annual Saber Strike training exercise in the Baltics and Poland that ended Friday. On a brilliant, sunny day this month, 150 Latvian infantry members fought across a sandy pine barren to seize locations defended by Atropians, a fictional foe played by Gurkha soldiers of the British Army. Both sides traded simulated artillery and rocket fire, before the Latvians dashed from the woods and used smoke screens as cover to seize their targets. The A-10 attack planes roared overhead. But what really snapped back the necks of Baltic and other European observers was the B-52 bomber, on call for any additional strikes. Latvia’s defense chief, Lt. Gen. Raimonds Graube, looked up admiringly at the warplanes and dismissed any suggestion that a NATO exercise with B-52s might provoke the Russians, as some European officials have complained. “Our soldiers must be ready to train on an international level,” he said. For a United States military that has spent nearly two decades fighting insurgencies in places like Iraq and Afghanistan, the tensions with Russia have young soldiers, many born after the Soviet Union collapsed, learning new skills and brushing up on an old adversary. “It’s not lost on me or my soldiers where we’re operating,” said Lt. Col. Chad Chalfont, an Army battalion commander training at a former Soviet base in Rukla, Lithuania. Colonel Chalfont, whose father served as an Air Force officer in an underground nuclear missile silo during the Cold War, said American and Lithuanian troops drilled together on mundane but critical tasks like talking on the same radio frequency. Lithuanian infantry troops also learn more complex skills, like operating together with American battle tanks for the first time in dense pine forests. The threat to the Baltic nations, at least in theory, is acute. For the Pentagon, Mr. Ochmanek of RAND has run war games trying to anticipate how to defend the Baltics in particular, the most immediate concern for the alliance. “It’s not realistic to think they could defend themselves against a determined Russian attack,” he said. There is a hope that deterrence will suffice to prevent Russia from moving, but many fear that Mr. Putin’s government could seek to undermine the allies by subterfuge, as Russia did in Crimea and is doing in Ukraine. Photo Lithuanian soldiers placed trip wires and flares in the woods surrounding the defensive positions they shared with American troops before the next day's attack by German soldiers in the exercise. Credit Bryan Denton for The New York Times More likely than any ground attack from Russian troops, NATO officials say, would be some kind of cyberstrike or information warfare assault, two of the critical components of a hybrid warfare style that is central to a new Russian military strategy unveiled in 2013 by Russia’s chief of the general staff, Gen. Valery V. Gerasimov. The doctrine explicitly acknowledged the use of “military means of a concealed character, including carrying out actions of informational conflict and the actions of special operations forces.” For those on NATO’s front lines, the doctrine appears all too real. This month, unknown hackers targeted the website of the Lithuanian Army leadership, posting false information about NATO exercises in the Baltics and Poland, a Lithuanian Defense Ministry spokesman said. Lithuanian officials said the false messages included a report that the NATO exercise was a pretext for a possible annexation of the Russian region of Kaliningrad, which lies between Lithuania and Poland. All of this is on NATO’s mind as it takes interim measures to deal with the threat. Asked what steps his military would take if Russian “little green men” tried to sneak across his border, General Terras, Estonia’s chief of defense, said bluntly, “We will shoot them.” Feeling Vulnerable Bravado aside, Baltic commanders and civilian leaders said they were scrambling to improve and enlarge their militaries and other security forces. These countries are overcoming the years when Russia was not considered an enemy, but was still eyed warily. When Baltic nations joined NATO more than a decade ago, they were encouraged to develop niche specialties rather than territorial defense, which was no longer thought necessary. Latvia, for instance, developed capabilities like explosive demolition experts and ground spotters to call in strikes — all skills that filled needs in NATO missions outside Europe, such as Afghanistan. Now, with standing forces of about 5,000 to 10,000 troops, the Baltics feel vulnerable despite being members of NATO. They have no tanks, no air forces to speak of, and only patrol craft and minesweepers to ply coastal waters. Each country is now rushing to correct this shortfall. The Estonians have a “defense league” that is made up of about 30,000 civilians and includes farmers, carpenters, lawyers and other professions. They engage in basic infantry training once a month, receive arms from the government, and in the event of an invasion would be called to active duty to be commanded by professional soldiers. Juozas Olekas, Lithuania’s defense minister, said in an interview that the government was developing a more comprehensive self-defense plan coordinating across several government agencies. The army will soon add some 3,000 new conscripts. In Latvia, Defense Minister Raimonds Vejonis said that with the Baltics’ bitter history under Soviet occupation, the public and the government were only too aware of Mr. Putin’s attempts to use propaganda and military might in Ukraine to intimidate NATO’s smallest members. “We will stay united because if we don’t, NATO will die,” said Mr. Vejonis, who will become Latvia’s president in July. Not all of the NATO allies are as ardent. While there has been striking unanimity against Russia’s actions in Ukraine — separately, the European Union extended its sanctions against Russia this week — divisions remain. “There’s a hope this is all a bump in the road and with a little bit of tweaking we can get back to the status quo,” the former American ambassador to Russia, Michael McFaul, said in a telephone interview. “In my view, that’s naïve. Putin’s not going to change his position, and he’s not going away. You’ve got to be in this for the long haul.”

Cred Bad

Credibility is a false justification for interventionist policies

Larison 14 (Larison, Daniel. "The "Credibility" Scam." The American Conservative. 11 Aug. 2014. Web. 26 June 2015. <http://www.theamericanconservative.com/larison/the-credibility-scam/>.)ʕ ⌐•ᴥ•ʔ⌐♥eve

The strange thing is that "credibility" hawks' warnings continue to be taken seriously when, as Friedman says, they haven't ever been right. The fact that they've never been right should tell us that there is something inherently wrong with the concept they keep using. Considering how many times U.S. "credibility" has supposedly been shattered or ruined, it is remarkable how many dozens of eager would-be clients and long-standing allies still line up with Washington and fully expect the U.S. to protect them and/or do as they wish. Warning about "credibility" is a giveaway that the person issuing the warning has run out of persuasive arguments and has nothing else left. Friedman sums it up this way: A good rule of thumb for foreign policy is that if someone tells you our credibility depends doing something, it's probably a bad idea. This true not only because "credibility" hawks are always invoking credibility in order to justify more aggressive policies in places of little or no importance to the U.S., but because the reliance on the "credibility" argument is confirmation that these policies can't be defended on the merits. The arguments for deeper U.S. involvement in conflicts that are at best tangentially related to U.S. vital interests are not compelling ones, which is why the "credibility" argument is used so often in these debates. "You may not agree with doing X, but you don't want to risk encouraging a North Korean invasion, do you?" At its core, the "credibility" argument is a sort of extortion: if you don't agree to do what the hawks prefer in one place, your actual allies somewhere else are supposedly going to get hurt. This should alert us to the weakness of the policy arguments, but instead many Americans allow themselves to be tricked into letting "credibility" concerns overrule all of their objections."Credibility" hawks also have the bad habit of exaggerating the significance of the commitment that the U.S. made in the past to pretend that the supposed "credibility" gap is far greater than it is. Consider the infamous "red line" over Syrian chemical weapons. It's true that Obama shouldn't have drawn this line, but he did so in such a vague, almost meaningless way that he had not really committed the U.S. to any particular course of action. It was Syria hawks that latched onto the "red line" and declared that it was a promise to intervene militarily. Similarly, the U.S. had made no commitments to defend Ukraine, but by pretending that the U.S. was ignoring its commitments in the Budapest memorandum "credibility" hawks insisted on taking a harder line in the crisis so that real American security commitments elsewhere wouldn't be undermined. That's how it often works: the "credibility" hawks insist on adding major new commitments that the U.S. never even contemplated having before, and then declare the entire alliance system and security of the planet at risk unless the rest of us agree with whatever reckless and unnecessary scheme they have devised. The "credibility" argument is nothing more than a scam, and we are the marks.

Credibility is counterproductive and contingent on allies- not U.S. policy

Walt 12 (Walt, Stephen. "Why Are U.S. Leaders so Obsessed with Credibility?" Foreign Policy Why Are US Leaders so Obsessed with Credibility Comments. 11 Sept. 2012. Web. 26 June

2015. <http://foreignpolicy.com/2012/09/11/why-are-u-s-leaders-so-obsessed-with-credibility/>.)ʕ ⊃•ᴥ•ʔ⊃♥eve

I call this error the "credibility fetish." U.S. leaders have continued to believe that our security depends on convincing both allies and adversaries that we are steadfast, loyal, reliable, etc., and that our security guarantees are iron-clad. It is a formula that reinforces diplomatic rigidity, because it requires us to keep doing things to keep allies happy and issuing threats (or in some cases, taking actions) to convince foes that we are serious. And while it might have made some degree of sense during the Cold War, it is increasingly counterproductive today. Stolid constancy and loyalty to pre-existing alliance relationship are not the self-evident virtues they once were. We should not be surprised that erstwhile allies put their own interest ahead of ours and act accordingly. Where it is to our long-term advantage, we should do the same."What might this mean in practice? As I've noted repeatedly, it means beginning by recognizing that the United States is both very powerful and very secure, and that there's hardly anything that could happen in the international system that would alter the global balance of power overnight. The balance is shifting, to be sure, but these adjustments will take place over the course of decades. Weaker states who would like U.S. protection need it a lot more than we need them, which means our "credibility" is more their problem than ours. Which in turn means that if other states want our help, they should be willing to do a lot to convince us to provide it.Instead of obsessing about our own "credibility," in short, and bending over backwards to convince the Japanese, South Koreans, Singaporeans, Afghans, Israelis, Saudis, and others that we will do whatever it takes to protect them, we ought to be asking them what they are going to do for themselves, and also for us. And instead of spending all our time trying to scare the bejeezus out of countries like Iran (which merely reinforces their interest in getting some sort of deterrent), we ought to be reminding them over and over that we have a lot to offer and are open to better relations, even if the clerical regime remains in power and maybe even if — horrors! — it retains possession of the full nuclear fuel cycle (under IAEA safeguards). If nothing else, adopting a less confrontational posture is bound to complicate their own calculations.This is not an argument for Bush-style unilateralism, or for a retreat to Fortress America. Rather, it is a call for greater imagination and flexibility in how we deal with friends and foes alike. I'm not saying that we should strive for zero credibility, of course; I'm merely saying that we'd be better off if other states understood that our credibility was more conditional. In other words, allies need to be reminded that our help is conditional on their compliance with our interests (at least to some degree) and adversaries should also be reminded that our opposition is equally conditional on what they do. In both cases we also need to recognize that we are rarely going to get other states to do everything we want. Above all, it is a call to recognize that our geopolitical position, military power, and underlying economic strength give us the luxury of being agile in precisely the way that Freeman depicts.

Despite spying scandals EU wants unified approach to Russia

Yan et al. 15 (Yan, Holly, Catherine Schoichet, and Michael Pearson. "Obama, Merkel Pledge Alliance on Ukraine - CNN.com." CNN. Cable News Network, 9 Feb. 2015. Web. 27 June 2015. <http://www.cnn.com/2015/02/09/europe/ukraine-conflict/>.)ʕ ⊃•ᴥ•ʔ⊃♥eve

Both Obama and Merkel stressed the importance of working together. "There may be some areas where there are tactical disagreements. There may not be. But the broad principle that we have to stand up for ... the principle of territorial integrity and sovereignty is one where we are completely unified," he said. Western leaders cannot stand idly by "and simply allow the borders of Europe to be redrawn at the barrel of a gun," Obama said. Merkel said the strong alliance

between Europe and the United States would thrive despite any differences. Russia's incursions on Ukraine's borders, she said, are too dangerous for Europe to tolerate. "I can only say that if we give up on this principle of territorial integrity of countries, then we will not be able to maintain the peaceful order of Europe that we've been able to achieve," she said.

US and EU working to diplomatically deescalate Russia

VOA News ("Obama, Merkel Opt for Diplomacy in Ukraine Crisis." VOA News. 9 Feb. 2015. Web. 27 June 2015. <http://www.voanews.com/content/german-chancellor-to-hold-talks-monday-with-obama-on-ukraine/2634472.html>.)ʕ ⌒•ᴥ•?⌒♥eve

Merkel came to the White House Monday for talks with Obama on a wide range of issues. Topping their agenda are the fighting in Ukraine and the international coalition against the Islamic State group.

The two leaders said the U.S. and Europe stand united to find a diplomatic solution to end the crisis in Ukraine and the resulting stand-off it triggered between Russia and Western allies.Obama also said Monday his administration is looking at all options in handling the crisis in Ukraine, but he has not yet decided whether the United States will provide arms. “The possibility of lethal defensive weapons is one of those options that is being examined, but I have not made a decision about that yet," he said. He said there is no "specific point" at which lethal defensive weapons would be "appropriate." But he said he had instructed key advisors to examine the plausibility of supplying Kyiv with weaponry, in the event that diplomacy fails to bring peace. Ukraine leaders insist that such hardware is necessary to offset recent rebel military gains and end the uprising near the Russian border.Merkel opposes arming Ukraine forces for fear of escalating tensions with Moscow, already at their highest point since the end of the Cold War. However, she added that no matter what Obama decides, "the alliance between the United States and Europe will continue to stand, will continue to be solid."

The U.S. and German leaders said they would "continue to encourage a diplomatic solution" and agreed that sanctions against Russia need to remain "fully in force" as long as it "continues on its current course."

U.S. and EU working together on Russia sanctions

Mason&Kelly 14 (Mason, Jeff, and Lidia Kelly. "U.S., EU to Work Together on Tougher Russia Sanctions." Reuters. Thomson Reuters, 27 Mar. 2014. Web. 27 June 2015. <http://www.reuters.com/article/2014/03/27/us-ukraine-crisis-idUSBREA2P0VB20140327>.)ʕ ⌒ •ᴥ•?⌒♥eve

The United States and the European Union agreed on Wednesday to work together to prepare possible tougher economic sanctions in response to Russia's behavior in Ukraine, including on the energy sector, and to make Europe less dependent on Russian gas. U.S. President Barack Obama said after a summit with top EU officials that Russian President Vladimir Putin had miscalculated if he thought he could divide the West or count on its indifference over his annexation of Crimea. Leaders of the Group of Seven major industrial powers decided this week to hold off on sanctions targeting Moscow's economy unless Putin took further action to destabilize Ukraine or other former Soviet republics. "If Russia continues on its current course, however, the isolation will deepen, sanctions will increase and there will be more consequences for the Russian economy," Obama told a joint news conference with European Council President Herman Van Rompuy and European Commission President Jose Manuel Barroso. In the keynote address of his European

trip, Obama later told an audience of 2,000 young people that the West would prevail if it remained united, not by military action but by the power of its values to attract ordinary Ukrainians. Russia would not be "dislodged from Crimea or deterred from further escalation by military force. But with time, so long as we remain united, the Russian people will recognize that they cannot achieve security, prosperity, and the status they seek through brute force," he said. In the speech in a Brussels concert hall, which resembled a point-by-point rebuttal of Putin's March 18 Kremlin speech announcing the annexation of Crimea, Obama voiced respect for a strong Russia but said "that does not mean that Russia can run roughshod over its neighbors". He also said NATO would step up its presence in new east European member states bordering on Russia and Ukraine to provide reassurance that the alliance's mutual defense guarantee would protect them. Russian forces in Crimea captured the last Ukrainian navy ship after firing warning shots and stun grenades, completing Moscow's takeover of military installations in the Black Sea peninsula. Kiev has ordered its forces to withdraw.

G7 nations focused on deescalating Russia through sanctions

Crone 6/9 (Crone, Jack. "The Hills Are Alive with the Sound of Merkel: Angela Looks like She's about to Burst into Song for Obama as World Leaders Celebrate G7 Deal." Mail Online. Associated Newspapers, 9 June 2015. Web. 28 June 2015. <http://www.dailymail.co.uk/news/article-3115473/The-hills-alive-sound-Munich-Angela-Merkel-looks-like-s-burst-song-Obama-world-leaders-celebrate-G7-deal.html>.) ʕ ⌒•ᴥ•ʔ⌒♥eve

And despite their sometimes-rocky relationship, the chancellor even won a laugh from David Cameron as she strolled with him and Canadian Prime Minister Stephen Harper before the hilltop summit. Today the Group of Seven (G7) industrial nations focused mainly on the international security threat posed by ISIS, 'Russian aggression' in Ukraine and climate change. Speaking on the issue of Russia, Ms Merkel, who was recently voted the world's most powerful woman, said Europe 'could toughen the sanctions if the situation requires us to do so.' The leaders want Russia and Ukraine to comply with a February 12 ceasefire agreed in the Belarus capital Minsk that largely halted fighting in eastern Ukraine between pro-Russian separatists and Ukrainian government forces.Speaking in a press conference, President Obama added: 'As we've seen again in recent days, Russian forces continue to operate in eastern Ukraine, violating Ukraine's sovereignty and territorial integrity. 'Russia is in deep recession. So Russia's actions in Ukraine are hurting Russia and hurting the Russian people. And the G7 is making it clear that if necessary we stand ready to impose additional significant sanctions against Russia.'Speaking on the same matter, Mr Cameron said the world should remember that the Ukrainians are 'the victims, not the aggressors', adding: 'Existing sanctions must remain in place until the Minsk agreements are fully implemented.'

No Internal Link

No loss of relations from spying - foreign leaders were aware of the spying

Calamur 13 (Calamur, Krishnadev. "4 Things To Know About Spying On Allies." NPR. NPR, 1 Oct. 2013. Web. 25 June 2015. <http://www.npr.org/sections/parallels/2013/10/28/241384089/four-things-to-know-about-spying-on-allies>.) ʕ ⌒•ᴥ•ʔ⌒♥eve

Spying on adversaries is common — as is spying on your allies. As Charles Kupchan, a professor of International Affairs at Georgetown University and a senior fellow on the Council on Foreign Relations, told NPR's Audie Cornish last week: "Everybody spies on everybody, including friends on friends." But there are some exceptions. Since World War II, the U.S. and Britain have shared sensitive intelligence. Three other countries belong to this so-called "five eyes" alliance: Australia, Canada and New Zealand. They *probably* don't spy on each other's leaders, but their citizens are fair game. "In fact," writes Max Boot in Commentary, "this intelligence sharing allows them to do an end-run around prohibitions on domestic surveillance: the Brits can spy on our citizens, we can spy on theirs, and then we can share the results." 2. Why are so many people angry? Two reasons: the scope of the spying and its scale. Foreign leaders likely knew the NSA was spying on citizens in their countries, but they are less tolerant of the fact that they were targets themselves. "What's very important about this particular scandal is that they see our collection as going beyond the pale," Tim Naftali, a senior research fellow at the New America Foundation, tells NPR's Renee Montagne. "We have somehow crossed a boundary that they understood existed and where we've gone they don't accept anymore." But Boot has a different view. "Much of their anger is faked for public consumption," he writes. "The only outrage is that anyone is outraged." So much of this is going to be done in secret and one thing that we should expect — or should hope for — is that Congress will play a role and we will see a change in the leadership of the NSA — because a signal has to be sent abroad to our allies that we take seriously their concerns about the ambit of NSA collection." But Kupchan notes there will be "very little" damage even if the U.S. stops spying on its allies. "And that's because in the end of the day, friends do not mean harm to friends," he says. "The United States would have somewhat less information in its diplomatic quiver, but we could certainly live if there were to be an agreement with our friends to cut this out."

Escalation Inev

Russian escalation is inevitable, Putin reacts irrationally --Ukraine crisis proves

Blodget 1/21 (Blodget, Henry., editor-in-chief of Business Insider,. "UKRAINE OFFICIAL: Putin Is Escalating And Emotional - And Hasn't Spoken To President Poroshenko For 11 Days." Business Insider. Business Insider, Inc, 21 Jan. 2015. Web. 24 June 2015. <http://www.businessinsider.com/ukraine-official-putin-is-escalating-the-conflict-2015-1#ixzz3e0BwNLJI>) ʕ ⊃•ᴥ•ʔ⊃♥eve

On a closed session at the World Economic Forum in Davos, Switzerland, a high-ranking Ukrainian official just shared the Ukrainian government's current view of its conflict with Russia: Fighting has resumed after a three-week ceasefire. The administration sees signs that Putin is escalating his forces, albeit in a limited way. The administration does not currently see Putin amassing force for a major invasion.. The official applauded support from China. The Ukrainian government believes time is working against Putin. The combination of economic sanctions, plunging oil prices, and the backlash against Putin's aggression is putting Putin in an increasingly isolated position. Putin is responding by escalating his forces. The Ukrainian government says it does not know what Putin wants. The administration believes that even Putin does not know what he wants. Putin's tone changes on every phone call with Ukrainian President Petro Poroshenko, the official said. The last time Putin spoke with President Poroshenko was 11 days ago.

Unified Front Not Key

No I/L uniq or risk of mpx. U.S. Providing military support and creating unity in Europe to deter Russian aggression.

Baldor 6/23/15

Baldor, Lolita C. National Security/Pentagon Reporter Associated Press Washington, D.C**.**"US to Put Military Equipment in 6 European Countries, including Balkans, to Reassure Allies." US

News. U.S.News & World Report, 23 June 2015. Web. 23 June 2015. <http://www.usnews.com/news/politics/articles/2015/06/23/carter-us-to-put-military-equipment-in-6-european-countries?page=2>.

TALLINN, Estonia (AP) — The U.S. will spread about 250 tanks, armored vehicles and other military equipment across six former Soviet bloc nations to help reassure NATO allies facing threats from Russia and terrorist groups, Defense Secretary Ash Carter announced Tuesday. Carter's announcement, made as he stood with defense chiefs from Estonia, Latvia and Lithuania, comes a day after he announced that the U.S. would have other weapons, aircraft and forces, including commandos, ready as needed for NATO's new rapid reaction force, to help Europe defend against potential Russian aggression from the east and the Islamic State and other violent extremists from the south. The defense chiefs standing with Carter all spoke bluntly about the threat they perceive from Russia, and **the latest military plans provide a show of solidarity across the region and in NATO.** Estonia Defense Minister Sven Mikser said the Baltic leaders aren't trying to restart the Cold War arms race or match Russian President Vladimir Putin "tank for tank," but the additional military presences will be a deterrent to Russia and could change the calculous. "In global terms Russia is no match conventionally to U.S. or to NATO, but here in our corner of the world, Putin believes that he enjoys regional superiority," Mikser said, adding that Estonia is eager and ready to accept the equipment immediately. Each set of equipment would be enough to outfit a military company or battalion, and would go on at least a temporary basis to Bulgaria, Estonia, Latvia, Lithuania, Poland, and Romania. Carter said the equipment could be moved around the region for training and military exercises, and would include Bradley fighting vehicles and self-propelled howitzer artillery guns. Germany will be participating in the expanded military effort, but already has U.S. equipment. "We intend to move those equipment sets around as exercises move around," Carter told a news conference. "They're not static. Their purpose is to enable richer training and more mobility to forces in Europe." He said the U.S. presence will be "persistent" but "agile," and he said the troops will be able to stay at a higher state of readiness. But while the stated goal of the move is that American forces moving in and out of Europe will be better able to do training, it also would allow NATO nations to more quickly respond to any military crisis in the region. Later in the day, Russia was also on the minds of U.S. sailors and Marines aboard the USS San Antonio, which just finished up a major annual international military exercise on the Baltic Sea called BALTOPS. The exercise, which involved some 60 ships from 17 NATO nations, is part of the stepped-up campaign to increase military training and activities in the region as a deterrent to Russia. Troops quizzed Carter on U.S. relations with Russia and questioned whether the U.S. might put a greater maritime presence in the region. The U.S. military "is highly, highly visible here in Europe, it's reassuring for them to see you," he said, "because of what you stand for." The U.S., said Carter, is also going to work with NATO's cyber center, located in Estonia, to help allies develop cyber defense strategies and other protections against computer-based attacks. Russian hackers have become particularly adept, including breaking into U.S. State Department computers. The countries for the equipment storage were chosen based on their proximity to training ranges, to reduce the time and cost of transporting it for exercises. The two-pronged U.S. plan — with the placement of equipment in Europe and the commitment of resources for NATO's very high readiness task force —

underscore America's commitment to helping allies counter growing threats on Europe's eastern and southern fronts.Rankings & Advice News U.S. News Home NEWS Facebook Twitter News, Opinion & Analysis News Ken Walsh's Washington Newsgram Washington Whispers At the Edge Data Mine The Run 2016 Opinion National Issues Special Reports Cartoons Photos The Report US to put military equipment in 6 European countries, including Balkans, to reassure allies The Associated Press The US Secretary of Defense Ashton Carter, left, and Estonian Defense Minister Sven Mikser attend a joint press conference after a meeting in Tallinn, Estonia, Tuesday, June 23, 2015 . (AP Photo) Associated Press June 23, 2015 | 12:44 p.m. EDT + More U.S. and NATO allies have criticized Russia for its increasingly aggressive actions, including the annexation of Crimea and its backing of separatist troops on Ukraine's eastern border. Under the plan to commit troops and resources if needed during a crisis, the U.S. could see a temporary increase in American troops in Europe, although many could be reassigned from bases already in the region. No U.S. troops or equipment will move immediately. Carter said the U.S., if requested and approved, would be willing to provide intelligence and surveillance capabilities, special operations forces, logistics, transport aircraft, and a range of weapons support that could include bombers, fighters and ship-based missiles. It would not provide a large ground force.

No I/L link, US sending strong deterrence signals

Kube 6/23/15

Courtney Q. chief Pentagon correspondent for NBC News. "U.S. Sending Armored Combat Brigade to Europe Amid Russia Tension." NBC News. National Broadcasting Corporation, 23 June 2015. Web. 24 June 2015. <http://www.nbcnews.com/storyline/ukraine-crisis/u-s-sending-armored-combat-brigade-europe-amid-russia-tension-n380191>.

At a news conference in Estonia, Carter said six countries — including Estonia, Romania and Poland — have agreed to temporarily host the armored brigade. "While we do not seek cold let alone 'hot war' with Russia, we will defend our allies, the rule-based international order and the positive future it affords us all," Carter told reporters, emphasizing that the move is not permanent and does not include troops. Defense officials told NBC News the forward deployment of the armored brigade will allow the U.S. to conduct more frequent training exercises in the region and send a strong signal to Russian President Vladimir Putin that the U.S. stands firmly with NATO in defense of the Baltic nations. There will be no U.S. military forces permanently deployed with the weapons, according to senior military officials. U.S. troops will be deployed as needed for joint exercises. Image: Defense Secretary Ashton Carter Gives Briefing On Sexual Assault Annual Report U.S. Secretary of Defense Ashton Carter speaks at a press briefing on the Sexual Assault Annual Report in the Pentagon Briefing Room on May 1, 2015 in Arlington, Virginia. Olivier Douliery / Getty Images U.S. officials added this is an effort to provide **a** "credible deterrence" to Russian aggression not an effort to reignited the Cold War with Russia. Senior military officials said the brigade will consist of 250 armored track vehicles, including tanks, Bradley fighting vehicles and artillery. There was no indication the U.S. was preparing to provide defensive weapons to Ukraine, where the government continues to fight Russian-backed rebels in the country's southeast. The violence continues in the region despite a ceasefire agreement reached in February. NATO Secretary-General Jens Stoltenberg told reporters Monday meeting that this was not a return to the Cold War. "We are not in a Cold War situation, but we are not in a strategic partnership with Russia either," he told a

news conference. "Therefore, we are facing something which is in between the historic experience of the Cold War and what we strive to establish, a strategic partnership with Russia after the Cold War."

No I/L or Impact, NATO strong and refuses arms race with Russia

Croft 6/24/15

Adrian. Is a part of Reuters UK reporting team, writing mainly about UK politics and foreign policy. "NATO Says Won't Be Dragged into Arms Race with Russia." Reuters. Thomson Reuters, 24 June 2015. Web. 24 June 2015. <http://www.reuters.com/article/2015/06/24/us-ukraine-crisis-nato-idUSKBN0P41RT20150624>.

The head of NATO said on Wednesday the alliance would not be forced into a new arms race with Russia but that what he called Moscow's aggression in Ukraine had compelled it to strengthen its defenses. The United States announced plans this week to station tanks and heavy weapons in NATO member states on Russia's border, shortly after President Vladimir Putin said Moscow would add 40 missiles to its nuclear arsenal. "We will not be dragged into an arms race, but we must keep our countries safe," NATO Secretary-General Jens Stoltenberg told reporters at the start of a meeting of alliance defense ministers. A Russian official last week accused NATO of pushing Russia into an arms race by stepping up its military activity around its borders, not least in the formerly Soviet Baltic States. U.S. Defense Secretary Ash Carter, attending his first NATO ministerial meeting, said on Tuesday the Baltic states - Estonia, Lithuania, Latvia - as well as Bulgaria, Romania and Poland had agreed to host the U.S. arms and heavy equipment. It was one of a range of steps the United States and NATO are taking to reinforce allies in eastern Europe after Moscow's annexation of Ukraine's Crimea region last year and what NATO says is Russia's military support for separatists in eastern Ukraine. Stoltenberg said the U.S. decision to store heavy weaponry in eastern Europe was a defensive measure and rejected suggestions that it could be a provocative step. "This is ... a prudent and a necessary response to what we have seen from Russia over a long period of time," he said. "What Russia has done in Ukraine is not defensive. To annex a part of another country is not defensive ... that is an act of aggression," he said. "They are also using now nuclear rhetoric and more nuclear exercises as part of their defense posturing. All of this creates a new security environment," he said. Asked if NATO and Russia were heading for a new Cold War, British Defense Secretary Michael Fallon told reporters: "There is sabre-rattling designed to provoke and intimidate but it is important also that the alliance ... continues to commit to the collective will to defend all its members." Ministers are expected to agree to further increase the size of NATO's rapid response force to 40,000 personnel. They decided in February to more than double it to 30,000 soldiers, airmen and sailors from 13,000. Within this force, NATO is to create a 5,000-strong "spearhead" force, part of which could move within 48 hours.

Russia and G7/NATO ALREADY aren't working together – impx should have happened already

Mulrine, Christian Science Monitor staff writer, 6/9

Anna Mulrine, June 6th, 2015, "NATO and Russia aren't talking to each other. Cold war lessons forgotten?" http://www.csmonitor.com/World/Europe/2015/0609/NATO-and-Russia-aren-t-talking-to-each-other.-Cold-war-lessons-forgotten-video PJL~KKF

WASHINGTON; AND MOSCOW — Knowing your enemy doesn't just win the war. Sometimes, it also can be critical to keeping the peace. Such was the case in 1983, during a massive NATO drill to test the alliance's capabilities to respond to a Soviet invasion of western Europe. Unknown to its planners, however, "Able Archer," which envisaged using nuclear weapons to halt the enemy advance, looked to Soviet eyes exactly the way Soviet intelligence had predicted a US nuclear "first strike" would unfold.

Though many of the details of how war was averted remain undisclosed, experts on both sides say the world came to the very brink of nuclear Armageddon through a chain of preventable misunderstandings. It was one of several cold war close calls that convinced Moscow and Washington to step up military contacts and establish formal, as well as informal, channels of communication that might make all the difference in an emergency. Those old tales are taking on urgent new relevance as the crisis over Ukraine drives East-West tensions to levels unseen since the cold war. Military machines on both sides are engaged in nearly non-stop war games aimed at displaying their readiness

to their jittery publics, and scary near-misses between warplanes are multiplying as Russia's Air Force tries to return to its Soviet-era pattern of global patrolling. All this is happening at a time when dialogue, even at the highest levels, is almost nonexistent. "Not just communications, but other mechanisms that used to exist are simply not working anymore," says Viktor Baranets, a former Russian defense ministry spokesman. "I don't want to sound alarmist, but judging by the rapid pace of events and growing aggressiveness on all sides, we may be moving toward disaster. It's like we're all priming a bomb, but no one knows when or how it will explode. Gradually, we are moving from cold to hot war." 'We should be having these conversations' The disconnect between the Russian and American militaries is in part a natural result of the end of the cold war Most of the old coping mechanisms were scrapped after they became unnecessary 25 years ago. That has left fighter pilots and ship captains today without the experience of their cold war predecessors, who were steeled by regular encounters with the enemy. But as NATO and Russia broke off relations last year amid the escalating spat over Ukraine, communications at lower echelons virtually ended. Last month NATO announced that it would set up a cold war-style "hotline" with the General Staff in Moscow. But that came even as NATO kicked out dozens of Russians formerly stationed at its Brussels headquarters. Pentagon officials say the US decision, alongside NATO, to slash military relations with Russia was the right thing to do "in light of Russia's aggressive actions in Ukraine." Virtually all bilateral engagements were shut down, including military exercises, bilateral meetings, port visits, and planning conferences. They say they continue to maintain "open lines of communication with Russia." But some experts worry that the hotline may prove far too little as tensions spiral, snap war drills become larger and more frequent on both sides, and genuine efforts to see the other guy's point of view dwindle. Army Chief of Staff Gen. Raymond Odierno says the fall-off in communications is indeed of concern. "I'm a big believer in no matter how big your disagreements are, it's important that you continue to have discussions," he says. "In my mind, when you're not talking, relationships can deteriorate faster because you can misinterpret – you don't quite understand exactly what's being said, and you don't have the opportunity to discuss the most difficult issues," he told defense reporters on May 28. "I believe we should be having these conversations, but we're not." Nuclear troubles Strategic nuclear weapons are still subject to strict controls. Five years ago Russia and the US signed the New START treaty, which holds the two sides to defined numbers of warheads and delivery systems. The treaty has its own apparatus for mutual verification and consultation. But the late-cold-war treaty that banned all medium-range nuclear missiles in Europe is under new strains, with the US accusing Russia of violations and some Russian politicians openly calling for the accord to be scrapped altogether. Russia is also warning that it might deploy nuclear-capable Iskander missiles to its western enclave of Kaliningrad and the newly-annexed territory of Crimea, which could add a nuclear dimension to the standoff. In the worst case, there is still the "red phone" – not actually a phone, but a priority connection – between the White House and the Kremlin, established in the wake of the 1962 Cuban Missile Crisis. But that's not enough to offset the shift in attitudes. "Relations are changing in the worst possible direction. We're in a propaganda war, and the realization has dawned that we are not friends," says Viktor Kremeniuk, a veteran Russian America-watcher and author of a new book, "Lessons from the Cold War." "If something should happen in an area not covered by a specific, preexisting agreement, it's not clear how it would be handled," he says. "Basically, the normal channels of diplomacy are all we've got now." Growing risk of accident An air-to-air encounter turned bad is one of the nightmares that plague officials on both sides. Pentagon officials point to an April 2014 incident, in which a Russian fighter plane buzzed a US reconnaissance aircraft and "put the lives of its crew in jeopardy." "During the cold war, it was routine anytime our reconnaissance aircraft was looking at them, or them at us, that we would be flying in formation in a very predictable way," says Christopher Harmer, a retired naval officer who served as former deputy director of future operations at the US Navy's Fifth Fleet. That tight formation flying helped keep miscalculations to a minimum, Mr. Harmer says. But the sort of "reckless" flying demonstrated by the Russian fighter jet represents a shift in tactics. There is little chance it was the act of a show-off pilot, he adds. "Russian pilots don't do rogue." The US Navy complains of similar close and "provocative" Russian approaches toward its ships in the Black Sea, including an incident last week involving the guided missile destroyer USS Ross. Russian media accounts of the same event stress the defensive actions of Russian military forces in the face of US "aggressive" moves. Odierno says that he has endeavored to arrange meetings to discuss rules of engagement. "I've actually tried to meet to meet with my Russian counterpart on two separate occasions, and both times they've refused to do that in neutral settings So it's concerning," because the lack of communication "definitely increases the danger of miscalculations" between the two countries, he says. "It's depressing to find ourselves back in this situation. Trust is ebbing, tensions are spiking, there's the constant feeling that something could go badly wrong," says Andrei Baklitsky, an expert with the independent PIR Center in Moscow, a think tank specializing in nuclear security issues. "We need to work out a new set of rules. The way we've been doing things for the past 25 years isn't working in this new situation, so people really need to start talking."

Alt causes -- The key to stopping Russia is to solve the ideological clashes between Eastern and Western politics, or at least to pacify these concerns of misperception

Economist 2/14/15 February 14, 2015, "Russia's aggression in Ukraine is part of a broader, and more dangerous, confrontation with the West" http://www.economist.com/news/briefing/21643220-russias-aggression-ukraine-part-broader-and-more-dangerous-confrontation PJL~KKF

THE pens were on the table in Minsk, Belarus's capital, for the leaders of France, Germany, Russia and Ukraine to sign a deal to end a year-long war fuelled by Russia and fought by its proxies. But on February 12th, after all-night talks, they were put away. "No good news," said Petro Poroshenko, Ukraine's president. Instead there will be a ceasefire from February 15th. A tentative agreement has been reached to withdraw heavy weaponry. But Russia looks sure to be able to keep open its border with Ukraine and sustain the flow of arms and people. The siege of Debaltseve, a strategic transport hub held by Ukrainian forces, continues. Russia is holding military exercises on its side of the border. Crimea was not even mentioned. Meanwhile the IMF has said it will lend Ukraine $17.5 billion to prop up its economy. But Mr Putin seems to be relying on a familiar Russian tactic of exhausting his negotiating counterparts and taking two steps forward, one step back. He is counting on time and endurance to bring the collapse and division of Ukraine and a revision of the post-cold war world order. Nearly a quarter-century after the collapse of the Soviet Union, the West faces a greater threat from the East than at any point during the cold war. Even during the Cuban missile crisis of 1962, Soviet leaders were constrained by the Politburo and memories of the second world war. Now, according to Russia's chief propagandist, Dmitry Kiselev, even a decision about the use of nuclear arms "will be taken personally by Mr Putin, who has the undoubted support of the Russian people". Bluff or not, this reflects the Russian elite's perception of the West as a threat to the very existence of the Russian state. **In this view Russia did not start the war in Ukraine, but responded to Western aggression.** The Maidan uprising and ousting of Viktor Yanukovych as Ukraine's president were engineered by American special services to move NATO closer to Russia's borders. Once Mr Yanukovych had gone, American envoys offered Ukraine's interim government $25 billion to place missile defences on the Russian border, in order to shift the balance of nuclear power towards America. Russia had no choice but to act. Even without Ukraine, Mr Putin has said, America would have found some other excuse to contain Russia. Ukraine, therefore, was not the cause of Russia's conflict with the West, but its consequence. Mr Putin's purpose is not to rebuild the Soviet empire—he knows this is impossible—but to protect Russia's sovereignty. By this he means its values, the most important of which is a monopoly on state power. **Behind Russia's confrontation with the West lies a clash of ideas.** On one side are human rights, an accountable bureaucracy and democratic elections; on the other an unconstrained state that can sacrifice its citizens' interests to further its destiny or satisfy its rulers' greed. Both under communism and before it, the Russian state acquired religious attributes. It is this sacred state which is under threat. Mr Putin sits at its apex. "No Putin—no Russia," a deputy chief of staff said recently. His former KGB colleagues—the Committee of State Security—are its guardians, servants and priests, and entitled to its riches. Theirs is not a job, but an elite and hereditary calling. Expropriating a private firm's assets to benefit a state firm is therefore not an act of corruption. When thousands of Ukrainians took to the streets demanding a Western-European way of life, the Kremlin saw this as a threat to its model of governance. Alexander Prokhanov, a nationalist writer who backs Russia's war in Ukraine, compares European civilisation to a magnet attracting Ukraine and Russia. Destabilising Ukraine is not enough to counter that force: the magnet itself must be neutralised. Russia feels threatened not by any individual European state, but by the European Union and NATO, which it regards as expansionist. It sees them as "occupied" by America, which seeks to exploit Western values to gain influence over the rest of the world. America "wants to freeze the order established after the Soviet collapse and remain an absolute leader, thinking it can do whatever it likes, while others can do only what is in that leader's interests," Mr Putin said recently. "Maybe some want to live in a semi-occupied state, but we do not." Russia has taken to arguing that it is not fighting Ukraine, but America in Ukraine. The Ukrainian army is just a foreign legion of NATO, and American soldiers are killing Russian proxies

in the Donbas. Anti-Americanism is not only the reason for war and the main pillar of state power, but also an ideology that Russia is trying to export to Europe, as it once exported communism. Anti-Westernism has been dressed not in communist clothes, but in imperial and even clerical ones (see article). "We see how many Euro-Atlantic countries are in effect turning away from their roots, including their Christian values," said Mr Putin in 2013. Russia, by contrast, "has always been a state civilisation held together by the Russian people, the Russian language, Russian culture and the Russian Orthodox church." The Donbas rebels are fighting not only the Ukrainian army, but against a corrupt Western way of life in order to defend Russia's distinct world view.

No MPX

Russia is currently pursuing peace with Ukraine

Tejas, 6/6/15 **Aditya Tejas, International Business Times, June 6th, 2015, "Putin Blames Ukraine For Stalling Peace Deal, Says Russia Wants Peace"** http://www.ibtimes.com/putin-blames-ukraine-stalling-peace-deal-says-russia-wants-peace-1955346 PJL~KKF

Russian President Vladimir Putin said on Saturday that Moscow supports the Minsk peace agreements ratified in February in Ukraine, but blamed Kiev for stalling the truce efforts. "Russia is interested in and will strive to ensure the full and unconditional implementation of the Minsk Agreements," Putin told the Italian newspaper Corriere della Sera on Saturday, according to Reuters. He called the deal between the two countries "right, just and feasible." An uneasy ceasefire saw hostilities between warring factions in eastern Ukraine cool off for a few months, but a spate of fighting in recent weeks has thrown the peace accord into uncertainty. An unknown number of fighters were killed on Wednesday when clashes broke out between Ukrainian troops and pro-Russia rebel forces in the Donetsk region. Putin blamed the fresh hostilities on Kiev, saying that separatist forces had fulfilled their promise of withdrawing heavy weapons from the fight. "It is time to begin implementing the Minsk Agreements," Putin reportedly told the paper. He called on Kiev to undertake constitutional reforms – as part of the agreement – that would allow the rebel breakaway regions in the country's east to become autonomous, and implement municipal elections and amnesty. "The problem is that the current Kiev authorities don't even want to sit down to talks with them. And there is nothing we can do about it," he reportedly said. "Only our European and American partners can influence this situation." He also dismissed the worries of the European countries regarding Moscow as unfounded. "As for some countries' concerns about Russia's possible aggressive actions, I think that only an insane person and only in a dream can imagine that Russia would suddenly attack NATO," he said. Radio Free Europe reported, citing Corriere della Sera. "I think some countries are simply taking advantage of people's fears with regard to Russia," he added. "Let me tell you something - there is no need to fear Russia." He called Kiev's economic severance from the rebel territories a humanitarian crisis and urged the European Union to provide more financial relief to the region. "Since we are talking about what can or must be done, and by whom, I believe that the European Union could surely provide greater financial assistance to Ukraine," he reportedly said. Moscow has maintained that Kiev has instigated the conflict, and that there are no Russian troops, except private forces, fighting in the country. It has defended the right of the breakaway regions, including the self-proclaimed Donetsk People's Republic, to secede from Ukraine.

NATO focused on deterring Russian nuclear aggression and U.S. wont engage in arms race anyway.

Dyer, 6/25/15

Geoff. "Nuclear Deterrent on Nato Agenda amid Rise in Russian Rhetoric." Financial Times. N.p., 25 June 2015. Web. <http%3A%2F%2Fwww.ft.com%2Fintl%2Fcms%2Fs%2F0%2Faa11ac16-1a8f-11e5-a130-2e7db721f996.html%23axzz3dwvRW8n6>.

Nato is reviewing its nuclear policy in response to what western officials believe is irresponsible rhetoric from Russia about the potential use of nuclear weapons. Defense ministers discussed strengthening the military alliance's nuclear deterrent for the first time since the end of the cold war on the margins of a summit in Brussels on Wednesday and are expected to have more formal talks at a meeting in October. US officials insist there are no plans to place new nuclear weapons in Europe, which would politically contentious within alliance members, but Nato officials say they need to re-examine the response to potential nuclear threats by Russia. "We will not be dragged into an arms race," Jens Stoltenberg, Nato secretary-general, said at the start of the

meeting. However, he warned that in addition to its military interventions in Crimea and eastern Ukraine, Russia was "also now using nuclear rhetoric and more nuclear exercises as part of their defence posturing". The renewed discussion within Nato about nuclear weapons underlines the shift in the alliance's priorities over the past 18 months from the war in Afghanistan to its core mission of self-defence against Russia. Any effort to beef up Nato's nuclear rhetoric would leave Barack Obama in an uncomfortable position after the US president came to office pledging to make nuclear disarmament one of his administration's main priorities. Vladimir Putin, Russia's president, said last week he planned to add 40 missiles to Russia's arsenal of intercontinental ballistic missiles. In recent months, Russia has increased flights of nuclear-enabled bombers across Nato territory and has added nuclear elements to some recent exercises. The Obama administration accused Russia last year of violating the Intermediate-range Nuclear Forces (INF) treaty, a cold war-era arms control accord, by testing a banned ground-launched cruise missile. Some Nato officials have suggested there could be a need to revive some military exercises with a nuclear component to understand how the alliance would respond. "There is very real concern about the way in which Russia publicly bandies around nuclear stuff. So there are quite a lot of deliberations in the alliance about nuclear but it is being done very slowly and deliberately. We need to do due diligence on where we are," a Nato diplomat said. US defence secretary Ashton Carter, who is on a week-long visit to Europe, has been critical of Mr Putin's comments about nuclear weapons. "What's odd about it is the level of rhetoric," he said while in Estonia. "That's what's so out of tune with the times and the way responsible world leaders have conducted themselves with respect to talking about what are very fearsome weapons." Douglas Lute, the US ambassador to Nato, said there was no discussion in Washington about redeploying land-based cruise missiles to Europe. But he said there was "a general assessment under way in Washington and a parallel assessment here in Nato to look at all the possible implications of what Russia says about its nuclear weapons". "Faced with today's Russia, which still has more than 5,000 nuclear warheads and which still positions itself as anti-western and which defines Nato as a concrete threat, nuclear strategy must be discussed and substantiated again," said Karl-Heinz Kamp, a German security analyst in a report for the Nato defence college. Nato shifts strategy in Europe to deal with Russia threat ZAGAN, POLAND - JUNE 18: Lithuanian soldiers participate in the NATO Noble Jump military exercises of the VJTF forces on June 18, 2015 in Zagan, Poland. The VJTF, the Very High Readiness Joint Task Force, is NATO's response to Russia's annexation of Crimea and the conflict in eastern Ukraine. Troops from Germany, Norway, Belgium, Poland, Czech Republic, Lithuania and Holland were among those taking part today. (Photo by Sean Gallup/Getty Images) The US is to store tanks and weapons across eastern Europe to deter Russia as US defence secretary Ashton Carter accused Vladimir Putin of wanting to "turn back the clock" in Europe. Continue reading The type of scenario that defence officials are examining is an attempt by Russia to take control of a slice of territory in one of the Baltic nations. If Nato then attempted to retake the territory by attacking Russian air defences in the area, Russia might at that stage accuse the alliance of escalating the conflict and threaten to use intermediate nuclear missiles. Elbridge Colby, a nuclear expert at the Center for a New American Security, said that in a conflict on Nato's eastern flank "Putin might assume that he could force the alliance to back down". He added: "Nato does not need a total nuclear rethink. But it needs to be realistic about how it would respond and willing to show Putin that he would not get away with it."

US Russia war will not escalate

Lynch 6/23/15

David. A senior writer with Bloomberg News in Washington, D.C., focusing on the intersection of politics and economics. "NATO Maneuvers to Keep Cool War With Russia From Becoming Hot." Bloomberg.com. Bloomberg, 23 June 2015. Web. 23 June 2015. <http://www.bloomberg.com/news/articles/2015-06-23/nato-maneuvers-to-keep-cool-war-with-russia-from-becoming-hot>

Spooked by Russian President Vladimir Putin's takeover of Crimea last year, NATO is working to deter a similar move elsewhere. U.S. Defense Secretary Ashton Carter, in the midst of a week-long trip to Europe, is reassuring nervous allies that the trans-Atlantic alliance would ride to the rescue if Russia attacked. The three tiny Baltic nations, Russia's neighbors and parts of the former Soviet Union before they joined the North Atlantic Treaty Organization in 2004, are especially anxious. "We have reasons to believe that Russia views the Baltic region as one of NATO's most vulnerable areas, a place where NATO's resolve can be tested," said Sven Mikser, Estonia's defense minister. On Tuesday, Carter tried to meet the test, saying that the U.S. is moving about 250 tanks, howitzers and Bradley Fighting Vehicles to Estonia, population 1.3 million, and five other alliance nations as a show of force. "While we don't seek a cold war, let alone a hot war, with Russia, we will defend our allies," he told reporters in Tallinn, the Estonian capital. Still, the U.S. defense chief confronts doubts about both NATO's capability and its willingness to act. His campaign of deterrence, while reminiscent of the Cold War, is playing out

on a vastly different political, military and economic landscape. The Cold War's tidy us-versus-them face-off has been replaced by a web of commercial and cooperative ties among Russia, the United States and European nations. Russia provides almost a third of the European Union's natural gas needs and is Europe's third-largest trading partner. NATO Doubts Those ties have contributed to doubts about NATO's willingness to fight for its newest members. Majorities of the public in Germany, France and Italy oppose defending NATO allies on Russia's periphery if they come under attack, according to a June 10 Pew Research Center survey. "Nobody's going to war with Russia over Estonia," said Leon Aron, a Russia specialist at the American Enterprise Institute in Washington. Doubts about NATO's will to act are matched by concerns about its ability to fight. The alliance is fielding a new rapid reaction force that's intended to reach trouble spots within 48 hours -- far faster than the minimum 30 days needed before the Ukraine crisis. Even that quicker tempo, however, may not be fast enough. A repeat of the murky circumstances that governed the opening phase of the Ukraine crisis -- operations by armed units with no insignia, coupled with stage-managed pleas for help by local ethnic Russians -- could present NATO with a difficult choice. Faster Decisions Carter said allied officials later this week will discuss ways to ensure that the "speed of decision-making" matches military needs. That hasn't always been the case. In 2003, it took a month after a U.S. request to NATO for Patriot air defense missile batteries to arrive in Turkey. "It's pretty clear they would not be there in time," said Terrence Kelly of the Rand Corp., a nonprofit policy research organization, who's participated in Baltic war games. "Our research clearly indicates that Russia could get to the Baltic Sea very, very quickly." Some doubt that the Russian threat will materialize. Ukraine, with a special, emotional importance to Russian culture, wasn't a member of NATO, and the deep reservoir of public support from ethnic Russians in Crimea would be difficult to replicate in Estonia, Latvia or Lithuania. Facing West "The Russian speakers in these countries have been living in the West for a long time," said Sean Kay, a former Defense Department consultant and director of the international studies program at Ohio Wesleyan University. "It's not the Donbass," he said, referring to the disputed eastern region of Ukraine. "They're citizens of the European Union." U.S. officials see the Russian leader's support for pro-Russian separatists in Ukraine as only part of a broader campaign to split the Western alliance -- what Rand analysts labeled a "cool war" in a March 25 study. "Weakening, if not destroying NATO, is one of Putin's key national security objectives," said Kelly, director of the strategy, doctrine and resources program for the Rand Arroyo Center, funded by the U.S. Army. Prepositioning equipment for one armored combat brigade spread among Estonia, Latvia, Lithuania, Bulgaria, Romania and Poland -- the allies closest to Russian soil -- is intended as a signal to Putin. No one expects Russian armored formations and thousands of soldiers to pour across the borders. The fear is a repeat of the deft propaganda and irregular militias that Russia has employed to devastating effect in eastern Ukraine. Virtual Warfare Or Russia could launch an offensive across virtual borders using cybertools that didn't exist in the Cold War. In 2007, during a dispute between Estonia and Russia over the relocation of a Soviet war memorial from the center of Tallinn, "denial of service attacks" crashed Estonian government websites. Carter on Tuesday toured an Estonian cybersecurity research center housed in a handsome stone building that served in the 19th century as a barracks for the Russian czar's army. Since Russia used such "hybrid warfare" to swallow the Crimean peninsula in March 2014, allied military forces have staged a near-continuous series of military exercises to demonstrate resolve while political leaders have vowed to counter any further Moscow moves. "The United States and the rest of the NATO alliance are absolutely committed to defending the territorial integrity of Estonia, Latvia and Lithuania, just as we're committed to defending all of our allies," Carter said. Military Imbalance If today's Russian

threat differs from that of the Cold War, Europe's military balance also has evolved. The U.S. remains in the midst of a long drawdown of its European forces despite the Ukraine crisis. The U.S. has about 65,000 troops in Europe today compared with an early-1990s peak of more than 300,000. Repeated headquarters staff cuts have made U.S. European Command the smallest combatant command in the U.S. military. In April, the U.S. Army announced the withdrawal of 24 Apache and 30 Blackhawk helicopters from Germany. U.S. forces in Europe "have been sized over the last two decades for a Russia that we were looking to make a partner," Air Force General Philip Breedlove, commander of U.S. European Command and Supreme Allied Commander in Europe, told the Senate Armed Services Committee in April. Russia's military, too, pales in comparison to its Soviet predecessor. From a 1986 peak of 4.3 million men under arms, the Russian military has shrunk to fewer than 1 million in uniform, according to a March 31, 2014, Congressional Research Service study. Uphill Battle Putin has launched a multiyear program to expand and modernize his military, but "mismanagement, changes in plans, corruption, manning issues, and economic constraints have complicated this restructuring," the report concluded. The military balance may not matter as much as perceptions in rival capitals, though**. Putin already has misjudged the consequences of seizing Crimea, and and allied officials want to make sure he doesn't miscalculate again. "NATO collectively is far superior to Russia today," said Mikser, the Estonian defense chief.** "In global terms, Russia is no match literally to the U.S., to NATO**.** But here in this, our corner of the world, Putin believes he enjoys superiority, regional superiority. That makes us vulnerable." Increased Exercises Over the past year, the U.S. has taken several steps to shore up its deterrent. Under the $1 billion European Reassurance Initiative, the Pentagon has increased the frequency of European exercises. It's flown A-10 attack aircraft to bases in Romania and funded improvements to railheads and landing strips that would be needed in the event of trouble along NATO's eastern or southern flanks. The prepositioning of enough equipment for 5,000 soldiers announced Tuesday is a further warning. But it may not be enough. "That will end up being an initial step," said retired Admiral James Stavridis, a former supreme allied commander and now dean of the Fletcher School of Law and Diplomacy at Tufts University in Medford, Massachusetts. "The Baltics' desire to have a small permanent presence of U.S. troops -- companies or battalions -- will continue to grow. I think we'll end up in that position in another year or so."

No impact, Strained US-Russian relations have not escalated, sanctions prove.

AFP 2/7/2015

AFP is a global news agency delivering fast, in-depth coverage of the events shaping our world from wars and conflicts to politics

Moscow (AFP) - President Vladimir Putin on Saturday said Russia is not at war and does not want war with anyone, but sharply criticised Western sanctions over Ukraine. "There's no war, thank God. But there is definitely an attempt to curb our development," Putin told a trade union conference, cited by TASS news agency. He criticised sanctions imposed on Russia by the West over Ukraine saying "they definitely can't be effective against a country like ours, although they cause certain damage and we have to realise this... We must raise our level of sovereignty, including in our economy." Putin complained of an attempt to "freeze the existing world order that has become established over the last decades after the fall of the Soviet Union, with a single leader who wants to stay that way," apparently talking about the United States. "Such a world order will never suit Russia," he said. "If somebody likes it or wants to live in conditions of semi-

occupation (then go ahead), but we won't do this." "But we don't plan to fight a war with anyone. We plan to cooperate with everyone."

U.S. Defense Secretary Ashton Carter confirmed Tuesday that the U.S. will deploy one armored combat brigade to Europe, bolstering joint training exercises with NATO partners in an effort to deter Russian aggression in eastern Europe. Carter said the armored brigade will include tanks, artillery and armored vehicles.

No arms race with Russia and NATO well prepared for any war.

Reuters. 6/24/15

"NATO: There Will Be No Arms Race with Russia." Reuters. Thomson Reuters, 24 June 2015. Web. 24 June 2015. <http://www.reuters.com/video/2015/06/24/nato-there-will-be-no-arms-race-with-rus?videoId=364712486>.

As NATO Defense ministers arrive in Brussels -- NATO Secretary Jens Stoltenberg says the alliance would not be forced into a new arms race with Russia -- but will fortify its defenses. (SOUNDBITE) (English) NATO SECRETARY-GENERAL, JENS STOLTENBERG, SAYING: "We will not be dragged into an arms race. But we must keep our countries safe." The NATO meeting comes after the U.S. announced plans this week to station tanks and heavy weapons in NATO member states on Russia's border -- this came shortly after President Vladimir Putin said Moscow would add 40 missiles to its nuclear arsenal. After the meeting, Stoltenberg said members agreed to bolster its rapid response team. (SOUNDBITE) (English) NATO SECRETARY-GENERAL, JENS STOLTENBERG, SAYING: "First we decided to increase further the strength and capability of the NATO response force, including its air, maritime and special operations components. Altogether, the enhanced NATO response force will consist of up to 40,000 personnel. This represents a substantial increase from the previous level of 13,000." The meetings come as Russian soldiers are carrying out large scale military drills-- which started on June 22nd and will continue until the 26th.

AT Climate Adv

UQ O/W Link

Climate Agreement will happen, G7 proves

Neuhauser, Alan. "We Continue to Make Progress toward a Strong Global Climate Agreement This Year in Paris," Obama Said in a Press Conference Monday in Germany. US News. U.S.News & World Report, 31 Mar. 2015. Web. 24 June 2015.

Six months ahead of a landmark **U.N. climate summit in Paris**, **the** Group of Seven of the world's largest advanced economies, or **G7, reaffirmed their commitment** Monday to **keeping the globe's average temperature from rising past 2 degrees Celsius**, widely **seen as the benchmark for averting catastrophic global warming**. The countries' plans for cutting heat-trapping carbon emissions, released over the past year, come nowhere close to achieving that target. Yet in pledging to reduce greenhouse gases while also expanding their economies, **world leaders once again signaled their view that environmental action and economic growth – once widely seen as inherently at odds – are now inextricably linked by the consequences of climate change.** "**Urgent and concrete action is needed to address climate change," the G7 leaders said in a joint statement** released Monday at the end of their two-day 2015 summit in Germany. **There is "strong determination" to adopt an agreement, one "that is ambitious, robust, inclusive and reflects evolving circumstances**." . **We continue to make progress toward a strong global climate agreement this year in Paris**," **Obama said** in a press conference Monday in Germany. "**All the G7 countries have now put forward our post-2020 targets for reducing carbon emissions, and we'll continue to urge other significant emitters to do so** as well." **The G7 declaration did call for "binding rules" that would "enhance transparency and accountability" as nations work toward achieving their carbon-reduction targets**.

U.S. leadership makes climate agreement a for sure deal

Neuhauser, Alan. "We Continue to Make Progress toward a Strong Global Climate Agreement This Year in Paris," Obama Said in a Press Conference Monday in Germany. US News. U.S.News & World Report, 31 Mar. 2015. Web. 24 June 2015.

Environmental groups and Democratic lawmakers, however, roundly welcomed the State Department's submission, known by negotiators as "Intended Nationally Determined Contributions." "**The president has again demonstrated leadership in addressing the threat posed by climate change**," Sen. Barbara Boxer, D-Calif., said in a statement. "Today's announcement confirms that **the United States is doing its part to reduce dangerous carbon**

pollution, and this effort will continue to bring other countries along the path to a strong agreement in Paris." Natural Resources Defense Council president Rhea Suh said she agreed, declaring **the commitment "sends a powerful message to the world**." A report published earlier this month by DBL Ventures, a venture capital firm that supports clean energy projects, found states that generate the greatest share of electricity from renewable sources like wind and solar experience lower energy prices than states with the smallest share of green power.

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France won't allow the climate talk to fail

King, Ed. "France Ready to Step in If UN Climate Talks Fail, Say Top Diplomat." *Guardian Environment Network*. The Guardian, 28 May **2015**. Web. 24 June 2015.

France will produce its own text for a global climate change agreement if countries taking part in UN negotiations fail to cut the current 90-page documentdown to size. The host of this year's UN summit, where an emissions cutting pact between nearly 200 countries is set to be finalised, wants a shorter document by the end of the summer. "**We have to get a simpler text by June or the latest by the end of August to work with it**," France's top climate diplomat Laurence Tubiana told RTCC, speaking at the Carbon Expo event in Barcelona. "**If this does not proceed from the normal process of course that will rely on the presidency of the COP in the summer to produce a new document. "We don't want that so we will push and press for everyone to deliver a shorter text by the end of August – really defining what needs to be decided in Paris, what will be decided after and what are the core principles in the agreement**." Tubiana said France wants the main elements of the deal ready by October to ensure there were "no surprises" that could stymie the process. Laurence Tubiana talks about the need for a simpler text for climate negotiations. The last time the UN attempted to secure a global climate solution ended in farce just under six years ago at a summit in Copenhagen, with a small group of major emitters stitching together a hurried voluntary deal after negotiations over a huge set of proposals stalled. Advertisement Three sessions of negotiations have been allocated for envoys to slim down the text between now and December, with the first starting next month in Bonn. Decisions this UN forum need to be decided by consensus, meaning it only takes a small group of countries to block suggested additions to agreements. Tubiana admitted the demand for an early resolution to the negotiating text added a level of pressure on countries that could slow talks further, but insisted **it was essential work sped up. "A logical result of this is countries are beginning to be tougher – because they don't want to show their cards – and that's what will happen at this summit, to show this is time to really agree on a compromise," she said. "Nuances and positions are very diverse, so it's difficult to align everybody, and there are strong views from different views, but I'm confident because countries want to agree in Paris**." Since UN climate talks started in 1991 greenhouse gas emissions have swelled to record levels. Scientists now say the world has under 30 years before dangerous levels of warming, causing droughts, floods and rising sea levels are guaranteed. France will ensure that plans to help countries adapt to future climate extremes are an integral part of any deal, Tubiana stressed,

acknowledging that on current form emission cuts will not limit warming to the internationally agreed 2C above pre-industrial levels ceiling. **The role of Paris will be to "accelerate" the trajectory of carbon reductions, she stressed, and also to allow the most climate vulnerable countries a chance to make their case for greater ambition**

Talks fail in Squo

Recent talks have shown climate talks fail in status quo

McGarrity, John. "UN Climate Talks Fail to Clear Obstacles to Paris Deal."*UN Climate Talks Fail to Clear Obstacles to Paris Deal*. China Dialogue, 11 June **2015**. Web. 24 June 2015.

The latest round of UN climate talks have made slow progress on refining a negotiating text for the Paris summit in December, **the focal point for efforts to agree curbs on greenhouse gas emissions in developed and developing countries**. **Despite** two **weeks of talks** at an interim meeting in the German city of Bonn, most of t**he contradictory proposals** that littered the previous 90-page document **remain, meaning that the next few rounds of talks in August and October will have to shoulder the burden of distilling a negotiating text** by December. France's climate ambassador Laurence Tubiana said that the tough, painstaking work of refining the document could still deliver real benefits in time for Paris. "It's like having a baby, sometimes you don't know exactly when the baby will be born," she told a press conference. Tubiana added: "**Everyone is feeling the frustration**, but we should not be frustrated or disappointed because these are really necessary conditions for Paris." Familiar disputes blocked progress at the mainly technical meeting in Bonn, which was being held around 500km away from this week's G7 summit in Bavaria. G7 leaders announced a long-term, but non-binding, decarbonisation targetand increased insurance for countries most vulnerable to climate change. But in Bonn **rich nations failed to give greater clarity on how rich economies will deploy US$100 billion of climate finance a year from 2020. Major rifts also remained on the legal basis of a future agreement, and the extent that large fast-developing economies such as China and India will be accountable for planned curbs on GHG emissions.**

No impact- General

No evidence supports warming causes extinction

Bastasch 15, Michael. "IPCC Runs from Claims That Global Warming Will Cause Mass Extinctions." IPCC No Longer Claims That Global Warming Causes Mass Extinction. The DC, 24 Mar. 2014. Web. 24 June 2015.

But Der Spiegel reports that the IPCC is shying away from such claims and gives **no concrete numbers for how many plant and animal species could be at risk if global temperatures increased**. While the IPCC does say that the pace of global warming is making it hard for some species to adapt, **the lack of basic data makes it impossible for there to be any hard evidence to back up this claim. Zoologists actually fear that the focus on global warming has drawn attention away from issues that actually cause extinctions, like destruction of natural habitats**. "**Monoculture, over-fertilization or soil destruction destroy more species than several degrees temperature rise ever** assets," University of Rostock zoologist Ragnar Kinzelbach told Der Spiegel. The UN's final climate report that will include its analysis on extinctions is set to be released in late March. Scientists and government representatives from around the world are meeting this week in Japan to hammer out a summary for policymakers on the UN's key findings.

Warming doesn't lead to extinction

Barrett 6 – Professor of International Policy @ Johns Hopkins Scott, Professor and Director of International Policy, School of Advanced International Studies, Johns Hopkins University, 2006, "CATASTROPHE: The Problem of Averting Global Catastrophe," Chicago Journal of International Law, Lexis

Less dramatic changes are more likely. Abrupt transformations in climate would probably cause few deaths. Many scientists have remarked that climate change would increase the spread of disease, 74 and seasonal weather changes are associated with outbreaks of many diseases, including meningococcal meningitis in sub-Saharan Africa and rotavirus in the US. Moreover, stronger El Nino events have been linked to the prevalence of cholera in Bangladesh, the spread of Rift Valley fever in East Africa, and malaria incidences on the Indian subcontinent. However, while the spread of disease is influenced by the weather, the connection between global climate change and the spread of disease has not yet been established. 75 One point is clear: as Rees notes, "Not even the most drastic conceivable climate shifts could directly destroy all humanity." 76

Impacts are inevitable, Temperature rises regardless

Climate Change Inevitable in 21st Century - News Release." Climate Change Inevitable in 21st Century - News Release. UCAR, University Corporation for Atmospheric Research, 17 Mar. 2005. Web. 24 June 2015.

BOULDER—**Even if all greenhouse gases had been stabilized** in the year 2000, **we would still be committed to a warmer Earth and greater sea level rise in the present century**, according to a new study by a team of climate modelers at the National Center for Atmospheric Research (NCAR). The findings are published in this week's issue of the journal *Science*. **The** modeling **study quantifies the relative rates of sea level rise and global temperature increase that we are already committed to in the 21st century. Even if no more greenhouse gases were added to the atmosphere, globally averaged surface air temperatures would rise about a half degree Celsius (one degree Fahrenheit) and global sea levels would rise another 11 centimeters (4 inches) from thermal expansion alone by 2100**. "**Many people don't realize we are committed right now to a significant amount of global warming and sea level rise because of the greenhouse gases we have already put into the atmosphere**," says lead author Gerald Meehl. "**Even if we stabilize greenhouse gas concentrations, the climate will continue to warm**, and there will be proportionately even more sea level rise. The longer we wait, the more climate change we are committed to in the future."

And, consensus of experts agree no impact to warming

Hsu '10

Jeremy, Live Science Staff, July 19, pg. http://www.livescience.com/culture/can-humans-survive-extinction-doomsday-100719.html

His views deviate sharply from those of most experts, who don't view climate change as the end for humans. Even the worst-case scenarios discussed by the Intergovernmental Panel on Climate Change don't foresee human extinction. "The scenarios that the mainstream climate community are advancing are not end-of-humanity, catastrophic scenarios," said Roger Pielke Jr., a climate policy analyst at the University of Colorado at Boulder. Humans have the technological tools to begin tackling climate change, if not quite enough yet to solve the problem, Pielke said. He added that doom-mongering did little to encourage people to take action. "My view of politics is that the long-term, high-risk scenarios are really difficult to use to motivate short-term, incremental action," Pielke explained. "The rhetoric of fear and alarm that some people tend toward is counterproductive." Searching for

solutions One technological solution to climate change already exists through carbon capture and storage, according to Wallace Broecker, a geochemist and renowned climate scientist at Columbia University's Lamont-Doherty Earth Observatory in New York City. But Broecker remained skeptical that governments or industry would commit the resources needed to slow the rise of carbon dioxide (CO_2) levels, and predicted that more drastic geoengineering might become necessary to stabilize the planet. "The rise in CO_2 isn't going to kill many people, and it's not going to kill humanity," Broecker said. "But it's going to change the entire wild ecology of the planet, melt a lot of ice, acidify the ocean, change the availability of water and change crop yields, so we're essentially doing an experiment whose result remains uncertain."

Relations being solved in Squo

US working on relations in light of new leaks.

Irish, John. "Obama Reassures France after "unacceptable" NSA Spying."*Reuters US Edition*. Reuters, **24 June 2015**. Web. 24 June 2015.

U.S. President Barack **Obama reaffirmed** in a phone call **with his French counterpart** Francois Hollande **on** Wednesday **Washington's commitment to end spying practices** deemed "unacceptable" by its allies. The presidents' conversation, announced by Hollande's office, came after transparency lobby group WikiLeaks revealed on Tuesday that U.S. National Security Agency (NSA) had spied on the last three French presidents. **The latest revelations of espionage among Western allies came after it emerged that the** U.S. National Security Agency (**NSA) had spied** on Germany and that Germany's own BND intelligence agency had cooperated with the NSA to spy on officials and companies elsewhere in Europe. "**President Obama reiterated unequivocally his firm commitment ... to end the practices that may have happened in the past and that are considered unacceptable among allies**," the French president's office said. Hollande had earlier held an emergency meeting of his ministers and army commanders and the U.S. ambassador was summoned to the foreign ministry. "France will not tolerate actions that threaten its security and the protection of its interests," an earlier statement from the president's office said, adding it was not the first time allegations of U.S. spying on French interests had surfaced. **A senior French intelligence official will travel to the United States to discuss the matter and strengthen cooperation between the two countries**, Hollande's office said. "We have to verify that this spying has finished," Stephane Le Foll, government spokesman, told reporters, adding that ministers had been told to be careful when speaking on their mobile phones.

Deal not key

Even if talks succeed their impacts are still going to happen

Geman, Ben. "Why a Global-Warming Pact Won't Stop Global Warming." *Www.nationaljournal.com*. The National Journal, 7 Aug**. 2014**. Web. 26 June 2015

Don't expect too much from the global climate-change accord that's expected to emerge from high-stakes international talks in Paris next year. A new MIT **study concludes that even if negotiators reach a deal at the United Nations conference, it** probably **won't be enough to limit global temperature increases to** 2 degrees Celsius above pre-industrial levels. That's **the level** many **scientists say**

would help stave off some of **the most dangerous and disruptive effects of climate change**. **Here's the** study's **bottom line on what to expect** from the so-called Conference of the Parties 21 **in Paris**: "Based on our expectations for the architecture of a COP-21 agreement, and our predictions about the national contributions likely to come forth under it, our analysis concludes **that these international efforts will indeed bend the curve of global emissions. However**, o**ur results also show that these efforts will not put the globe on a path consistent with** commonly stated **long-term climate goals**," states the paper by economics professor Henry Jacoby and Y-H Henry Chen, who both work with MIT's Joint Program on the Science and Policy of Global Change. **The 2°C ceiling has been highly optimistic** for a while, as global greenhouse-gas emissions continue to soar. In a major report last year, the United Nations Intergovernmental Panel on Climate Change modeled the impact of a series of possible emissions trajectories. **Runaway emissions growth could further boost temperatures**, at the high end of the estimates**, by** up to **4.8 °C** by 2100, the IPCC estimated.

Paris won't solve; 2 degree rise is inevitable

Doyle, Alister**, and** Bruce **Wallace**. "U.N. Climate Deal in Paris May Be Graveyard for 2C Goal." *Reuters.com*. Reuters, 1 June **2015**. Web. 26 June 2015

The U.N.'s Paris climate conference, **designed** to reach a plan **for curbing global warming, may instead become the graveyard for its** defining **goal**: **to stop temperatures rising more than 2 degrees Celsius** above pre-industrial levels. Achieving the 2C (3.6 Fahrenheit) target has been the driving force for climate negotiators and scientists, who say it is the limit beyond which the world will suffer ever worsening floods, droughts, storms and rising seas**. But six months before world leaders convene in Paris, prospects are fading for a deal that would keep average temperatures below the ceiling. Greenhouse gas emissions have reached record highs in recent years. And proposed cuts in carbon emissions from 2020 and promises to deepen them in subsequent reviews - offered by governments wary of the economic cost of shifting from fossil fuels - are unlikely to be enough for the 2C goal**. "**Paris will be a funeral without a corpse**," said David Victor, a professor of international relations at the University of California, San Diego, **who predicts the 2C goal will slip away despite** insistence by many governments **that is still alive. "It's just not feasible**," said Oliver Geden, of the German Institute for International and Security Affairs. "Two degrees is a focal point for the climate debate but it doesn't seem to be a focal point for political action." But as officials meet in the German city of Bonn from June 1-11 to lay more groundwork for the Paris summit, the United Nations says 2C is still within reach. Christiana Figueres, **the U.N.'s top climate change official, acknowledges that national plans for emissions curb**s - the building blocks for the Paris accord - **won't be enough for 2C.**

UN talks fail regardless

Irish, John. "U.N. Climate Efforts Not Good Enough: French Minister." *Reuters*. Thomson Reuters, 01 June **2015**. Web. 26 June 2015

Efforts spearheaded by the United Nations to reach a global deal to fight climate change are "inadequate", a French minister said on Monday **in a sign of growing frustration before Paris** hosts a major meeting later this year. Governments will try on Monday to streamline an 89-page draft text of a U.N. deal to fight climate change due to be agreed in the French capital in December, hoping to avoid the acrimony of the last failed attempt. "**The U.N. negotiations are totally inadequate for the climate emergency we are facing**," Environment Minister Segolene Royal said in an interview published in Le Monde. "**In private everybody is saying it ... but the weight of the process means it is carrying on as if there was no problem."** The 190-nation talks among delegates in the German city of Bonn from June 1-11 will try to narrow down vastly differing options, ranging from promises to slash greenhouse gas emissions to zero by 2050 to vague pledges to curb rising emissions. "**This gap between UN procedure and the climate emergency is starting to pose a real problem and exasperating the countries that are the biggest victims of climate change,**" she said. Foreign Minister Laurent Fabius, who is presiding December's talks, told Reuters on May 26 a deal in Paris was within reach, but that the hurdles remained and getting a consensus between 196 parties was very difficult. Royal, a senior French

Socialist known for being outspoken, blamed negotiators for past failures. "Bonn must obey the political instructions of heads of state and governments. Otherwise, the negotiators, who have been there for 15 years, if not 20 years, will just continue going through the motions," she said

Climate agreement is important, but not key—much more needs to be done afterward

Pisani-Ferry 6/23(Jean Pisani-Ferry, 6-23-2015, [Jean Pisani-Ferry teaches at the Hertie School of Governance in Berlin and serves as commissioner-general for Policy Planning in Paris. He is a former director of Bruegel, the Brussels-based economic think tank] "Four Roadblocks to a Global Climate Agreement," No Publication, http://english.caixin.com/2015-06-23/100821714.html)

Summing up, we are making progress, but slowly and partially. Success in Paris is indispensable in view of the mounting evidence that the climate is deteriorating faster than expected, but the international community must avoid the temptation of declaring victory and departing the field. If successful, the conference will only help put mankind on a better track. Many more conferences and many more efforts will be needed to reach the goal of preserving the climate.

More than one international agreement is needed

Chong 4/8(Howie Chong, 4-8-2015, [former president of Sierra Club Canada and am the founder of Carbonzero, one of Canada's most trusted providers of carbon offsets.] "What if the Paris Climate Talks fail?," http://www.howiechong.com/journal/2015/4/what-if-paris-fails)

If countries are serious about reducing emissions and stopping climate change, they should not be reliant on a single international agreement. They should be building bilateral and multilateral agreements with their friends and allies. President Obama has made great strides in this direction. Along with China, the White House has announced bilateral agreements with its southern neighbour as well as agreements with India, another rising economic power. We should have more smaller emissions reduction agreements. There should be a NAFTA agreement, and ASEAN agreement, an APEC agreement. The more webs of agreements we can can enmesh countries into, the more difficult it will be for them to escape their responsibility. If nations come to an agreement in Paris this December, being enmeshed in a web of bilateral and multilateral reduction agreements would make it more difficult for any particular country to back out of their commitments. If Paris fails, we at least mare left a network of global commitments upon which the world community can fall back. In both outcomes, such a structure would make emissions reductions policies more resilient to domestic political pressure.

Failure

Climate agreement will fail for three reasons—national targets, the US senate, and countries resisting emissions reductions

Taraska 6/1(Gwynne Taraska, 6-1-2015,[Gwynne Taraska is a Senior Policy Advisor at the Center for American Progress, where she works on climate and energy policy.] "The Paradox of Paris: How a Successful Climate Agreement Could Have Inadequate and Nonobligatory Emissions Reduction Targets," name, https://www.americanprogress.org/issues/green/news/2015/06/03/114333/the-paradox-of-paris-

how-a-successful-climate-agreement-could-have-inadequate-and-nonobligatory-emissions-reduction-targets/)

The parties to the U.N. Framework Convention on Climate Change, or UNFCCC, are meeting in Bonn, Germany, June 1 through June 11 to continue negotiating a new international climate agreement. They will reconvene in Paris in December to finalize it. A key aspect of the eventual agreement—which will apply to both developed and developing countries—will be a set of national targets to reduce greenhouse gas emissions. With little time remaining to avoid the worst consequences of climate change, there is tremendous pressure on negotiators to usher in an era of effective international climate cooperation. Yet as the contours of the agreement come into focus, it is increasingly apparent that the emissions reduction targets—which will be nationally determined rather than internationally negotiated—will be collectively insufficient to curtail dangerous climate change. It also is becoming clear that the agreement will not legally require countries to meet the targets. Paradoxically, these results would not entail the failure of the agreement. An insufficient set of national targets is compatible with a successful overall outcome in Paris, and a nonbinding set of national targets may actually be necessary for it. An inadequate first wave of emissions reduction targets but a potentially effective climate regime Over the past year, world leaders have shown a new political will to address climate change. The United States, for example, announced an aggressive but achievable emissions reduction target—26 percent to 28 percent below 2005 levels by 2025—and is working to implement the Clean Power Plan, which will dramatically reduce emissions from the power sector. China, to take another example, committed to peak carbon emissions by around 2030 in a historic announcement this past November. There has been significant progress on climate finance as well, with 33 countries pledging more than $10 billion to the nascent Green Climate Fund, which will help developing countries adapt to climate change and transition to pathways of low-carbon growth. Despite these developments, which have provided momentum toward a strong agreement in Paris, it is anticipated that the national emissions reduction targets submitted to the UNFCCC this year will be collectively inadequate to deliver climate safety. The Paris agreement, however, can still be successful. This is because the parties have the opportunity to ensure that the national emissions reduction targets—which have end dates of 2025 or 2030—are only a first wave in a succession of increasingly ambitious national targets to rein in global warming. Time, of course, is dwindling. According to the latest report from the Intergovernmental Panel on Climate Change, limiting warming to 2 degrees Celsius over preindustrial levels—which is the U.N.-agreed target—would entail a 40 percent to 70 percent reduction in emissions from 2010 levels by midcentury and net-zero emissions by 2100. To facilitate a new climate regime that is effective, the Paris agreement should set frequent cycles for improving national targets. It also should establish frequent and thorough reviews of national progress. These are among the issues set for discussion in Bonn—and in the run-up to Paris—that will help determine the ultimate success of the final agreement. French Foreign Minister Laurent Fabius, who will preside over the Paris meeting, has referred to the agreement not as a destination but as a "springboard." It is within the power of the parties to make it a springboard to adequate climate action, rather than one to the failure of the UNFCCC. A legally binding agreement, potentially with nonbinding national emissions reduction targets Miguel Arias Cañete, EU Commissioner for Climate Action and Energy, has joined Foreign Minister Fabius in his effort to manage expectations of what the first wave of national targets can achieve. Despite this pragmatism, however, the European Union has been publicly idealistic on the issue of whether the national targets should be legally binding. It is generally held that the core agreement will be binding under international law, but the European

Union maintains that the national targets should be legally binding as well. Although well intentioned, this is a potentially self-defeating position. An agreement with legally obligatory targets for emissions reductions could threaten the participation of some of the world's major emitters. It also is possible that such an agreement would encourage conservative rather than ambitious targets. In the case of the United States, an agreement with legally binding targets would likely require the consent of a supermajority in the Senate, which is doubtful in the current political environment. Given this conspicuous legislative reality, there has been little need for other countries to publicly oppose legally binding targets as the Paris meeting approaches. Both India and China, however, have a record of resisting emissions reduction targets that are obligatory under international law.

If the agreement goes into US congress it will not pass, putting the US out of the deal

The Guardian 6/1(Associated Press In Bonn, 6-1-2015, "Climate deal must avoid US Congress approval, French minister says," Guardian, http://www.theguardian.com/world/2015/jun/01/un-climate-talks-deal-us-congress)

The global climate agreement being negotiated this year must be worded in such a way that it doesn't require approval by the US Congress, the French foreign minister said on Monday. Laurent Fabius told African delegates at UN climate talks in Bonn that "we know the politics in the US. Whether we like it or not, if it comes to the Congress, they will refuse." If negotiators follow his plan, that would exclude an international treaty that has legally binding limits on greenhouse gas emissions — something some countries still insist on but which would have no chance of being ratified by the Republican-controlled Congress. "We must find a formula which is valuable for everybody and valuable for the US without going to the Congress," said Fabius, who will host the UN climate summit in Paris in December where the new agreement is supposed to be adopted. Those pushing for a legally binding deal in Paris include the European Union and small island nations who fear being wiped out by rising seas.

The goal of the talks are NOT to reach an agreement on climate change

Newton 6/10(Steven Newton, 6-10-2015, [Programs and Policy Director for the National Center for Science Education]"Climate Conference Cacophony, or How Good Intentions Go Bad When the Process Is Rigged to Fail," Huffington Post, http://www.huffingtonpost.com/steven-newton/climate-conference-cacophony-or-how-good-intentions-go-bad-when-the-process-is-rigged-to-fail_b_7555056.html)

Recently delegates from around the world gathered in Bonn, Germany, for a UN conference to discuss how the nations of the world can reach a "new, universal agreement on climate change." This agreement is meant to outline how nations will work together to reduce greenhouse gases and limit, to the degree still possible, the worst effects of global climate change. These are good, laudable goals. But as you may suspect, there is a catch. The major goal of the Bonn conference is editing a document negotiated in February by over 190 nations. The hope is that this document can form that basis of a planned agreement in Paris this December, establishing a successor to the 1992 Kyoto Protocol. But before all that can happen, the agreement needs a bit of work. This current Bonn editing session will be followed by another one in September, then another in October. They apparently think this is going to need a lot of editing. The reason this will need so much editing is the flawed process that created it. According to NPR, ...to build trust and goodwill negotiators could throw in any proposed text they wanted. The result is 90 pages long--a jumbled patchwork of ideas... How bad it is? You can read it all yourself here (PDF). But consider these short snippets to get an idea of the document's epic incoherence: Apparently "triangular cooperation schemes" are a thing now (can hexagonal schemes be far behind?). It goes on: Had enough? It goes on like this for ninety more pages. Having read these pages myself (a sacrifice so you can save your brain cells from the experience, gentle reader), I think

it's safe to say that if you wanted to obfuscate the urgency of climate change and befuddle the well-intentioned with meaningless lawyerese, if your goal was to delay action on climate change with the pretense of meaningful agreement, then you could not have done better than this. French Ecology minister Ségolène Royal agreed with this sentiment, noting, "the weight of UN negotiations is such that we carry on as if nothing was wrong." She also called the talks "completely inadequate." Something is deeply broken in the process that creates such a document. But some will argue that the process has to be this way, that the purposefully opaque rhetoric of lawyerese is a necessary vice. Some may argue this, but to me it is clearer that what we need is a different way of creating such agreements. And certainly a different process than inviting 190 countries to edit the same Google Doc, apparently all at the same time, in a mad, chaotic scrum. Such processes may seem like radical democracy, but their product is instead mere cacophony, in which no country's interests are served. What is really missing is genuine decisive leadership. But today that elusive quality seems as rare as rain in California or cool temperatures in India.

Even if all points are completed, developed countries will still not comply

Telesur 6/11(Telesur, 6-11-2015, "What Elephant? Bonn Climate Talks Fail to Tackle Big Questions," No Publication, http://www.telesurtv.net/english/news/What-Elephant-Bonn-Climate-Talks-Fail-to-Tackle-Big-Questions-20150611-0031.html)

Climate change talks limped to an unsatisfactory end Thursday, leaving developing countries and environmental justice groups left worried that time is running out. The Bonn talks, held from June 1-11, were the first formal negotiations to work over the draft text that has been prepared in view of December's Paris Climate Summit, an event that will represent several critical deadlines. Among them is developing a new agreement 'with legal force' to apply to all countries from 2020 onward over action on catastrophic global warming. RELATED: Earth Emergency Despite the urgency of the event - only two preparatory sessions remain before Paris in December - several elephants in the room were roundly ignored, namely fixing a global goal for reducing greenhouse gases. "We haven't seen as much progress as we would have liked," said Elina Bardem, chief of the European Commission delegation, which advocates tough emissions-reducing targets. "It is not something that we can play with indefinitely." And as days tick down to Paris, a further concern is that this procrastination will lead to failure to form a binding agreement, representing a get-out-of-jail-free card for the rich, countries. "We are worried that the Paris agreement will lead to the 'Great Escape' of developed countries in meeting their commitments and their historical responsibility," said Meena Raman of Third World Network in Malaysia Thursday. "From what we have witnessed in the process, developed countries especially from the 'Umbrella Group' (that includes the US, Canada, Japan, Australia and New Zealand) are shaping an agreement that will be weak on targets for developed countries emission reductions and inconsistent with science and equity. They are also pushing for more loopholes and market mechanisms so their actual reductions will be even less. Equally worrying is the reluctance to have any commitment on finance and technology transfer targets to enable developing countries to undertake strong climate action and adaptation."

Empirically proven that multilateral negotiations are unsuccessful—2 decades of failure

Hale, Held, and Young 13(THOMAS HALE, DAVID HELD, and KEVIN YOUNG, 5-24-2013, [Thomas Hale is a Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University.] "Gridlock: the growing breakdown of global cooperation," openDemocracy, https://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation)

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it. Climate negotiators have met for two decades without finding a way to stem global emissions. The UN is paralyzed in the face of growing insecurities across the world, the latest dramatic example being Syria. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common. Global cooperation is gridlocked across a range of issue areas. The reasons for this are not the result of any single underlying causal structure, but rather of several underlying dynamics that work together. Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful, producing unintended consequences that have overwhelmed the problem-solving capacities of the very institutions that created them. It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries.

The approach countries take to solving climate change is fundamentally flawed

Heritage Foundation 13(About The, 1-24-2013, "Climate Change: How the U.S. Should Lead," Heritage Foundation, http://www.heritage.org/research/reports/2013/01/climate-change-how-the-us-should-lead)

The past four years have seen successive annual U.N. conferences (Copenhagen in 2009, Cancun in 2010, Durban in 2011, and Doha in 2012) frantically trying to reach agreement among nearly 200 countries on a successor to the Kyoto Protocol. In essence, these conferences have succeeded only in wresting vague pledges from developed countries to reduce emissions, contribute funds to help developing countries adapt to climate change, and meet again to try to negotiate a binding treaty by 2015. The problem is that the basic approach is unworkable. International negotiations have centered on placing the economic burden of addressing climate change on a few dozen developed countries while asking nothing from more than 150 developing countries. But the primary source of greenhouse gas emissions is increasingly the developing world. Any approach to effectively address increasing emissions of greenhouse gases must capture emissions from developed and developing countries. This notion was the central feature of the 1997 Byrd–Hagel Resolution, which unanimously passed the Senate, establishing conditions for the U.S. becoming a signatory to the Kyoto Protocol and remains the primary reason why the U.S. never ratified that treaty. But developing countries, primarily India and China, have made it quite clear that they have no appetite to slow economic growth or curb use of conventional fuels to control emissions. For this reason, Canada, Japan, and Russia refused to sign onto a new agreement committing them to emissions reductions unless major developing country emitters were also included. Until and unless this issue is resolved, the U.S. would be foolish to consider unilateral restrictions on the U.S. economy that, in the end, would be merely symbolic without significant effect on global emissions reductions.

An agreed goal of reducing emissions is not enough—there has to be a tech revolution

Wolf 6/23(Martin Wolf, 6-23-2015,[associate editor and chief economics commentator at the Financial Times.] "A moonshot to save a warming planet," Financial Times, http://www.ft.com/cms/s/0/ffc2b8ae-166f-11e5-b07f-00144feabdc0.html#axzz3e0DuHSaz)

The need, then, is to generate a technological revolution. The paper (named after the successful mission to the moon of the 1960s) argues that this will require rapid technological advances. Progress is happening, notably the collapse in the price of photovoltaic panels. But this is not enough. The sun provides 5,000 times more energy than humans demand from industrial sources. But we do not know how to exploit enough of it. Martin Wolf 1 Despite the evident need, publicly-funded research and development on renewable energy is under 2 per cent of all publicly-funded R&D. At just $6bn a year, worldwide, it is dwarfed by the $101bn spent on subsidies for renewable production and the amazing total of $550bn spent on subsidising fossil fuel production and consumption. This is a grotesque picture. Far more money needs to go to publicly funded research. The public sector has long played a vital role in funding scientific and technological breakthroughs. In this case, that role is particularly important, given the agreed goal of reducing emissions and the fact that the energy sector spends relatively little on R&D. The envisaged programme would have a single purpose: "To develop renewable energy supplies that are cheaper than those from fossil fuels." The authors suggest that to do this, research should focus on electricity generation, storage and smart grids. The suggested programme would amount to $15bn a year, still a mere 0.02 per cent of world output. That is indeed a minimal amount, given the goal's importance.

Climate agreement moving too slow—there's too much on the agenda

Harrabin 6/10(Roger Harrabin, 6-10-2015,[BBC environment analyst] "UN climate conference: Silence over emissions targets," BBC News, http://www.bbc.com/news/science-environment-33089496)

Nations have jointly promised to keep the global temperature rise below the 2C danger threshold. They are informing the UN how they will each cut their domestic emissions of greenhouse gases. But key countries are refusing to discuss whether the sum of these cuts will do the job. The EU, supported by African nations, wants to make countries face up to the fact that their collective cuts won't keep the climate within the 2C threshold. But China, India and Brazil are insisting that the national contributions should not be discussed at the UN until the main summit in Paris in December, by which time it will be too late for countries to negotiate any

increase in ambition. 'Too slow' The Chinese chief negotiator, Su Wei, said talks about the procedure for a new UN climate regime were going so slowly there was no time to discuss whether the emissions cuts added up. "It has taken us 10 days here discussing procedural matters and we have made hardly any progress," he told the BBC. "We cannot add any more items to the agenda to be discussed before Paris." Delegates from around the world have been meeting in Bonn. Other nations blame China for orchestrating moves to slow progress in Bonn. Tasneep Essop from the World Wildlife Fund said the situation was "bizarre". "The aim of this process is to stabilise the climate, yet delegates are being prevented from even talking about it," he told the BBC. "We want a full science-based review of all the countries' intended contributions so the world's public can see whether politicians are keeping their promises. It is clear already that countries need to do more."

The Kyoto Protocol proves that climate agreements do not work

Harvey 6/2(Fiona Harvey, 6-2-2015,[Fiona Harvey is an award-winning environment journalist for the Guardian. Prior to this, she worked for the Financial Times for more than a decade. She has reported on every major environmental issue, from as far afield as the Arctic and the Amazon, and her wide range of interviewees include Ban Ki-moon, Tony Blair, Al Gore and Jeff Immelt] "Everything you need to know about the Paris climate summit and UN talks," Guardian, http://www.theguardian.com/environment/2015/jun/02/everything-you-need-to-know-about-the-paris-climate-summit-and-un-talks) In 1992, governments met in Rio de Janeiro and forged the United Nations Framework Convention on Climate Change. That agreement, still in force, bound governments to take action to avoid dangerous climate change, but did not specify what actions. Over the following five years, governments wrangled over what each should do, and what should be the role of developed countries versus poorer nations. Those years of argument produced, in 1997, the Kyoto protocol. That pact required worldwide cuts in emissions of about 5%, compared with 1990 levels, by 2012, and each developed country was allotted a target on emissions reductions. But developing countries, including China, South Korea, Mexico and other rapidly emerging economies, were given no targets and allowed to increase their emissions at will. Al Gore, then US vice president, signed up to the protocol, but it was quickly apparent that it would never be ratified by the US Congress. Legally, the protocol could not come into force until countries representing 55% of global emissions had ratified it. With the US – then the world's biggest emitter – on the outside, that was not going to happen. So for most of the following decade, the Kyoto protocol remained in abeyance and global climate change negotiations ground to a near-halt. But in late 2004, Russia decided to pass the treaty – unexpectedly, and as part of a move to have its application for World Trade Organisation membership accepted by the European Union. That made up the weight needed, and the protocol finally came into force.

Corporations prove that climate agreement will never work

Williams 6/8 (Bychris Williams, 6-8-2015,[author of Ecology and Socialism: Solutions to Capitalist Ecological Crisis] "Why U.N. Climate Talks Continue to Fail," No Publication, https://indypendent.org/2014/09/12/why-un-climate-talks-continue-fail)

An important part of the answer certainly lies with the economic and political power wielded by energy corporations that have a direct stake in selling more fossil fuels. As we now know from a 2014 Intergovernmental Panel on Climate Change report, 80 percent of known fossil fuel reserves fuels must stay in the ground in order to have any chance of remaining under the critical threshold of 2 degrees Celsius of average warming. That is equivalent to writing off $20 trillion in assets from the largest corporations on the planet. RUNAWAY GLOBAL WARMING The earth has warmed by 0.8 Celsius (1.4 F) since the beginning of the Industrial Revolution. Climate scientists expect the world to continue warming in the 21st century. The question is, how much? The idea that those reserves, which are the basis for the stock market valuation of oil companies, could become "stranded" led ExxonMobil to declare in a report to shareholders, "the scenario where governments restrict hydrocarbon production in a way to reduce [greenhouse gas] emissions 80 percent during the outlook period [to 2040] is highly unlikely." Instead, a top company executive explained, "all of ExxonMobil's current hydrocarbon reserves will be needed, along with substantial future industry investments, to address global energy needs." The profit-maximizing imperative of corporate titans like ExxonMobil, Chevron, British Petroleum and Shell is only part of the story. Economic

competition between corporations is replicated on the international stage by economic and political rivalry among nation states. In a world run along capitalist lines, every country is engaged in geopolitical maneuvering for economic and political advantage. As the ecological situation has become both more dire and more clearly tied to the countries that have the most geopolitical power and the biggest stake in fossil fuel production and consumption, so those powers have become ever more unwilling and unable to take serious action. The problem is compounded by intensifying competition for resources and international markets as new competitor states, such as China and India, emerge on the world stage. As evidence, one only needs to look at the recently concluded U.S.-Africa Summit, which revolved almost exclusively around how the U.S. government needed to do more to support U.S. corporations entering and exploiting African countries for natural resources, energy production, labor and consumer markets. "We kind of gave Africa to the Europeans first and to the Chinese later, but today it's wide open for us," commented General Electric CEO Jeffrey Immelt.

The agreement will fall short—everyone says so

Friedman 14(Lisa Friedman,Climatewire, 8-21-2014, "Global Climate Deal May Fail to Restrain Global Warming," No Publication, http://www.scientificamerican.com/article/global-climate-deal-may-fail-to-restrain-global-warming/)

A growing number of leaders are openly acknowledging that a 2015 international agreement to avert catastrophic global warming will surely fall short of what's needed to achieve that goal. But another consensus is also forming among top U.S. experts: that shortfall is OK, as long as the deal puts all major climate polluters on a serious, upward and transparent path to cutting greenhouse gases. "The big question the public is going to ask is: Are all the major emitters participating? And are they doing enough to help solve this challenge?'" said Peter Ogden, director of international climate and energy policy at the Center for American Progress and a former chief of staff to U.S. Special Envoy for Climate Change Todd Stern. The new agreement to be signed in Paris, to take effect in 2020, will essentially replace the 1997 Kyoto Protocol. Unlike Kyoto, the Paris deal will demand action from everyone, and not just from wealthy industrialized countries. But in order to make that palatable for governments, negotiators are moving away from a traditional top-down approach in which scientists dictate what is needed to save the planet and countries are allotted targets accordingly. Instead, consensus has built around a more voluntary approach in which governments figure out how much they can cut and offer it up as a pledge. Those "intended nationally determined contributions" are due early next year. In interviews with former negotiators and longtime observers of the U.N. climate negotiations, not one person expressed confidence that the sum of countries' targets will be enough to keep rising global temperatures below the internationally agreed 2-degree-Celsius "guardrail" between dangerous and extremely dangerous warming. "If that were the case, it would be a stunning surprise. I don't think anyone expects that," said Joy Hyvarien, executive director of the U.K.-based Foundation for International Law and Development (FIELD). Recently, the Massachusetts Institute of Technology used a sophisticated climate model to come to the same result.

Water Wars

Empirics prove no water wars and not key to foreign policy

Selby 13

[Jan, Senior Lecturer in International Relations and Director of the Sussex Centre for Conflict and Security Research, "No water wars on the horizon," October 04, 2013, http://www.abo.net/oilportal/topic/view.do?contentId=2148541]

Does anything similar apply in the case of water? The answer has to be a resounding no. To start with, while water is of course biologically indispensable, the paradoxical truth is that oil is in other respects more important for modern economically developed societies than water. By way of illustration, in 1991 Israel experienced a significant drought to which it responded by reducing

total water consumption by a third – with negligible impacts on economic growth or stability (indeed, this was a boom period in Israel). By contrast an equivalent cut in oil supplies would have had far-reaching social and economic consequences. Within industrialized or post-industrial societies, water demand is much more elastic than demand for oil, at least over the short term. Secondly – and here the differences with oil are most keen – water is a renewable, relatively plentiful, and relatively well-distributed resource. The total volume of world water resources is on the order of 1,385 million square kilometers, and while only 2.5 percent of this is fresh water, it is nonetheless the case that fresh water can be created from saline water as well as reused and recycled ad infinitum. Wastewater is now routinely recycled for agricultural and even human consumption. Sea water is very often desalinated (including in the Gulf states, where oil helps power the process; and in Israel, which has the economic might to desalinate whatever it needs). And states in water- scarce parts of the world increasingly rely on "virtual water" imported in the form of food staples (indeed, Israel, Egypt, and many other Middle Eastern states are as dependent on rain falling over the American prairies as they are on that from the Nile or Jordan Rivers). There are multiple ways in which states and societies can adapt to water scarcity. Some undoubtedly fail to adapt, or are prevented from adapting – but the primary reasons for this are economic and political, not the natural distribution of resources. Third, water does not and could not conceivably generate equivalent revenues to oil. It is sometimes suggested that water might become a new "blue gold," but this is misleading. The extraordinary revenues accrued from oil are products of the industry's complexity and concentration, combined with the economic and infrastructural dependency of our "hydro-carbon societies" and the international oil trade. But none of these factors apply in the case of water. Most of the world's water supplies are accessed and consumed within the boundaries of the same state, limiting the capacity of local elites and providers to generate windfall profits from water supplies. Indeed, water is arguably of declining, not rising, economic and political importance. Most water is still used for agricultural production, but agriculture accounts for ever-smaller proportions of most countries' national products, exports and employment. Unlike oil, water is not an important source of economic or political power. A regional strategic resource It follows from this that water is not a strategic resource to the same extent as oil. For some states water is, of course, an important foreign policy concern, especially in circumstances where these states are dependent on large trans-boundary rivers flowing through arid regions (Egypt on the Nile, and Syria and Iraq on the Tigris-Euphrates). But such cases are exceptions to the general rule. Moreover, water is a strategic good only on a regional level, never more widely. While the U.S. has direct interests in the stability of Middle Eastern oil production and supplies, it has no equivalent interest in relation to water. Given these fundamental differences, it should be no surprise that there exists very little evidence of water causing or even contributing to armed conflict. Even in the most water-scarce regions of the Middle East, water is simply not important enough, as a source of revenues or security, for state elites to warrant going to war over it. Water is sometimes a subject of hostile rhetoric – as with Egyptian President Morsi's pre-coup threats against Ethiopia over the construction of its Grand Renaissance Dam – but there is little evidence of such rhetoric being followed through. The 1967 Arab-Israeli war, sometimes described as a "water war," was nothing of the sort. Equally, the water dimensions of the Israeli-Palestinian conflict, often described as intractable, could fade away quickly if the broader conflict were resolved: in strictly economic terms, Israel could quite feasibly grant the Palestinians a much larger share of shared water resources. The only recorded Middle Eastern water war occurred 4500 years ago, between two Mesopotamian city states. None of this exactly suggests that water is on the verge of becoming the "new oil." Cooperation Indeed, the current academic consensus is that water is more associated with cooperation than conflict. This does not

mean that water is a subject of harmony. Trans-boundary water "cooperation" can obscure and even perpetuate stark inequalities of water supply. Moreover, localized violence over access to springs, pastures or pipelines occurs in many areas of the Middle East and beyond, especially within peripheral rural areas. Sometimes this is violence is inter communal, but more often it involves states. In central Sudan, Khartoum- backed militias have repeatedly employed violence to displace people from areas of rain-fed agricultural land that have been marked out for agro-industrial development. On a very different scale, in the West Bank the Israeli military authorities continue to restrict Palestinian water development and access to supplies in areas marked out for strategic and settlement purposes. But such cases hardly amount to evidence of "water wars." It seems unlikely that this will change in any significant way. Water may become an increasingly important site or source of violence in peripheral agricultural regions, but these conflicts are likely to be small-scale and localized rather than inter-state, and quite different from those associated with oil. Indeed, given our ever-increasing oil dependency, combined with pressures on remaining reserves, the major source of conflict in the Middle East is likely to remain disturbingly familiar. The main "new" source of conflict will probably be the same as the old one: oil.

Warming Inevitable/Can't Solve—1NC

Can't solve warming

Hamilton 10 – Professor of Public Ethics @ ANU

Clive Hamilton, Professor of Public Ethics in Australia, 2010, "Requiem for a Species: Why We Resist the Truth About Climate Change," pg 27-28

> The conclusion that, **even if we act promptly and resolutely**, the world is on a path to reach 650 ppm is almost too frightening to accept. That level of greenhouse gases in the atmosphere will be associated with warming of about 4°C by the end of the century, well above the temperature associated with tipping points that would trigger further warming.58 So it seems that even with the most optimistic set of assumptions—the ending of deforestation, a halving of emissions associated with food production, global emissions peaking in 2020 and then falling by 3 per cent a year for a few decades—**we have no chance** of preventing emissions rising well above a number of critical tipping points that will spark uncontrollable climate change. The Earth's climate would enter a chaotic era lasting thousands of years before natural processes eventually establish some sort of equilibrium. Whether human beings would still be a force on the planet, or even survive, is a moot point. One thing seems certain: there will be far fewer of us. These conclusions arc alarming, co say the least, but they are not alarmist. Rather than choosing or interpreting numbers to make the situation appear worse than it could be, following Kevin Anderson and Alice Bows 1 have chosen numbers that err on the conservative side, which is to say numbers that reflect a more buoyant assessment of the possibilities. A more neutral assessment of how the global community is likely to respond would give an even bleaker assessment of our future. For example, the analysis excludes non-CO2, emissions from aviation and shipping. Including them makes the task significantly harder, particularly as aviation emissions have been growing rapidly and are expected to continue to do so as there is no foreseeable alternative to severely restricting the number of flights.v' And any realistic assessment of the prospects for international agreement would have global emissions peaking closer to 2030 rather than 2020. The **last chance to reverse the trajectory of global emissions** by 2020 **was forfeited** at the Copenhagen climate conference in December 2009. As a consequence, a global response proportionate to the problem was deferred for several years.

Warming Inevitable/Can't Solve—Studies Confirm

Warming inevitable even if we cut emissions to zero—multiple studies confirm

Gillett et al 10—director @ the Canadian Centre for Climate Modelling and Analysis

Nathan, "Ongoing climate change following a complete cessation of carbon dioxide emissions". *Nature Geoscience*

> Several recent studies have demonstrated that CO2-induced 17 global mean temperature change is irreversible on human 18 timescales1 5. We find that not only is this climate change 19 irreversible, but that for some climate variables, such as Antarctic 20 temperature and North African rainfall, CO2-induced climate 21 changes are simulated to continue to worsen for many centuries 22 **even after a complete cessation of emissions.** Although it is 23 also well known that a large committed thermosteric sea level 24 rise is expected even after a cessation of emissions in 2100, 25 our finding of a strong delayed high-latitude Southern Ocean 26 warming at intermediate depths suggests that this effect may be 27 compounded by ice shelf collapse, grounding line retreat, and ensuing accelerated ice discharge in marine-based sectors of the 28 Antarctic ice sheet, precipitating a sea level rise of several metres. 29 Quantitative results presented here are subject to uncertainties 30 associated with the climate sensitivity, the rate of ocean heat 31 uptake and the rate of carbon uptake in CanESM1, but our 32 findings of Northern Hemisphere cooling, Southern Hemisphere 33 warming, a southward shift of the intertropical convergence zone, 34 and delayed and ongoing ocean warming at intermediate depths 35 following a cessation of emissions are likely to be robust. Geo- 36 engineering by stratospheric aerosol injection has been proposed 37 as a response measure in the event of a rapid melting of the 38 West Antarctic ice sheet24. Our results indicate that if such a 39 melting were driven by ocean warming at intermediate depths, as 40 is thought likely, a geoengineering response would be ineffective 41 for several centuries owing to the long delay associated with 42 subsurface ocean warming.

No Warming—Solar Variations

Solar variations outweigh – they are exclude by the IPCC

-cooling coming

Morner 11 – PhD in Paleogeophysics

Nils-Axel Mörne, former head of the Paleogeophysics and Geodynamics department at Stockholm University, "ARCTIC ENVIRONMENT BY THE MIDDLE OF THIS CENTURY," Energy & Environment, Vol 22, No. 3

> Later, I use the Solar Irradiance curve of Bard et al. (2000), noting that this curve, in fact, rather should be labelled "a Solar Wind Curve" as it is constructed from the variations in cosmogenic nuclides controlled by the variations in shielding capacity of the Earth's geomagnetic field as given in Figure 4 (cf. Mörner, 2010). Along this curve (Figure 6) I have marked the changes recorded between Gulf Stream stages 2 (above) and 4 (below) situations as given in Figure 2 (cf. Mörner, 2010). In the middle of this century (at about 2040-2050), we should, by cycle extrapolation, have a Future Solar Minimum when the past Gulf Stream situation should repeat; i.e. we would have a new stage 4 situation with "Little Ice Age" conditions in Europe and in the Arctic (Figure 7). This is in sharp contrast to the scenarios of IPCC (2001) and ACIA (2004), which predict a unidirectional continued warming leading to the opening of the Arctic basin within this century. Their prediction is based on **modelling excluding the effects of**

the Sun, however. Personally, I am convinced that we need to have "the Sun in the centre" (Mörner, 2006a, 2006b), and doing so, we are indeed facing a new Solar Minimum in the middle of this century. Whether this minimum will be as the past three once were (Figure 6), or it will be affected by anthropogenic factors, is another question. The date of the New Solar Minimum has been assigned at around 2040 by Mörner et al. (2003), at 2030-2040 by Harrara (2010), at 2042 ±11 by Abdassamatov (2010) and at 2030-2040 by Scafetta (2010), implying a fairly congruent picture despite somewhat different ways of transferring past signals into future predictions. The onset of the associated cooling has been given at 2010 by Easterbrook (2010) and Herrara (2010), and at "approximately 2014" by Abdassamatov (2010). Easterbrook (2010) backs up his claim that the cooling has already commenced by geological observations facts. At any rate, from a Solar-Terrestrial point of view, we will, by the middle of this century, be in a New Solar Minimum and in a New Little Ice Age (Figure 7). This conclusion is completely opposite to the scenarios presented by IPCC (2001, 2007) as illustrated in Figure 3. With "the Sun in the centre", no other conclusion can be drawn, however.

Biodiversity

Abrupt changes in climate don't cause mass biodiversity loss—history proves

Singer and Avery 7—distinguished research and environmental science professors @ George Mason and Virginia

Fred, Distinguished Research Professor at George Mason University and Professor Emeritus of environmental science at the University of Virginia, Dennis, director of the Center for Global Food Issues at the Hudson Institute, Unstoppable Global Warming: Every 1,500 years, pg. 16

We know that species can adapt to abrupt global warming because the climate shifts in the 1500-year cycle have often been abrupt. Moreover, **the world's species have already survived at least six hundred such warmings and coolings in the past million years**. The major effect of global warming will be more biodiversity in our forests, as more trees, plants, birds, and animals extend their ranges. This is already happening. Some biologists claim that a further warming of 0.8 degrees Celsius will destroy thousands of species. However, the Earth warmed much more than that during the Holocene Climate Optimum, which occurred 8,000 to 5,000 years ago, and no known species were driven extinct by the temperature increase.

Sea Level Rise

Predictions of sea level rise are inaccurate

Taylor 11 – senior fellow for environmental policy @ the Heartland Institute

(James, "SINKING UNDER THEIR FALSE SEA-LEVEL PREDICTIONS, ALARMISTS CHANGE THE DATA' [http://sppiblog.org/news/sinking-under-their-false-sea-level-predictions-alarmists-change-the-data] May 17)

Faced with the embarrassing fact that sea level is not rising nearly as much as alarmist computer models predict, the University of Colorado's NASA-funded Sea Level Research Group has announced it will begin adding a scientifically unjustified 0.3 millimeters per year to its Global Mean Sea Level Time Series. **Human civilization readily adapted to the seven inches of sea-level rise that occurred during the twentieth century**. Alarmists, however, claim global warming will cause sea level to rise much more rapidly during the

coming century. The United Nations Intergovernmental Panel on Climate Change (IPCC) gives a mean estimate of 15 inches of sea-level rise during the twenty-first century. High-profile alarmists often predict three feet. Some even predict 20 feet. Satellite measurements show global sea level has risen merely 0.83 inches during the first decade of the twenty-first century (**a pace of eight inches for the century**) and has barely risen at all since 2006. **This puts alarmists in the embarrassing position of defending predictions that are not coming true in the real world.**

Warming just as likely causes decreased flooding

Lomborg 7

Bjorn, Adjunct Professor at the Copenhagen Business School and a former director of the Environmental Assessment Institute in Copenhagen, Cool It, pg. 82

When studying US rivers, we can see increasing precipitation causing increasing stream flows, but if we check when the increase happens, it turns out that it happens mostly during the fall, when there is generally lower flow and little risk of flooding, whereas it happens rarely in the spring and with high flows. Likewise, in Europe, a study of the two major rivers, the Oder and the Elbe (which flooded Prague and Dresden in 2002), showed that over the past centuries summer floods show no trend and winter floods have actually decreased. **This is well correlated with the historical evidence, which shows much greater flood risks in the colder climates of the Little Ice Age.** With much snow and a late thaw, ice jams typically blocked a swollen river, producing high water levels, followed by floods and bursting dikes. This pattern was the main cause of flooding on the lower Rhine during the Little Ice Age, with almost all the dike bursts in the Netherlands being due to ice jams. **These floods have decreased sharply in the twentieth century, on account of warming.** Likewise, an analysis of the river Werra in Germany shows the highest flood risk was in the 1700s. Along the river Vitvava in the Czech Republic, floods have decreased over the past century.

Food Prices 1NC

Food prices are rising – the only solution is increased production

The Press Association 8

UN warns of rising food prices, 6/25/08,
http://ukpress.google.com/article/ALeqM5gw3QAJkWm_FVBknySwRjlxsD_Z4g

The head of the UN's food agency has warned that food prices will remain high and called for a boost in production. Food and Agriculture Organisation director general Jacques Diouf said prices are expected to remain high due to climate change, continued demand for bioenergy, low food stocks and greater demand in emerging countries such as China, India, Indonesia and Brazil. Mr Diouf said the problem will not be solved without increasing food production, and he called on world leaders meeting in Japan next month to address this issue.

Co2 key to increased ag production

Steward 9—geologist

(H Leighton, "Plants need more CO2, not less" [http://plantsneedco2.org/default.aspx/act/newsletter.aspx/category/In+The+News/menuitemid/312/MenuGroup/NewsAndMedia/NewsLetterID/26/startrow/4.htm] December 4)

Congress and federal regulators are poised to make a misguided and reckless decision that will stifle our economy recovery and spur long- term damage to plant and animal life on earth. In the coming months, the Environmental Protection Agency will hold hearings to justify the movement to brand carbon dioxide (CO_2) as a pollutant. Congress will also consider cap-and-trade legislation that, if enacted, could also regulate CO_2 as pollution. Why is it such a catastrophic decision? Because there is not a single piece of evidence that CO_2 is a pollutant. In fact, **lower levels of carbon dioxide actually inhibit plant growth and food production.** What we see happening in Washington right now is the replacement of politics for science in conversations about CO_2. For plants, CO_2 is the greatest, naturally occurring air-borne fertilizer that exists. Even schoolchildren learn in elementary science class that plants need carbon dioxide to grow. During photosynthesis, plants use this CO_2 fertilizer as their food and they "breathe out" oxygen into the air so humans can inhale it, and in turn exhale CO_2. This mutually beneficial and reinforcing cycle is one of the most basic elements of life on earth. An article appeared recently in the Environment and Energy Daily that claimed a "modeled" nitrogen deficiency will occur as CO_2 rises. Well, CO_2 has already risen over 37%, 105 parts per million, and where is the real world nitrogen deficiency?Why are Earth's forests lush if the added growth that has already occurred, due to big bursts of CO_2, has depleted the nitrogen supply? The nitrogen supply of pristine ecosystems has been resupplied through natural processes for eons. Computer models, manipulated to produce desired results, can generate catastrophic, front page, forecasts. We encourage our government's scientists to step back from their models and observe what is and what has happened in the real world, as well as in actual plant experiments. Doesn't anyone recognize the good news that is staring them in the face? It simply defies imagination, let alone science, that the United Nations has now backed an arbitrary limit on atmospheric carbon dioxide levels. The chairman of the politically charged Intergovernmental Panel on Climate Change (IPCC) said he supports efforts to reduce carbon dioxide to 10% below current levels. In the context of today's political conversations, this recommendation may sound like an acceptable position to save the environment. But the scientific reality of such a step is quite the opposite**. Lowering carbon dioxide in our atmosphere will have catastrophic affects on our food supply.** Higher concentrations of carbon dioxide support plant life and helps plants thrive. If our food supply is reduced, the hunger crisis in many parts of the world will worsen. **Not only would lowering CO_2 levels be wrong, one can make the argument that even higher levels would be desirable. Greenhouse operators routinely increase CO_2 to about three times the current level in earth's atmospher**e in order to encourage plant growth. We know CO_2 is vital for plants, but what about the argument that it is a dominant contributor to the greenhouse effect? Again, science does not support this argument. CO_2 is not even close to being the most important of the greenhouse gases. Most of the greenhouse effect is due to water vapor, which is more than 30 times as abundant in the atmosphere as CO_2. As further evidence, we find that as the post-war industrial boom began to put significant volumes of CO_2 into the atmosphere, global temperatures did not rise. Since 1945, there have been about 40 years of cooling trend and only 20-plus years of warming. While the warming is significant, it followed an unusually high period of solar activity. Temperature did rise steeply in the 1920's and in the 1930's in the U.S. and 1934 was the warmest year of the 20th century. The rate of warming then was also higher than in the 1980's and 1990's, even though CO_2 levels were lower. Many in the scientific community reject reducing atmospheric CO_2 to 350 parts per million, as Dr. Pachauri of the U.N. wishes. Thousands of peer-reviewed experiments have demonstrated CO_2' s ability to "green" the earth dramatically. Nonetheless, Dr. Pachauri and those who prefer to debate science with politics are sticking to their old story and clinging to their inadequate climate models and their headline-grabbing catastrophic forces. Do Americans want to see their government spend trillions of dollars removing CO_2 that will not lower the Earth's temperature but absolutely will risk harming ecologies, economies and mankind itself?

High food prices threaten global economic collapse

Fickler 8

MARTIN FACKLER June 15, 2008
http://www.nytimes.com/2008/06/15/business/worldbusiness/15ministers.html "Surging Oil and Food Prices Threaten the World Economy, Finance Ministers Warn"

> The global economy faces a one-two punch from slowing growth and soaring fuel and food prices, finance ministers from the world's richest nations warned Saturday, though they stopped short of offering concrete solutions. Finance ministers from the Group of 8 industrialized nations wrapped up a two-day meeting in Japan that was dominated by talk of rising petroleum prices, which have set off street protests across the world. In a statement, the ministers said higher prices of oil and other commodities threatened the world economy at a time when it was still reeling from the collapse of the housing market in the United States.

Economic decline risks nuclear war

Mead 92

[Walter Russel Mead, Senior Fellow in American FoPo @ the Council on Foreign Relations, World Policy Institute, 1992]

> Hundreds of millions, billions, of people have pinned their hopes on the international market . They and their leaders have embraced market principles and drawn closer to the west because they believe the system can work for them? But what if it can't? What if the global economy stagnates or even shrinks? In that case, we will face a new period of international conflict: North against South, rich against poor. Russia, China India, these countries with their billions of people and their nuclear weapons will pose a much greater danger to the world than Germany and Japan did in the 30s.

CO2 Key to Ag

CO2 in the last century has helped increase agricultural productivity

Spencer 11—former senior scientist @ NASA

Roy Spencer, Ph.D. Meteorology, Former Senior Scientist for Climate Studies, NASA, 1/4/11, Popular Science, http://www.climatechangedispatch.com/temperate-facts/co2-and-gw-primers/co2-is-not-pollution?start=1

> "Many chemicals are absolutely necessary for humans to live, for instance oxygen. Just as necessary, human metabolism produces by-products that are exhaled, like carbon dioxide and water vapor. So, the production of carbon dioxide is necessary, on the most basic level, for humans to survive. The carbon dioxide that is emitted as part of a wide variety of natural processes is, in turn, necessary for vegetation to live. It turns out that most vegetation is somewhat 'starved' for carbon dioxide, as experiments have shown that a wide variety of plants grow faster, and are more drought tolerant, in the presence of doubled carbon dioxide concentrations. Fertilization of the global atmosphere with the extra CO2 that mankind's activities have emitted in the last century is believed to have helped increase agricultural productivity. In short, carbon dioxide is a natural part of our environment, necessary for life, both as 'food' and as a by-product."

CO2 Key To Bio-D

Co2 is key to global biodiversity and is the only way to counter the effects of global warming

Idso 3

Sherwood (President of the Center for the Study of Carbon Dioxide and Global Change and former professor at Arizona State University), Craig, and Keith Idso, The Specter of Species Extinction, http://www.marshall.org/pdf/materials/150.pdf

> So what could we logically expect to happen to the biosphere in a world of both rising air temperature and atmospheric CO2 concentration? We could expect that earth's plants would extend the current cold-limited boundaries of their ranges both poleward in latitude and upward in elevation, but that the heat-limited boundaries of the vast majority of them would remain pretty much as they are now, i.e., unchanged. Hence, the sizes of the ranges occupied by most of earth's plants would increase. We additionally hypothesize that many of the animals that depend upon those plants for food and shelter would exhibit analogous behavior. Hence, with respect to both plants *and* animals, we would anticipate that nearly everywhere on earth, local biodiversity or species richness would increase in a world of rising air temperature and atmospheric CO2 concentration, as the expanding ranges of the planet's plants and animals overlapped those of their neighbors to an ever-increasing degree. The implications of these observations are clear: if the planet continues to warm, even at what climate alarmists call "unprecedented rates," we need not worry about earth's plants and animals being unable to migrate to cooler regions of the globe fast enough to avoid extinction, as long as the air's CO2 content continues to rise at its current rate. So obvious is this conclusion, in fact, that Cowling (1999) has bluntly stated that "maybe we should be less concerned about rising CO2 and rising temperatures and more worried about the possibility that future atmospheric CO2 will suddenly stop increasing, while global temperatures continue rising."

Food Prices Bad – Hunger

Higher food prices kill billions

Tampa Tribune 96

(January 20, LN)

> "Even if they are merely blips, higher international prices can hurt poor countries that import a significant portion of their food," he said. "Rising prices can also quickly put food out of reach of the 1.1 billion people in the developing world who live on a dollar a day or less." He also said many people in low-income countries already spend more than half of their income on food.

This outweighs all – we must stop hunger, even if it leads to extinction

LaFollette 2K3

(Hugh, http://www.stpt.usf.edu/hhl/papers/World.Hunger.htm)

> Those who claim the relatively affluent have this strong obligation must, among other things, show why Hardin's projections are either morally irrelevant or mistaken. A hearty few take the former tack: they claim we have a strong obligation to aid the starving even if we would eventually become malnourished**.** On this view, to survive on lifeboat earth, knowing that others were tossed overboard into the sea of starvation, would signify an indignity and callousness worse than extinction (Watson 1977).

It would be morally preferable to die struggling to create a decent life for all than to continue to live at the expense of the starving.

AT: Loladze

Loladze is wrong – high co2 levels allow for plants to use nitrogen efficiently

Idso 2

Sherwood (President of the Center for the Study of Carbon Dioxide and Global Change and former professor at Arizona State University), Craig, and Keith Idso, "Has the Historical Rise in the Air's CO2 Content Negatively Impacted Human Health?" Volume 5, Number 44: 30 October 2002

Loladze's thesis is based on the assumption that certain essential micronutrients should be present in plants at concentrations that are greater than, or at least equal to, their current concentrations. By this thinking, any concentration reductions from those of the present are deemed to be bad. This premise, however, is far too simplistic; for it is not the amount of those elements, but how they are used, that defines their utility or value to the plant and/or human body. A case in point from the plant world is the commonly - but not universally - observed decrease in foliage nitrogen concentration that occurs in vegetation growing in air enriched with CO_2. Originally thought to be a negative response, this acclimation phenomenon has gradually come to be realized to be a positive reaction to atmospheric CO_2 enrichment. Not requiring as much nitrogen to maintain their photosynthetic machinery in top working condition when growing in air enriched with CO_2, plants need not acquire as much nitrogen as they do in CO_2-deficient air (such as that of the present) and, therefore, they need not expend the extra energy required to do so, growing bigger and better all the while. And that is why it is openly acknowledged that atmospheric CO_2 enrichment greatly enhances plant nitrogen use efficiency.

AT: Warming Collapses Ag

Lower temperatures crush agriculture – history proves

Dunn 7

J.R., "Resisting Global Warming Panic," 1/31/2k7, American Thinker, http://www.americanthinker.com/2007/01/resisting_global_warming_panic.html

The climate closed down. Rains ruined crops and washed away entire seacoast towns. Far to the north, the great colonies of Iceland and Greenland faltered and began to fade away. Famine returned to Europe, and with it the plague, in one of the greatest mass deaths ever witnessed by humanity. The bright centuries were replaced by the dance of death and a dank and morbid religiosity. The focus of culture shifted to the warm Mediterranean. It remained cold, within certain broad limits, for six hundred years. The chill only lifted in the 1850s, when our current warming actually began.

We look back to a world that was a far more pleasant place at the turn of the last millennium, with a milder climate, plentiful food, a healthy populace. A picture, needless to say, at some variance with the Greens' prediction of coming universal disaster. It also undermines one of one of the basic environmentalist tenets - that nature is in delicate balance that can destroyed by a hard look from any given capitalist, and that any such change leads inevitably to catastrophe. The LCO suggests that a warmer world may well be more desirable than the one we have now. To go a step further, my research implied that the planet is in fact meant to be somewhat warmer than it is today, that the life-forms we see around us are in fact adapted to a warmer climate. The earth is, after all, stuck within a three-million-year glacial epoch whose origin and cause remain a mystery. (We're now in a brief "interglacial" - a warming period! - that began only 12,000 years ago and could end tomorrow.)

AT Democracy Adv

DPT Bad

Democratic peace theory justifies violent interventions to promote US interests—covert operations expose the flaws and tautology of DPT research

Barkawi 15 - Deputy Head of Research Department London School of Economics and Political Science

Tarak, Scientific Decay, International Studies Quarterly (2015) 1–3

As a dissenting referee for Michael Poznansky's (2015) article "Stasis or Decay? Reconciling Covert War and the Democratic Peace," the editors invited me to convert my report into a published response. Poznansky defends the Democratic Peace against the inconvenient fact that the United States has intervened, on multiple occasions, to subvert and even overthrow democratically elected regimes. I consider Poznansky's attempt to protect demo- cratic-peace theory from this historical record fundamen- tally misguided. Poznansky winds up reinscribing the very ideological categories that American leaders used to jus- tify often brutal and bloody anti-democratic projects as somehow "pro-democracy". Rather than supporting dem- ocratic-peace theory, Poznansky's article instead calls attention to the Cold War ideology and **American excep- tionalism that underwrites it**.∂ The Democratic Peace and Covert Operations∂ The first and most important thing to say about "Stasis or Decay? Reconciling Covert War and the Democratic Peace" presents little genuinely new evidence about covert opera- tions, the Democratic Peace, and the Cold War. Instead, the article develops auxiliary hypotheses that aim to deal with the challenge posed to democratic-peace theory by covert operations against elected regimes (see, for exam- ple, Doyle 1983:334–337; Barkawi 2001; Downes and Lilley 2010). In doing so, it highlights the **degenerative** character of the research program—how democratic-peace theory no longer creates or explains novel facts (Lakatos 1970:116– 119). As Poznansky writes, his theory helps "existing theories of the democratic peace account for covert inter- vention." (2015:3) He does so by arguing that US policy- makers covertly intervened against elected governments when they expected "democracy" to decay and "commu- nists" to take over. He holds that covert interventions reflect, rather than falsify, the causal logics of democratic-peace theory, so long as scholars take expectations of the future trajectory of democracy into account.∂ In essence, Poznansky has written a "get out of jail free card" for the Democratic Peace. If, before they conduct an operation against an elected government, US policymak ers reason that their actions ultimately further democracy, then political scientists can rest assured that these actions do not invalidate the Democratic Peace. Putting the mat- ter in this way makes evident the circularity between the mindsets of officials and the categories of democratic- peace theory. This circularity invites critical reflection.∂ To make his argument, Poznansky distinguishes between being anti-communist and being pro-democratic. Critics claim, in my view, correctly, that, during most of the Cold War, US policymakers cared more about com- batting communism than promoting democracy in the Third World. Poznansky argues that anti-communism and promoting democracy amount to the same thing, both in an objective sense and in the minds of US policymakers at the time (2015:3, 5). That a social scientific journal article could so unreflectively make such a world-historical claim alerts us to the constitutive relations between power and knowledge, including scientific knowledge. But this is a topic neither Poznansky nor our discipline much want to discuss. The consequence, as here, is scholarship com- plicit with US power in the world, past and present, and with its violent interventions into the affairs of others.∂

Poznansky does not mince words: “Empirical evidence” shows that “[c]ommunism as an ideology” was both threatening “geopolitically” and “inherently anti-demo- cratic” (2015:5). Said another way, the Cold War hawks were right! Intervening to stop communism anywhere was an inherently pro-democratic act. When US officials helped overthrow the popularly elected Mossadegh, they were not “working against democracy” but rather worried that “Iran’s experiment with democracy would soon be over” (Poznansky 2015:6). Similarly, in Chile, US officials believed that the election of Allende meant the end of democracy (2015:8). For those officials, as for Poznansky, communists, socialists, and other leftists were, in world- historical terms, anti-democratic, even if they were elected. That US officials believed things like this is well known to any student of the Cold War. The really inter- esting question is why such Cold War truisms would be of particular scientific interest at the current moment or treated as critical tests of empirical laws.∂ The definition of democracy lies at the crux of the anti-communism/pro-democracy issue, as Mark Laffey and I noted over a decade ago (1999:407–409). US Cold War ideology considered communism inherently anti- democratic; it equated anti-communism with the protec- tion and promotion of democracy. When Laffey and I argued that the United States often deployed its power against democracy in the Third World, we had in mind a different conception of democracy: as a project of popu- lar rule (1999:414; cf. Poznansky 2015:5). We made this argument in order to identify the multiple, diverse, and co-constitutive relations between democracy and war in world politics. Democratic-peace theory defines these rela- tions out via biases lodged in its core categories and its statistical indicators. Poznansky, along with US Cold War officials and the democratic-peace research program, sim- ply equates “democracy” with “liberal capitalist democ- racy” without acknowledgment of the essentially contested nature of this concept. From such an obviously ideological, facile standpoint, US Cold War policies like overthrowing elected governments, militarily supporting regimes arrayed against their own populations, or vio- lently opposing popular movements and insurgencies can be classified as defending or promoting democracy.∂ That Poznansky and I have different definitions of democracy is not that interesting. However, Poznansky passes off US Cold War ideology as objective fact; namely, that communism—very broadly defined (for example, Allende, Arbenz, Mossadegh)—was intrinsically anti- democratic. Poznansky quotes US officials, such as Kis- singer, expressing their concern for democracy in Iran and Chile, even as their actions helped birth murderous, long-lived dictatorships. To claim that an election in Chile constituted a threat to the US reiterates a well- rehearsed strain of anti-communist ideology. Yet Poznan- sky argues that the US perception that an “Allende vic- tory” amounted to a “negation of democracy” had an “objective basis” (Poznansky 2015:3, 8). He reasons that US policymakers observed how some communist parties curtailed electoral democracy in other countries, as in Czechoslovakia in 1948. They worried as a world-historical matter about the future trajectory of democracy if com- munists took over. This is the position taken by Cold Warriors like Jeane Kirkpatrick in her polemic “Dictator- ships and Double Standards” (1979). Of course, those who supported Mossadegh and Allende saw matters dif- ferently: For them, the United States helped put an end to popular political projects. Poznansky invites this sort of rehashing of Cold War arguments because he allies his scientific reasoning with a long-dominant ideology and its interpretation of history. The fact that he so easily does so reflects how the categories of democratic-peace theory already profoundly naturalize Cold War ideology.∂ Setting aside those categories makes visible an irony at the heart of Poznansky’s argument. He claims that covert operations fail to invalidate the causal mechanisms sus- taining the peace among democracies. Yet those opera- tions most certainly subverted democracy domestically in the United States. The Executive Branch hid such secret operations from US citizens and their legislative represen- tatives. US Cold War covert

operations involved executive overreach in respect of budget and war powers, matters of central concern to liberal democratic theory. These operations also closely intertwined with the use of intelli- gence agencies to monitor, and subvert, domestic politi- cal activity (Halperin, Berman, Borosage, and Markwick 1976).∂If one took seriously the questions raised by covert operations and intelligence agencies for democracy, war, and peace, topics such as these might warrant consider- able interest. Poznansky instead investigates two uncon- troversial hypotheses. First, that the United States proved more likely to intervene when it thought a country of strategic concern might go communist. Second, that it intervened first to covertly strengthen its perceived allies in the country, and later with covert force in pursuit of regime change. That the United States did so in various cases—and that its officials believed they were acting on behalf of the free world, democracy, and the American Way—is a matter of straightforward historical record. The mystifying brew of liberalism and empiricism that is dem- ocratic-peace theory obscures the decisive fact that in the covert operations under consideration, US officials sub- verted democracy both at home and abroad.∂In the twentieth century, dominant versions of US identity came to equate the fate of the American project with that of democracy in general (Campbell 1992). US officials and politicians, and the experts who advised them, took for granted the worldwide role of the United States. They planned their policies and rationalized their actions within that ideological frame. As a result, anyone trying to replicate Poznansky's work will find numerous confirmations of his hypotheses. Whether invading, cov- ertly waging war, or subverting democracy in other peo- ple's countries, US officials regularly expressed their genuine concern for the survival of democracy—if not the fate of civilization itself.∂Power, Knowledge, and the "Science" of the Democratic Peace∂Circularity between power and knowledge undergirds Poznansky's article. The Democratic Peace, as a scientific claim about the world, retrospectively **justifies US Cold War policies**. Interventions in the Third World were really about promoting democracy, and not about supporting dictatorial regimes out of paranoid anti-communism. At the same time, those Cold War interventions—which we should, by rights, see as challenging the Democratic Peace—reappear as validating that claim. Overthrowing elected leaders with the wrong ideology, or repressing popular movements abroad, is actually pro-democracy and ultimately sustains the peace between democracies, objectively speaking. Here we catch a whiff of how Poz- nansky's article, and the research program of which it is a part, participates in US power and **reproduces its logics of intervention** in the present. This sort of scholarship perpetuates the nearly complete failure of our discipline to confront its own implication in the US security state in and beyond the Cold War (cf. Asad 1973; Amadae 2003; Oren 2003).∂The purpose of science should be to stand outside of ideology, to critique it, not to ratify it (Weber 1946 [1919]). Consider Poznansky's closing lines about the present-day worldwide construct through which the US legitimates intervention, the War on Terror. He writes: "the prospects for a democratic peace in the Middle East will hinge in large part on whether moderate elements within these countries successfully keep anti-democratic Islamists out of power and forestall the belief that their countries have stepped out onto the slippery slope of democratic decay" (2015:10). Having reproduced Cold War ideology in stark simplicity—anti-communism equals pro-democracy—Poznansky does the same for the War on Terror. We have the whole panoply here: US friends (moderate Islamists), US enemies (anti-democratic Isla- mists), and the idea that any Islamist regime is inherently susceptible to authoritarianism. This think tank-level analysis wishes away the popular (that is, democratic) power of US opponents, whether or not they formally elect parties and governments. It disappears from inquiry their democratic projects and any relations those projects might have with peace, war, or the prospects for popular rule. It identifies the analyst with the US project in the world and with its enmities.∂That the chief findings of liberal

and empiricist IR reflect the worldview of the US security state in no way confirms the hypotheses of democratic-peace theory. They indicate instead the co-constitutive character of power/knowledge relations and the need for a reckoning with the multifaceted ways in which US power has shaped, and continues to shape, the discipline (Lowen 1997; Cumings 1999:173–204; Gilman 2003; Isaac 2007; Stampnitzky 2013).

Democracy Backsliding

Authoritarian governments are bringing democratic backsliding

Kulantzick 11

(Joshua Kulantzick, an American journalist from Baltimore, Maryland, United States. He is a Fellow for Southeast Asia at the Council on Foreign Relations, May 19, 2011, "The Great Democracy Meltdown", http://www.newrepublic.com/article/world/magazine/88632/failing-democracy-venezuela-arab-spring)

As the revolt that started this past winter in Tunisia spread to Egypt, Libya, and beyond, dissidents the world over were looking to the Middle East for inspiration. In China, online activists inspired by the Arab Spring called for a "jasmine revolution." In Singapore, one of the quietest countries in the world, opposition members called for an "orchid evolution" in the run-up to this month's national elections. Perhaps as a result, those watching from the West have been positively triumphalist in their predictions. The Middle East uprisings could herald "the greatest advance for human rights and freedom since the end of the cold war," argued British Foreign Secretary William Hague. Indeed, at no point since the end of the cold war—when Francis Fukuyama penned his famous essay The End of History, positing that liberal democracy was the ultimate destination for every country—has there been so much optimism about the march of global freedom. If only things were so simple. The truth is that the Arab Spring is something of a smokescreen for what is taking place in the world as a whole. Around the globe, it is democratic meltdowns, not democratic revolutions, that are now the norm. (And even countries like Egypt and Tunisia, while certainly freer today than they were a year ago, are hardly guaranteed to replace their autocrats with real democracies.) In its most recent annual survey, the monitoring group Freedom House found that global freedom plummeted for the fifth year in a row, the longest continuous decline in nearly 40 years. It pointed out that most authoritarian nations had become even more repressive, that the decline in freedom was most pronounced among the "middle ground" of nations—countries that have begun democratizing but are not solid and stable democracies—and that the number of electoral democracies currently stands at its lowest point since 1995. Meanwhile, another recent survey, compiled by Germany's Bertelsmann Foundation, spoke of a "gradual qualitative erosion" of democracy and concluded that the number of "highly defective democracies"—democracies so flawed that they are close to being failed states, autocracies, or both—had doubled between 2006 and 2010. The number of anecdotal examples is overwhelming. From Russia to Venezuela to Thailand to the Philippines, countries that once appeared to be developing into democracies today seem headed in the other direction. So many countries now remain stuck somewhere between authoritarianism and democracy, report Marc Plattner and Larry Diamond, co-editors of the Journal of Democracy, that "it no longer seems plausible to regard [this condition] simply as a temporary stage in the process of democratic

transition." Or as an activist from Burma—long one of the world's most repressive countries—told me after moving to Thailand and watching that country's democratic system disintegrate, "The other countries were supposed to change Burma. ... Now it seems like they are becoming like Burma." Twenty or even ten years ago, the possibility of a global democratic recession seemed impossible. It was widely assumed that, as states grew wealthier, they would develop larger middle classes. And these middle classes, according to democracy theorists like Samuel Huntington, would push for ever-greater social, political, and economic freedoms. Human progress, which constantly marched forward, would spread democracy everywhere. For a time, this rosy line of thinking seemed warranted. In 1990, dictators still ruled most of Africa, Eastern Europe, and Asia; by 2005, democracies had emerged across these continents, and some of the most powerful developing nations, including South Africa and Brazil, had become solid democracies. In 2005, for the first time in history, more than half the world's people lived under democratic systems. Then, something odd and unexpected began to happen. It started when some of the leaders who had emerged in these countries seemed to morph into elected autocrats once they got into office. In Venezuela, Hugo Chávez is now essentially an elected dictator. In Ecuador, elected President Rafael Correa, who has displayed a strong authoritarian streak, recently won legislation that would grant him expansive new powers. In Kyrgyzstan, Kurmanbek Bakiyev, who led the 2005 Tulip Revolution, soon proved himself nearly as authoritarian as his predecessor. And, in Russia, Vladimir Putin used the power he won in elections to essentially dismantle the country's democracy. But it wasn't just leaders who were driving these changes. In some cases, the people themselves seemed to acquiesce in their countries' slide away from free and open government. In one study by the Program on International Policy Attitudes, only 16 percent of Russians said it was "very important" that their nation be governed democratically. The regular Afrobarometer survey of the African continent has found declining levels of support for democracy in many key countries. And in Guatemala, Paraguay, Colombia, Peru, Honduras, and Nicaragua, either a minority or only a small majority of people think democracy is preferable to any other type of government. Even in East Asia, one of the most democratic regions of the world, polls show rising dissatisfaction with democracy. In fact, several countries in the region have developed what Yu-tzung Chang, Yunhan Zhu, and Chong-min Park, who studied data from the regular Asian Barometer surveys, have termed "authoritarian nostalgia." "Few of the region's former authoritarian regimes have been thoroughly discredited," they write, noting that the region's average score for commitment to democracy, judged by a range of responses to surveys, has recently fallen. But what about the middle class? Even if large segments of the population were uninterested in liberal democracy, weren't members of the middle class supposed to act as agents of democratization, as Huntington had envisioned? Actually, the story has turned out to be quite a bit more complicated. In country after country, a familiar pattern has repeated itself: The middle class has indeed reacted negatively to populist leaders who appeared to be sliding into authoritarianism; but rather than work to defeat these leaders at the ballot box or strengthen the institutions that could hold them in check, they have ended up supporting military coups or other undemocratic measures. Thailand offers a clear example of this phenomenon. In 2001, Thaksin Shinawatra, a former telecommunications tycoon turned populist, was elected with the largest mandate in Thai history, mostly from the poor, who, as in many developing nations, still constitute a majority of the population. Over the next five years, Thaksin enacted several policies that clearly benefited the poor, including national health insurance, but he also began to strangle Thailand's institutions, threatening reporters, unleashing a "war on drugs" that led to unexplained shootings of political opponents, and silencing the bureaucracy. In 2005, when the charismatic prime minister won another free election with an even larger mandate, the middle class revolted,

demonstrating in the streets until they paralyzed Bangkok. Finally, in September 2006, the Thai military stepped in, ousting Thaksin. When I traveled around Bangkok following the coup, young, middle-class Thais, who a generation ago had fought against military rulers, were engaged in a love-in with the troops, snapping photos of soldiers posted throughout Bangkok like they were celebrities. The middle class in Thailand had plenty of company. In 2001, urban Filipinos poured into the streets to topple President Joseph Estrada, a former actor who rose to power on his appeal to the poor, and then allegedly used his office to rake in vast sums of money from underworld gambling tycoons. In Honduras in 2009, middle-class opponents of populist President Manuel Zelaya began to protest his plans to extend his power by altering the constitution. When the military removed him in June of that year, the intervention was welcomed by many members of the urban middle class. An analysis of military coups in developing nations over the past two decades, conducted by my colleague David Silverman, found that, in nearly half of the cases—drawn from Africa, Latin America, Asia, and the Middle East—middle-class men and women either agitated in advance for the coup, or, after the takeover, expressed their support in polls or prominent press coverage. Even as domestic politics in many developing nations has become less friendly to democratization, the international system too has changed, further weakening democratic hopes. The rising strength of authoritarian powers, principally China but also Russia, Saudi Arabia, and other states, has helped forestall democratization. Moscow and Beijing were clearly rattled by the "color revolutions" of the early and mid-2000s, and they developed a number of responses. First, they tried to delegitimize the revolts by arguing that they were not genuine popular movements but actually Western attempts at regime change. Then, in nations like Cambodia, Ukraine, Georgia, Kyrgyzstan, and Moldova, Moscow and Beijing intervened directly in attempts to reverse democratic gains. The Kremlin's youth group, Nashi, known for its aggressive tactics against democracy activists, launched branches in other Central Asian nations. In Kyrgyzstan, Russian advisers helped a series of leaders emulate the Kremlin's model of political control. In part because of this Russian influence, "[p]arliamentary democracy in Kyrgyzstan has been hobbled," according to the International Crisis Group. China and Russia even created new "NGOs" that were supposedly focused on democracy promotion. But these organizations actually offered expertise and funding to foreign leaders to help them forestall new color revolutions. In Ukraine, an organization called the "Russian Press Club," run by an adviser to Putin, posed as an NGO and helped facilitate Russia's involvement in Ukrainian elections.

Democracy is in a recession –laundry list of countries

Posner 14

(Eric Posner, professor at the University of Chicago Law School, is author of The Twilight of International Human Rights Law, December 22, 2014, "The Year of the Dictator", http://www.slate.com/articles/news_and_politics/view_from_chicago/2014/12/democracy_is_stagnating_kenya_cuba_egypt_turkey_russia_show_resurgence_of.html)

Last week, the Kenyan Parliament enacted a new counterterrorism bill amid scuffles and protests. Opponents argued that, by restricting liberties, the main effect of the bill was to increase presidential power rather than to counter terrorism. The U.S. State Department complained that the bill restricts freedom of speech and freedom of assembly. This bill came on the heels of another government action to deregister hundreds of nongovernmental organizations that had criticized the government. Kenya's president, Uhuru Kenyatta, is not (yet) a dictator, but Kenya is less free than it was 10 years ago. And Kenya is not alone. There has been a surge of authoritarianism around the world, reversing decades of progress toward democracy. Back in

1989, Francis Fukuyama proclaimed "the end of history" with the collapse of communism. Fukuyama meant that the death of communism left liberal democracy as the only legitimate political system. It was only a matter of time before democracy would spread around the world. The engine of democracy may have run out of steam. While Fukuyama's theory was based on his reading of Hegel, the German philosopher who believed that history unfolded according to an inherent logic in the direction of freedom, his argument was related to a long-standing debate among political scientists about the relationship between economic growth, or "modernization," and democracy. Data on these variables showed that while poorer countries cycled between democratic and authoritarian systems, and authoritarian governments in rich countries like Singapore often endured, countries that became wealthy and then established a democracy never seemed to revert to authoritarianism. So democracy seemed to work as a ratchet that would engage if a country achieved a certain level of wealth, and if revolution or reform brought about democratic institutions. Even if Fukuyama (and Hegel) were wrong about the logic of history, there was good reason to believe that, given enough time and economic growth, democracy would spread. Fukuyama's argument received a huge amount of attention because it played into the heady sense of victory after the end of the Cold War. But democracy had been spreading since the early 19th century. And while it has endured some ups and downs, the trend is unmistakable. As the accompanying graph shows, since 1972, the fraction of "free countries" has increased from 29 percent to 45 percent. (The source of the data is the think tank Freedom House; for clarity I have omitted countries that Freedom House defines as "partly free.") But the graph also shows that stagnation set in about 10 to 15 years ago. No one knows why. It might be a random fluctuation in an irreversible trend, as Fukuyama's argument suggests, but it also may indicate that the engine of democracy has run out of steam. As we look around us, we can see some evidence for the latter interpretation. Probably the most striking examples are the advance of authoritarianism in two relatively wealthy and modern-seeming democracies, Turkey and Hungary. In those countries, a charismatic leader has used his control of the government to crack down on criticism in the media and squelch dissent from political opposition. Turkish President Recep Tayyip Erdogan has jailed political opponents and harassed the media. Hungarian Prime Minister Viktor Orban says he wants to create an illiberal state modeled on Russia and Turkey. Russia, which lumbered toward democracy in the 1990s, has become an increasingly authoritarian place. Vladimir Putin has skillfully consolidated the power of the government without resorting to communist-era totalitarianism. He has undermined the independence of the media, harassed and stymied his critics, and manipulated elections. While the collapse of oil prices spells trouble for the Russian economy, Putin remains popular. Russians seem to like having a strong leader, even if that means that the media are controlled and political opposition is muted. China's authoritarian system is increasingly admired throughout the developing world. The government has managed to maintain order (the country is enviably safe) despite wrenching economic and social change. Since the size of China's economy surpassed that of the United States earlier this year, it will become increasingly hard to maintain that democracy is necessary to economic development. In many poor countries, where ending soul-crushing poverty takes precedence over Western-style political freedoms, governments have taken note. Another warning to democrats is the collapse of the Arab Spring. Back in 2010, when the Arab Spring began, it was possible to think that democracy would finally make headway in a region that has long resisted it. It didn't. President Abdel Fattah El-Sisi's consolidation of power in Egypt, with the help of liberals who feared Islamic rule by the Muslim Brotherhood, shows vividly that people can prefer the stability of authoritarianism to the chaos of democracy. A last example is Cuba. Cuba is a full-fledged dictatorship, one that jails and tortures dissidents, muzzles the press,

and refuses to hold elections. It is tempting to think that the normalization of relations with Cuba will bring democracy to that country. But that has not happened with Russia, China, and countless other authoritarian countries that the United States trades with. President Raúl Castro has made clear that he plans to maintain Cuba's authoritarian system while working on economic reform, along the lines of the China model. The cheering from Venezuela and other parts of Latin America expresses the relief felt by leftist authoritarians who see that if the United States can tolerate an undemocratic Cuba, it will have no grounds for criticizing authoritarianism in their countries. This is as it should be. The opening to Cuba is best understood as long-overdue recognition by the United States that economic sanctions can do little to improve political freedoms in foreign countries.

Democracy Evolving

American democracy isn't doomed it's just evolving

O'Hehir 14

(Andrew O'Hehir, senior writer for Salon, May 17 2014, "Was American Democracy Always Doomed?", http://www.alternet.org/civil-liberties/was-american-democracy-always-doomed)

In the glory days of the anti-globalization movement, circa the "Battle in Seattle" of 1999, there was an oft-repeated street scene some of you will remember. A group of protesters would seize an intersection or a block for a little while, likely because the police were otherwise occupied or couldn't be bothered or didn't want to bust heads while the cameras were watching. The ragtag band would haul out the drums and noisemakers, climb the lampposts and newspaper boxes with colorful banners, and send out an exuberant chant: "This is what democracy looks like!" (Contrary to what you may have heard, smashing the Starbucks windows was not required, and not all that common.) It's easy to snark all over that from this historical distance: If democracy looks like a noisy street party involving white people with dreadlocks dressed as sea turtles, count me out! But the philosophy behind that radical-activist moment was not nearly as naive as it might look from here, and much of the problem lies in that troublesome noun: democracy. In those post-Communist, pre-9/11 days, the era of the "end of history," democracy in its liberal-capitalist formulation was assumed to be the natural fulfillment of human society. It was the essential nutrient-rich medium for the growth of all good things: Pizza Hut, parliamentary elections, knockoff designer clothes and broadband Internet, not to mention all the wonderful gizmos that were about to be invented. Even anti-capitalist protesters were compelled to embrace the rhetoric of democracy, if only to suggest (as Gandhi did about "Western civilization") that it was a great idea but we hadn't gotten there yet. A decade and a half later, democracy remains officially unopposed on the world stage, yet it faces an unexpected existential crisis. Since the collapse of the Soviet Union, American-style liberal-capitalist democracy has presented itself to the world as "the only legitimate form of expression or decision-making power" and "the necessary first condition of freedom." (I'm quoting an anarchist critique by Moxie Marlinspike and Windy Hart, which is well worth reading.) But it has abruptly and spectacularly stopped working as advertised: The broken American political system has become a global laughingstock, and numerous other Western countries that modeled their systems on ours are in chronic crisis mode. This is what democracy looks like: grotesque inequality, delusional Tea Party obstructionism, a vast secret national-security state, overseas wars we're never even told about and a total inability to address the global climate crisis, a failure for which our descendants will never forgive us, and never should. Maybe I'll take the turtle costumes after all. The aura of

democratic legitimacy is fading fast in an era when financial and political capital are increasingly consolidated in a few thousand people, a fact we already knew but whose implications French insta-celebrity Thomas Piketty and the political scientists Martin Gilens and Benjamin Page (of the "oligarchy study") have forcefully driven home. Libertarian thinker Bryan Caplan sees the same pattern, as Michael Lindrecently wrote in Salon, but thinks it's a good thing. In America, democracy offers the choice between one political party that has embraced a combination of corporate bootlicking, poorly veiled racism, anti-government paranoia and a wholesale rejection of science, and another whose cosmopolitan veneer sits atop secret drone warfare, Wall Street cronyism and the all-seeing Panopticon of high-tech surveillance. You don't have to conclude that noted climate-change expert Marco Rubio and Establishment mega-hawk Hillary Clinton are interchangeable or identical to conclude that it isn't much of a choice. Most critiques of democracy as it currently exists, certainly those from the liberal left, assume that democracy can and should be fixed and that it's just a matter of switching off the cat videos and doing the work. They remain inside the conceptual and ideological frame mentioned above, the idea that democracy is the only legitimate expression of politics. This has the force of religious doctrine, and in fact is far stronger than any religious doctrines to be found in the Western world. Our democracy may be stunted or corrupted or deformed by bad forces of money and power, these arguments go, but it self-evidently remains the ideal form of government, and it is our responsibility to redeem it. If only we can build a third party around Ralph Nader (that went well!), if only we can ring enough doorbells for Dennis Kucinich, if only we can persuade Elizabeth Warren to run against Hillary – you've heard all this before. There are many versions of this strategy, some more plausible than others, but they all rest on the faith that the promised land of real democracy is out there somewhere beyond the horizon, waiting for us to reach it. As the Italian political scientist Mario Tronti has noted, this faith in a golden future, with its implicit apology for the current state of affairs, may sound oddly familiar to those whose cultural memories extend back to the Cold War. It's exactly what defenders of the Soviet "experiment" said over and over. Yes, "actually existing socialism" had its limitations, most of which resulted from imperialist meddling and ideological backwardness, but one day our grandchildren, or their grandchildren, would finish the task of building a communist society. That was hogwash, Tronti says, and so is the insistence that we should judge democracy based on some imaginary potential rather than what it is in practice. "This theoretical-practical knot that is democracy," he writes, "can now be judged by its results." What we see around us "should not be read as a 'false' democracy in the face of which there is or should be a 'true' democracy, but as the coming-true of the ideal, or conceptual, form of democracy." In other words, we have to consider the possibility that the current state of American politics, with its bizarre combination of poisoned, polarized and artificially overheated debate along with total paralysis on every substantive issue and widespread apathy and discontent, is what we get after 200-odd years. It's not a detour in the history of Jeffersonian democracy but something closer to a natural outcome. We also must consider that our version of a democratic system is not, in fact, designed to reflect the will of the people (a dubious concept to begin with) but to manipulate and channel it in acceptable directions.

Democracy in America is constantly evolving –empirics prove
(this is cut heavily)

Belrolzheimer 13

(Alan Berolzheimer, Ph.D, Flow of History Project Historian, 2013, "Continuity and Change in American Democracy, 1861 to the Present", http://www.flowofhistory.org/themes/american_republic/back_essay.php)

American democracy is not static; it is constantly evolving. From the rhetoric and ideals of founding documents like the Declaration of Independence, the Constitution, and the Bill of Rights, to contemporary debates about the war in Iraq, domestic surveillance in the "war on terror," the consequences of Hurricane Katrina, or the economic impact of Wal-Mart, the meanings of democracy in the United States and the dynamics of its exercise have been ever shifting. Undoubtedly, by nearly any measure the degree of freedom that Americans as a whole have achieved and enjoy today—including the ability to participate in politics and government and to choose their leaders—is fabulous. And yet, to say that "rule by the people" in America is the most effective, efficient, or humane form of government to be found anywhere in the world oversimplifies and obscures important historical truths that contribute to a fuller, more complex picture. The Civil War was obviously a watershed in the evolution of democracy in the U.S. that was as revolutionary as the Revolution itself. The victory of the North, the destruction of slavery, and the preservation of the Union within the framework of the 13th, 14th, and 15th Amendments to the Constitution undermined the structure of one system of democracy and inaugurated another. While the premise of full civil and political equality regardless of race represented progress, the new system of democracy itself was fundamentally flawed by the exclusion of women, and it proved to be easily distorted by violence, nativism, and concentrated wealth. Woman suffrage was the next major watershed in 1920, and the Civil Rights Act of 1964 and Voting Rights Act of 1965 finally accomplished in the political arena what the 14th and 15th Amendments did not. But a funny thing happened along the way as access to the franchise and real political power expanded over the course of the 20th century: Political participation consistently declined, at least on the national level. Historians note that at the turn of the century, politics was a very popular activity and a focal point of community life throughout the country. In the 1896 presidential election, 80% of eligible voters voted. In 2004, only 66% of eligible voters were registered, and only 58% of the eligible population voted in the presidential election. (Interestingly, the percentages for whites and blacks in 2004 are nearly identical; Asian Americans voted in considerably fewer numbers. Among all racial groups, the percentages of people registered and voting increased as a function of income.)1 Many factors help to explain this decline, prominent among them the rising influence of money and mass media. Some historians, myself included, would argue that a new conception of democracy accompanied the expansion of the franchise in the 20th century: The citizen as consumer. All of these post-Civil War developments suggest ways to understand the dynamics of democracy in modern American history, and they are relevant to considering the state and meanings of democracy today. For African Americans, the post-Civil War era began with the exhilaration of emancipation, freedom, and great expectations. Inevitably, with slavery abolished, the South in ruins, an entire economic and social system destroyed, and the pressing need for everyone to somehow still procure the means of fulfilling their basic needs, it would be a time of tremendous upheaval and transition. The story of Reconstruction—usually defined as the period from the end of the war until the withdrawal of federal troops from the South in 1877—is fascinating and convoluted, involving many layers of conflicting interests and goals among the key players: blacks and whites, radical reformers and radical traditionalists, Northerners and Southerners, presidents and legislators, owners and laborers, missionaries and generals. The constitutional amendments of the time created the legal framework for full citizenship and voting rights for the former slaves.

Missionaries and reformers offered aid in the form of teachers, nurses, food and clothing. The army on the ground offered a measure of protection from reprisal and manipulation at the hand of disgruntled Confederates. Most important, African Americans embraced their new freedom and acted upon it, by reconstituting their families, clamoring for education, practicing their religions openly, seeking their own livelihoods, demanding their rights to land, and organizing to participate in politics and hold elective office. But while real gains were made, a variety of powerful obstacles prevented African Americans from taking their rightful place in American society. Reconstruction turned out to be, in the words of Eric Foner, "America's unfinished revolution."2 In the end, African-American aspirations were largely thwarted by a potent combination of fierce resistance to black autonomy by most white Southerners and their determination to restore a society grounded in white supremacy by whatever means necessary, the widespread belief in the inferiority of black people among Northern whites, prevailing attitudes about work, dependency, and private property, and the lack of political will in the North to support black aspirations at the expense of preserving white privilege and getting on with the business of industrial capitalism. Democracy in the post-Civil War South thus became democracy for whites only, as they successfully reconstituted a society based on the ideology of white supremacy and black subservience, enforced by intimidation, raw violence, and the law of Jim Crow. From the 1870s onward, the de facto but intricately developed rules of racial power and etiquette gradually became a formal system of segregation and disenfranchisement. A series of decisions by a conservative Supreme Court holding an ungenerous view of government responsibility to protect the rights of African Americans, culminating in the separate-but-equal doctrine of Plessy v. Ferguson in 1896, severely weakened the impact of the Reconstruction amendments. Beginning in 1890 with Mississippi, every Southern state revised its constitution to impose restrictions on suffrage that effectively eliminated the black vote (and diminished the electoral fortunes of poor whites, as well), and within a decade the deed was legally accomplished throughout the region. At the same time, Southern legislatures enacted the Jim Crow laws that forced African Americans to use separate facilities in the public sphere, from train cars and theaters to rest rooms and drinking fountains. The Jim Crow regime would persist into the middle of the 20th century. On the economic front, prejudice, discrimination, and intimidation by whites for the most part excluded blacks from all but the most unskilled jobs in mining, milling, lumbering, and manufacturing, while debt peonage through sharecropping remained the predominant condition of Southern blacks in the King Cotton economy. Undergirding the social, economic, and political relations of white supremacy, white-on-black violence was an ever-present threat that circumscribed the lives of African Americans in the South. Lynching—which claimed the lives of roughly 5,000 Americans, mostly black, between 1882 and 1950, peaking at around 200 annually in the 1890s3—and race riots, sometimes premeditated—n which white mobs marauded through black communities burning homes and businesses, destroying property, and murdering innocent victims at will (Wilmington, NC in 1898, Atlanta in 1906, East St. Louis in 1917, Chicago in 1919, Tulsa in 1921, Rosewood, FL in 1923, were only the worst, and not just in the South)—were the most extreme manifestations of what can fairly be called a culture of violence intended to ensure that African Americans understood their subservient place in the social order and would stay there, at the risk of their lives. Ironically, the Jim Crow regime coincided with a sustained burst of reform energy that swept the nation from the late 19th century through World War One, which historians call the Progressive Era. The juxtaposition of these long historical episodes, one predominating in the South and one in the North and West, reveals the deepest contradictions in American democracy at the beginning of the modern era. The various strands of Progressive reform were responses by middle-class, educated, and professional

Americans to the rapid pace of industrialization, immigration, and urbanization that characterized the period. These trends raised fears about the unchecked power of concentrated wealth, intensified class conflict between workers and employers, abundant opportunities for political corruption, alien cultural mores about alcohol and sex, and how the nation would be able to assimilate tens of millions of these immigrants and their children into the American mainstream and turn them into loyal citizens. From the viewpoint of the Progressives and their allies in other social groups, these were all threats pointed straight at the heart of American democracy. The significant social, economic, and political reforms that emerged during this period included federal regulation of business, professionalization of municipal administration, widespread construction of playgrounds and kindergartens, introduction of electoral measures such as the referendum and the direct election of U.S. senators, and further attempts to suppress the consumption of alcohol which culminated with national Prohibition in 1919. Evaluating the effects of these myriad solutions on the institutions and practice of democracy is complicated and difficult to summarize—except to say that in some ways individuals became more empowered to influence public affairs and the conditions of their lives, and in some ways they became less empowered. Taken as a whole, the reforms implemented during the Progressive Era struck a balance between promoting equity and social justice on some levels, and imposing control over the behavior of groups defined as "other" by Middle America on other levels. Progressivism also had a racial dimension. In the South, advances in education, public health, workplace safety, and civic efficiency primarily benefited white people. Furthermore, the disfranchisement of African Americans significantly reduced the potential constituency of advocates for progressive change in the region, and helped create the political reality of a one-party state in the region (Democrats). Later in the 20th century, the strength of that one-party rule constrained further progressive reform, again along racial lines, in the shaping of the Social Security program during President Roosevelt's New Deal and the enactment of civil rights legislation during the Kennedy and Johnson presidencies. In the North and West, while African Americans were not necessarily formally excluded from taking advantage of economic and political reforms, white prejudice and racism were still the norm, and blacks were viewed by many Progressives as alien "others," just like Chinese, Japanese, and immigrants from southern and eastern Europe. Exclusion from many jobs, as well as segregated housing, schooling, and recreational facilities such as beaches were also the norm outside the South, and as noted above, race riots instigated by whites were a common occurrence in Northern cities during the first quarter of the 20th century. The question of why events and historical forces converged in the 1950s and 1960s to produce changes that had been elusive for a century will be considered during the Flow of History book groups in fall 2006. Clearly, democracy is an imperfect institution, and the contours of American democracy throughout our nation's history have been fundamentally shaped by other ideological imperatives, by the power of wealth, by the complex social relations of power that constitute any social structure at a given point in time, and by individuals' desire and willingness to take positive action to influence or control the conditions of their lives. During the 20th century, politics was not the only arena in which the meaning of democracy in America became transformed. The expansion of a certain kind of economic democracy was equally important. The maturation of the industrial monster that so concerned turn-of-the-century Progressives produced material affluence of historic proportions, made possible continually rising standards of living, and significantly widened the opportunity for American families of all stripes and backgrounds to achieve adequacy. Indeed, new levels and modes of consumption and comfort redefined the very meaning of adequacy, and along with it the meaning of citizenship. By mid-century—at the very time a key set of democratic assumptions was finally undergoing radical change in the political sphere—

access to a specific configuration of consumer goods and experiences had become widely understood as the birthright of every American, a principal benefit of American democracy. The so-called "American standard of living" was an ideological as well as a material construct. The concept, and the apparent reality, smoothed over various fault lines of social and economic difference that otherwise fractured the national body politic, including race. It was a compelling basis for imagining a unified national community, a participatory national democracy: The consumer fulfilling the functions of citizenship, citizenship essentially grounded in the right to be a consumer. Thus, the period of American history since the middle of the 20th century can be seen as characterized by yet another system of democracy, in which the political and economic variables have been jumbled up and rearranged in comparison with previous eras. And it is a system that continues to be shaped by factors of race and class, not to mention gender, region, and others. What are the relationships between the political, economic, and social dimensions of this incarnation of American democracy? How do they reflect aspects of continuity and change? Has it been superseded by another set of arrangements or priorities or ideologies? What does "democracy" mean today and to what extent do individuals or groups have the power to make or influence decisions that affect their lives? These questions make excellent topics for discussion.

Democracy is evolving to “voice-centered” not “vote-centered”

Farrell 2/19

(DAVID FARRELL, professor of politics at University College Dublin. He was also the research director of the Irish constitutional convention, 19 FEBRUARY 2015, “Democratic Decline or Democratic Evolution?”, http://www.policy-network.net/pno_detail.aspx?ID=4843&title=Democratic-decline-or-democratic-evolution)

The way that people engage in politics is changing, but it is a mistake to necessarily equate this with democratic decline There is a sense of doom in the air. Contemporary accounts of the state of our systems of representative democracy paint a bleak picture. And it does appear pretty bleak: election turnout in decline; levels of partisan attachment plummeting as those who do vote chop and change between parties that they find it increasingly difficult to distinguish between; political parties losing their members and becoming ever more reliant on state resources to stay afloat and a brood of new populist parties emerging that seek to attack the status quo. The late Peter Mair sums it up perfectly in his last book, Ruling the Void, when he describes the “mutual withdrawal” of citizens and politicians from the representative process, resulting in the death of political parties and a form of democracy that is “hollowed out”. It cannot be denied that these indicators are worrying, but is there a risk of reading too much into them? Are scholars like Mair being too pessimistic? Consider the following points. First, were things really better in the halcyon ‘old days’? Were the male-dominated parliaments of the 1950s better merely because more people (among those over 21) voted? Were the 1960s and 1970s better because more citizens participated in street protests (though, if so, surely this was already a sign that parties were failing to channel citizen demands even then)? Were democracies such as Ireland’s of the 1950s really more citizen-oriented in an age when the clergy set the terms of public debate and politicians kowtowed to Church doctrine? In short – and to mix metaphors – when looking back to a golden age there is a risk of doing so through rose-tinted glasses. Second, political parties undoubtedly are different but are they necessarily any weaker for it? Many of the indicators used to argue the case that parties are ‘in decline’ harken back to a form of party organisation: the famed ‘mass party’ model, when parties had large memberships and were well embedded in society. Clearly this is less so today; parties are shedding members and societal links. But are they unique in this

regard? Consider what is happening to church attendance, trade union membership, and sports clubs. Citizens are finding new ways – increasingly of a virtual nature – to engage with each other. And even if that includes not being a party member, that does not weaken the hold that parties continue to have over the electoral and policy process – as my colleagues and I demonstrate in our 2011 study, Political Parties and Democratic Linkage. Third, the new ways that citizens, particularly the younger generation, are finding to engage with each other also affects how they engage with the political process. As Russell Dalton shows convincingly in his study of The Good Citizen, political participation is evolving beyond elections as younger generations seek new ways to engage critically with the political process as 'engaged citizens'. More of them are active in civil society groups, in protests or boycott campaigns, or are interested in more deliberative forms of engagement. This may mean they are withdrawing from the electoral process (as shown by turnout trends among younger citizens), but they are not withdrawing from the political process. Perhaps they are just engaging with it differently. Fourth, this newer way of engaging with the political process coincides with reforms that are ongoing to our political systems as institutions evolve in a more citizen-orientated direction.This is shown, for instance, by: more elections for more offices (eg mayors, regional assemblies); one-member-one-vote ballots within parties; freedom of information moves to service an 'open government' agenda; and the increasing use of 'mini-publics' to allow citizens a voice in everything from allocation of council budgets, to planning or infrastructural decisions, right through to debates over constitutional reform. To use a phrase common to deliberative theorists, all this speaks to an evolution of democracies from being 'vote-centred' to becoming 'voice-centred'. That democracies are undergoing important changes is not in dispute, but as Michael Saward observes in his noted study on The Representative Claim, all of this does not "necessarily add up to a picture that is less democratic. It can, rather, be differently democratic." It seems more a case of democratic evolution than democratic decline.

AT Cyber Security

Cyber Security
CS→Worse Privacy

Cyber Security Bills open backdoors and make privacy issues worse
Fang, 6/11/2015

[Lee, journalist for ThinkProgress, The Nation, and The Intercept; The Intercept; "PATRIOT ACT REFORM CURBED NSA; CYBERSECURITY BILL WOULD EMPOWER IT", https://firstlook.org/theintercept/2015/06/11/one-week-patriot-act-reform-mitch-mcconnell-moves-sneak-nsa-expansion/]

Though touted as a measure strictly to enhance cybersecurity through information sharing, privacy advocates say **CISA is actually about cyber surveillance**. The bill provides liability protection for businesses that voluntarily share "cyber-threat" data with the government. Big business has lobbied for CISA because companies see it as a way to shift some anti-hacking defenses onto the government, which would save them money. But critics say **CISA would not** have **prevent**ed **the high-profile hacks its supporters cite as evidence of the need for action**. And Burr's version of the bill creates a back-door channel for the government, including the NSA, to vacuum up huge new tracts of consumer data. "Last week, the Senate made history when it passed the USA Freedom Act, taking a major step forward for Americans' privacy," said Robyn Greene, Open Technology Institute's policy counsel in a statement. "Passing CISA would be like taking two steps back. CISA is essentially a cyber-surveillance bill that would empower the NSA and FBI by giving them access to vast new troves of Americans' information, and let them use that information for investigations that have nothing at all to do with cybersecurity." As we noted earlier this year, CISA's vague definition of a cybersecurity threat that triggers information sharing with the government includes "an imminent threat of death, serious bodily harm, or serious economic harm," or information that is potentially related to threats relating to weapons of mass destruction, threats to minors, identity theft, espionage, protection of trade secrets, and other possible offenses. The Center for Democracy & Technology also criticized McConnell's move, noting that by attaching CISA to the defense authorization bill, he was moving to close debate and force it through Congress. The bill as currently written, CDT warned, risks "turning the cybersecurity program it creates into a back door wiretap by authorizing sharing and use of cyber threat indicators for law enforcement purposes that have nothing to do with cybersecurity."

No Cyber Threat

Cyber Terror threat exaggerated – no physical harm or death thus far
Singer, '12

[Peter, director of the Center for 21st Century Security and Intelligence and a senior fellow in Foreign Policy at Brookings, Brookings Institute, http://www.brookings.edu/research/articles/2012/11/cyber-terror-singer]

We have let our fears obscure how terrorists really use the Internet. About 31,300. That is roughly the number of magazine and journal articles written so far that discuss the phenomenon of cyber

terrorism. **Zero. That is the number of people that who been hurt or killed by cyber terrorism** at the time this went to press. In many ways, cyber terrorism is like the Discovery Channel's "Shark Week," when we obsess about shark attacks despite the fact that you are roughly 15,000 times more likely to be hurt or killed in an accident involving a toilet. But by looking at how terror groups actually use the Internet, rather than fixating on nightmare scenarios, we can properly prioritize and focus our efforts. Part of **the problem is the way we talk about the issue**. The FBI defines cyber terrorism as a "premeditated, politically motivated attack against information, computer systems, computer programs and data which results in violence against non-combatant targets by subnational groups or clandestine agents." A key word there is "violence," yet many discussions sweep all sorts of nonviolent online mischief into the "terror" bin. Various reports lump together everything from Defense Secretary Leon Panetta's recent statements that a terror group might launch a "digital Pearl Harbor" to Stuxnet-like sabotage (ahem, committed by state forces) to hacktivism, WikiLeaks and credit card fraud. As one congressional staffer put it, the way we use a term like cyber terrorism "has as much clarity as cybersecurity — that is, none at all."

CS→Info Overload

Cyber Reform leads to information overload, 87% agree it won't solve

Castillo, 5/10/2015

[Andrea, program manager for the Technology Policy Program at the Mercatus Center at George Mason University, Reason, "The Cyber Terror Bogeyman", http://reason.com/archives/2015/05/10/why-cisa-wont-improve-cybersecurity]

Even if we could remove CISA's sketchy non-cybersecurity provisions and turn the federal government into a godly font of efficiency, CISA would fail to improve cybersecurity because information sharing just doesn't work like CISA advocates imagine it does. As security researcher Robert Graham points out, these kinds of programs devolve into a kind of overwhelming "false positive sharing system." Seasoned hackers know how to easily evade detection, so mostly false alarms are triggered. **Innocent parties' online activities are thus more likely to be hoovered up and analyzed than capable cybercriminals' signatures. And by the time analysts can sort through the terabytes, they may find that sharing that information can do little to prevent an attack anyway. One survey of information security professionals found 87 percent did not believe CISA will significantly reduce security breaches**. Insufficient "information sharing" is only one small issue among many larger problems plaguing network security. Industry studies find that external attacks only constitute 37 percent of reported root causes; system glitches and human error respectively make up 29 percent and 35 percent of the remainder. These kinds of vulnerabilities can be patched through user education, strong authentication, and proactive system testing and improvement—not backwards-looking information sharing. CISA's sole emphasis on this small component of network security could instill a dangerous complacency among those who feel following the feds' lead absolves the need to proactively anticipate threats and continually improve security practices. If enough people believe that their cybersecurity is "taken care of" because the government will alert them to any threats, CISA will serve to ultimately weaken cybersecurity by causing users and operators to neglect critical factors arguably more imperative for robust cybersecurity. CISA actually bucks the usual liberty/security trade-off, because it threatens our civil liberties without meaningfully

improving cybersecurity—and could potentially even weaken it. We should dump this Trojan and focus on developing bottom-up, collaborative security practices that will actually work.

AT I-Freedom Adv

IF Not Key to Heg

The US will remain the financial hegemon because of interdependency – a fragmenting crisis is required to break that – internet freedom not key

Danzman and Winecoff 13 (Sarah Bauerle Danzman and W. Kindred Winecoff, Why U.S. Financial Hegemony Will Endure, Symposium Magazine, an innovative digital publication that provides a central address for academics to talk with the broader public, and with each other across disciplines, October 7th, 2013)

The difference between these two approaches is significant. When we conceptualize the international financial system as a network, we see that the U.S. has become more central since 2007, not less. Rather than shift from West-to-East, **global financial actors have responded to crisis by reorganizing around American capital to a remarkable extent**. This is partially due to proactive responses to the crisis by policymakers such as the Federal Reserve, but it is also the result of factors outside the U.S. Above all, American capital markets remain attractive because complex networks contain strong path dependencies, which reinforce the core position of prominent countries while keeping potential challengers in the periphery. That is to say, policymakers and market players were limited in the decisions they could take because of factors that had already been locked in. As a result, the structure of the global financial system keeps the U.S. at the core and will continue to do so unless the entire network is fragmented, as it was during the 1930s when Great Britain lost its dominance. Some who do see continuing U.S. financial resiliency contend that American power serves to the disadvantage of smaller countries. Indeed, they are correct that when a crisis occurs in the core – where the U.S. remains — the effects are felt throughout the system. But they miss the fact that American prominence also provides important stabilization mechanisms that can contain crises. To explain this, we need to look at what network scientists call "topology," which refers to the organization of the components of a network, whether we are looking at a computer system or a financial system. Once we view the international financial system in this context, we see that it is robust when facing crises in peripheral countries, but fragile when facing crises occrring in the core. This explains why the U.S. subprime crisis destabilized the global economy, while upheavals such as the 1990s East Asian crisis did not. Even the euro zone crisis has remained localized, to this point. A network perspective also explains how policy interventions by the U.S. prevented the collapse of the global system, thus ensuring that U.S. centrality persists. Finally, a network model should make us more cautious about promoting policies meant to erode U.S. financial hegemony. In fact, American centrality contained crises in peripheral countries from spreading globally, and the U.S. government demonstrated both the capacity and the willingness to pursue monetary and fiscal policies to moderate crises emanating from its own banking system. Returning to a world in which the structure of global financial relationships devolves outside the U.S. would therefore reintroduce a type of systemic risk not seen since the 1930s.

Retrenchment Inev

Yes retrenchment – decline means no US intervention, Heg does not check

MacDonald and Parent 11 (Paul K. MacDonald, Assistant Professor, Political Science, Willians College and Joseph M. Parent, Assistant Professor, Political Science, University of Miami, "Resurrecting Retrenchment: The Grand Strategic Consequences of U.S. Decline," POLICY BRIEF, Belfer Center for Science and International Affairs, Harvard University, 5--, http://belfercenter.ksg.harvard.edu/files/macdonald-parent-may-2011-is-%20brief.pdf)

To date, there has been no comprehensive study of great power retrenchment and no study that defends retrenchment as a probable or practical policy. Using historical data on gross domestic product, we identify eighteen cases of "acute relative decline" since 1870. Acute relative decline happens when a great power loses an ordinal ranking in global share of economic production, and this shift endures for five or more years. A comparison of these periods yields the following findings: Retrenchment is the most common response to decline. Great powers suffering from acute decline, such as the United Kingdom, used retrenchment to shore up their fading power in eleven to fifteen of the eighteen cases that we studied (61–83 percent). The rate of decline is the most important factor for explaining and predicting the magnitude of retrenchment. The faster a state falls, the more drastic the retrenchment policy it is likely to employ. The rate of decline is also the most important factor for explaining and predicting the forms that retrenchment takes. The faster a state falls, the more likely it is to renounce risky commitments, increase reliance on other states, cut military spending, and avoid starting or escalating international disputes. In more detail, secondary findings include the following: Democracy does not appear to inhibit retrenchment. Declining states are approximately equally likely to retrench regardless of regime type. Wars are infrequent during ordinal transitions. War broke out close to the transition point in between one and four of the eighteen cases (6–22 percent). Retrenching states rebound with some regularity. Six of the fifteen retrenching states (40 percent) managed to recapture their former rank. No state that failed to retrench can boast similar results. Declining great powers cut their military personnel and budgets significantly faster than other great powers. Over a five-year period, the average nondeclining state increased military personnel 2.1 percent—as compared with a 0.8 percent decrease in declining states. Likewise, the average nondeclining state increased military spending 8.4 percent—compared with 2.2 percent among declining states. Swift declines cause greater alliance agreements. Over a five-year period, the average great power signs 1.75 new alliance agreements—great powers undergoing large declines sign an average of 3.6 such agreements. Declining great powers are less likely to enter or escalate disputes. Compared to average great powers, they are 26 percent less likely to initiate an interstate dispute, 25 percent less likely to be embroiled in a dispute, and markedly less likely to escalate those disputes to high levels. IMPLICATIONS FOR POLICYMAKERS From the analysis above, three main implications follow for U.S. policy. First, we are likely to see retrenchment in U.S. foreign policy. With a declining share of relative power, the United States is ripe to shift burdens to allies, cut military expenditures, and stay out of international disputes. This will not be without risks and costs, but retrenchment is likely to be peaceful and is preferable to nonretrenchment. In short, U.S. policymakers should resist calls to maintain a sizable overseas posture because they fear that a more moderate policy might harm U.S. prestige or credibility with American allies. A humble foreign policy and more modest overseas presence can be as (if not more) effective in restoring U.S. credibility and reassuring allies. Second, any potential U.S.-Sino power transition is likely to be easier on the United States than pessimists have advertised. If the United States acts like a typical retrenching state, the future looks promising. Several regional allies—foremost India and Japan—appear capable of assuming responsibilities formerly shouldered by the United States, and a forward defense is no longer as valuable as it once was. There remains ample room for cuts in U.S. defense spending. And as China grows it will find, as the United States did, that increased relative power brings with it widening divisions at home and fewer friends overseas. In brief, policymakers should reject arguments that a reduction in U.S. overseas deployments will embolden a hostile and expansionist China. Sizable forward deployments in Asia are just as likely to trap the United States in unnecessary clashes as they are to deter potential aggression. Third, the United States must reconsider when, where, and how it will use its more modest resources in

the future. A sensible policy of retrenchment must be properly prepared for—policymakers should not hastily slash budgets and renounce commitments. A gradual and controlled policy of reprioritizing goals, renouncing commitments, and shifting burdens will bring greater returns than an improvised or imposed retreat. To this end, policymakers need to engage in a frank and serious debate about the purposes of U.S. overseas assets. Our position is that the primary role of the U.S. military should be to deter and fight conventional wars against potential great power adversaries, rather than engage in limited operations against insurgents and other nonstate threats. This suggests that U.S. deployments in Iraq and Afghanistan should be pared down; that the United States should resist calls to involve itself in internal conflicts or civil wars, such as those in Libya and elsewhere in North Africa; and that the Asia-Pacific region should have strategic priority over Europe and the greater Middle East. Regardless of whether one accepts these particular proposals, the United States must make tough choices about which regions and threats should have claim to increasingly scarce resources. CONCLUSION Retrenchment is probable and pragmatic. Great powers may not be prudent, but they tend to become so when their power ebbs. Regardless of regime type, declining states routinely renounce risky commitments, redistribute alliance burdens, pare back military outlays, and avoid ensnarement in and escalation of costly conflicts. Husbanding resources is simply sensible. In the competitive game of power politics, states must unsentimentally realign means with ends or be punished for their profligacy. Attempts to maintain policies advanced when U.S. relative power was greater are outdated, unfounded, and imprudent. Retrenchment policies—greater burden sharing with allies, less military spending, and less involvement in militarized disputes—hold the most promise for arresting and reversing decline

Global IF Decline Inev

East Asian Internet freedom declining – aff can't solve

Cook, 5/29/15

[Sarah, Senior Research Analyst, East Asia; The Diplomat; "China and the East Asian Internet"; https://freedomhouse.org/article/china-and-east-asian-internet#.VYtZfWCpqlI]

Internet freedom in East Asia is exemplified by a key paradox – even as access expands exponentially and social-media tools open new avenues for information sharing, freedom of expression and user privacy online are declining. Governments in the region are taking increasing measures to regulate not only the spread of internationally recognized harmful content, but also citizen communications on topics of vital social, political, religious, and security relevance. Leading the region's most robust such campaign is the ruling Communist Party of China. These countervailing trends – part of a similar global trajectory – are especially evident and important in North and Southeast Asia, home to approximately one-third of the world's Internet users and several of its leading economies. While restrictions are perhaps expected in authoritarian contexts, they have also appeared in the region's democratic and semi-democratic countries. Seven out of the 11 East Asian countries assessed in the latest edition of Freedom on the Net, Freedom House's annual index of Internet freedom around the world, declined compared to the previous year: China, Indonesia, the Philippines, Singapore, South Korea, Thailand, and Vietnam. Only two – Myanmar and Malaysia – improved, while Japan and Cambodia's performance remained consistent. One central dynamic driving this decline and threatening Internet freedom across the region has been the passage of new laws or regulations that increase censorship or establish provisions that could be employed to punish users for their online writings. In many cases, the new rules specifically target Internet communications. For example, Thailand's new

ruling junta issued Order 97 in July, prohibiting online media from publishing information critical of the regime. Meanwhile, Thai police were quoted as warning that "liking" an anti-military message on Facebook would be considered a crime. In Vietnam, Decree No. 72, which came into effect in September 2013, extends existing restrictions on sharing news articles from blogs to social networks. That same month, in China, a new judicial interpretation increased the criminalization of online speech based on an arbitrary threshold that posts with 500 shares or 5,000 views would be considered a more severe offense. Read more from The Diplomat.

Laundry List of Alt Causes to iFreedom Reduction

Gatusso et al 6/3/2015

[James L., Alden Abbott, Curtis Dubay, David Inserra, Paul Rosenzweig, Michael Sargent, Brett D. Schaefer; "Saving Internet Freedom";
http://www.heritage.org/research/reports/2015/06/saving-internet-freedom]

It has become virtually impossible to imagine a world without an Internet. Instant access to information—from stock quotes to sports scores to the answers to bar bets—is taken for granted. Getting and staying in touch with friends and business partners has become easier, as individuals connect almost effortlessly with friends around the globe, and from long ago, on social networks. This instant and ubiquitous communication and information has also transformed political dialogue—helping to upend dictatorships abroad, and energizing political debate at home. The common product of these transformations has been more opportunity for freedom—political freedom in the public square, economic freedom in the marketplace, and social freedom in the community. But these changes are not universally welcomed. The disruptive force of the Internet is a threat to those who have enjoyed unchallenged political power and economic rents from the status quo ante. This has led to attempts by governments around the world to limit its use, and forestall the changes that it makes possible. The trend is disturbing. In its 2014 survey of the state of Internet freedom around the globe, Freedom House records the fourth straight year of declining freedom on the Net. From 2013 to 2014, Freedom House found 41 countries passing or proposing online-speech restrictions and arrests related to online political speech in 38 countries.[4] Moreover, it reports continued widespread blocking and filtering of online content by governments, as well as government-sponsored cyberattacks against other countries' governments and businesses. Infringements on the Internet are not limited to the world's dictatorships. The European Union, for example, recently required search engines, upon request, to remove links to categories of personal information, such as prior bankruptcies, which courts deem no longer relevant or lack a compelling public interest meriting disclosure—in effect forcing search engines, such as Google, to censor content.[5] The United States has largely escaped such direct infringements of political rights and freedom of speech on the Web. But Americans face threats of different kinds, ranging from foreign governments trying to impose global-governance rules to domestic regulators trying to limit the economic freedom to innovate and serve digital consumers. This report examines seven areas of particular concern: Federal "network-neutrality" regulations. Rules adopted by the Federal Communications Commission (FCC) in February 2015 ban Internet access providers from prioritizing the content that is sent through their networks. This ban limits the ability of Internet service providers (ISPs) to innovate, which limits economic freedom, to the detriment of the Internet and its users. In addition to activities clearly prohibited, the new rule also gives the FCC vast discretion. As a result, critical decisions about what practices will be allowed on the Net will be left to the subjective judgment of five unelected FCC commissioners. Global Internet governance. Many nations, such as China and Russia, have made no secret of

their desire to limit speech on the Internet. Even some democratic nations have supported limiting freedoms online. With the U.S. government's decision to end its oversight of the Internet Corporation for Assigned Names and Numbers (ICANN), the private, nonprofit organization that manages name and number assignments on the Internet, these countries see a chance to fill the vacuum, and to use ICANN's Internet governance role to limit expression on the Web. Regulatory barriers to online commerce. The Internet is a true disruptive force in commerce, challenging inefficient ways of business. Often, these challenges conflict with anti-consumer laws that protect middlemen and others with a stake in older, costlier ways of doing business. These harmful laws have eroded in many cases, but have not been erased from the statute books. Internet taxation. Sales and other taxation also create regulatory barriers to online commerce. Some politicians and state tax collectors are pushing Congress to pass legislation that would allow state governments to force retailers located in other states to collect their sales taxes. They say they want to equalize the tax burdens between so-called brick-and-mortar retailers and their online counterparts. But instead of eliminating differences, the proposal would create new disparities and impose new burdens, as sellers struggle to deal with the tax laws of some 10,000 jurisdictions and 46 state tax authorities. Intellectual property. The freedom to create without fear that one's creation will be appropriated by others is fundamental. At the same time, overly restrictive laws limiting the use of intellectual property erodes other freedoms, not least freedom of expression. The challenge to lawmakers is to balance these two opposing values, to protect intellectual property without undue limits on its fair use or on third parties.

AT Economy Adv

AT Tech Leadership Adv

Internal Link Defense

Snowden revelations prove –NSA spying has minimal impact on tech industry

MENN 13 (Menn, Joseph. "How The NSA Revelations May Actually Be Helping The US Tech Industry." Business Insider. Business Insider, Inc, 15 Sept. 2013. Web. 2 July 2015. <http://www.businessinsider.com/how-the-nsa-revelations-may-actually-be-help-the-us-tech-industry-2013-9>.)ʕ ⌒•ᴥ•ʔ⌒♥eve

Google employees told Reuters that the company has seen no significant impact on its business, and a person briefed on Microsoft's business in Europe likewise said that company has had no issues. At Amazon, which was not named in Snowden's documents but is seen as a likely victim because it is a top provider of cloud computing services, a spokeswoman said global demand "has never been greater." There are multiple theories for why the business impact of the Snowden leaks has been so minimal. One is that cloud customers have few good alternatives, since U.S. companies have most of the market and switching costs money. Perhaps more convincing, Amazon, Microsoft and some others offer data centers in Europe with encryption that prevents significant hurdles to snooping by anyone including the service providers themselves and the U.S. agencies. Encryption, however, comes with drawbacks, making using the cloud more cumbersome. On Thursday, Brazil's president called for laws that would require local data centers for the likes of Google and Facebook. But former senior Google engineer Bill Coughran, now a partner at Sequoia Capital, said that even in the worst-case scenario, those companies would simply spend extra to manage more Balkanized systems. Another possibility is that tech-buying companies elsewhere believe that their own governments have scanning procedures that are every bit as invasive as the American programs.

Link Turn

TURN - NSA spying unifies the tech industry

Lomas 14 (Lomas, Natasha. "Zuckerberg: Snowden NSA Revelations Have Brought The Tech Industry Closer." TechCrunch. 24 Feb. 2014. Web. 2 July 2015. <http://techcrunch.com/2014/02/24/zuck-on-snowden/>.) ʕ ⌒•ᴥ•ʔ⌒♥eve

Zuckerberg played down the potential impact that fear of government surveillance might have on Internet.org's mission — and indeed argued the reverse, saying that he thought it might make the goal easier because of a new spirit of collaboration in a post-Snowden tech world. "The NSA issues have industry working together better than ever before," he said, adding: "Historically we've had issues working with some of our competitors aligning on policy issues that even help the whole industry – Internet policy issues – but now it's such an important thing, because of how extreme some of the NSA revelations were, I do feel that a lot of the industry is a lot more aligned." Zuckerberg did not name any names, in terms of who exactly used to be hostile to his overtures and is now less so, but one likely candidate here is (presumably) Google. In further comments on the NSA issue, Zuckerberg added that the agreement, secured from the U.S. government, for Facebook to be able to share "everything the government's

asking of us" — in terms of requests for user data — has also been "helpful" to dissipating people's fears about the extent of government data-mining of Facebook.

AT TPD Adv

No Econ Impact

Even massive economic decline has zero chance of war

Robert **Jervis 11**, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, "Force in Our Times," Survival, Vol. 25, No. 4, p. 403-425

> Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, **it is hard to believe that the conflicts could be great enough** to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that **even if the more extreme versions of free trade and economic liberalism become discredited**, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen **such a sharp economic down-turn** without **anyone** suggesting that force of arms is the solution shows that **even if bad times bring about greater economic conflict, it will not make war thinkable.**

Circumvention

Reforms fail – the NSA is a rogue agency that can't be constrained

Glenn **Greenwald**, **2014**, No Place to Hide: Edward Snowden, the NSA, and the US Surveillance State. p. 130-131, mm

In the wake of our Snowden stories, a group of senators form both parties who had long been concerned with surveillance abuses began efforts to draft legislation that would impose real limits on the NSA's powers. But these **reformers**, led by Democratic senator Ron Wyden of Oregon, **ran into an immediate roadblock**: **counter efforts by the NSA's defenders** in the Senate to write legislation **that would provide only the appearance of reform, while in fact retaining or even increasing the NSA's powers**. As Slate's Dave Weigel reported in November: Critics of the NSA's bulk data collection and surveillance programs have never been worried about congressional inaction. They've expected Congress to come up with something that looked like reform but actually codified and excused the practices being exposed and pilloried. That's what's always happened **– every amendment or reauthorization** to the 2001 USA Patriot Act **has built more back doors than walls**. "We will be up against a 'business-as-usual brigade' – made up of

influential members of the government's intelligence leaderships, their allies in think tanks [sic] and academia, retired government officials, and sympathetic legislators," warned Oregon Sen. Ron Wyden last month. "Their endgame is ensuring that any surveillance reforms are only skin-deep…Privacy protections that don't actually protect privacy are not worth the paper they're printed on." The "fake reform" faction was led by Dianna Feinstein, the very senator who is charged with exercising primary oversight over the NSA. Feinstein has long been a devoted loyalist of the US national security industry, from her vehement support for the war on Iraq to her steadfast backing of Bush-era NSA programs. (Her husband, meanwhile, has major stakes in various military contracts). Clearly, Feinstein was a natural choice to head a committee that claims to carry out oversight over the intelligence community but has for years performed the opposite function. Thus, **for all the government's denials, the NSA has no substantial constraints on whom it can spy on and how**. **Even when such constraints nominally exist** – when American citizens are the surveillance target – **the process has become largely hollow**. **The NSA is the definitive rogue agency: empowered to do whatever it wants with very little control, transparency, or accountability**.

Circumvention

NSA is notorious for circumvention – will find way to continue programs
Ackerman 6/1/2015

[Spencer, national security editor for Guardian US. A former senior writer for Wired, he won the 2012 National Magazine Award for Digital Reporting; The Guardian; "Fears NSA will seek to undermine surveillance reform"; http://www.theguardian.com/us-news/2015/jun/01/nsa-surveillance-patriot-act-congress-secret-law]

Yet **in recent memory, the US government permitted the NSA to circumvent** the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004. Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, an internal NSA draft history records that attorneys found a different legal rationale that "essentially gave NSA the same authority to collect bulk internet metadata that it had". After a New York Times story in 2005 revealed the existence of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along – precisely the contention that the second circuit court of appeals rejected in May.

No Courts Modeling

Zero risk the plan meaningfully increases privacy rights:

A) Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.

Treats court as monolith…snowden

Posner and Vermeule, 10 - *professor of law at the University of Chicago AND **professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here **two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and *political incentives* to defer to the executive**, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that ***courts possess legal authority but not robust political legitimacy***. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as "cases and controversies" rather than as abstract legal questions. This means that **there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are *less likely to set precedents while crises are hot,* precedents** that ***will be warped by the emotions of the day* or by the political power of aroused majorities**.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, **even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not**. **If they have worked,** or at least if there is a widespread sense that the crisis has passed, **then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact**. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, **the legal challenges will interest constitutional lawyers, but will *lack practical significance***.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, **the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed**. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government's assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the

administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt's claim. It is entirely consistent with the broader tenor of Schmitt's thought, however, to observe that **the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges**, including judges applying APA-style review. **While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.**

Legality and Legitimacy

At a higher level of abstraction, **the basic problem underlying judicial review of emergency measures is the divergence between the courts' legal powers and their political legitimacy in times of perceived crisis**. **As Schmitt pointed out, emergency measures can be "exceptional" in the sense that although illegal**, or of dubious legality, **they may nonetheless be politically legitimate**, if they respond to the public's sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive's emergency regulations. Anticipating this, courts pull in their horns.

When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. **The precedents set after the sense of crisis has passed may be calmer and more deliberative**, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—**but the public will *not take much notice of those precedents*, and they will have *little sticking power when the next crisis rolls around*.**

A) Obama will disregard the Court. He is on record

Pyle 12—Professor of constitutional law and civil liberties @ Mount Holyoke College [Christopher H. Pyle, "Barack Obama and Civil Liberties," Presidential Studies Quarterly, Volume 42, Issue 4, December 2012, Pg. 867–880]

Preventive Detention

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, **Holder has chosen to deny some prisoners any trials at all**, either because the government lacks sufficient evidence to guarantee their convictions or because what "evidence" it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, **the president** considered asking Congress to pass a preventive detention law. Then he **decided to institute the policy** himself **and *defy the courts to overrule him*, thereby forcing judges to assume primary blame for** any **crimes** against the United States **committed by prisoners following a court-ordered release** (Serwer 2009).

According to Holder, courts and commissions are "essential tools in our fight against terrorism" (Holder 2009). ***If they will not serve that end, the administration will disregard them*. The *a*ttorney *g*eneral** also **assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt** for the rule of **law than this refusal to abide by the judgment of a court.** Indeed, it is grounds for Holder's disbarment.

As a senator, Barack Obama denounced President Bush's detentions on the ground that a "perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence" (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. **The N**ational **D**efense **A**uthorization **A**ct of 2012 **authorized the military to** round up and **detain, indefinitely and without trial**, American citizens suspected of giving "material support" to alleged terrorists. **The law was patently unconstitutional, and has been so ruled by a court** (Hedges v. Obama 2012), **but** President **Obama's** only **objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief**. He even said, when signing the law, that "my administration will not authorize the indefinite military detention without trial of American citizens," but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b).

Thus, **Obama's "accomplishments**" in the administration of justice "**are slight**," as the president admitted in Oslo, **and not deserving of a Nobel Prize**. **What little he has done has more to do with appearances than substance**. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. **By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge**.

It is probably **naïve to expect much more** of an elected official. ***Few presidents willingly give up power or seek to leave their office "weaker" than they found it*. Few now have what it takes to stand up to the national security state** or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like "enhanced interrogation techniques" (Editorial 2011b).

B) Lower courts block

Wietse **Buijs**, lecturer in the section of Jurisprudence at the Erasmus School of Law (ESL) in Rotterdam, "WHY IT WASN'T A GREAT VICTORY AFTER ALL", Amsterdam Law Forum, Vol. 4, No. 1, pp. 93-100, 20**12**, Feb (BJN)

The accumulation of the turf war came, as I discussed in the beginning in this paragraph, in 2008 with Boumediene. **The Court held in a narrow 5-4 decision that the detainees had a right to a writ of habeas** corpus under the Constitution and that the MCA was an unconstitutional suspension of that right. Because of the fact that the United States have complete and utter control and jurisdiction, and thereby 'de facto' sovereignty over GITMO, detainees held there have the right to protection under the Constitution. On these grounds **Boumediene should have been 'a great victory**.'19 **It was** meant as **a *definitive* answer from the Supreme Court on how to interpret the Constitution** in detainee cases. **It looked like a definitive case, except for the fact that it was not.** Boumediene of course was sent for remand to the Court of Appeals of the D.C. Circuit Court. It is this Court that would turn out to be the Court in control of the detainee cases. The DTA and the MCA both appointed the D.C. Circuit Court as the only Court allowed to review any of the detainee cases. But **contrary to the slim, progressive left wing majority in the Supreme Court** (only in the instance of Boumediene by the way), **the D.C. Circuit Judges were and are mostly conservative**. And in some cases extremely conservative. It is fair to say that **these judges *weren't really keen on implementing the new precedent***. **Some judges were not even very subtle in their criticism towards the Supreme Court**. Senior D.C. Circuit judge Randolph even held public speeches called 'The Guantanamo mess' referring to the Boumediene precedent.20 **So after Boumediene most detainees sought their way**, again, **to the Courts in order to obtain a release order** for their detention. But they eventually would reach the D.C. Circuit Court of Appeals in their appeal. **The Court of Appeals for their part refused to release a detainee in *every single detainee case that reached it***. **In their quest to overturn the Boumediene precedent they used a remarkable method, they used another Supreme Court ruling against the Boumediene precedent**. As faith would have it, it was a case that was decided on the same day as Boumediene. Munaf v. Geren was a case where the court unanimously concluded that habeas corpus extends to U.S. citizens held overseas by American forces subject to an American chain of command, even if acting as part of a multinational coalition. It did not differ much from the view set out in Boumediene. But the Court also found that habeas corpus provided the petitioners with no relief holding that "Habeas corpus does not require the United States to shelter such fugitives from the criminal justice system of the sovereign with authority to prosecute them."21 So the Boumediene case, dividing the Court 5-4, gave GITMO detainees, for the first time, a constitutional right to go to court to challenge their detention. But the unanimous Munaf decision, which had nothing in it explicitly about GITMO, held that federal courts could not control the U.S. military's decision, in Iraq, to hand over to the Iraqi government American citizens who had allegedly committed crimes in that country. **What the judges so cleverly did was use the broad interpretation of the Munaf decision to increase the executive power of the, by now Obama, Administration and diminish the precedent set out in the Boumediene case. *The Circuit Court flatly ordered the District judges not to 'second-guess' the Executive's call*** on what to do with detainees, even those who had won

release orders. ***So the result of this decision was that the Circuit Court of Appeals in no case approved an actual release***. **The logical step to take for the numerous defence lawyers of the detainees was to appeal to the Supreme Court** for its consideration in these matters. And so they did. Just last year alone **eight cases**, for the most part consolidated cases regarding more than one detainee, **reached the Court asking a writ of certiorari**.22 ***All eight were dismissed.*** The Supreme Court did in all instances discuss the case but, in majority at least, did not see the need to grant certiorari. In consideration of the reason why the Court sees no need for further review of these cases, the Justices provide no definitive answer. There is certainly a great need to further explain the Court's view in both Boumediene and Munaf, notwithstanding the fact that the D.C. Circuit Court has created a remarkable way of interpreting both precedents. It seems that a major reason or perhaps **the only reason that the Supreme Court did not grant certiorari to any of the detainee cases is that there was, and still is, no majority for a coherent decision to be found**. During Obama's first term in office, two justices retired. Justices Souter and Stevens were replaced by Sotomayor and Kagan. As both Justices Souter and Stevens were fairly liberal justices and so are Sotomayor and Kagan, no change in balance in detainee matters would have been expected, except for the fact that justice Kagan was a Solicitor General of the United States prior to her appointment to the bench. As a Solicitor General she was directly involved in some of the cases she now had to judge. The consequence of course was that she had to recuse herself on all those cases. With justice Kagan out of the picture in detainee cases, the 5-4 split in Boumediene in favour of detainee rights would then be a 4-4 stalemate. In case of a 4-4 split, no decision is made and the initial ruling by the D.C. Circuit Court of Appeals stands, therefore the Supreme Court grants no certiorari in any of the detainee cases. Because of that, ***the D.C. Circuit Court of Appeals is in control over all detainee matters***, a control that, for the moment, translates in ever diminishing rights for the persons held in indefinite detention.

Turn—legitimacy—Noncompliance undermines the Court's legitimacy and makes the plan worthless

Pushaw 4—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., "Defending Deference: A Response to Professors Epstein and Wells," Missouri Law Review, Vol. 69, 2004]

Civil libertarians have urged the Court to exercise the same sort of **judicial review over war powers** as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the **institutional differences**, **embedded in the Constitution**, that **have always led federal judges to review warmaking under special standards**. Most obviously, **the President can act with a speed, decisiveness, and access to info**rmation (often highly confidential) **that cannot be matched** by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, **the judiciary by design acts far more slowly** than either political branch. A court

must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, **by the time federal judges** (particularly those on the Supreme Court) **decide a case, the action taken by the executive is several years old**. Sometimes, **this delay is long enough that the crisis has passed and the Court's detached perspective has been restored**.57 **At other times**, however, **the war rages, the President's action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms**.58 **In such critical situations, issuing a judgment simply weakens the Court** as an institution, **as Chief Justice Taney learned the hard way**.59

Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court's examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President's actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62

This proposal intelligently blends a concern for individual rights with pragmatism. **Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so** and employs the least restrictive means to achieve that interest.63 Obviously, **national security is a compelling governmental interest**.64 Professor Wells's crucial insight is that courts should not allow the President simply to assert that "national security" necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65

Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, **the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors**—**including highly sensitive intel**ligence **that he does not wish to dis-close**.66 Moreover, **if the President's response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution**. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President's integrity and judgment? If so, what effect might such a judicial decision have on America's foreign relations? These questions are worth pondering before concluding that "hard look" review would be an improvement over the Court's established approach.

Moreover, **such** searching **scrutiny will be useless in situations where the President has made a wartime decision that he will not change**, **even if judicially ordered to do so**. For instance, **assume that the Court in Korematsu** had applied "hard look" review and **found that** President **Roosevelt had wildly exaggerated** the sabotage and espionage **risks** posed by

Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). **If the Court accordingly** had **struck down FDR's order** to relocate them, **he would** likely **have disobeyed it.**

Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in "pretend" review and stained its reputation by upholding the constitutionality of the President's odious and unwarranted racial discrimination. I would agree. But I submit that **the solution in such** unique **situations** (i.e., **where a politically strong President has made a final decision and will defy any contrary court judgment**) **is not judicial review in any form**—**ordinary, deferential, or hard look**. Rather, **the Court should simply declare the matter to be a political question and dismiss the case**. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

SQUO Solves

Bulk Collection Good

Experts say USA FREEDOM ACT is sufficient to solve for government abuse

Schanzer, 5/28/15

[Peter, associate professor of the practice at Duke University's Sanford School of Public Policy and director of the Triangle Center on Terrorism and Homeland Security., Duke University, "News Tip: Patriot Act Reforms Sufficient to Protect Privacy, Prohibit Governmental Abuse, Expert Says", https://today.duke.edu/2015/05/tip-patriotact]

If Congress does not act, only three provisions of the Patriot Act will expire on Sunday, and the vast majority of the law will remain in effect. The current debate is about Section 215 of the Patriot Act that provides the legal basis for the telephone metadata program run by the National Security Agency. • Quotes: "I am in favor of allowing this program to continue with the significant reforms included in the USA Freedom Act, which passed the House with a large bipartisan majority," says David Schanzer, an associate professor of the practice at Duke University's Sanford School of Public Policy and director of the Triangle Center on Terrorism and Homeland Security. "Even though the intelligence agencies cannot point to a specific terrorist attack that has been disrupted based on information from this program, I side with the many intelligence and senior national security officials who **believe it is an important counterterrorism tool." "The reforms will prohibit the government from taking possession of huge volumes of Americans' telephone records and require a judicial warrant for the government to gain access to specific chains of metadata. These changes are sufficient to protect privacy and protect against governmental abuse**." "The most likely scenario for this week is for the Senate to take up the USA Freedom Act, a step supported by 57 of the necessary 60 senators last week. If the bill does get to the floor, Sen. Rand Paul and other opponents of the NSA program can slow its progress, but probably cannot defeat it. Legal authority for the program may lapse briefly into next week, but this would not cause any significant problems."

No alternative for Bulk Data Collection – USA FREEDOM ACT reforms solve

Sanger, 1/15/2015

[David E., chief Washington reporter for NYT, NYT, "Report Finds No Substitute for Mass Data Collection", http://www.nytimes.com/2015/01/16/us/politics/report-finds-no-alternative-to-bulk-collection-of-phone-data.html]

WASHINGTON — A federal study released on Thursday concluded that **there was no effective alternative to the government's "bulk collection" of basic information about every telephone call made in the United States,** a practice that civil rights advocates call overly intrusive. Last year, after the former intelligence contractor Edward J. Snowden revealed details of the government's vast data-collection enterprise, President Obama asked intelligence agencies to assess whether there was a way to get at the communications of terrorism suspects without sweeping up records of all calls made and received inside the United States, including their length and other identifying information. On Thursday, the National Academy of Sciences, in a detailed report that brought together communications and cybersecurity experts and former senior intelligence officials, said that "no software-based technique can fully replace the bulk collection of signals intelligence." But it also concluded that there were ways to "control the usage of

collected data" and to make sure that once it is in the government's hands, there are stronger privacy protections. The findings came a year after Mr. Obama announced modest reforms to practices of the National Security Agency that had been revealed by Mr. Snowden, including doing away with a huge government-run database of phone records and instead relying on separate databases managed by phone companies. Eventually, those records will be held only by providers like AT&T and Verizon. But the change has not happened yet, as officials try to figure out how they would search, with court orders, information they do not have on their own computer systems. Government officials have been clear that the transition will take considerable time. Mr. Obama's hope was that technology would solve the problem — that new search technologies would make it possible to "target" the collection of the phone data, which does not include the conversations themselves. But the researchers could not find a way. "From a technological standpoint, **curtailing bulk data collection means analysts will be deprived of** some **information**," said Robert F. Sproull, the chairman of the committee that examined the problem and a former director of Oracle's Sun Labs. But, he said, that "does not necessarily mean that current bulk collection must continue." Since the uproar over Mr. Snowden's revelations and the program's effect on Americans' privacy, the politics of mass data collection have shifted. Terrorist attacks like the ones that killed 17 people in Paris last week, along with the rise of the Islamic State, have led to calls for more vigilance by intelligence agencies, swinging the pendulum back. Britain is now talking about expanding surveillance, and both its government and Mr. Obama's law enforcement agencies have protested moves by Apple, Microsoft and other technology companies to prevent snooping by routinely encrypting many types of mobile and computer communications. David Cameron, the British prime minister, was expected to raise those issues in detail in a visit with Mr. Obama on Thursday and Friday. The American Civil Liberties Union, a strong critic of the N.S.A. program, said in a statement from Neema Singh Guliani, the group's legislative counsel, that "it would be a mistake to read the National Academy's report as supporting a policy of continued bulk collection." She added that the report did not contradict findings of groups that have concluded that "the domestic bulk call record program has not helped stop an act of terrorism." But she noted that the report "does importantly acknowledge that there are additional steps that the intelligence community can take to increase transparency, improve oversight, and limit the use of information collected." The report examined ways intelligence agencies could narrow searches to foreign research institutes, companies or government facilities, using generic situations that were clearly thin covers for events now unfolding in places like Libya and Syria. But it found all the approaches ultimately unsatisfactory. **"The 'needle in the haystack' metaphor is relevant here," it concluded. "If the needle is not in the smaller haystack, no amount of smarter searching will help." "There is no doubt that bulk collection of signals intelligence leaves many uncomfortable," the report said. "Various courts have indeed questioned whether such collection is constitutional." But in the end, the committee concluded, the United States should focus on putting limits on how the data is viewed and used — and by whom — rather than limiting how much of it is collected.**

NSA Wake

A/T Democracy Advantage

1NC F/L

Court action over congressional action undermines democracy

Kochan, 200**6** (Donald J., Assistant Professor of Law, Chapman University School of Law, "SOVEREIGNTY AND THE AMERICAN COURTS AT THE COCKTAIL PARTY OF INTERNATIONAL LAW: THE DANGERS OF DOMESTIC JUDICIAL INVOCATIONS OF FOREIGN AND INTERNATIONAL LAW," Fordham International Law Journal, February, 29 Fordham Int'l L.J. 507)

Related to sovereignty and the rule of law are democracy concerns. **Lawmaking** power, **in democracies, lies with the lawmakers** as **selected** and directed **by the people**. n166 **Judges do not fit that role** in the United States. n167 Many scholars have [*547] noted the tendency of international law to erode sovereignty, to the detriment of democratic lawmaking. n168 Thus, **resort to international** or foreign **laws is uniquely** un-American and **un-democratic**. It runs completely afoul of the observations by Alexis de Tocqueville regarding the primacy of the "sovereignty of the people" in the United States n169: At the present day the principle of the sovereignty of the people has acquired in the United States all the practical development that the imagination can conceive. It is unencumbered by those fictions that are thrown over it in other countries, and it appears in every possible form, according to the exigency of the occasion. Sometimes the laws are made by the people in a body, as at Athens; and sometimes its representatives, chosen by universal suffrage, transact business in its name and under its immediate supervision. n170 Tocqueville continues to describe how U.S. democracy looks internally for the source of its laws - not outside, as some today advocate. He articulates positively that laws foreign to the U.S. system are non-controlling: In some countries a power exists which, though it is in a degree foreign to the social body, directs it, and forces it to pursue a certain track. ... But nothing of the kind is to be seen in the United States; there society governs itself for itself. All power centers in its bosom, and scarcely an individual is to be met with who would venture to conceive or, still less, to express the idea of seeking it elsewhere. The nation participates in the making of its laws by the choice of its legislators, and in the execution of them by the choice of the agents of the executive government; it may almost be said to govern itself, so feeble and restricted is the share left to the [*548] administration, so little do the authorities forget their popular origin and the power from which they emanate. The people reign in the American political world ... . They are the cause and the aim of all things; everything comes from them, and everything is absorbed in them. n171 These historical references underscore the idea that **democracy demands** that **the people be** the **masters** of their own domain. Judicial **injection of foreign and supposed international law violates this** principle **and denigrates** the **reverence many have** had **for the uniqueness of the U.S. system**. Federal **judges are** largely **unaccountable** to democratic controls. n172 Thus, the allowance **for judges to adopt** or import **foreign laws presents them with un-democratic lawmaking power**. The foundation of democratic governance lies in the people's ability, responsibility, and power to create law or control the mechanisms by which law is created. n173 Democratic control is lost when sources outside the domestic political processes serve as the bases of decision. Kenneth Anderson accurately opines that the **government** in the United States **receives** its **consent from the people** and should be constrained by their expressed judgment as to what laws should and should not exist: **Without fidelity to** the principle of democratic, **self-governing provenance** over substantive content in the utilization of constitutional adjudicatory materials, **a court becomes** merely **a purveyor of its own view of best policy.** Yet **this is** not solely an issue of an unconstrained Court. It is, more importantly, **a violation of the compact between government and governed**, free people who choose to give up a measure of their liberties [*549] in return for the benefits of government - a particular pact with a particular community, in which the materials used in the countermajoritarian act of judging them nonetheless have, in some fashion, even indirectly, democratic provenance and consent. n174 As such, recent cases discussed herein demonstrate an antidemocratic trend. n175 Some have characterized such imposition as judicial activism and arrogance against accepted lawmaking processes. n176

US supreme court decisions aren't modeled – the US doesn't engage in international judicial dialogue

Harvard Law Review, 200**1** ("The International Judicial Dialogue: When Domestic Constitutional Courts Join the Conversation," May, 114 Harv. L. Rev. 2049)

The Canadian court's citation in Burns to Justice Breyer's dissent, rather than to any other recent U.S. state or federal court decision regarding the death row phenomenon, n124 suggests that Justice Breyer's willingness to look to outside jurisprudence renders his opinions more influential in foreign and supranational jurisdictions. Conversely, the U.S. Supreme Court's failure to engage in the international judicial dialogue may cause other nations to be less willing to rely on its rulings. The cases discussed in this Part illustrate how the dialogue among domestic and supranational courts has contributed to the formation of legal norms for death penalty cases, and it seems likely that the international judicial conversation will similarly influence the development of other international norms. Cases such as Burns raise the question whether the U.S. Supreme Court's reluctance to engage in dialogue with its foreign counterparts will reduce its ability to shape the conversation about legal norms. Many constitutional courts have been eager to engage in the international judicial dialogue and to take advantage of the opportunity to influence the development of international law, but the U.S. Supreme Court has remained reticent. If taking part in the dialogue allows a court to influence the development of international law, it may seem surprising that the U.S. Supreme Court would be so reluctant to join the conversation. But perhaps the willingness (or unwillingness) of constitutional courts to look to foreign or supranational jurisprudence is explained in part by the way that particular courts view their domestic constitutions. The U.S. Supreme Court seems to regard the [*2073] U.S. Constitution as a document with a uniquely American character, and thus, a document that should not be informed by outside jurisprudence. Courts that have joined the international judicial dialogue, by contrast, seem to perceive their constitutions as documents that "speak to," and listen to, the entire international community.

Restraining authority is insufficient to solve liberal democratic modeling – they can't solve US inability to effectively govern

Fukuyama, 20**14** (Francis, senior fellow at Stanford University's Freeman Spogli Institute for International Studies, "At the 'end of history' still stands democracy," Wall Street Journal, June 6, http://www.wsj.com/articles/at-the-end-of-history-still-stands-democracy-1402080661)

The biggest single problem in societies aspiring to be democratic has been their failure to provide the substance of what people want from government: personal security, shared economic growth and the basic public services (especially education, health care and infrastructure) that are needed to achieve individual opportunity. Proponents of democracy focus, for understandable reasons, on limiting the powers of tyrannical or predatory states. But they don't spend as much time thinking about how to govern effectively. They are, in Woodrow Wilson's phrase, more interested in "controlling than in energizing government." This was the failure of the 2004 Orange Revolution in Ukraine, which toppled Viktor Yanukovych for the first time. The leaders who came to power through those protests—Viktor Yushchenko and Yulia Tymoshenko—wasted their energy on internal squabbling and shady deals. Had an effective democratic administration come to power, cleaning up corruption in Kiev and making the state's institutions more trustworthy, the government might have established its legitimacy across Ukraine, including the Russian-speaking east, long before Mr. Putin was strong enough to interfere. Instead, the democratic forces discredited themselves and paved the way for Mr. Yanukovych's return in 2010, thus setting the stage for the tense, bloody standoff of recent months. India has been held back by a similar gap in performance when compared with authoritarian China. It is very impressive that India has held together as a democracy since its founding in 1947. But Indian democracy, like sausage-making, doesn't look very appealing on closer inspection. The system is rife with corruption and patronage; 34% of the winners of India's recent elections have criminal indictments pending against them, according to India's Association for Democratic Reforms, including serious charges like murder, kidnapping and sexual assault. The rule of law exists in India, but it is so slow and ineffective that many plaintiffs die before their cases come to trial. The Indian Supreme Court has a backlog of more than 60,000 cases, according to the Hindustan Times. Compared with autocratic China, the world's largest democracy has been completely hamstrung in its ability to provide modern infrastructure or basic services such as clean water, electricity or basic education to its population. In some Indian states, 50% of schoolteachers fail to show up for work, according to the economist and activist Jean Drèze. Narendra Modi, a Hindu nationalist with a troubling past of tolerating anti-Muslim violence, has just been elected prime minister by an impressive majority in the hope that he will somehow cut through all the blather of routine Indian politics and actually get something done. Americans, more than other people, often fail to understand the need for effective government, focusing instead on

the constraint of authority. In 2003, the George W. Bush administration seemed to believe that democratic government and a market-oriented economy would spontaneously emerge in Iraq once the U.S. had eliminated Saddam Hussein's dictatorship. It didn't understand that these arise from the interaction of complex institutions—political parties, courts, property rights, shared national identity—that have evolved in developed democracies over many decades, even centuries. The inability to govern effectively extends, unfortunately, to the U.S. itself. Our Madisonian Constitution, deliberately designed to prevent tyranny by multiplying checks and balances at all levels of government, has become a vetocracy. In the polarized—indeed poisonous—political atmosphere of today's Washington, the government has proved unable to move either forward or backward effectively. Contrary to the hysterics on either side, the U.S. faces a very serious long-term fiscal problem that is nonetheless solvable through sensible political compromises. But Congress hasn't passed a budget, according to its own rules, in several years, and last fall, the GOP shut down the entire government because it couldn't agree on paying for past debts. Though the U.S. economy remains a source of miraculous innovation, American government is hardly a source of inspiration around the world at the present moment. Twenty-five years later, the most serious threat to the end-of-history hypothesis isn't that there is a higher, better model out there that will someday supersede liberal democracy; neither Islamist theocracy nor Chinese capitalism cuts it. Once societies get on the up escalator of industrialization, their social structure begins to change in ways that increase demands for political participation. If political elites accommodate these demands, we arrive at some version of democracy.

No Solvency – Liberal democracy is inherently and structurally unstable

McGinnis, 20**14** (John O., George C. Dix Professor in Constitutional Law at Northwestern University, "Endless history: The tension in liberal democracy," Library of Law and Liberty, June 11, http://www.libertylawsite.org/2014/06/11/endless-history-the-tension-in-liberal-democracy/)

Fukuyama's defense of his own work is thoughtful, but his original thesis suffers from a problem that is playing out now all over the world. There are inherent tensions in liberal democracy that ensure that history continues. By protecting liberties, liberalism prioritizes individuals, while democracy necessarily prioritizes a collective right—the right of a people to govern themselves and impose obligations and indeed trench on the liberties of others. In a constitutional republic such as ours, we try to resolve that tension by permitting democracy for ordinary politics while enshrining rights that are beyond majority control. But even here with a constitution that has lasted for two hundred years the mixture is unstable. Just consider current conflict between campaign finance regulation and the First Amendment. Around the world the conflict is truly combustible. Fukuyama acknowledges that some nations that looked in the 1990s as if they were moving to liberal democracies are backsliding today, but he does not discuss how this problem reflects in large measure the basic tension within liberal democracy itself. Take Thailand, one of his examples. There one party wins elections apparently by giving out huge subsidies to supporters—subsides that are not restrained by conceptions of limited government. Or take another example—Turkey—where Prime Minister Erdogan believes that his stalwart religiously inspired majority support permits him to shut down Twitter and engage in other fundamentally illiberal acts. I think we underestimate, too, how much democratic support another autocratic discussed by Fukuyama- Vladimir Putin–enjoys. As my friend Mark Movsesian suggests. Putin sadly does reflect the preferences of Russian people, who do not generally accept our WEIRD (Western,Educated, Industrialized, Rich, Democratic (as defined in liberal democracy)) values. They by and large support his illiberal policies. More generally, the tension between democracy and liberalism will continue to generate new kinds of regimes– new syntheses of the contradictions between liberalism and democracy– depending on culture, religious affiliation and geopolitical position. In his retrospective article, Fukuyuma could also have discussed old Europe more, where democracy has led to economic illiberalism and, consequently, stagnation. As one politician says of the failure of European economic reform, we all know what to do, but we do not know how to be reelected once we do it. Interestingly, Fukuyama complains that democracy in the United States is not working well, specifically that gridlock has led to

insufficiently energetic government. But gridlock writ large and our slower-moving politics—the product of bicameralism, the separation of powers, and federalism—protects liberty as much as the provisions of the Bill of Rights. Fukuyama's unhappiness with America as well as with democratic autocracies, like Russia, shows that his thesis has a Goldilocks quality: the world is moving to liberal democracy, but only if the mixture creates the right temperature for both liberalism and democracy. Given their inherent tensions the right mixture is no mean feat to achieve and even if achieved, there is no stable stopping point, as his contemporary examples of backsliding illustrate. History will continue as long as does the conflict between liberalism and democracy, between markets and the state.

Democracy doesn't prevent war

Goldstein, '11 (Joshua, is professor emeritus of international relations at American University and author of Winning the War on War: The Decline of Armed

Conflict Worldwide, Sept/Oct 2011, "Think Again: War. World peace could be closer than you think", *Foreign Policy*)

"A More Democratic World Will Be a More Peaceful One." Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight nondemocracies. In fact, democracy can heighten conflict by **amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment** in order **to stay in** power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things). Why then do democracies limit their wars to non-democracies rather than fight each other? Nobody really knows As the University of Chicago's Charles Lipson once quipped about the notion of a democratic peace, "We know it works in practice. Now we have to see if it works in theory!" The best explanation is that of political scientists 9/29/2011 Think Again: War - By Joshua S. Goldst… foreignpolicy.com/…/think_again_war?… 6/9Bruce Russett and John Oneal, who argue that three elements -- democracy, economic interdependence (especially trade), and the growth of international organizations -- are mutually supportive of each other and of peace within the community of democratic countries. Democratic leaders, then, **see themselves as having less to lose in going to war with autocracies.**

A/T Illiberal Democracy

Illiberalism is declining

Moller, 2008 (Jorgen, European University Institute "A Critical Note on 'The Rise of Illiberal Democracy'," Australian Journal of Political Science, Vol. 43, No. 3, September)

In Table 1, **I** have **extended Zakaria's analysis** both back in time (to 1990) and into the present (to 2005). What can we say about the dynamics of what Zakaria terms 'democratizing states' (i.e. roughly the countries belonging to the Freedom House's class 'partly free')? We see that **the number of** what Zakaria terms '**democratizing states' has been** rather **stable**, oscillating only between a low of 65 and a high of 76 in the period of 1991–2005.3 **The number** of democratizing states **doing better on 'political rights' than 'civil liberties'** (Zakaria's 'illiberal democracies') **has not been** very **stable** in the same period, however. In absolute terms, the number has oscillated between 36 (1998) and 12 (2005). In relative terms (i.e. as a proportion of all democratizing states) the oscillation is also very large, from a high of 51 per cent in 1994 to a low of 18 per cent in 2005. Two points can be made with regard to these trends. First, they underline that the illiberal species of democracy (which is really a species of hybrid regime, using Zakaria's conceptualization) is not a stable political regime form over the period – no dysfunctional equilibrium seems to exist in this 'grey zone' between democracy and autocracy. Second, it turns out that the '**illiberalness'** of the said countries **has not been on the rise** since Zakaria vented his warning;

rather, **it has clearly been on the wane**. In 2004 and 2005, countries that do better on 'civil liberties' (the liberal attribute) even outnumber those doing better on 'political rights' (the electoral attribute). This drop in 'illiberal democracies' kicked in as early as 2002 and, thus, **it seems to be** a bit of **an overstatement when Zakaria**, having duly noted that the number is decreasing, **remarks that** '[s]till, as of this writing close to half of the '**democratizing' countries** in the world **are illiberal** democracies' (Zakaria 2003, 99). On one account Zakaria was right, though. The 'illiberal democracies' did grow as a proportion of all 'democratizing states' in the period leading up to the publication of his 1997 article. But does this conclusion hold if, instead, we use the alternative conceptualization; that is, the typology of political regime forms? Table 2 shows that the '**illiberal democracies' as a proportion of** all '**electoral democracies' was**, in fact, a **very stable** one during the period 1990–97. With the sole exception of 1991 (i.e. the ultimate year of political change due to the breakdown of communism) it lay relatively close to 25 per cent. In plain English, when the electoral and illiberal attributes are kept conceptually independent of each other, we do not really find any rise of 'illiberal democracy' over the period. Furthermore, the figures show the same tendency as evinced in the prior extension of Zakaria's analysis; that the relative frequency has been decreasing fast since the late 1990s. The situation at the temporal end-point of the analysis, in 2005, is so striking that it is worth describing in detail. **A mere seven** (out of 192!) **countries are** classified as '**illiberal** democracies' in 2005; namely, El Salvador, India, Indonesia, Jamaica, Lesotho, Peru and Senegal. And all of these countries combined 'political rights' scores of 2 with 'civil liberties' scores of 3 (i.e. they were only marginally more electoral than liberal). At the same time, three countries could be classified as 'liberal autocracies'; namely, Serbia and Montenegro; Trinidad and Tobago; and Ukraine. In this troika, the obverse mix of scores obtains, i.e. a score of 3 on 'political rights' were combined with a score of 2 on 'civil liberties'. In a nutshell, then, the statuses of the empirical referents on the two dimensions correlate almost perfectly,4 and even the countries that do, in fact, diverge do so only minimally. Hence, the conclusion of the taxonomic exercise is that the countries almost always travel in the same direction on both of the two dimensions and that this co-variation has increased, not decreased, over time. Conclusion: The Future of Freedom The descriptive point I wish to make in this note is a simple one. If we trust that the Freedom House ratings measure what they are supposed to measure, then there is no increasing gap between 'illiberal' and 'liberal' democracies, and there has not really been one during the past one-and-a-half decades. The two strands (i.e. the electoral and the liberal component) of liberal democracy are not coming apart; doing better with respect to one attribute normally means doing better with respect to the other as well. Even the modest gap between the two that did exist in the 1990s, and which spurred the inductive observations and corresponding theoretical conclusions of Zakaria, has, more or less, been wiped out in the 2000s. This should be comforting news for those worried about the future of freedom in a democratic age. Also, it paves the way for a prescriptive conclusion that contrasts, head on, with that of Zakaria. **Zakaria favours** a '**liberal democracy**-itinerary' **that starts out with constitutional liberalism** and then moves only towards free elections. However, as Thomas Carothers (2007) has argued recently, **the underlying premise** – that autocrats will favour the development of the rule of law – **is faulty**. Recall Lord Acton's dictum: that power tends to corrupt, and absolute power corrupts absolutely. Hence the basic premise of liberal democratic theory – that laws, not men, should rule. This requires that the exercise of power is based on political institutions rather than the personal authority of an omnipotent president. Differently said, the 'law-abiding autocrat' is virtually an oxymoron and it is very difficult to imagine a country moving towards constitutional liberalism in the absence of some kind of elections to check the power holder(s). That theoretical lesson is supported by the empirical data presented in this short note.

US Can’t Promote Constitutionalism

The US can’t promote constitutional liberalism, only participatory democracy can

Kupchan, 19**98** (Charles A., Professor of International Relations at Georgetown University and a Senior Fellow at the Council on Foreign Relations, “Restoring Democracy’s Good Name,” Foreign Affairs, Volume 77, Issue 3, May/June)

Zakaria concludes by appearing to pull back from his insistence that liberalism must precede democracy, instead acknowledging that the two may go hand in hand. He sensibly urges American policymakers to promote both liberalization and democratization. Nevertheless, the central thrust of Zakaria's analysis is clear: the United States should stop pushing the ballot box until states are liberal enough to make good use of it. To recast U.S. policy accordingly would be misguided and dangerous. Constitutional liberalism cannot be imposed upon a society that lacks the requisite political values and habits. Instead, **participatory democracy is essential to nurturing** the dignity and **autonomy of the individual, which is** in turn **the foundation of constitutional liberalism**. Were the United States to stop promoting democracy, it would find the world not just less democratic but also less liberal -- and in the long run less peaceful. Bringing about the "democratic **peace" may require** the spread of **liberalism**, as Zakaria argues, **but** it is **the initial spread of democracy** itself, **even in its illiberal forms**, that **will** eventually **get us there**.

Majoritarian Gov't = Prerequisite to Liberal Democracy

Majoritarian government is a prerequisite to democratic values – their causality is backwards

Kupchan, 19**98** (Charles A., Professor of International Relations at Georgetown University and a Senior Fellow at the Council on Foreign Relations, "Restoring Democracy's Good Name," Foreign Affairs, Volume 77, Issue 3, May/June)

Although on target in his observation that illiberal democracy is on the rise, Zakaria misses the mark in explaining why and in prescribing what to do about it. He misconstrues how liberal democracy evolves by relying too heavily on the Anglo-Saxon experience. Classical liberalism -- the notion that the individual's autonomy is sacrosanct -- was born and bred in Britain and the United States. When democracy -- narrowly defined as the selection of governments through free and fair elections -- took root in these countries, their political cultures, practices, and institutions were already imbued with the spirit of constitutional liberalism. Zakaria is right that liberalism preceded democracy -- but only in the Anglo-Saxon West. The current wave of democratization is taking place in regions that have little or no experience in constitutional liberalism. Many countries in East Asia and the former Soviet bloc, for example, have a long history of paternalism and social norms that privilege the group over the individual. Without a tradition of liberal protection, the introduction of democracy is critical to instilling respect for individual rights and values of accountability and responsibility. **Participatory democracy helps bring** about the **incremental changes in political culture necessary for liberal governance. Constitutional liberalism**, after all, **rests not just on formal institutions, but on** the **political attitudes** and habits that bring them to life. Furthermore, the **abuses** of power **that accompany illiberal democracy** often **create demand for** the **institutions** and practices **that check** centralized **power**. In many of today's democratizing states, **illiberal democracy may be a way station along the road to the** more benign forms of **governance** that **Zakaria** justifiably **prefers**.

Kupchan, 19**98** (Charles A., Professor of International Relations at Georgetown University and a Senior Fellow at the Council on Foreign Relations, "Restoring Democracy's Good Name," Foreign Affairs, Volume 77, Issue 3, May/June)

Zakaria attempts to rebut the claim that democracy can foster liberalism by arguing that "democracy does not seem to bring constitutional liberalism," and that "to date few illiberal democracies have matured into liberal democracies." Not so. In fact, many of **today's liberal democracies passed through** lengthy **illiberal periods**. Germany had to make several passes at democracy before getting it right -- the Wilhelmine and inter-war variants were far from liberal. Even after the United States exported constitutional liberalism to Germany after World War II, it took time for it to take hold. Japan has long held democratic elections but has only recently strengthened multiparty governance, the quality and scope of public debate, and other attributes of liberal systems. A number of Latin American states have moved -- admittedly in fits and starts -- from illiberal to liberal democracy. Mexico, for example, has been democratic for decades, during which time its commitment to constitutional liberalism has gradually deepened. **Democracy** may produce adverse side effects during its early, transitional years, but over time it **helps instill habits of transparency**, tolerance, **and accountability conducive to** stable and **liberal governance**. Zakaria's misconception that liberal democracy takes root only when constitutional liberalism precedes democratic rule leads him to misinterpret the political transformations now taking place in many parts of the world. East Asian states are relatively wealthy and stable, according to Zakaria, because they have followed the Western itinerary and moved from "autocracy to liberalizing autocracy, and, in some cases, toward liberalizing semi-democracy." Most East Asian states, however, are far more democratic than they are liberal. In Zakaria's own terms, constitutional liberalism "seeks to protect an individual's autonomy against coercion, whatever the source." But in making the case for East Asian liberalism, Zakaria points primarily to the existence of free markets, contract law, and property rights. East Asians might enjoy the wealth that has accompanied these economic freedoms as well as the moderating influence of a growing middle class, but they certainly do not enjoy the civil liberties commonly associated with liberal governance. Even in the economic realm, states assert control over the market -- one of

the main causes of the recent financial crises in East Asia. Civic freedoms have of late been expanding, especially in South Korea and Taiwan. But **democracy has served as a beachhead for liberal values and practices, not vice versa**.

A/T Zakaria

Zakaria is wrong – falsely draws causal inferences from illiberal democracy to warfare

Kagan, 2003 (Robert, contributing editor for the New Republic, "Why democracy must remain America's goal abroad," The New Republic, June 26, http://www.travelbrochuregraphics.com/extra/the_ungreat_washed.htm)

Zakaria also employs other means of smearing democracy. Often he blames democracies for problems for which they bear no responsibility. In order to demonstrate that democracies are incompetent at stimulating economic growth, he cites the case of Indonesia. "Since it embraced democracy," Zakaria observes, "Indonesia's gross domestic product has contracted by almost 50 percent, wiping out a generation of economic progress and pushing more than 20 million people below the poverty line." This is a rather appalling distortion. Indonesia's economy collapsed not after Indonesia "embraced" democracy but before, during the last two years of the Suharto dictatorship and as a result of the Asian financial crisis of 1997-1998. Per capita GDP dropped from $1,100 in 1997 to $487 in 1998, the year Suharto fell. Indonesia's first parliamentary elections were held a year later, in June 1999, by which time the economy had already collapsed and the 50 percent contraction to which Zakaria refers had already taken place. This tendency to blame democracy for problems for which it cannot justly be blamed permeates Zakaria's book. He blames democratization for the ethnic warfare in Yugoslavia as it broke up in the early 1990s, arguing that "the introduction of democracy" there "actually fomented nationalism, ethnic conflict and even war," and that this proves his general point, which is that "democratizing societies display a disturbingly common tendency toward" violent behavior. But does Zakaria believe that ethnic conflict would have been avoided after the breakup of Yugoslavia had Serbia been in the hands of an unelected dictator? No, he shies away from making such an absurd claim. He admits that dictatorships are "hardly innocent" of fomenting ethnic conflict. Indeed they are not. Nor does the history of the Balkans, filled as it is with ethnic violence over the centuries, lend support to Zakaria's assertion that somehow it was "the introduction of democracy" that was responsible for sparking ethnic warfare in the 1990s. Nor would any sensible person hold democratization responsible for ethnic conflict in parts of Africa, where tribal warfare has thrived in all political climates.

A/T Zakaria – A/T Fundamentalism

Liberal states generate nationalism too

Gould-Davies, 1998 (Nigel, Lecturer in Politics at Hertford College, Oxford University, "Restoring Democracy's Good Name," Foreign Affairs, Volume 77, Issue 3, May/June)

Zakaria argues that the introduction of democracy in divided societies can foment "nationalism, ethnic conflict, and even war." But the fact **that** populist **nationalism** and ethnocentrism **can be inflamed** and put to violent uses by leaders of limited accountability **does not mean** that **democracy** itself **invokes these** malign **forces**. In most instances, nationalism exerts its influence through public expression, not democratic voice. To say otherwise is to confuse the passions of the masses with the power of majorities. Indeed, **nationalism has** often **been manipulated** from above **as a strategy for averting**, not responding to, **democratization**. Moreover, since the propagation of nationalist sentiments requires a degree of freedom of speech and assembly, it may in fact be **liberalization rather than democratization** that **makes states more dangerous**. Such a conclusion is supported by the argument that **an imperfect "marketplace of ideas" fosters** the spread of **nationalist myths**. The expansion of liberal **freedoms, not democratic accountability, makes possible** the **articulation of identity** and difference **for invidious ends**.

Majoritarian influences empirically solve radicalism

Kagan, 2003 (Robert, contributing editor for the New Republic, "Why democracy must remain America's goal abroad," The New Republic, June 26, http://www.travelbrochuregraphics.com/extra/the_ungreat_washed.htm)

Zakaria also **blames democracy for** unleashing Islamic **radicalism** and religious conflicts that, he claims, had been kept under control by "liberal autocrats." He cites Indonesia as one such case. Suharto's "strongman" rule was "far more tolerant and secular" than the democracy that followed his overthrow in 1998, and whose "newly open political system has ... thrown up Islamic fundamentalists." **This is** another **historical distortion**. It is true that in the first decades after independence, secularism was part of the Indonesian social compact. But as Jacques Bertrand, the prominent expert on Indonesia, explained in a recent article in Pacific Affairs, the roots of religious conflict in Indonesia can be traced back to the 1980s and 1990s, when Suharto, worried about his increasingly precarious control of the country, deliberately "shifted to Islamic groups for political support." Zakaria himself notes that in Pakistan it was the military dictator Zia ul-Haq who embarked on an "Islamization" program that fostered the militant fundamentalism we know today, and with the funding provided by another dictatorship, the Saudi Arabian monarchy. In an offhanded remark Zakaria even claims that democracy was responsible for the perpetuation of slavery in the United States. "Slavery and segregation were entrenched in the American South through the democratic system," he argues, because "the majority of southern voters defended it passionately." This is a marvelous inversion of history. **Slavery**, in fact, **was perpetuated not by democracy--**slaveholders and their supporters in the South represented a minority of voters in the nation--**but** precisely **by** all **the undemocratic elements of the American** system of **government** that **Zakaria** now **celebrates** and wishes to recover: by one undemocratic clause in the Constitution that counted a nonvoting slave as three-fifths of a voter so as to give Southern states a disproportionate influence in Congress, and by another clause in the Constitution that gave each state two senators regardless of their population, which was also partly designed to give disproportionate weight to the slaveholding South; by **an undemocratic Supreme Court** that consistently **upheld the "liberal" principle that** the slaveholders' human "**property" could not be taken** away by the government, even in non-slave states; and by a Senate, already weighted undemocratically in the South's favor, in which the slave states were capable of thwarting the will of the non-slave-state majority by means of the filibuster and other undemocratic practices. Southern Senators employed those same practices to block civil rights legislation during the century that followed the Civil War.

US JI Doesn't Spillover

US supreme court decisions aren't modeled – the US doesn't engage in international judicial dialogue

Harvard Law Review, 200**1** ("The International Judicial Dialogue: When Domestic Constitutional Courts Join the Conversation," May, 114 Harv. L. Rev. 2049)

The Canadian court's citation in Burns to Justice Breyer's dissent, rather than to any other recent U.S. state or federal court decision regarding the death row phenomenon, n124 suggests that Justice Breyer's willingness to look to outside jurisprudence renders his opinions more influential in foreign and supranational jurisdictions. Conversely, the U.S. Supreme Court's failure to engage in the international judicial dialogue may cause other nations to be less willing to rely on its rulings. The cases discussed in this Part illustrate how the dialogue among domestic and supranational courts has contributed to the formation of legal norms for death penalty cases, and it seems likely that the international judicial conversation will similarly influence the development of other international norms. Cases such as Burns raise the question whether the U.S. Supreme Court's reluctance to engage in dialogue with its foreign counterparts will reduce its ability to shape the conversation about legal norms. Many constitutional courts have been eager to engage in the international judicial dialogue and to take advantage of the opportunity to influence the development of international law, but the U.S. Supreme Court has remained reticent. If taking part in the dialogue allows a court to influence the development of international law, it may seem surprising that the U.S. Supreme Court would be so reluctant to join the conversation. But perhaps the willingness (or unwillingness) of constitutional courts to look to foreign or supranational jurisprudence is explained in part by the way that particular courts view their domestic constitutions. The U.S. Supreme Court seems to regard the [*2073] U.S. Constitution as a document with a uniquely American character, and thus, a document that should not be informed by outside jurisprudence. Courts that have joined the international judicial dialogue, by contrast, seem to perceive their constitutions as documents that "speak to," and listen to, the entire international community.

Foreign models can't effectively produce judicial reform

Chodosh 03 (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives. 103 Furthermore, reforms conceived as blunt negations of [*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

Judicial independence alone can't produce effective constitutionalism

Prempeh 06 (Kwasi, Associate Professor of Law, Seton Hall University School of Law, March, 80 Tul. L. Rev. 1239, lexis)

Judicial review is commonly presumed to be a check on the power and conduct of politicians. However, as Alexander Bickel has reminded us, "judicial review means not only that the Court may strike down a legislative action as unconstitutional but also that it may validate it as within constitutionally granted powers and as not violating constitutional limitations." 312 Thus, judicial review "performs not only a checking function but also a legitimating [function]." 313 Therefore the mere grant of judicial review power, even under conditions of judicial independence, offers no assurance that it will be employed to aid the cause of constitutionalism. In the end, the fate of constitutionalism will depend crucially on the philosophic attitudes, background assumptions, and outlook that judges bring to the task of interpreting the constitutional text.

A/T Independence Key to Democracy

Judicial independence makes judges less accountable—this is a recipe for corruption and judicial incompetence

Krotoszynski 06 (Ronald, Professor of Law and Alumni Faculty Fellow, Washington & Lee University School of Law, May, 104 Mich. L. Rev. 1321, lexis)

The final chapter of Judges in Contemporary Democracy addresses the problem of judicial misconduct and judicial discipline. A serious accountability problem arises because the independence necessary to secure the rule of law also insulates corrupt or incompetent judges from appropriate discipline (up to, and including, removal from office). If one secures effective judicial accountability, it almost certainly comes at the price of judicial independence. President Rodriguez Iglesias suggests that judicial independence is crucial to securing the rule of law (pp. 282-84). At the same time, however, some form of judicial accountability must exist to counter judicial malfeasance and misbehavior. "The need to guarantee the judge's independence is difficult to reconcile with the adoption of a proper system of judicial responsibility" (p. 284). Making judges directly accountable to political institutions risks the politicization of the judicial task and ultimately the rule of law itself; leaving judges free to police themselves, on the other hand, risks "corporate solidarity" and a failure to address conduct that undermines the legitimacy of the judiciary (pp. 284-85). "The problem is that the need for judicial independence is hard to reconcile with the creation of a system for assuring responsibility" (p. 302).

Judicial independence ensures an insulated judiciary—this is antithetical to democracy

Re 99 (Edward, Chief Judge Emeritus of the United States Court of International Trade and Distinguished Professor of Law, St. John's University School of Law, Summer, 14 St. John's J.L. Comm. 79, lexis)

Judicial independence was meticulously established by the framers of the Constitution and jealously guarded by all concerned with the administration of justice. 2 Past mechanisms designed to protect that independence, however, may have created the appearance of an insulated, privileged branch of government. Quite apart from legal considerations, the presence of such a class of persons, however small or exceptional, is an anachronism in a modern democracy. Comparatively recent congressional efforts to provide accountability for Federal judges, without infringing on the bounds of necessary judicial independence, culminated in the enactment of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 3

A/T Liberal Democracy Stable

Liberal democracy is inherently and structurally unstable

McGinnis, 20**14** (John O., George C. Dix Professor in Constitutional Law at Northwestern University, "Endless history: The tension in liberal democracy," Library of Law and Liberty, June 11, http://www.libertylawsite.org/2014/06/11/endless-history-the-tension-in-liberal-democracy/)

Fukuyama's defense of his own work is thoughtful, but his original thesis suffers from a problem that is playing out now all over the world. There are inherent tensions in liberal democracy that ensure that history continues. By protecting liberties, liberalism prioritizes individuals, while democracy necessarily prioritizes a collective right—the right of a people to govern themselves and impose obligations and indeed trench on the liberties of others. In a constitutional republic such as ours, we try to resolve that tension by permitting democracy for ordinary politics while enshrining rights that are beyond majority control. But even here with a constitution that has lasted for two hundred years the mixture is unstable. Just consider current conflict between campaign finance regulation and the First Amendment. Around the world the conflict is truly combustible. Fukuyama acknowledges that some nations that looked in the 1990s as if they were moving to liberal democracies are backsliding today, but he does not discuss how this problem reflects in large measure the

basic tension within liberal democracy itself. Take Thailand, one of his examples. There one party wins elections apparently by giving out huge subsidies to supporters—subsides that are not restrained by conceptions of limited government. Or take another example—Turkey—where Prime Minister Erdogan believes that his stalwart religiously inspired majority support permits him to shut down Twitter and engage in other fundamentally illiberal acts. I think we underestimate, too, how much democratic support another autocratic discussed by Fukuyama- Vladimir Putin–enjoys. As my friend Mark Movsesian suggests. Putin sadly does reflect the preferences of Russian people, who do not generally accept our WEIRD (Western,Educated, Industrialized, Rich, Democratic (as defined in liberal democracy)) values. They by and large support his illiberal policies. More generally, the tension between democracy and liberalism will continue to generate new kinds of regimes– new syntheses of the contradictions between liberalism and democracy– depending on culture, religious affiliation and geopolitical position. In his retrospective article, Fukuyuma could also have discussed old Europe more, where democracy has led to economic illiberalism and, consequently, stagnation. As one politician says of the failure of European economic reform, we all know what to do, but we do not know how to be reelected once we do it. Interestingly, Fukuyama complains that democracy in the United States is not working well, specifically that gridlock has led to insufficiently energetic government. But gridlock writ large and our slower-moving politics—the product of bicameralism, the separation of powers, and federalism—protects liberty as much as the provisions of the Bill of Rights. Fukuyama's unhappiness with America as well as with democratic autocracies, like Russia, shows that his thesis has a Goldilocks quality: the world is moving to liberal democracy, but only if the mixture creates the right temperature for both liberalism and democracy. Given their inherent tensions the right mixture is no mean feat to achieve and even if achieved, there is no stable stopping point, as his contemporary examples of backsliding illustrate. History will continue as long as does the conflict between liberalism and democracy, between markets and the state.

A/T Legitimacy Advantage

1NC F/L

Turn – limiting deference undermines effective foreign policy and causes terrorism

Yoo, 20**15** (John, law professor at the University of California, Berkeley, and a visiting scholar at the American Enterprise Institute, "Will Congress Reject Today's Dangerous NSA Ruling by Reauthorizing the Patriot Act?" http://www.nationalreview.com/article/418072/will-congress-reject-todays-dangerous-nsa-ruling-reauthorizing-patriot-act-john-yoo)

A federal appeals court in New York today grievously erred in blocking the National Security Agency's collection of telephone metadata — the calling records, but not the conversations — to detect terrorist attacks. Stripped of its flawed reasoning, the decision shows the blindness of the Left (one that also afflicts some libertarians) to the dire threat of foreign terrorism. Luckily, the decision will be of little import, because Congress will decide shortly whether to reauthorize or modify the NSA program, which will effectively overrule today's ruling even before it reaches the Supreme Court. In ACLU v. Clapper, the Second Circuit Court of Appeals showed its weak grip on reality. In the same week that two men attempted a Charlie Hebdo–like attack in Dallas, the Court indulged in libertarian fantasies of a Big Brother state. In the very introduction to the court's opinion, Judge Gerard Lynch compared electronic surveillance in the wake of the 9/11 attacks to President Richard Nixon's abuse of the NSA and the CIA to pursue the Democratic party and his other political enemies. RELATED: Republicans and the Patriot Act The substance of the opinion begins: "In the early 1970s, in a climate not altogether unlike today's, the intelligence-gathering and surveillance activities of the NSA, the FBI, and the CIA came under public scrutiny." After rehearsing the evils of the Nixon abuses and the investigation of the Church Committee, which set back the intelligence agencies for years, the Court declares: "We are faced today with a controversy similar" to those of the 1970s. ACLU v. Clapper reveals a fundamental and dangerous misunderstanding of the challenges facing the nation today. There were no serious foreign terrorist attacks against the United States in the 1950s through the '70s; the only true threat came from the Soviet Union and its allies. Nixon's abuses came not from his efforts to protect the U.S. in the Cold War, but from his direction of intelligence assets against domestic political opponents. Only someone who has drunk the left-wing Kool-Aid could find equivalence between Watergate and the 9/11 attacks, after which presidents of both parties have ordered electronic-surveillance that has helped prevent another catastrophic terrorist attack on U.S. soil. RELATED: Mike Lee: It's Time to Put an End to the NSA's Bulk Collection of Americans' Metadata The court's comparison looks even worse when one considers Congress's support for the NSA's broad collection of metadata. Like every president before him, Nixon had engaged in electronic surveillance on his own authority. I happen to think that presidents have that power as part of their commander-in-chief authority in wartime, even though it also contains the potential for abuse. After the revelation of the Nixon-era scandals, Congress passed the Foreign Intelligence Surveillance Act in 1978, which requires the government to seek a warrant from a special federal court when it wants to eavesdrop for national-security reasons. Congress passed the Patriot Act in the first few weeks after the 9/11 attacks. Section 215 of the Act specifically expanded FISA to allow the government to seek a warrant to force the production of "any tangible things," including "books, records, papers, documents, and other items." To get the warrant, the government must show "there are reasonable grounds" that the records are "relevant" to a terrorism investigation. In the interests of full disclosure, I worked on the bill (as well as on NSA programs) while an official in the Bush Justice Department from 2001 to 2003. It is difficult to conclude that telephone metadata does not fall within the plain meaning of the statute, as I argued in the Harvard Journal of Law and Public Policy last year. Not only did Congress enact this expansion of FISA in the wake of the 9/11 attacks, it has reenacted and even strengthened it several times since. Most recently, Congress reauthorized Section 215 in 2011, well after the New York Times and other newspapers leaked the existence of the NSA's broad electronic-surveillance programs. To avoid the clear meaning of the law, the Second Circuit pulls a fast one familiar to any fan of Justice Scalia's sharp critiques of sloppy interpretation. The Court finds a bit of legislative history that did not appear in the statute's plain text. It quotes a statement on the floor of the Senate that the Patriot Act would provide the government with the same tools to fight terrorism that it had to fight drug dealers and the mafia, in particular broad grand-jury subpoenas for business records. During the 2006 reauthorization of Section 215, then-senator Jon Kyl of Arizona declared that "it was time to apply to terrorism many of the same kinds of techniques in law enforcement authorities that we already deemed very useful in investigating other kinds of crimes. Our idea was, if it is good enough to investigate money laundering or drug dealing, for example, we sure ought to use those same kinds of techniques to fight terrorists." From this single quote, the Court overturns the plain meaning of Section 215 to narrow the government only to those powers it already has in domestic crimes (which of course do not include the collection of telephone metadata into a database). The Court's reliance on this single snippet would be almost laughably weak if the subject were not so serious. The quote comes, after all, from Jon Kyl, one of the staunchest defenders of the national security, who wanted not to limit Section 215, but merely to illustrate its uses. And it was uttered in 2006 as a description of what Congress thought it had done in 2001, not as a limitation of the statute in 2006 — or 2011, for that matter. The Second Circuit's use of this single quote is a perfect example of why the selective use of legislative history in court rulings has been critiqued as "akin to looking over a crowd and picking out your friends." Finally, the Court displays a deep misunderstanding of the challenges of counterterrorism policy, which Congress understands far better. As Judge Richard Posner has recognized, an intelligence search "is

a search for the needle in a haystack." Rather than pursue suspects who have already committed a crime and whose identity is already known, intelligence agencies must search for clues among millions of potentially innocent connections, communications, and links. "The intelligence services," Posner writes, "must cast a wide net with a fine mesh to catch the clues that may enable the next attack to be prevented." Our government can detect terrorists by examining phone and e-mail communications, as well as evidence of joint travel, shared assets, common histories or families, meetings, and so on. If our intelligence agents locate a lead, they must quickly follow its many possible links to identify cells and the broader network of terrorists. A database of call data would allow a fast search for possible links in the most important place — the United States, where terrorists can inflict the most damage. Most of the calling records may well be innocent (just as most of the financial records of a suspected white-collar criminal may also be innocent), but the more complete the database, the better our intelligence agencies can pursue a lead into the U.S. I admit that there are serious legal issues surrounding the NSA metadata program. The least serious is whether Congress has approved the NSA program — it clearly has, several times, by giving the government the broadest authority to collect "any tangible things" relevant to terrorism investigations. The more important question is whether our society should strike this balance of security and liberty. That fundamental question falls to Congress and the president, which have far superior knowledge and competence in dealing with foreign national-security threats and better reflect the wishes of the American people. The courts will have a role when legal challenges arise under the Fourth Amendment, but they have usually displayed deference to the president and Congress when they agree on national-security questions. Judicial modesty was sorely lacking in the court's decision today. Luckily, the elected branches of government will have ample opportunity to overrule the Second Circuit. Congress was already scheduled to reauthorize Section 215 in the next three weeks; otherwise, the law will sunset in June. The Senate may favor a bill that simply reauthorizes the Patriot Act, which should give it the chance to make clear it rejects the Court's ruling. The House might require that telecom companies hold the database, which would still amount to a rejection of the Second Circuit's decision. Or the decision could embolden critics of electronic surveillance, who were otherwise going to lose the debate, into gumming up the works and allowing the law to expire. In that worst possible result, our judges would bear responsibility for disarming our nation at a time when foreign threats are on the rise and attacks in the U.S. are in the offing.

Turn – Soft power causes complacency and internal divisions that decrease hegemony.

Michael et al, 20**14** (Bryane, senior research fellow, SKOLKOVO Institute for Emerging Market Studies, Christopher Hartwell, Head of Global Markets and Institutional Research, SKOLKOVO Institute for Emerging Market Studies, and Bulat Nureev, Deputy director at the SKOLKOVO Institute for Emerging Market Studies, "Soft Power: A Double-Edged Sword?" BRICS, No. 5, http://bricsmagazine.com/en/articles/soft-power-a-double-edged-sword)

While digital density may show how soft power is spread, the reality of soft power and its exercise is a complex issue. In much of the research, and especially in the popular press, soft power is shown as an unmitigated good: a country wants to have soft power, it should acquire soft power, and it improves its standing in the world through the exercise of soft power. However, it is possible that soft power may hurt, as well as help, a country, especially if its acquisition obscures the need to cultivate hard power as well. Additionally, soft power could lull a country's leaders into a false sense of security. While being respected abroad may help to smooth over some difficulties, it can also lead to complacency. As the English adages have it, countries should not believe their own press, or rest on their laurels. This reality has been observed both in the trends in our data, as well as in the real-life example of Ukraine. Soft power, like all power, has its good and bad sides Ukraine illustrates the paradoxes and prospects of soft power. It ranks in our top 20, compiled just before the recent unrest. Its soft power has made it attractive to both the EU and Russia, but has also made it the cynosure of all eyes, leading to a internal struggle for the rewards of that power. BRICS economies – and those learning from them, like Ukraine – must learn how to manage the risks as well as the returns that soft power provides, both at home and abroad. Ukraine has seen an increase in international soft power since its independence in 1991, carefully balancing Russian and European Union interests but drawing on its location, large population, and large foreign émigré base to give the country a voice in international affairs larger than its GDP alone may warrant. Even as the country itself has endured political and economic stagnation, the reputation of Ukraine as a bridge between East and West has survived. Successes such as the peaceful separation from the Soviet Union, coupled with ultimately successful negotiations to denuclearize the country, have also raised Ukraine's visibility in the world. For example, Ukraine was the first former Soviet republic to co-host the UEFA European

Championship, along with the more westernized Poland. Yet, while Ukraine's soft power has been directed externally and raised the country's standing in the eyes of the world, a successive run of Ukrainian leaders could not translate this international standing into tangible successes within the country. Like countries further east that have been plagued with political instability, Ukraine has seen itself undergo two political revolutions, the first leaving it even worse off economically than before. In terms of its economy, the country has stagnated due to corruption, lack of structural reforms, and a reliance on Soviet-era heavy manufacturing – all issues which have led to discontent and a disconnect with the country's image abroad. The current turmoil in the country, which appears to be split along geographic lines, also appears to be a result of the source of Ukraine's soft power. The same balancing act between the EU and Russia which gave Ukraine its soft power internationally looks ready to tear the country apart. Like all investments, those in soft power have both risks and returns, but in Ukraine's case the reality of the country has diverged from its image abroad. Unfortunately, in such a situation, reality always wins.

Soft power doesn't affect hegemony – leaders can't translate soft power into policymaking

Ford, 20**12** (Christopher A., Senior fellow at Hudson Institute in Washington DC, "Soft on 'Soft Power,'" SAIS Review of International Affairs, Vol. 32, No. 1, Winter-Spring)

The problem here is twofold, and does not necessarily entail any criticism of the idea that in some meaningful sense, a nation's aggregate impact in the world is significantly dependent upon economic, cultural, moral, and political factors. Rather, the problem lies with the assumptions that "soft power" per se can be relied upon by U.S. policymakers to advance their agenda and that the United States enjoys a "soft power" advantage in perhaps the world's most important bilateral relationship, that with the People's Republic of China. Given Washington's finite political capital, high-level attention, budget dollars, and the degree to which either assumption proves faulty, the current U.S. focus on "soft power" approaches, may be a mistaken priority. The concept of "soft power" as a sort of aggregate measurement of a country's overall socio-political clout in the world retains some utility as an analytical tool. Billions of people worldwide recognize iconic American brands such as McDonald's and Coca-Cola, watch movies made in Hollywood, and the United States remains the world's largest economy in an age of profound globalization. Such pervasive contact with the non-American world surely counts for something in assessing the United States' impact in global affairs. It is less clear, however, what to make of "soft power" from the perspective of a U.S. policymaker, whose natural inclination will presumably be to ask what he or she can do with all this "power." It is one thing, after all, to posit that the appeal of American values, the model offered by its political system, the broad presence of its brands overseas, and its pop cultural exports help in some vague and very general way predispose foreign publics toward things of which U.S. policymakers approve (e.g., consumerist democracy) and ultimately lead to a greater convergence of interests in world affairs. It is quite another to hold out reliance upon "soft power" as a means by which an American policymaker can accomplish any specific policy objective. In this sense, it is far from clear that "soft power" always deserves to be spoken of in the same breath as "hard power" when discussing forms of power that can actually be used for articulated ends. Diplomatic engagement, of course, can be so used, as influence and persuasion is its express purpose. Foreign aid is frequently and more or less plausibly alleged to form a critical element of the United States' "ability to influence the world," and an essential component of its "soft power."11 Just how effective these tools are can of course be debated, but there is little doubt that they are tools that [End Page 93] can be purposefully used by policymakers. Yet, not all supposed aspects of "soft power" can be so directed. This problem has received too little attention. To what extent is "soft power" actually something that our national leadership can use to influence other countries or shape the international environment? This question is, central to distinguishing "soft power" from mere impact. If one considers "soft power" analogous to and at least partially substitutable for the "hard power" of military force, its ability to be used is inescapably important. Many things about the United States may have great impact on others, but unless our national leadership can shape or steer that impact, it is difficult to describe it as a tool of national power. The distinction is important because when viewed through this prism of usability, much of what is considered the United States' "soft power" fails the test. Indeed, in a developed democracy such as our own, some of the most important and dynamic aspects of society frequently associated with our strengths, including the media, business, financial and cultural sectors, are conspicuous because they cannot be purposefully "steered" by the U. S. government in a significant way.

Deference Good – Readiness

Deference is key to readiness – turns the hege advantage

Wilkinson, 1996 (Chief Judge, U.S. Court of Appeals, Fourth Circuit, Thomasson v. Perry, Majority Opinion, 80 F.3d 915, 4/5, http://www.ncgala.org/cases/thomasson.htm)

Aside from the Constitution itself, the need for deference also arises from the unique role that national defense plays in a democracy. Because our nation's very preservation hinges on decisions regarding war and preparation for war, the nation collectively, as expressed through its elected officials, faces "'the delicate task of balancing the rights of servicemen against the needs of the military.'" Weiss, supra (quoting Solorio v. United States, 483 U.S. 435, 447-48 (1987)). To the degree that the judiciary is permitted to circumscribe the national security options of our elected officials, it "decreases the ability of the political branches to impose their will on another [nation and at] the worst, it permits the imposition of the will of another [nation] on the United States." James M. Hirschhorn, "The Separate Community: Military Uniqueness and Servicemen's Constitutional Rights," 62 N.C. L. Rev. 177, 237-238 (1983). After all, "unless a society has the capability . . . to defend itself from the aggressions of others, constitutional protections of any sort have little meaning." Wayte v. United States, 470 U.S. 598, 612 (1985). National defense decisions not only implicate each citizen in the most profound way. Such decisions also require policy choices, which the legislature is equipped to make and the judiciary is not. "Congress, working with the Executive Branch, has developed a system of military criminal and administrative law that carefully balances the rights of individual servicemembers and the needs of the armed forces." Sam Nunn, "The Fundamental Principles of the Supreme Court's Jurisprudence in Military Cases," 29 Wake Forest L. Rev. 557, 566 (1994). While Congress and the President have access to intelligence and testimony on military readiness, the federal judiciary does not. While Congress and the members of the Executive Branch have developed a practiced expertise by virtue of their day-to-day supervision of the military, the federal judiciary has not. The judiciary has no Armed Services Committee, Foreign Relations Committee, Department of Defense, or Department of State. As the Supreme Court has noted, "the lack of competence on the part of the courts [with respect to military judgments] is marked." Rostker, supra. In fact, It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches. Gilligan v. Morgan, 413 U.S. 1, 10 (1973). Finally, the imprimatur of the President, the Congress, or both imparts a degree of legitimacy to military decisions that courts cannot hope to confer. Even when there is opposition to a proposed change --as when Congress abolished flogging in the 19th century or when President Truman ended the military's racial segregation in 1948, see Hirschhorn, supra --the fact that the change emanates from the political branches minimizes both the likelihood of resistance in the military and the probability of prolonged societal division. In contrast, when courts impose military policy in the face of deep social division, the nation inherently runs the risk of long-term social discord because large segments of our population have been deprived of a democratic means of change. In the military context, such divisiveness could constitute an independent threat to national security. Parallel to the deference owed Congressional and Presidential policies is deference to the decision-making authority of military personnel who "have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy." Goldman v. Weinberger, 475 U.S. 503, 508 (1986). Judicial interference with the subordinate decisions of military authorities frustrates the national security goals that the democratic branches have sought to achieve. The Supreme Court has recognized the need for deference when facing challenges to a variety of military decisions: a policy that prohibited the wearing of headgear in certain circumstances, Goldman, supra (noting that the military is "a specialized society separate from civilian society"); an Air Force regulation that required service members to obtain permission before circulating petitions on bases, Brown v. Glines, 444 U.S. 348, 357 (1980) (noting that "the military must possess substantial discretion over its internal discipline"); a base policy that prohibited certain political activity on base premises, Greer v. Spock, 424 U.S. 828, 837 (1976) (noting "the special constitutional function of the military in our national life"); and military court-martial proceedings, Schlesinger v. Councilman, 420 U.S. 738, 757 (1975) (noting that "to prepare for and perform its vital role, the military must insist upon a respect for duty and discipline without counterpart in civilian life"). The need for deference also derives from the military's experience with the particular exigencies of military life. Among these is the attainment of unit cohesion--"the subordination of personal preferences and identities in favor of the overall group mission" and "the habit of immediate compliance with military procedures and orders." Goldman, supra.

Should the judiciary interfere with the intricate mix of morale and discipline that fosters unit cohesion, it is simply impossible to estimate the damage that a particular change could inflict upon national security--"there is no way to determine and correct the mistake until it has produced the substantial and sometimes irreparable cost of [military] failure." Hirschhorn, supra.

Deference is key to readiness.

Hudson, 1999 (Major Walter M, Judge Advocate General's Corps of the United States Army and Instructor of the Criminal Law Department, Military Law Review Volume 159, March, l/n)

By granting the elected branches plenary and command power over the military, the Constitution links military control to the democratic will and the democratic process. Because the people will feel the burden of war, the elected branches can best respond to that will.223 Furthermore, in granting power to the elected branches to control the military, the Constitution acknowledges that the elected branches grant a degree of legitimacy to military policy that courts cannot. These elected branches can best reflect and respond to the societal consensus, a particularly relevant and important concern when dealing with national security.224 Of the three branches, the judiciary has the least competence to evaluate the military's formation, training, or command. It has, as one court stated, "no Armed Services Committee, Foreign Relations Committee, Department of Defense, or Department of State" nor does it have the same access to intelligence and testimony on military readiness as does Congress or the President.225 The Supreme Court has thus repeatedly cited its own lack of competence to evaluate military affairs.226 To analyze the oft-criticized judicial deference to military matters, it is important to understand the structural differences between the ability of the elected branches and the courts to determine policy. The elected branches use regulatory decision making to determine policy. Regulatory decision-making, which is the creation of administrative policy through internal-rule formation, is a far more efficient means of policy making than adjudicated decisions.227 There are several problems with adjudication as a means of rule making. Adjudication is more costly and more time consuming. Years and millions of dollars can be spent in litigating one issue that involves one individual.228 Adjudication concerns itself with an individual remedy based upon "a small set of controverted facts'' that are highly contextual and may or may not be applicable to a larger class of individuals.229 Furthermore, adjudication sets up elaborate procedures according to its ultimate goal-to determine whether a particular individual should prevail in a particular case.23o Dissenters, in particular Justice Brennan, have asserted that the Court decides issues that are far more technically complicated than adjudicating rather straightforward rules on di~cipline.~~' Yet that argument does not address rules formation in an administrative, as opposed to an adjudicative, system. Military policy-making is, by its nature, meant to do precisely what administrative policy-making does: allocate rights, benefits, and sanctions, among large groups using consistent standards.232 What makes military policy making along administrative rule-making lines even more advantageous is that the military's primary concern is ensuring military discipline and combat effectiveness of units, rather than focusing primarily on individuals themselves. Applying consistent and predetermined norms among large groups is what administrative rule making is best equipped to do.233 Where Brennan's argument may appear to be the most persuasive is where the potential "penalties" cut into the interests that the adjudicative process is best suited to protect-namely, constitutional protections. In dealing with constitutional protections, individual rights often trump majority concerns. Discerning whether individuals should be granted these protections may not be particularly complex, on the surface.234 When viewing the grant of constitutional protections in relation to the military's goal-successful combat operations-this argument loses force. This is because "simplicity" as defined in civilian contexts often does not have the same meaning in the military context. Clausewitz, the Prussian general and author of the military classic, On War, once famously stated: "Everything in war is very simple, but the simplest thing is Clausewitz terms all the uncertainties and problems that accompany wartime operations as Friction can be defined as the "realm of uncertainty and chance, even more [is] it the realm of suffering, confusion, exhaustion, and fear"237 that accompanies military wartime operations. All these exist to a much higher degree in war, because, as Clausewitz points out, in war, not only is chance and uncertainty a con- ~tant,*~* but also one side is trying to impose its will on its opponent, which is an "animate object that reacts."239 In other words, in war, you are seeking to overcome an opponent who is reacting to (and may be anticipating) your movements, who is trying not only to defeat but to destroy you, and who may not be constrained by your own laws, customs, and behavior. It is not thus simply the lack of judicial competence in military affairs, but the effects that the lack of competence may have that is an additional "friction" in the military environment. The problem in applying a standard of review similar to the kind used for civilian society is not just that the court may err, but the ramifications of such an error given the uncertainty of conflict.240 An error in military policy making could impede military effectiveness and thereby jeopardize national security.241 These judicial decisions put the courts squarely into the political arena. Judges unwittingly become "strategists"-unelected and ill-equipped officials deciding matters of potentially ultimate importance. Judicial deference, therefore, is generally appropriate to military decision- making, and in particular, a unit

commander's decision-making on extremism. Extremism's disproportionate impact on the community where it occurs is an impact that can only be magnified in a military unit. The best way to appreciate that impact is to look at the gravest danger posed by racial extremists-the violent hate crime. If the courts rely solely on the statistics that compare the few numbers of bias crimes committed in relation to total crimes, they may be misled about the effect on good order and discipline.242 The courts may not be aware of the totality of information about extremist hate crimes. The vast majority of bias-oriented crimes are crimes against persons, not property. These crimes are also more likely to involve physical assault than non-bias crimes.243 Usually, at least four or more individuals commit them.244 The median age group is among young Loosely associated individuals, not organized extremist groups, commit most hate crimes.246 Furthermore, the most explosive element about the crimes is not necessarily the criminal act. Rather, the race or bias motivation can cause a community to polarize and even to explode.247 This impact is essential to the military's need for judicial deference to extremist policies-at both the local commander policy level and the Army policy level.

Soft Power Bad – Blowback

Turn – soft power still causes blowback because of cultural associations

Gray, 20**11**(Colin S., Professor of International Politics and Strategic Studies at the University of Reading, England, "Hard Power and Soft Power," Strategic Studies Institute, http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1059.pdf)

The seeming validity and attractiveness of soft power lead to easy exaggeration of its potency. Soft power is admitted by all to defy metric analysis, but this is not a fatal weakness. Indeed, the instruments of hard power that do lend themselves readily to metric assessment can also be unjustifiably seductive. But the metrics of tactical calculation need not be strategically revealing. It is important to win battles, but victory in war is a considerably different matter than the simple accumulation of tactical successes. Thus, the burden of proof remains on soft power: (1) What is this concept of soft power? (2) Where does it come from and who or what controls it? and (3) Prudently assessed and anticipated, what is the quantity and quality of its potential influence? Let us now consider answers to these questions. 7. Soft power lends itself too easily to mischaracterization as the (generally unavailable) alternative to military and economic power. The first of the three questions posed above all but invites a misleading answer. Nye plausibly offers the co-option of people rather than their coercion as the defining principle of soft power.38 The source of possible misunderstanding is the fact that merely by conjuring an alternative species of power, an obvious but unjustified sense of equivalence between the binary elements is produced. Moreover, such an elementary shortlist implies a fitness for comparison, an impression that the two options are like-for-like in their consequences, though not in their methods. By conceptually corralling a country's potentially attractive co-optive assets under the umbrella of soft power, one is near certain to devalue the significance of an enabling context. Power of all kinds depends upon context for its value, but especially so for the soft variety. For power to be influential, those who are to be influenced have a decisive vote. But the effects of contemporary warfare do not allow recipients the luxury of a vote. They are coerced. On the other hand, the willingness to be coopted by American soft power varies hugely among recipients. In fact, there are many contexts wherein the total of American soft power would add up in the negative, not the positive. When soft power capabilities are strong in their values and cultural trappings, there is always the danger that they will incite resentment, hostility, and a potent "blowback." In those cases, American soft power would indeed be strong, but in a counterproductive direction. These conclusions imply no criticism of American soft power per se. The problem would lie in the belief that soft power is a reliable instrument of policy that could complement or in some instances replace military force.

Soft power causes resentment; doesn't increase influence

Joffe, 200**6** (Josef, publisher-editor of the German weekly Die Zeit, "The perils of soft power," NYT, May 14, http://www.nytimes.com/2006/05/14/magazine/14wwln_lede.html?ei=5090&en=4680e76f268e503d&ex=1305259200&partner=rssuserland&emc=rss&pagewanted=print&_r=0)

In recent years, a number of American thinkers, led by Joseph S. Nye Jr. of Harvard, have argued that the United States should rely more on what he calls its "soft power" — the contagious appeal of its ideas, its culture and its way of life — and so rely less on the "hard power" of its stealth bombers and aircraft carriers. There is one problem with this argument: soft power does not

necessarily increase the world's love for America. It is still power, and it can still make enemies. America's soft power isn't just pop and schlock; its cultural clout is both high and low. It is grunge and Google, Madonna and MoMA, Hollywood and Harvard. If two-thirds of the movie marquees carry an American title in Europe (even in France), dominance is even greater when it comes to translated books. The figure for Germany in 2003 was 419 versus 3,732; that is, for every German book translated into English, nine English-language books were translated into German. It used to be the other way around. A hundred years ago, Humboldt University in Berlin was the model for the rest of the world. Tokyo, Johns Hopkins, Stanford and the University of Chicago were founded in conscious imitation of the German university and its novel fusion of teaching and research. Today Europe's universities have lost their luster, and as they talk reform, they talk American. Indeed, America is one huge global "demonstration effect," as the sociologists call it. The Soviet Union's cultural presence in Prague, Budapest and Warsaw vanished into thin air the moment the last Russian soldier departed. American culture, however, needs no gun to travel. There may be little or no relationship between America's ubiquity and its actual influence. Hundreds of millions of people around the world wear, listen, eat, drink, watch and dance American, but they do not identify these accouterments of their daily lives with America. A Yankees cap is the epitome of things American, but it hardly signifies knowledge of, let alone affection for, the team from New York or America as such. The same is true for American films, foods or songs. Of the 250 top-grossing movies around the world, only four are foreign-made: "The Full Monty" (U.K.), "Life Is Beautiful" (Italy) and "Spirited Away" and "Howl's Moving Castle" (Japan); the rest are American, including a number of co-productions. But these American products shape images, not sympathies, and there is little, if any, relationship between artifact and affection. If the relationship is not neutral, it is one of repulsion rather than attraction — the dark side of the "soft power" coin. The European student movement of the late 1960's took its cue from the Berkeley free-speech movement of 1964, the inspiration for all post-1964 Western student revolts. But it quickly turned anti-American; America was reviled while it was copied. Now shift forward to the Cannes Film Festival of 2004, where hundreds of protesters denounced America's intervention in Iraq until the police dispersed them. The makers of the movie "Shrek 2" had placed large bags of green Shrek ears along the Croisette, the main drag along the beach. As the demonstrators scattered, many of them put on free Shrek ears. "They were attracted," noted an observer in this magazine, "by the ears' goofiness and sheer recognizability." And so the enormous pull of American imagery went hand in hand with the country's, or at least its government's, condemnation. Between Vietnam and Iraq, America's cultural presence has expanded into ubiquity, and so has the resentment of America's soft power. In some cases, like the French one, these feelings harden into governmental policy. And so the French have passed the Toubon law, which prohibits on pain of penalty the use of English words — make that D.J. into a disque-tourneur. In 1993, the French coaxed the European Union into adding a "cultural exception" clause to its commercial treaties exempting cultural products, high or low, from normal free-trade rules. Other European nations impose informal quotas on American TV fare.

No Solve Soft Power

Soft Power fails – others view the US cumulatively and individual policies can't change views

Gray, 20**11**(Colin S., Professor of International Politics and Strategic Studies at the University of Reading, England, "Hard Power and Soft Power," Strategic Studies Institute, http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1059.pdf)

The second question above asked about the provenance and ownership of soft power. Nye correctly notes that "soft power does not belong to the government in the same degree that hard power does." He proceeds sensibly to contrast the armed forces along with plainly national economic assets with the "soft power resources [that] are separate from American government and only partly responsive to its purposes." 39 Nye cites as a prominent example of this disjunction in responsiveness the fact that "[i]n the Vietnam era . . . American government policy and popular culture worked at cross-purposes."40 Although soft power can be employed purposefully as an instrument of national policy, such power is notably unpredictable in its potential influence, producing net benefit or harm. Bluntly stated, America is what it is, and there are many in the world who do not like what it is. The U.S. Government will have the ability to project American values in the hope, if not quite confident expectation, that "the American way" will be found attractive in alien parts of the world. Our hopes would seem to be achievement of the following: (1) love and respect of American ideals and artifacts (civilization); (2) love and respect of America; and (3) willingness to cooperate with American policy today and tomorrow. Admittedly, this agenda is reductionist, but the cause and desired effects are accurate enough. Culture is as culture does and speaks and produces. The soft power of values culturally expressed that others might find attractive is always at risk to negation by the evidence of national deeds that appear to contradict our cultural persona. Moreover, no contemporary U.S.

government owns all of America's soft power—a considerable understatement. Nor do contemporary Americans and their institutions own all of their country's soft power. America today is the product of America's many yesterdays, and the worldwide target audiences for American soft power respond to the whole of the America that they have perceived, including facts, legends, and myths.41 Obviously, what they understand about America may well be substantially untrue, certainly it will be incomplete. At a minimum, foreigners must react to an American soft power that is filtered by their local cultural interpretation. America is a future- oriented country, ever remaking itself and believing that, with the grace of God, history moves forward progressively toward an ever-better tomorrow. This optimistic American futurism both contrasts with foreigners' cultural pessimism—their golden ages may lie in the past, not the future—which prevails in much of the world and is liable to mislead Americans as to the reception our soft power story will have.42 Many people indeed, probably most people, in the world beyond the United States have a fairly settled view of America, American purposes, and Americans. This locally held view derives from their whole experience of exposure to things American as well as from the features of their own "cultural thoughtways" and history that shape their interpretation of American-authored words and deeds, past and present.43

A/T Privacy Advantage

1NC F/L

Innovation sustainable from multiple sources

AreaDevelopmentOnline, 2010 ("The Recovery act: transforming the American economy through innovation," August 25, http://www.areadevelopment.com/StudiesResearchPapers/8-25-2010/recovery-act-transforming-american-economy3694.shtml)

The American **R**ecovery and **R**einvestment **A**ct **is one of the single largest investments in the U.S. economy** in the country's history. **The act's $787 billion** of funding **aims to improve** a number of sectors, including **transportation, clean energy, and information** and communications technology. The act's three-fold approach — to rescue the economy, to put the country on a path to recovery, and to reinvest in the country's long-term economic future — is already stimulating the economy. This August report from the Offices of the President and Vice President provides an update on the progress of recovery. **The act's transportation investments focus on renewables**. The government has invested more than $2 billion in advanced battery and electric drive component manufacturing. In 2009, there were only two advanced vehicle battery plants in the country. By 2012, there will be 30. The Advanced Vehicles Manufacturing program gives another $2.4 billion to Fisker, Nissan, and Tesla to build electric car factories in Delaware, Tennessee, and California, respectively. Section 1603 grants are boosting wind and solar energy capacity. More than $3 billion in grants have been extended to more than 100 wind projects in 30 states. The program also supports more than 200 megawatts of solar projects that are already delivering power to consumers. To improve information technologies, the government granted $4.4 billion to the Department of Commerce and $2.5 billion to the Department of Agriculture to improve broadband connectivity in rural areas. **Millions of Americans will have improved access to broadband due to those funds.**

Constitutional protection doesn't solve privacy

Schlanger, 2015 (Margo, Henry M. Butzel Professor of Law, University of Michigan, "Intelligence legalism and the national security agency's civil liberties gap," 6 Harvard National Security Journal 112)

Consider, first, the Constitution, as interpreted by the courts. Those who answer charges of surveillance overreach by emphasizing the constitutionality of the contested conduct—which is to say, nearly every federal official who has defended the NSA in recent months—are essentially arguing that constitutional law sets not individual rights minima, but rather, perhaps even definitionally, the right civil liberties policy. If this were correct, optimal policy could be implemented by a robust compliance infrastructure. The best civil liberties path might, for example, be simply to augment judicial review, perhaps by cutting through the large variety of litigation barriers (including doctrines of ripeness, finality, standing, justiciability, state secrets, and limits on inferred private rights of action) that often impede judicial supervision. The problem is that to assume, as this view does, that "constitutional" and "good" are the same is to mistake the role of constitutional law.267 The distance between "constitutional" and "good" is a matter of both method and purpose. Methodologically, many of the constitutional considerations—precedent, text, framers' intent, and so on— are irrelevant to policy evaluation. Courts may well also "lack the institutional capacity to easily grasp the privacy implications of new technologies they encounter," as Orin Kerr has argued at length.268 But even when courts include policy analysis in their decision-making, constitutional decisions at least purport to be more about "can" than about "should." That is why Fourth Amendment caselaw, notwithstanding its policy-heavy reasonableness inquiry, is formulated to give the government a good deal of leeway269—both for mistakes270 and for differences of opinion.271 Indeed, it is only to be expected that courts are likely to err on the side of nonintervention in constitutional cases. The remedial rigor that is at least the symbolic entailment of a right must on the margin discourage rights declaration 272 ; declaring something to be a "right" ups the stakes considerably, discouraging partial solutions. So while constitutional law and court enforcement of it sometimes

advance individual liberty with respect to particular issue or in some cases, there is likely to be considerable distance between optimal policy and the constitutional floor. To quote one summary, again by Orin Kerr, "we should not expect the Fourth Amendment alone to provide adequate protections against invasions of privacy made possible by law enforcement use of new technologies. . . . Additional privacy protections are needed to fill the gap between the protections that a reasonable person might want and what the Fourth Amendment actually provides."273

No impact to US competitiveness- it's all hype

Krugman '11 [Paul, Nobel Prize-winning economist, professor of Economics and International Affairs at Princeton University, received his B.A. from Yale University in 1974 and his Ph.D. from MIT in 1977. He has taught at Yale, MIT and Stanford. At MIT he became the Ford International Professor of Economics, "The Competition Myth," 1-24-11, http://www.nytimes.com/2011/01/24/opinion/24krugman.html?_r=0]

Meet the new buzzword, same as the old buzzword. In advance of the State of the Union, President Obama has telegraphed his main theme: competitiveness. The President's Economic Recovery Advisory Board has been renamed the President's Council on Jobs and Competitiveness. And in his Saturday radio address, the president declared that "We can out-compete any other nation on Earth." This may be smart politics. Arguably, Mr. Obama has enlisted an old cliché on behalf of a good cause, as a way to sell a much-needed increase in public investment to a public thoroughly indoctrinated in the view that government spending is a bad thing.¶ But let's not kid ourselves: talking about "competitiveness" as a goal is fundamentally misleading. At best, it's a misdiagnosis of our problems. At worst, it could lead to policies based on the false idea that what's good for corporations is good for America.¶ About that misdiagnosis: What sense does it make to view our current woes as stemming from lack of competitiveness?¶ It's true that we'd have more jobs if we exported more and imported less. But the same is true of Europe and Japan, which also have depressed economies. And we can't all export more while importing less, unless we can find another planet to sell to. Yes, we could demand that China shrink its trade surplus — but if confronting China is what Mr. Obama is proposing, he should say that plainly.¶ Furthermore, while America is running a trade deficit, this deficit is smaller than it was before the Great Recession began. It would help if we could make it smaller still. But ultimately, we're in a mess because we had a financial crisis, not because American companies have lost their ability to compete with foreign rivals.¶ But isn't it at least somewhat useful to think of our nation as if it were America Inc., competing in the global marketplace? No.¶ Consider: A corporate leader who increases profits by slashing his work force is thought to be successful. Well, that's more or less what has happened in America recently: employment is way down, but profits are hitting new records. Who, exactly, considers this economic success?¶ Still, you might say that talk of competitiveness helps Mr. Obama quiet claims that he's anti-business. That's fine, as long as he realizes that the interests of nominally "American" corporations and the interests of the nation, which were never the same, are now less aligned than ever before.¶ Take the case of General Electric, whose chief executive, Jeffrey Immelt, has just been appointed to head that renamed advisory board. I have nothing against either G.E. or Mr. Immelt. But with fewer than half its workers based in the United States and less than half its revenues coming from U.S. operations, G.E.'s fortunes have very little to do with U.S. prosperity.¶ By the way, some have praised Mr. Immelt's appointment on the grounds that at least he represents a company that actually makes things, rather than being yet another financial wheeler-dealer. Sorry to burst this bubble, but these days G.E. derives more revenue from its financial operations than it does from manufacturing — indeed, GE Capital, which received a government guarantee for its debt, was a major beneficiary of the Wall Street bailout.¶ So what does the administration's embrace of the rhetoric of competitiveness mean for economic policy?¶ The favorable interpretation, as I said, is that it's just packaging for an economic strategy centered on public investment, investment that's actually about creating jobs now while promoting longer-term growth. The unfavorable interpretation is that Mr. Obama and his advisers really believe that the economy is ailing because they've been too tough on business, and that what America needs now is corporate tax cuts and across-the-board deregulation.¶ My guess is that we're mainly talking about packaging here. And if the president does propose a serious increase in spending on infrastructure and education, I'll be pleased.¶ But even if he proposes good policies, the fact that Mr. Obama feels the need to wrap these policies in bad metaphors is a sad commentary on the state of our discourse.¶ The financial crisis of 2008 was a teachable moment, an object lesson in what can go wrong if you trust a market economy to regulate itself. Nor should we forget that highly regulated economies, like Germany, did a much better job than we did at sustaining employment after the crisis hit. For whatever reason, however, the teachable moment came and went with nothing learned.¶ Mr. Obama himself may do all right: his approval rating is up, the economy is showing signs of life, and his chances of re-election look pretty good. But the ideology that brought economic disaster in 2008 is back on top — and seems likely to stay there until it brings disaster again.

Tech high

Tech innovation sustainable

One India, 20**10** ("US to compete with India, china in R&D," September 15, http://news.oneindia.in/2010/09/15/us-to-compete-india-china-in-development.html)

Washington, Sep 15: President Barack **Obama** said his administration **had made the largest investment in research and development so that the US can compete with China, India and Germany**. In an appearance at a private home, he said what his administration had "tried to do to lay this foundation for long-term economic growth is to put our investments in those things that are really going to make us more competitive over the long term." "So we have made the largest investment in research and development, in basic research and science, in our history, because that's going to determine whether we can compete with China and India and Germany over the long term," he said. **Today people around the world "still want to be the U**nited **S**tates of America," he said, "as we still have a huge competitive edge and we've got the best workers in the world. And we've got the most dynamic economy in the world. **We've got the best universities, the best entrepreneurs in the world**." he added.

Competitiveness Wrong

Competitiveness theory wrong

Bhide, 9 [Amar, Glaubinger Professor of Business at Columbia University, editor of Capitalism and Society, member of the Council on Foreign Relations, and author of The Origin and Evolution of New Businesses, " The Venturesome Economy: How Innovation Sustains

Prosperity in a More Connected World," Journal of Applied Corporate Finance • Volume 21 Number 1, Winter 2009]

The techno-nationalist claim that U.S. prosperity requires that the country "maintain its scientific and technological lead" is particularly dubious: the argument fails to recognize that the development of scientific knowledge or cutting-edge technology is not a zero-sum competition. The results of scientific research are available at no charge to anyone anywhere in the world. Most arguments for the public funding of scientific research are in fact based on the unwillingness of private investors to undertake research that cannot yield a profit. Cutting-edge technology (as opposed to scientific research) has commercial value because it can be patented; but patent owners generally don't charge higher fees to foreign licensors. The then tiny Japanese company Sony was one of the first licensors of Bell Labs' transistor patent. Sony paid all of $50,000—and only after first obtaining special permission from the Japanese Ministry of Finance—for the license that started it on the road to becoming a household name in consumer electronics. Moreover, if patent holders choose not to grant licenses but to exploit their inventions on their own, this does not mean that the country of origin secures most of the benefit at the expense of other countries. Suppose IBM chooses to exploit internally, instead of licensing, a breakthrough from its China Research Laboratory (employing 150 research staff in Beijing). This does not help China and hurt everyone else. Rather, as I discuss at length later, the benefits go to IBM's stockholders, to employees who make or market the product that embodies the invention, and—above all—to customers, who secure the lion's share of the benefit from most innovations. These stockholders, employees, and customers, who number in the tens of millions, are located all over the world. In a world where breakthrough ideas easily cross national borders, the origin of ideas is **inconsequential**. Contrary to Thomas Friedman's assertion, it does not matter that Google's search algorithm was invented in California. After all, a Briton invented the protocols of the World Wide Web—in a lab in Switzerland. A Swede and a Dane in Tallinn, Estonia, started Skype, the leading provider of peer-to-peer Internet telephony. How did the foreign origins of these innovations harm the U.S. economy?

Competitiveness not key to heg

Brooks and Wohlforth '8 - Brooks is Assistant Professor AND*** William C. Wohlforth is Professor in the Department of Government at Dartmouth College [Stephen G., "World out of Balance, International Relations and the Challenge of American Primacy," p. 32-35]

American primacy is also rooted in the county's position as the world's leading technological power. The United States remains dominant globally in overall R&D investments, high-technology production, commercial first decade of this century. As we noted in chapter 1, this was partly the result of an Iraq-induced doubt about the utility of material predominance, a doubt redolent of the post-Vietnam mood. In retrospect, many assessments of U.S. economic and technological prowess from the 1990s were overly optimistic; by the next decade important potential vulnerabilities were evident. In particular, chronically imbalanced domestic finances and accelerating public debt convinced some analysts that the United States once again confronted a **competitiveness crisis**.23 If concerns continue to mount, this will count as the **fourth such crisis since 1945**; the first three occurred during the 1950s (Sputnik), the 1970s (Vietnam and stagflation), and the 1980s (the Soviet threat and Japan's challenge). **None of these crises**, however, shifted the international system's structure: multipolarity did not return in the 1960s, 1970s, or early 1990s, and **each scare over competitiveness ended with** the American position of **primacy** retained or strengthened.24 Our review of the evidence of U.S. predominance is not meant to suggest that the United States lacks vulnerabilities or causes for concern. In fact, it confronts a number of significant vulnerabilities; of course, this is also true of the other major powers.25 The point is that adverse trends for the United States will not cause a polarity shift in the near future. If we take a long view of U.S. competitiveness and the prospects for relative declines in economic and technological dominance, one takeaway stands out: **relative power shifts slowly**. The United States has accounted for a quarter to a third of global output for over a century. No other economy will match its combination of wealth, size, technological capacity, and productivity in the foreseeable future (tables 2.2 and 2.3). The depth, scale, and projected longevity of the U.S. lead in each critical dimension of power are noteworthy. But what truly distinguishes the current distribution of capabilities is American dominance in all of them simultaneously. The chief lesson of Kennedy's 500-year survey of leading powers is that nothing remotely similar ever occurred in the historical experience innovation, and higher education (table 2.3). Despite the weight of this evidence, elite perceptions of U.S. power had shifted toward pessimism by the middle of the that informs modern international relations theory. The implication is both simple and underappreciated: the counterbalancing constraint is inoperative and will remain so until the distribution of capabilities changes fundamentally. The next section explains why.

Terrorism DA

1NC Link

Plan causes WMD terrorism – fourth amendment restrictions prevent effective intelligence and make stopping attacks impossible

Yoo, 20**14** (John, Emanuel S. Heller Professor of Law, University of California, Berkeley Law School; Visiting Scholar, American Enterprise Institute, "THE LEGALITY OF THE NATIONAL SECURITY AGENCY'S BULK DATA SURVEILLANCE PROGRAMS," Harvard Journal of Law & Public Policy, Vol. 37, No. 3, June 1)

The real problem with FISA, and even the Patriot Act, as they existed before the 2008 Amendments, is that they remained rooted in a law enforcement approach to electronic surveillance. They tied the government's counterterrorism efforts to individualized suspicion. Searches and wiretaps had to target a specific individual already believed to be involved in harmful activity. But detecting al Qaeda members who have no previous criminal record in the United States, and who are undeterred by the possibility of criminal sanctions, requires the use of more sweeping methods. To prevent attacks successfully, the government has to devote surveillance resources where there is a reasonable chance that terrorists will appear or communicate, even if their specific identities remain unknown. What if the government knew that there was a fifty percent chance that terrorists would use a certain communications pipeline, such as e-mail provided by a popular Pakistani ISP, but that most of the communications on that channel would not be linked to terrorism? An approach based on individualized suspicion would prevent computers from searching through that channel for the keywords or names that might suggest terrorist communications because there are no specific al Qaeda suspects and thus no probable cause. Searching for terrorists depends on playing the probabilities rather than individualized suspicion, just as roadblocks or airport screenings do. The private owner of any website has detailed access to information about the individuals who visit the site that he can exploit for his own commercial purposes, such as selling lists of names to spammers or gathering market data on individuals or groups. Is the government's effort to find violent terrorists a less legitimate use of such data? Individualized suspicion dictates the focus of law enforcement, but war demands that our armed forces defend the country with a broader perspective. Armies do not meet a "probable cause" requirement when they attack a position, fire on enemy troops, or intercept enemy communications. The purpose of the criminal justice system is to hold a specific person responsible for a discrete crime that has already happened. But focusing on individualized suspicion does not make sense when the purpose of intelligence is to take action, such as killing or capturing members of an enemy group, to prevent future harm to the nation from a foreign threat. FISA should be regarded as a safe harbor that allows the fruits of an authorized search to be used for prosecution. Using FISA sacrifices speed and breadth of information in favor of individualized suspicion, but it provides a path for using evidence in a civilian criminal prosecution. If the President chooses to rely on his constitutional authority alone to conduct warrantless searches, then he should generally use the information only for military purposes. The primary objective of the NSA program is to "detect and prevent" possible al Qaeda attacks on the United States, whether another attack like September 11; a bomb in apartment buildings, bridges, or transportation hubs such as airports; or a nuclear, biological, or chemical attack. These are not hypotheticals; they are all al Qaeda plots, some of which U.S. intelligence and law enforcement agencies have already stopped. A President will want to use information gathered by the NSA to deploy military, intelligence, and law enforcement personnel to stop the next attack. The price to pay for speed, however, is foregoing any future criminal prosecution. If the President wants to use the NSA to engage in warrantless searches, he cannot use its fruits in an ordinary criminal prosecution. Al Qaeda has launched a variety of efforts to attack the United States, and it intends to continue them. The primary way to stop those attacks is to find and stop al Qaeda operatives, and the best way to find them is to intercept their electronic communications. Properly understood, the Constitution does not subject the government to unreasonable burdens in carrying out its highest duty of protecting the nation from attack.

War on Terror Link

Metadata key to stop terrorism – tracks terror cells

Yoo, 20**14** (John, Emanuel S. Heller Professor of Law, University of California, Berkeley LawSchool; Visiting Scholar, American Enterprise Institute, "THE LEGALITY OF THE NATIONAL SECURITY AGENCY'S BULK DATA SURVEILLANCE PROGRAMS," Harvard Journal of Law & Public Policy, Vol. 37, No. 3, June 1)

Meanwhile, the data collected is potentially of enormous use in frustrating al Qaeda plots. If U.S. agents are pointed to members of an al Qaeda sleeper cell by a domestic phone number found in a captured al Qaeda leader's cell phone, call pattern analysis would allow the NSA quickly to determine the extent of the network and its activities. The NSA, for example, could track the sleeper cell as it periodically changed phone numbers. This could give a quick, initial, database-generated glimpse of the possible size and activity level of the cell in an environment where time is of the essence. A critic might respond that there is a difference between a pen register that captures the phone numbers called by a single person and a database that captures all of the phone numbers called by everyone in the United States. The Supreme Court, however, has never held that obtaining billing records would somehow violate privacy merely because of a large number of such records.

National Security Precedent Link

Plan would overturn fourth amendment deference to national security

Yoo, 20**14** (John, Emanuel S. Heller Professor of Law, University of California, Berkeley LawSchool; Visiting Scholar, American Enterprise Institute, "THE LEGALITY OF THE NATIONAL SECURITY AGENCY'S BULK DATA SURVEILLANCE PROGRAMS," Harvard Journal of Law & Public Policy, Vol. 37, No. 3, June 1)

Even if constitutional privacy interests were thought to extend to telephone metadata or to foreign e-mails, the Fourth Amendment's warrant requirement still would not apply because the NSA searches seek to prevent military attacks, not garden-variety criminal activity.84 As observed earlier, every lower court to examine the question has found that when the government conducts a search of a foreign power or its agents, it need not meet the requirements that apply to criminal law enforcement. Though, admittedly, the Supreme Court has never ruled on the question, it has suggested in dicta that roadblocks and dragnets to stop a terrorist bombing in an American city would not need to meet the warrant requirement's demand for individualized suspicion.85 This approach is fully consistent with the Supreme Court's recent Fourth Amendment cases. Not all searches require a warrant. Rather, as the Court found in a 1995 case upholding random drug testing of high school athletes, "[a]s the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'"86 When a passenger enters an airport, government employees search his belongings and subject him to an x-ray— undoubtedly a search—without a warrant. When travelers enter the country, customs and immigration officials can search their baggage and sometimes their persons without a warrant.87 Of course, when law enforcement undertakes a search to discover evidence of criminal wrongdoing, reasonableness generally requires a judicial warrant. But when the government's conduct is not focused on law enforcement, a warrant is unnecessary. A warrantless search can be constitutional, the Court has said, "'when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'"88 A search must be "reasonable" under the circumstances. What does "reasonable" mean? The Court has upheld warrantless searches to reduce deaths on the nation's highways, to maintain safety among railway workers, and to ensure that government officials were not using drugs.89 In these cases, the "'importance of the governmental interests'" outweighed the "'nature and quality of the intrusion on the individual's Fourth Amendment interests.'"90 It is hard to imagine that any of these situations are more important than protecting the nation from a direct foreign attack in wartime. "It is obvious and unarguable," the Supreme Court has observed several times, "that no governmental interest is more compelling than the security of the Nation."91 It is the duty of the President to respond to

attacks on the territory and people of the United States, and Congress confirmed the President's authority to use force after September 11. The extraordinary circumstances of war require that the government seek specific information relevant to possible attacks on Americans, sometimes in situations where obtaining a warrant is not practical.92 Before the September 11 attacks, the Supreme Court observed that the Fourth Amendment's warrant requirement would probably not apply to the special circumstances created by a potential terrorist attack. "[T]he Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route."93 To be sure, this case, City of Indianapolis v. Edmond, challenged the constitutionality of a highway checkpoint program that searched cars for illegal drugs rather than for terrorists. And in Edmond, the Court found that the checkpoints vio- lated the Fourth Amendment protection against search and seizure because the police were searching for drugs for the purpose of "crime control" and "the ordinary enterprise of investigating crimes." 94 But the Court still observed that some warrantless searches were acceptable in the emergency situation of a possible terrorist attack, in which the "need for such measures to ensure public safety can be particularly acute."95 If the Supreme Court has found that searches for border and airport control present special needs that do not call for a warrant, a court would be hard pressed to deny that searches to find foreign terrorists bent on attacking the United States fall within the same category.

National Security Power – Impact

Plan restricts national security power and causes terrorism

Yoo, 20**14** (John, Emanuel S. Heller Professor of Law, University of California, Berkeley LawSchool; Visiting Scholar, American Enterprise Institute, "THE LEGALITY OF THE NATIONAL SECURITY AGENCY'S BULK DATA SURVEILLANCE PROGRAMS," Harvard Journal of Law & Public Policy, Vol. 37, No. 3, June 1)

If national security searches do not require a warrant, it might be asked why FISA is even necessary. FISA offers the executive branch a deal. If a President complies with the process of obtaining a FISA warrant, courts will likely agree that the search was reasonable and will admit its fruits as evidence in a criminal case. FISA does not create the power to authorize national security searches. Rather, it describes a safe harbor that deems searches obtained with a warrant reasonable under the Fourth Amendment. If a President proceeds with a search under his own authority rather than under FISA or under ordinary criminal procedure, he takes his chances. A court might refuse to admit evidence in any future proceeding that had been obtained without a warrant, or even allow the target to sue the government for damages.96 Then again, it might not. FISA ultimately cannot limit the President's powers to protect national security through surveillance if those powers stem from his unique Article II responsibilities. Intercepting enemy communications has long been part of waging war; indeed, it is critical to the successful use of force.97 The U.S. military cannot at- tack or defend to good effect unless it knows where to aim. America has a long history of conducting intelligence operations to obtain information on the enemy. General Washington used spies extensively during the Revolutionary War and as President established a secret fund for spying that existed until the creation of the CIA.98 President Lincoln personally hired spies during the Civil War, a practice the Supreme Court upheld.99 In both World Wars I and II, Presidents ordered the interception of electronic communications leaving the United States. 100 Some of America's greatest wartime intelligence successes have involved signals intelligence (SIGINT), most notably the breaking of Japanese diplomatic and naval codes during World War II, which allowed the U.S. Navy to anticipate the attack on Midway Island.101 SIGINT is even more important in this war than in those of the last century. Al Qaeda has launched a variety of efforts to attack the United States, and it intends to continue them.102 The primary way to stop those attacks is to find and stop al Qaeda operatives who have infiltrated the United States. The best way to find them is to intercept their electronic communications entering or leaving the country. The need for executive authority over electronic intelligence gathering becomes apparent when we consider the facts of the war against al Qaeda. In the hours and days after September 11, members of the government thought that al Qaeda would try to crash other airliners or use a weapon of mass destruction in a major east coast city, probably Washington, D.C. Combat air patrols began flying above New York and Washington. Suppose a plane was hijacked and would not respond to air traffic controllers. It would be reasonable for U.S. antiterrorism personnel to intercept any radio or cell phone calls to or from the airliner, to

discover the hijackers' intentions, what was happening on the plane, and ultimately whether it would be necessary for the fighters to shoot down the plane. Under the civil libertarian approach to privacy, the government could not monitor the suspected hijackers' phone or radio calls unless they received a judicial warrant first—the calls, after all, are electronic communications within the United States. A warrant would be hard to obtain because it is unlikely that the government would then know the identities of all the hijackers, who might be U.S. citizens or permanent resident aliens. But because the United States is in a state of war, the military can intercept the communications of the plane to see if it poses a threat, and target the enemy if necessary, without a judicial warrant because the purpose is not arrest and trial, but to prevent an attack. This comports far better with the principle of reasonableness that guides the Fourth Amendment. As Commander-in-Chief, the President has the constitutional power and the responsibility to wage war in response to a direct attack against the United States.103 In the Civil War, President Lincoln undertook several actions—raising an army, withdrawing money from the treasury, launching a blockade—on his own authority in response to the Confederate attack on Fort Sumter, moves that Congress and the Supreme Court later approved.104 During World War II, the Supreme Court similarly recognized that once war began, the President's authority as Commanderin-Chief and Chief Executive gave him the tools necessary to wage war effectively.105 In the wake of the September 11 attacks, Congress agreed that "the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States," which recognizes the President's authority to use force to respond to al Qaeda, and any powers necessary and proper to that end.106 Even legal scholars who argue against this historical practice concede that once the United States has been attacked, the President can respond immediately with force. The ability to collect intelligence is intrinsic to the use of military force. It is inconceivable that the Constitution would vest in the President the powers of Commander-in-Chief and Chief Executive and give him the responsibility to protect the nation from attack, but then disable him from gathering intelligence on how to use the military most effectively to defeat the enemy. Every evidence of the Framers' understanding of the Constitution is that the government would have every ability to meet a foreign danger. As James Madison wrote in The Federalist, "[s]ecurity against foreign danger is one of the primitive objects of civil society."107 Therefore, the "powers requisite for attaining it must be effectually confided to the federal councils."108 After World War II, the Supreme Court declared that a "grant of war power includes all that is necessary and proper for carrying these powers into execution."109 Covert operations and electronic surveillance are clearly part of this authority.

A/T No Need for Database

Database storage is key to effectiveness of the program

Margulies, 20**14** (Peter, Professor of Law, roger Williams University School of Law, "Dynamic surveillance: evolving procedures in metadata and foreign content collections after snowden," Hastings Law Journal, December, 66 Hastings L.J. 1)

The utility of the metadata program has been the subject of vigorous debate, with the government initially insisting that the program was "essential" and critics suggesting that the government's claims were inflated. n66 The fog of rhetoric on both sides obscures common ground. The program cannot claim exclusive credit for stopping a terrorist plot, n67 and in most investigations other alternatives could have provided (or actually did provide) information that identified the plotters. However, the most careful and comprehensive critics concede that the program has provided early information in investigations, allowed law enforcement to rule out suspects, and hedged against the persistent problem of disparate agencies failing to "connect the dots." n68 The single court to squarely address this question has agreed that the program is helpful because it allows the government to effectively, [*15] reliably, and expeditiously trace connections between known and unknown terrorists. n69 Having a large database enhances the comprehensiveness of the government's search for connections. As the district court noted in ACLU v. Clapper, "without all the data points, the Government cannot be certain it connected the pertinent ones." n70 Having a single large database avoids the waste of time entailed in chasing down leads with different telecommunications providers. n71 Promulgating a single set of rules for that database ensures that data will be deleted only when the government, taking both security and privacy into account, is confident that the data is irrelevant. For an illustration of the benefits and limits of the metadata program,

consider the case of Najibullah Zazi, who had plotted in 2009 to bomb New York City subways. n72 Pursuant to the metadata program, the NSA provided the Federal Bureau of Investigation ("FBI") with information "early in the investigation" showing Zazi's telephone calls. n73 The NSA also provided the FBI with "additional leads" throughout the investigation. n74 Moreover, the NSA used section 215 to ascertain the unknown telephone number of one of Zazi's New York accomplices, Adis Medunjanin. n75 While this information may well have been available from other sources, n76 the metadata program is what provided the facts. The metadata program also plays an important role in allocating government counterterrorism resources. For example, as Ryan Goodman suggests, the comprehensive nature of the section 215 program allows the government to rule out foreign connections to plots, such as the Boston Marathon bombing. n77 While this capability may not be as eye- [*16] catching as the ability to ferret out a pending plot, it can help law enforcement and national security officials allocate resources in the long and short term. In the long term, the metadata program gives officials a view from 20,000 feet on the links to international terrorist groups within the United States. If queries show a relatively small presence, officials can focus their efforts narrowly, and devote more resources to foreign threats. The metadata program reduces the guesswork involved in allocation decisions, and solidifies the factual foundation for these complex determinations. In the near term, the metadata program can inform allocation of resources in the chaotic period immediately following an attack. During the Boston Marathon bombing investigation, for example, section 215 collection helped to confirm early on that the Tsarnaev brothers acted without foreign assistance. n78 That confirmation curbed counterproductive speculation, and focused resources on the Tsarnaev brothers' roles. n79 The metadata program also provides for efficiency in tracing contacts. In some investigations, speed may turn out to be less important because law enforcement officials are gathering information and monitoring a subject over time. However, as Director of the FBI James Comey testified to Congress in January 2014, the "agility" produced by the metadata program may turn out to be quite useful in a fast-moving investigation. Comey put it simply: that agility, which permits law enforcement to accomplish "in minutes what would otherwise take ... hours," is "not material except when it matters most." n80 Finally, the metadata program is a useful hedge if agencies fail to share information that could allow them to connect the dots in a counterterrorism investigation. This failure was the most salient problem with the actions of law enforcement and security officials prior to the September 11 attacks. n81 Although the situation has improved, n82 deficits in cooperation will inevitably occur whenever agencies seek to coexist. n83

Clear Statement CP

1NC

The United States Supreme Court should hold in *American Civil Liberties Union v. Clapper* that the collection of metadata by or for the use of the National Security Agency is an unconstitutional because it does not evince an unmistakably clear intent to abrogate the implied Fourth Amendment right to privacy in the United States Constitution.

Clear statement rule solve enforcement of constitutional rights

Meagher, 20**14** (Dan, Associate Professor, School of Law, Deakin University, "The Principle of Legality as Clear Statement Rule: Significance and Problems," The Sydney Law Review, September, 36 Sydney L. Rev. 413)

These clear statement rules are said to provide an attractive alternative to strong (counter-majoritarian) judicial review when legislation engages constitutional or other important legal rights and values. n28 The rules are 'an [*417] expression of the [Supreme] Court's constitutional values, a way for the Court to conduct an illuminating discourse with the legislature about our nation's public values, but without obstructing or intruding into the political system'. n29 And '[b]y developing ... a thick description of its interpretive practice, the Court [can] provide Congress with more certain guidelines as to how it should expect to see its statutes interpreted'. n30 This gives the legislature clear and prior notice as to those rights and values that the courts will protect if interpretively possible and the manner in which they will do so. Scalia J has noted in this regard that '[w]hat is of paramount importance is that Congress be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts'. n31 This can promote rule of law values by requiring greater clarity in the drafting of statutes that engage constitutional rights and values and transparency in the way they will be interpreted by the courts. In doing so, it is said that such rules ... provide significant protection for constitutional norms because they raise the costs of statutory provisions invading such norms. Ultimately, such rules may even be democracy-enhancing by focusing the political process on the values enshrined in the Constitution. n32 However, clear statement rules are not without normative (indeed constitutional) controversy. As will be detailed below, they amount to mandatory rules of interpretation developed by the courts that are imposed on the legislature. In this regard, Larry Alexander and Saikrishna Prakash argue that 'such rules of interpretation are constitutionally problematic': We doubt that the judicial power -- the power to decide cases -- gives the federal judiciary the power to dictate interpretive rules to Congress. The courts cannot dictate (or constrain) how Congress must express itself. n33 And notwithstanding the 'weighty precedential pedigrees' n34 of most clear statement rules, they are controversial for they 'reflect judicially articulated policies that are sometimes enforced very vigorously ... and thus do affect the allocation of power, rights, and property in [American] society'. n35 To this end, Alexander and Prakash say they 'should be recognized for what they are: attempts to drag statutes away from their actual meaning and towards the substantive preferences of those who create the rules of interpretation'. n36 Which, in the case of clear statement rules, are the senior members of the judiciary. n37

Democracy Net Benefit

CP solves the aff and preserves representative democracy

Frickey and Eskridge, 19**92** (Philip P., Faegre & Benson Professor of Law, University of Minnesota, and William N. Eskridge Jr., Professor of Law, Georgetown University Law Center, "Quasi-Constitutional Law: Clear Statement Rules As Constitutional Lawmaking," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2860&context=facpubs)

In a representative democracy such as ours, most important political decisions should be made by the political branches, primarily Congress and secondarily the Executive.8 3 Judicial review in a democracy is exceptional and should be deployed by unelected judges only when there is a clear inconsistency between a statute or regulation and the Constitution.1 4 Indeed, we have learned over time that certain constitutional values-most notably the structural rather than individual rights values-are either unenforceable by the Court because they involve essentially nonjusticiable political questions or will be underenforced by the Court."'5 These unenforced or underenforced constitutional norms include the nondelegation doctrine,186 federalism limitations on the national government, 187 and separation of powers."' While a Court that seeks to avoid antidemocratic constitutional activism might refuse to invalidate federal statutes because of their infringement of these constitutional norms, such a Court might also seek other ways to protect those norms. One way to articulate and protect underenforced constitutional norms is through interpretive presumptions, clear statement rules, and super-strong clear statement rules-canons of statutory construction.189 The canons, especially the "tough" ones, can protect important constitutional values against accidental or undeliberated infringement by requiring Congress to address those values specifically and directly. Protecting underenforced constitutional norms through super-strong clear statement rules makes sense: it is not ultimately undemocratic, because Congress can override the norm through a statutory clear statement; such rules still provide significant protection for constitutional norms, because they raise the costs of statutory provisions invading such norms; and ultimately such rules may even be democracy-enhancing by focusing the political process on the values enshrined in the Constitution.

Solvency – Generic

Clear statement rules set constitutional precedent and restrict congressional power

Young, 2004 (Ernest A., Judge Benjamin Harrison Powell Professor of Law, University of Texas at Austin, "The Rehnquist Court's Two Federalisms," Texas Law Review, November, 83 Tex. L. Rev. 1)

Resistance norms likewise function well in areas in which the relevant constitutional principles are designed primarily to be self-enforcing, through the political processes at work in the coordinate branches of government. Certain kinds of soft limits - particularly clear statement canons of statutory construction - function effectively by increasing the political costs of particular kinds of government action. Requiring Congress to state its purpose with special clarity both imposes an additional drafting hurdle and may serve to mobilize opposition by highlighting the proposed intrusion on state authority. n618 Clear statement rules in this sense embody both the soft and process-based dimensions of federalism doctrines discussed in Part II. It thus seems best to justify the Court's state-protective clear statement canons not through fictional attributions of congressional intent - that is, by assuming that Congress generally intends to protect state autonomy - but as doctrinal innovations by courts designed to protect state autonomy. n619 We should also forthrightly acknowledge that these clear-statement doctrines are constitutional in nature; as Larry Sager has demonstrated, the fact that a norm is "under-enforced" - that is, enforced through something short of a strong invalidation norm - does not mean the norm lacks grounding in the Constitution. n620 And I have argued elsewhere that these sorts of innovations ought not to be dismissed simply because they cannot be grounded directly in [*127] text or history. n621 Rather, they should be assessed by how well they implement the commitments to state autonomy that are embodied in the Constitution. On those criteria, the strong autonomy model would embrace a broad range of "soft" rules because of their attention to autonomy values and their responsiveness to the institutional limitations courts confront in enforcing federalism.

Solvency – A/T Plan Key to Precedent

CP is key to set precedent – constitutional restrictions of congressional power are unenforceable, clear statement rules promote constitutional values without interfering with congress

Frickey and Eskridge, 1992 (Philip P., Faegre & Benson Professor of Law, University of Minnesota, and William N. Eskridge Jr., Professor of Law, Georgetown University Law Center, "Quasi-Constitutional Law: Clear Statement Rules As Constitutional Lawmaking," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2860&context=facpubs)

A further theme of this study is that the current Court emphasizes a different array of clear statement rules than did the Court in the 1970s. The current Court is less inclined to protect individual rights through cautious statutory interpretation than the Court was a decade ago, and more inclined to protect constitutional structures through cautious interpretation. Moreover, consistent with its interest in textualism as its dominant interpretive methodology, the current Court emphasizes clear statement rules much more than presumptions. Indeed, the most striking innovation of the recent Court has been its creation of a series of new "super-strong clear statement rules" protecting constitutional structures, especially structures associated with federalism. These super-strong clear statement rules are remarkable. On the one hand, they require a clearer, more explicit statement from Congress in the text of the statute, without reference to legislative history, than prior clear statement rules have required. This would suggest that such rules are protecting particularly important constitutional values. But, on the other hand, the super-strong clear statement rules the Court has actually adopted protect constitutional values that are virtually never enforced through constitutional interpretation. That is, the Court in the 1980s has tended to create the strongest clear statement rules to confine Congress's power in areas in which Congress has the constitutional power to do virtually anything. What the Court is doing is creating a domain of "quasi-constitutional law" in certain areas: Judicial review does not prevent Congress from legislating, but judicial interpretation of the resulting legislation requires an extraordinarily specific statement on the face of the statute for Congress to limit the states or the executive department. That the Court's super-strong clear statement rules are new does not mean they are undesirable, of course. In fact, a good case can be made for such quasi-constitutional law: structural constitutional protections, especially those of federalism, are underenforced constitutional norms. They are essentially unenforceable by the Court as a direct limitation upon Congress's power, and are best left to the political process. But the Court may have a legitimate role in forcing the political process to pay attention to the constitutional values at stake, and super-strong clear statement rules are a practical way for the Court to focus legislative attention on these values.

Solvency – A/T Congress Overturns

Congress won't overturn the CP

Frickey and Eskridge, 1992 (Philip P., Faegre & Benson Professor of Law, University of Minnesota, and William N. Eskridge Jr., Professor of Law, Georgetown University Law Center, "Quasi-Constitutional Law: Clear Statement Rules As Constitutional Lawmaking," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2860&context=facpubs)

As the Dellmuth example illustrates, the countermajoritarian nature of the Court's super-strong clear statement rules is not necessarily mitigated by the possibility of a congressional override. Even when Congress thinks it is overriding the Court, the Court has frustrated Congress's expectations in cases like Dellmuth.1 6 More important, it is sometimes as difficult to override a Supreme Court statutory decision as it is to override a constitutional one. Thus, in the current period of divided government, with the

President and the Court aligned on issues of civil rights against the preferences of Congress, an override of a Supreme Court statutory decision requires the same supermajorities in Congress that a constitutional amendment requires. 11 Even when the President is not opposed to an override, powerful interest groups-including the ones that won the Supreme Court case-will be, and the legislative process offers numerous opportunities for determined minorities to thwart override efforts.

I find this argument highly dubious – the CP creates substantive rights and imposes high costs on congress for overturning

Meagher, 20**14** (Dan, Associate Professor, School of Law, Deakin University, "The Principle of Legality as Clear Statement Rule: Significance and Problems," The Sydney Law Review, September, 36 Sydney L. Rev. 413)

In an age of statutes, clear statement rules in the United States and the principle of legality in Australia provide for fundamental rights strong protection against statutory modification. They do so by 'announcing a rule of law: in the absence of clear statutory text speaking to the precise issue, judges must interpret the statute a certain way'. n190 The principle of legality is a strong Australian species of clear statement rule that is applied when legislation engages common law rights, freedoms and principles. The courts are looking for a clear indication that the legislature has directed its attention to the rights and freedoms in question and has consciously decided upon abrogation or curtailment. The significance of this is the construction and protection of a quasi-constitutional common law bill of rights that is now used as 'a baseline of acceptable law and conduct' n191 for the political arms of government.

Congress CP

1NC

The United States Congress should prohibit the collection of metadata by or for the use of the National Security Agency citing the fact that such data collection is a violation of the Fourth Amendment to the United States Constitution.

Congress solves best – they have the necessary expertise to regulate privacy

Yoo, 20**13** (John, Emanuel Heller professor of law at the University of California at Berkeley, "The flaw in the fourth amendment NSA ruling," National Review, December 17, http://www.nationalreview.com/corner/366567/flaw-fourth-amendment-nsa-ruling-john-yoo)

Judge Leon cannot claim that the reasoning of Smith does not cover the telephone metadata at issue here, because the data collected are exactly the same as the kind held unprotected in Smith. Leon's decision instead argues that technology has changed so much that Smith is no longer good law. But that is not Judge Leon's decision to make; that is up to the Supreme Court. Judge Leon concludes that the ability to collect and analyze the data, and the extent of its collection, was unlike anything in existence at the time of Smith. Again, that was not for Judge Leon to decide, but for the Supreme Court. In fact, I do not think that this is fundamentally the job of judges. It may be time to reconceive the rules of search and seizure in light of new Internet technologies — but that is the responsibility of our elected representatives. Only they can determine what society's "reasonable expectation of privacy" is in Internet and telephone communications. Judges are the last people to fairly claim they have their fingers on the pulse of the American people. Only our elected representatives can properly balance existing privacy rights (if any), against the need for information to protect the nation from terrorist attack. Judges are far too insulated and lack the expertise to make effective judgments on national-security and foreign affairs. The president and Congress must take up their duty and work out the rules to govern surveillance to protect the nation's security, and when they don't, it is left up to the branch least capable of doing so, the judiciary.

Counterplan is key to the effectiveness of constitutional protections and to overall legitimacy

West, 2007 (Robin, professor of law at the Georgetown University Law Center, "Constitutional fidelity and democratic legitimacy," July, American Constitution Society for Law and Policy, http://www.acslaw.org/files/Robin%20West%20Vanderbilt%20Paper%207-2007.pdf)

There is, a second problem with the conventional account, however, that an increasing number of "popular constitutionalists" have begun to elaborate. The problem is one of "underenforcement" of constitutional guarantees. To summarize a large and growing body of scholarship, the suggestion is that **there may be constitutional values**, arguments, and even entire constitutional clauses that **are slighted by the conventional allocation of labor**. Some constitutional provisions, including some that go to liberty and equality, might be best understood as aimed at protecting all citizens or even majorities of citizens, against empowered minorities with entrenched power, rather than the other way around. If that's right, then **those provisions might best be** explicated, interpreted, recognized, and **enforced through** representative, **legislative**, political, majoritarian **decision-making**. Part of the Fourteenth Amendment, furthermore, might be of this nature: the Privileges and Immunities Clause, the Citizenship Clause, perhaps even the Equal Protection Clause, might all be best understood as imposing upon the Congress various duties to affirmatively act so as to protect the positive rights, liberties, and the privileges and immunities of all citizens against various sorts of dangers.3 **The Court**, for both institutional and jurisprudential reasons, might **be constitutively incapable of seeing some meanings that are clearly there**: **Court**s, by design, are best situated to respond to constitutional clauses protecting the rights of minorities or individuals against overly intrusive state action, and **are not well situated to protect the citizenry generally against a failure of the state to ac**t. If so, we are not enjoying the fruits of even our enumerated text, much less the unenumerated one. The conventional allocation of labor might have cramped our understanding of the Constitution's meaning, and specifically, our understanding of the moral content, and meaning, of the

Reconstruction Amendments. For these and other reasons, a number of scholars have argued some measure of a re-shuffling of the allocation of labor suggested by the conventional understanding. I. Our Political Constitution So, let me turn to the less conventional answer to the question posed above: would the quality and legitimacy of representative politics be enhanced by greater constitutional fidelity on the part of our elected representatives? Contra the conventional view, perhaps the answer is yes: the democratic "**legitimacy" of our politics might be enhanced by legislative** as well as popular fidelity to constitutionalism. **The quality of our politics might be enhanced**, and **the more progressive and egalitarian interpretations of various clauses of the Constitution**, notably the Reconstruction Amendments, might **likewise be realized, were they subjected to legislative** rather than judicial **interpretation** and enforcement. That, at any rate, is the suggestion now being urged by various popular and legislative constitutionalists. To put my cards on the table, I think it's an important and serious claim. **Were conscientious legislators to take the Constitution seriousl**y, it might enhance the quality of political deliberation, and **it might result in a more egalitarian**, as well as more robust and meaningful, **set of constitutional commitments**. We should consider not only the possible understandings of the Constitution that a future Court might embrace, but more ambitiously, perhaps, the possible understandings of constitutionalism that might one day guide serious legislative politics. The "legislated constitution," or the political constitution, or popular constitutionalism, remain unexplored possibilities for progressive politics, worthy of serious consideration.

Popular Constitutionalism Net Benefit

The counterplan alone is key to restore popular constitutionalism – any perm won't fully invalidate judicial supremacy, the CP is key to restore global democracy and civic engagement

Kramer, 200**4** (Larry D., Russell D. Niles Professor of Law, New York University School of Law, "Popular Constitutionalism, circa 2004," July, 92 Calif. L. Rev. 959)

Whatever else one might think, this plainly represents a profound change in attitude from what was historically the case. Neither the Founding generation nor their children nor their children's children, right on down to our grandparents' generation, were so submissive about their place as republican citizens. They would not have accepted - they did not accept - being told that a lawyerly elite had charge of the Constitution, and they would have been incredulous if told (as we are often told today) that the main reason to worry about who becomes President is that the winner will control judicial appointments. Something would have gone terribly wrong, they believed, **if an unelected judiciary were being given that kind of importance** and deference. Even if such a country could still be called "democratic," it **would no longer be the kind of democracy Americans** had **fought** and died **to create**. Madison thought he was being snide, after all, when he had Anti-republican say that the people "should think of nothing but obedience, leaving the care of their liberties to their wiser rulers." n171 What changed to make this sarcastic caricature not just respectable, not just real, but prevalent? [*1010] Somehow, Americans have been pacified, lulled into believing that the meaning of their Constitution is something beyond their compass, something that should be left to others. Somehow, constitutional history has been recast as a story of judicial triumphalism. **A judicial monopoly on constitutional interpretation is depicted as inexorable and inevitable**, as something that was meant to be and that saved us from ourselves. The historical voice of judicial authority is privileged while opposition to the Court's self-aggrandizing tendencies is ignored, muted, or discredited. How and why we reached this pass is a complicated story, though I alluded to a few of the causes above. Some factors are internal to constitutional law - such as the historical anomaly of the Warren Court, which instilled in many liberals a naive faith in the judiciary; and the swiftness with which the Court returned to conservatism, which has left many of these same liberals tongue-tied for fear of seeming hypocritical. n172 Other factors reflect broader and more long-term intellectual trends, like the heightened skepticism of democracy occasioned by fascism and other variants of twentieth-century totalitarianism and the emergence of interest group and rational choice theory. There are perhaps deeper causes, too. The twentieth century ended with a spectacular surge of democracy, the greatest by far since the end of the eighteenth. In simple numbers of people getting their first taste of self-government, t**he spread of democratic sentiments across the globe dwarfed the tiny American and French Revolutions.** As remarkable as this late-century embrace of democratic institutions, however, was the late-century swell of cynicism in the places where democracy is oldest and that have seen its benefits best. Signs of the phenomenon are all around us. **Voter turnout** in the United States **continues to drop**, despite occasional bounces. In Europe, splinter parties with extremist agendas and depressingly thin commitments to democracy have made hair-raising gains. Scandals abound, even

as politicians become cleaner under the ceaseless glare of public scrutiny. On both continents, **the electorate willingly embraces extravagantly implausible amateur politicians**, while polls report persistently rising levels of mistrust in leadership and skepticism about the ability of politics to make life better. **The willingness to surrender constitutions to courts** - another phenomenon that is occurring worldwide - can and perhaps **should be seen as a symptom of this larger trend.** Whatever the reasons for the change, it would be foolish and shortsighted to assume that it is permanent. For now, so far as most Americans are concerned, the stakes may remain obscure and esoteric. But if history teaches anything, it is that this will change if the Court persists on its current path. The intellectual case against judicial supremacy and in favor of [*1011] popular constitutionalism is, as we have seen, already being built - has already been built. **The question is whether the Justices are listening**. Actually, whether the Justices are listening ultimately matters less than whether anyone else is. For **the choice between popular constitutionalism and judicial supremacy** - between what Sanford Levinson has called a "protestant" and a "catholic" Constitution n173 - **is necessarily** and unavoidably **one for the** American **people** to make. The Constitution does not make the choice for us. Neither does history or tradition or law. We may choose as a matter of what Levinson calls "constitutional faith" to surrender control to the Court, to make it our platonic guardian for defining constitutional values. Or we may choose to keep this responsibility, even while leaving the Court as our agent to make decisions. Either way, we decide. n174

This depoliticization causes extinction

Boggs 19**97**(Carl, Professor of Political Sience – National University, Theory & Society 26, December, p. 773-4)

The decline of the public sphere in late twentieth-century America poses a series of great dilemmas and challenges. Many ideological currents scrutinized here ^ localism, metaphysics, spontaneism, post- modernism, Deep Ecology – intersect with and reinforce each other. While these currents have deep origins in popular movements of the 1960s and 1970s, they remain very much alive in the 1990s. Despite their different outlooks and trajectories, they all share one thing in common: a **depoliticized expression of struggles** to combat and overcome alienation. The false sense of empowerment that comes with such mesmerizing impulses **is accompanied by a loss of public engagement**, an erosion of citizenship **and a depleted capacity of individuals** in large groups **to work for social change**. As this ideological quagmire worsens, **urgent problems** that are destroying the fabric of American society **will go unsolved** – perhaps even unrecognized – **only to fester** more **ominously into the future**. And **such problems** (**ecological crisis**, poverty, urban decay, spread of **infectious diseases**, technological displacement of workers) **cannot be understood outside the** larger social and **global context** of internationalized markets, finance, and communications. Paradoxically, the widespread retreat from politics, often inspired by localist sentiment, comes at a time when agendas that ignore or side- step these global realities will, more than ever, be reduced to impotence. In his commentary on the state of citizenship today, Wolin refers to the increasing sublimation and dilution of politics, as larger numbers of people turn away from public concerns toward private ones. By diluting the life of common involvements, we negate the very idea of politics as a source of public ideals and visions.74 In the meantime, **the fate of the world hangs in the balance**. The unyielding truth is that, even as the ethos of anti-politics becomes more compelling and even fashionable in the United States, it is the vagaries of political power that will continue to decide the fate of human societies. This last point demands further elaboration. The **shrinkage of politics hardly means** that **corporate colonization will be less of a reality**, that social hierarchies will somehow disappear, **or that gigantic state and military structures will lose their hold** over people's lives. Far from it: **the space abdicated by a broad citizenry**, well-informed and ready to participate at many levels, **can** in fact **be filled by authoritarian and reactionary elites** – an already familiar dynamic in many lesser- developed countries. The fragmentation and chaos of a Hobbesian world, not very far removed from the rampant individualism, social Darwinism, and civic violence that have been so much a part of the American landscape, could be the prelude to a powerful Leviathan designed to impose order in the face of disunity and atomized retreat. In this way the eclipse of

politics might set the stage for a reassertion of politics in more virulent guise – or it might help further rationalize the existing power structure. In either case, the state would likely become what Hobbes anticipated: the embodiment of those universal, collective interests that had vanished from civil society.75

A/T Perm Do Both

The perm doesn't solve – CP requires taking control of constitutional interpretation away from the courts, including the supreme court undermines this

Kramer, 2004 (Larry D., Russell D. Niles Professor of Law, New York University School of Law, "Popular Constitutionalism, circa 2004," July, 92 Calif. L. Rev. 959)

From the perspective of American history, and I mean the full sweep of that history, **the circumstances of constitutional law** today **look** downright **unnatural**. For while there may always have been champions of the aristocratic sensibility alongside the democratic one, there never was much doubt about the democratic principle's dominance, as reflected in the evolving practices of popular constitutionalism. Until now, that is. Earlier generations of Americans did sometimes let their guard down, giving those who worry excessively about democracy an opportunity to assert themselves and relieve their anxieties. **These overanxious souls** invariably **grasped the opportunity**, too, seeking as best they could **to extend their control over politics**, whether by concentrating power at the national level (like the Federalists of the 1790s) **or turning for help to the Supreme Court** (like conservatives during the Lochner era). Yet once the threat had become clear and Americans understood what was at stake, they always reasserted their right and their responsibility to say finally what the [*1009] Constitution means, disdaining the nervous paternalism of those who would define their fundamental values for them. Are Americans today willing to do the same? **Are we prepared to insist on our right to control the meaning of the Constitution**? I wonder. **This is** not a matter of liberal versus conservative politics. It is a m**atter of choosing complacently to accept the Court's word as final** regardless of the issue, regardless of what the Justices say, and regardless of the Court's political complexion. Why else has the appointment process come to matter so much? n169 Liberals fight hard to block conservative nominations because they believe and are ready to accept that once in office these Justices should have the power to decide matters once and for all. Senator Patrick Leahy, former Democratic chairman of the Senate Judiciary Committee and an active critic of the Rehnquist Court, takes great pains to purge his speeches of any hint of challenging the Court's authority. "As a member of the bar of the Court, as a U.S. Senator, as an American," he says, "I, of course, respect the decisions of the Supreme Court as ... the ultimate interpretation of our Constitution, whether I agree or disagree." n170 And **in that** "of course" **lies the crux of today's reigning sensibility**. Nor do conservatives differ in this respect, as evidenced by their own passivity toward the Court's authority and their matching obsession on the matter of appointments.

Solvency – Generic

Congress is key to restore democracy and give legitimacy to constitutional rights

Williams, 2004 (Norman R., Assistant Professor of Law, Willamette University, "BOOK REVIEW: The People's Constitution," October, 57 Stan. L. Rev. 257)

Larry Kramer is upset, and he thinks you should be upset, too. And, if Kramer is right, we should be upset, for what Kramer describes in this probing and elegant work is nothing less than a constitutional coup d'etat. According to Kramer, the federal judiciary has usurped the role of we the People in guarding our constitutional commitments. Worse still, we have accepted that, once the federal courts have spoken, the judiciary's word on the matter is final - that we the People are obligated to accede to the judiciary's interpretation of the Constitution, no matter how erroneous we think that interpretation may be. Kramer is scathing: we no longer live in a democracy in which the People decide for themselves the meaning of the Constitution; we live in an aristocracy in which a cabal of unelected judges decides for the rest of us what the Constitution means (p. 247). We have succumbed, it seems, to the rule by Platonic jurists of which Judge Learned Hand warned us. n1 [*258] This is not some blunderbuss attack on the federal judiciary or the power of judicial review. Nor is it a reprise of the much hashed-over debate surrounding the so-called countermajoritarian dilemma. In fact, Kramer endorses the power of judicial review, agreeing that the federal courts should have the power to set aside legislation or executive action that is inconsistent with the judiciary's understanding of the Constitution. In this respect, Kramer's criticism of current

constitutional practice differs from that of Mark Tushnet, who has called for the wholesale repudiation of the power of judicial review. n2 Nevertheless, Kramer's analysis of our current constitutional order and the federal courts' place in it is just as biting as Tushnet's. Drawing on an earlier foreword in the Harvard Law Review, n3 Kramer focuses his attack on the doctrine of judicial supremacy - the notion that the judiciary's understanding of the Constitution is supreme over those of Congress, the President, and the People. Kramer subscribes instead to a view called "departmentalism," which holds that each branch must decide for itself what the Constitution means. If there is a disagreement between two or more branches, it is for the People to resolve which view is the correct one.

A/T Courts Good – Countermajoritarian

Courts aren't effectively countermajoritarian – they fear the majority and don't provide checks

Kramer, 2004 (Larry D., Russell D. Niles Professor of Law, New York University School of Law, "Popular Constitutionalism, circa 2004," July, 92 Calif. L. Rev. 959)

The Supreme Court has, in a few instances, expressly recognized a need for this kind of construction via the political question doctrine. But as Whittington convincingly demonstrates, the Court has silently watched as a much larger number of problems were resolved in and through politics. Whittington describes some of these in detail, such as defining the terms of judicial independence in the Chase impeachment and resolving the constitutionality of protective tariffs in the fight over nullification. n32 Yet Whittington's list of relevant constructions covers a broader range of subjects, most with somewhat lower political profiles. These encompass the creation of organic political structures (e.g., cabinet departments, the size [*969] of the Supreme Court, congressional committees), the distribution of important political powers (e.g., embargoes, the scope of the President's veto, congressional subpoena and contempt powers), the definition of certain individual or collective rights (e.g., secession, the draft), the structure of politics (e.g., the cap on the size of the House of Representatives, use of the Australian ballot, the requirement of winner-take-all districts), the allocation and exercise of legislative jurisdiction (e.g., annexation of new territory, home rule in the District of Columbia, extension of coastal national waters), and numerous issues of international governance (e.g., entry into NATO and the United Nations, executive agreements, recognition of foreign powers). n33 The overall picture is consistent with, and indeed tends to substantiate, Lawrence Sager's suggestion that judges have "singled out comparatively few encounters between the state and its citizens as matters of serious judicial concern." n34 These political resolutions may not be conventionally thought of as "law" (because they were not dictated by courts), yet they rest on interpretations and constructions of the Constitution that have proved as or more durable than judicial precedent. n35 Another group of scholars argues that the judiciary's authority and control over constitutional law is limited even with respect to all those matters conventionally thought to present controversies of a type addressed by courts. This group includes writers who insist that "in our political system the executive and legislative branches necessarily share with the judiciary a major role in interpreting the Constitution." n36 According to Louis Fisher, among the most prolific writers associated with this idea, n37 "the historical record proves overwhelmingly" that "the Court is neither final nor infallible. Judicial decisions rest undisturbed only to the extent that Congress, the President, and the general public find the decisions [*970] convincing, reasonable, and acceptable. Otherwise, the debate on constitutional principles will continue." n38 A model of law that rests on a simple one-to-one correspondence between what the Court says and what affected actors do is misleading. Not only do Congress, the President, the states, and other relevant players find room to act in, around, and between judicial decisions, but the Court often finds that it must work in partnership with these nonjudicial actors to give shape to constitutional values in the first place. n39 A particularly rich strand in this line of scholarship explores the Supreme Court's strategic interactions with other political actors and finds that the Justices "rarely oppose strong majorities and almost never do so for any length of time." n40 Mr. Dooley's familiar adage about the Court's attention to election results may be somewhat overstated, n41 but a sizeable body of empirical work supports the view that the judiciary is seldom far out-of-step with legislative majorities at the national level and that when there is a divergence it rarely lasts. n42 Lawyers hate this sort of stuff. Witness the ill will provoked by Gerald Rosenberg's concededly provocative book, The Hollow Hope, which argued that even celebrated cases like Brown, Roe v. Wade, n43 and Miranda v. Arizona n44 were either [*971] inconsequential or ineffective as engines of social change. n45 But the data are numerous and consistent, and there is now a general consensus among social scientists that courts have not been a strong or consistent countermajoritarian force in American politics. No similar consensus yet exists about why this should be so, n46 but that it is so seems hard to deny.

A/T Courts Key to Check Congress

Relying on the courts as a check on congress guarantees repressive legislation – the CP reorients the legislative process

West, 2007 (Robin, professor of law at the Georgetown University Law Center, "Constitutional fidelity and democratic legitimacy," July, American Constitution Society for Law and Policy, http://www.acslaw.org/files/Robin%20West%20Vanderbilt%20Paper%207-2007.pdf)

The legislated branch, according to this conventional answer, constitutionally speaking, can behave irresponsibly, because the judiciary is charged with the obligation of aligning law with constitutional mandate. So, according to the conventional answer, if Congress, responding to and representing passion, whimsy, woes, fears or fury, decides to give the President the power to lock up American citizens without recourse to trials, or to allow him to direct military interrogators to ignore the Geneva Conventions, or they decide to prolong Terry Schiavo's life, or to outlaw contraception, or to mandate the Lord's Prayer in public schools—oh well, so goes the conventional answer, that's just Congress being Congress. The Court's job is to apply sweet judicial reason, Constitutional constraints, and its understanding of liberty, equality and so forth to all of this, and to right the apple cart. The Court will ensure, through the exercise of reason that the the product of Congressional action aligns with constitutionalism. Congress, in other words, acts and the Court reasons. The result is constitutional fidelity and democratic legitimacy both. We need not worry, then, if our politics are constitutionally irresponsible. The Constitution, after all, is law, which the Court ascertains and applies. This conventional answer, as Bradley Thayer predicted a hundred years ago,1 increasingly seems to be not only misguided, but even destructive, and for at least two reasons. First, it rests on a debased, denuded view of politics, and therefore, to the considerable degree that constitutional ideas really do matter, it actually debases politics. Politics, and not just adjudication, ought to be reasoned, deliberate, intelligent, forward-looking, respectful of the past, and mindful of equality and liberty. Legislators ought to possess and exercise precisely the virtues we ask of judges. Our politics, and not just our law, should be ennobling; it should be as Aristotle thought it was: the highest form of ethical decision-making by and over the affairs of civic equals. The division of labor on the conventional account virtually guarantees it won't be. The greater and wider and stronger the moral context, or richness, of the Constitution's grand phrases, furthermore, the worse the problem becomes. Dworkin's mythical judge Hercules,2 deciding cases by the light of omniscience and perfect moral knowledge, is just the limiting case, he casts in sharp relief, albeit unintentionally, precisely what is wrong with the conventional answer he was created to justify. Hercules, as Dworkin has described him, has the virtues of the quintessential Aristotlean political actor: he is wise, philosophically astute, mindful of history, and dedicated above all else to promoting liberty and equality. But—he's a judge. By contrast, the Dworkinian legislator, as Dworkin tells us again and again, just does whatever he wants. Dworkin's judge is truly political in the highest sense. The legislator, by contrast, is infantile. There is a problem when our most enduring, most conventional account of constitutionalism effectively casts our politics as a sandlot brawl.

A/T Key to Stable Interpretation

CP solves predictability – congress values it as much as the courts

Kramer, 2004 (Larry D., Russell D. Niles Professor of Law, New York University School of Law, "Popular Constitutionalism, circa 2004," July, 92 Calif. L. Rev. 959)

A second point, equally obvious, is also equally important to emphasize: we cannot ask how much stability different institutional arrangements will provide in the abstract. As Mark Tushnet notes, "the question for institutional design is not what principles govern the institutions, but what practices they engage in." n103 Proponents of judicial supremacy on settlement grounds have been notoriously inattentive to what we know about how political institutions actually handle constitutional questions, content to argue from stereotypes and theoretical possibilities. Yet experience suggests that if there is a "settlement gap" between a world with judicial supremacy and a world without it, that gap is likely to be small. [*988] This is so for a number of reasons. Nonjudicial actors also value stability and predictability and work hard to produce it. n104 More important, the structure of American politics - including not just the formal Constitution, but also subconstitutional devices like the filibuster and congressional committee system - tends to reinforce these natural incentives by requiring large coalitions to bring about change. n105 "The difficulty of getting laws passed unless they have really strong support," Tushnet offers, "means that making our fundamental law depend on what Congress enacts would almost certainly be no more unstable than making it depend on what five Justices say." n106 Partly for this

reason, moreover, it would never be the case (as the argument is sometimes caricatured) that everything would be up for grabs all the time. Issues might come and go; things that were once settled might again become controversial. But at any given time, the vast majority of constitutional law would be stable and settled.

A/T Judicial Independence Good

Judicial independence is bad – congressional interpretation is better

Kramer, 200**4** (Larry D., Russell D. Niles Professor of Law, New York University School of Law, "Popular Constitutionalism, circa 2004," July, 92 Calif. L. Rev. 959)

Consider, for example, the argument that judges can reason about questions of principle "better" because institutional independence insulates them from the sort of grubby self-interest that distorts the thinking of ordinary citizens and politicians. Even granting the very questionable proposition that judges are meaningfully insulated from self interest (as opposed to experiencing it in a different form), the argument that this is a good thing "flies in the face of other epistemic precepts" - for example, "that decisions about rights are best taken by those who have a sufficient stake in the matter to decide responsibly." n124 And how do we resolve that disagreement? Yet without concurrence on the necessary or proper circumstances for reaching correct results, any argument that judges are more likely to do so either lacks foundation or begs the question: Without an epistemology - and an epistemology which is to some extent less controversial (or at any rate differently controversial) than the knowledge claims it covers - there cannot be a theory of expertise. Thus the epistemic inadequacy of moral realism is far-reaching: in practical matters, it deprives realists of almost everything that they might want to say or argue for in the name of objectivity. n125 It does not follow that we must reject judicial supremacy. Uncertainty about which answers or processes are best does not automatically point us toward any other institution to resolve disagreements either. Perhaps backers of judicial supremacy need to be less confident about their argument, but incertitude is not the same thing as incapacity. We still must decide who should decide, and one could still choose the judiciary because one believes (all things considered) that the judicial process still offers the best solution. Waldron recognizes this but suggests two reasons for lodging final interpretive authority elsewhere. First, Waldron says, the unavoidable existence of disagreement and uncertainty about outcomes means that any argument based on "rights-instrumentalism" - the notion that this or that decision-making procedure is likely to produce more correct results - will never rest on anything other than faith and will be decided less on the basis of hard evidence than a priori postulates about how different actors behave. n126 The turn to judges, for example, relies on and reflects a fairly profound skepticism about the ability of politicians and ordinary citizens to handle constitutional questions: a belief that, at its most cynical, sounds something like "legislative and electoral politics is entirely a matter of self-interest, [*996] and ... representatives and voters never raise their minds above the sordid question, "What's in it for me?"" n127 Yet the assumption that ordinary citizens cannot be trusted to understand or respect the principles that animate constitutional rights stands at odds with the assumption we make about why they are entitled to those rights in the first place - which is that human individuals are thinking agents, "endowed with an ability to deliberate morally, to see things from others' points of view, and to transcend a preoccupation with [their] own particular or sectional interests." n128 This being so, Waldron reasons, should we not rather resolve our uncertainty about rights in favor of individual participation? How can we say we are offering someone the respect he or she is owed as an active, thinking person entitled to rights if, at the same time, we ignore what he or she has to say about the matter? Not that individuals will always make correct choices, either for themselves or (collectively) for others. But insofar as uncertainty will always remain about which choices are in fact correct, the affected individuals should themselves be the ones to decide. This might be true even were we certain that "a nine man junta clad in black robes and surrounded by law clerks" n129 would generally do a better job. But surely it seems right where we can have no basis for such confidence. This position, Waldron explains: Embodies a conviction that these issues of principle are ours to deal with, so that even if they must be dealt with by some institution which comprises fewer than all of us, it should nevertheless be an institution that is diverse and plural and which, through something like electoral accountability, embodies the spirit of self-government, a body which can discern the manifest footprints of our own original consent. n130

A/T Judicial Review Good

Judicial review undermines deliberative democracy and empowers social elites

Aronson, 20**10** (Ori, S.J.D. Candidate, Harvard Law School, and Sacher Research Fellow, Hebrew University of Jerusalem, "INFERIORIZING JUDICIAL REVIEW: POPULAR

CONSTITUTIONALISM IN TRIAL COURTS," University of Michigan Journal of Law Reform, Summer, 43 U. Mich. J.L. Reform 971)

(1) Anti-democratic. The oldest critique in the "new wave" of critiques of judicial review is that which emerged anew with Alexander Bickel's Least Dangerous Branch, n5 namely, that judicial review is countermajoritarian, and thus in its very essence is at odds with democracy. The well-known argument is that allowing non-elected and unremoveable judges and justices to overrule procedurally valid decisions of periodically elected bodies (namely Congress) undermines the very bedrock of democratic rule - majoritarian decision-making by elected representatives who are institutionally accountable to popular will. This is a "difficulty" with any constitutional regime, n6 but it is most severe in constitutional regimes like that of the United States, in which the Constitution is relatively old and practically unamendable. Under a rule of judicial review, the will of current majorities - as exhibited through legislative acts of elected representatives - is being overruled by an unelected minority, which at best follows the dictates of past generations, and at worst applies its own set of beliefs and mores. [*976] Democracy - understood as government through the aggregated will of current majorities - is therefore undermined by the combined will of current minorities and past generations. (2) Not professionally adequate. A second difficulty with judicial review is that even if one supports a constitutional regime, in the sense that current majorities should be bound by the value and procedure determinations of past majorities (or, often, past super-majorities), then judges are not necessarily, and to some necessarily not, the best equipped agents of constitutional interpretation and application. n7 While judges, bound by their professional ethos, focus on interpreting texts, adhering to or distinguishing earlier precedents, and cloaking their ideological standpoints, legislators regularly drive to the heart of moral disagreements and openly engage with the policy implications of their determinations. Because constitutional interpretation calls for moral and political deliberation, legislatures may be more suited for the job, and therefore also more legitimate. n8 (3) Inhibits Deliberation. A third theme of the attack on judicial review concerns the effects of judicial review on the strength of the democratic culture and on such values as participation, deliberation, and public engagement in the political process. According to this argument, leaving the final interpretation and application of the Constitution to the courts numbs the public forums that are both functionally and democratically more suited to conduct moral deliberation and to produce legitimate political determinations: most notably, elected legislatures and their originating processes - party politics and electoral campaigns. n9 Rather than "fight it out" in the forums of public deliberation, both constituents and representatives often defer to the stylized, alienated, paternalistic, and assumedly conclusive determinations of a professional judiciary in a wide variety of deeply contested issues of value. This loss of participation and public deliberation harms democratic legitimacy, erodes public attentiveness to injustices and rights-violations and to popular capabilities to address them, undermines the shared experience of a political community, marginalizes "have-nots," and [*977] empowers "haves" and legal repeat-players. For deliberative visions of democracy, judicial review may be an inhibiting force. n10 (4) Elitist. A fourth kind of critique of judicial review aims at the socially elitist nature of the practice. Judicial review is typically practiced by usually affluent, usually white, usually male, judges who enjoy - at least since they were exempted from circuit duties and granted the power of certiorari - an institutionalized aloofness. Judges and, more so, justices, who normally belong to an elite class within their society, hold themselves capable of providing the national constituency with a definitive interpretation of their founding tenets. This practice legitimates and preserves an existing social order: it legitimates the political structure by wielding a rhetoric of rights. n11 While this critique is applicable to many judicial practices, it may be argued that judicial review is the most extreme case of judicial anti-populism. Judicial review lets judges have their way with the essentials that define the polity - the constitution - which is arguably the field where popular energy may be most obviously and directly exerted. n12

K Stuff

Rights Bad

Rights focus stifles more radical challenges and diminishes welfare for rights holders

Schlanger, 20**15** (Margo, Henry M. Butzel Professor of Law, University of Michigan, "Intelligence legalism and the national security agency's civil liberties gap," 6 Harvard National Security Journal 112)

Theorists and observers in a variety of fields have developed the broad critique that law and its concomitant rights orientation may have the counterintuitive impact of decreasing the welfare of the purported rights holders—or, in a more modest version of the point, may ameliorate some prevalent set of harms but undermine more ambitious efforts. Focusing particularly on litigation, they argue that it is inherently a timid enterprise, and yet it crowds out other more muscular approaches.317 Even with respect to out-of-court rights orientation, or "legalization," scholars have offered the insight that formalizing/legalistic approaches can come with real costs to their intended beneficiaries, depending on the context. 318 The issue is whether, in a particular institutional setting, these possibilities have materialized. In this Section, I examine two pathways by which intelligence legalism tends to impair the prospects of a softer civil-liberties protective policy. 1. Intelligence Legalism Crowds Out Interest Balancing This Article demonstrates the high salience of rights in this realm. Several related mechanisms convert that high salience into a devaluation of interests: First, rights occupy the "liberty" field because of the practical issue of attention bandwidth, which potentially applies both to agencies and advocates. After all, even large organizations have limited capacity.319 NSA compliance is such an enormous task that little room remains for more conceptual weighing of interests and options. Recall that of the dozen-plus offices I described in Part II, just two—the Civil Liberties and Privacy Office at the NSA, and the Privacy and Civil Liberties Oversight Board—are currently playing a policy rather than strictly a compliance role. They are also, not coincidentally, the two newest and two smallest of the offices listed. I think, though, that this bandwidth issue is driven by a more conceptual, less practical, factor: that rights talk hides the necessity of policy judgments and, by its purity, diverts attention from that messier field. Morton Horwitz explains the point: A . . . troubling aspect of rights discourse is that its focus on fundamental, inherent, inalienable or natural rights is a way of obscuring or distorting the reality of the social construction of rights and duties. It shifts discussion away from the always disputable issue of what is or is not socially desirable. Rights discourse . . . wishes us to believe instead that the recognition of rights is not a question of social choice at all, as if in the normative and constitutional realm rights have the same force as the law of gravity.320 Mary Dudziak makes a similar claim in her recent discussion of law and drone warfare, "In this context, law . . . does not aid judgment, but diverts our attention from morality, diplomacy, humanity, and responsibility in the use of force, and especially from the bloody mess left on the ground."321 Even in Fourth Amendment jurisprudence, an area of constitutional doctrine explicitly imbued with policy considerations, we talk about rights as if they are somehow scientific, to be deduced rather than debated. The discussion that must accompany policy claims pales in prestige and importance by comparison. And from the perspective of their beneficiaries, judicially enforceable rights, with their promise of supremacy over competing interests, are shiny and magnetic. This is why the assertion of rights can be such a powerful organizing tool322—even if those rights don't turn out to change much on the ground. As Rich Ford has written, "Rights are a secular religion for many Americans."323 Or to quote Alan Freeman's classic article about civil rights, "Rights consciousness can offer sustenance to a political movement, however alienated, indeterminate or reified rights may be."324 It is the purity, the apparent apolitical nature, of rights that makes them nearly the only coin available. By comparison with judicially enforceable rights, other methods of advancing individual liberty look feeble, contingent, jury-rigged. An accusation of illegality becomes the required first bid for any policy discussion, and a refutation of that accusation ends play. This dynamic is very much in evidence in the response to the PCLOB's 702 report, described above. Rights discourse stunts needed policy discourse.325

Judicial Review Bad

Judicial review legitimates surveillance – makes systemic reform more difficult

Schlanger, 20**15** (Margo, Henry M. Butzel Professor of Law, University of Michigan, "Intelligence legalism and the national security agency's civil liberties gap," 6 Harvard National Security Journal 112)

In addition, judicial review legitimates the American surveillance system; that is why reference to court supervision is surveillance proponents' first recourse when they want to suggest that everything is fine. It is, for example, a rare speech by a government official that fails to make reference to the FISA Court and its ratification of the government's surveillance programs. Below are passages, chosen essentially at random, from a speech by President Obama on the topic of signals intelligence reform326: • "I ordered that our programs be reviewed by my national security team and our lawyers . . . . We increased oversight and auditing, including new structures aimed at compliance. Improved rules were proposed by the government and approved by the Foreign Intelligence Surveillance Court." • "[T]he Foreign Intelligence Surveillance Court . . . provides judicial review of some of our most sensitive intelligence activities." In language like the above, court involvement is offered as evidence of both legality and appropriateness; indeed, the two are conceptually merged. My point is not that FISA Court legitimation is phony. In fact, judicial review has real effects on the system—we know from the recently declassified documents that FISA Court review disciplines the surveillance system, holding it at least to the government's own representations.327 Yet the oversight gain carries with it a legitimation cost; the existence of judicial review makes political change more difficult. Scholars, particularly critical legal studies scholars, have made this point in a large number of other contexts. For example, Alan Freeman argued that civil rights law—and law more generally—exists "largely to legitimize the existing social structure."328 The polity at large is soothed, and the effect is felt even by rights beneficiaries, who frame and tame their aspirations to suit the inherently limited scope of potential judicial interventions. Freeman described his view that American civil rights litigation has amounted to a "process of containing and stabilizing the aspirations of the oppressed through tokenism and formal gestures which actually enhance the material lives of few."329 He wrote: Rights are granted to, or bestowed upon, the powerless by the powerful. They are ultimately within the control of those with authority to interpret or rewrite the sacred texts from which they derive. To enjoy them, one must respect the forms and norms laid down by those in power. One must especially avoid excesses in behavior or demands.330 The point is not, for Freeman (and the plentiful literature he adduced), that law accomplishes nothing for its purported beneficiaries. If that were true, it could not legitimate: "[I]f law is to serve its legitimation function, [the] ultimate constraints [that come from politics] must yield up just enough autonomy to the legal system to make its operations credible for those whose allegiance it seeks as well as those whose self-interest it rationalizes."331 But gains from rights may—and in the surveillance situation clearly do—make gains from politics less available. To sum up this Part, neither the Constitution nor FISA aims to optimally balance security and liberty—and frequently analyzed difficulties in congressional intelligence oversight mean that new statutes are unlikely to fill that gap. Likewise the existing foundational Executive Order, 12,333, is at the very least out-of-date. Accordingly intelligence legalism, and its compliance mindset, cannot achieve optimal policy. Its concomitant empowerment of lawyers is real and important, but does not deputize a procivil liberties force. Indeed, legalism actually both crowds out the consideration of policy and interests (as opposed to law and rights), and legitimates the surveillance state, making it less susceptible to policy reform. Are there, then, non-legalistic reforms that could play a productive part? I turn next to this issue.

NSA UNT

Solvency Frontline 1/

Zero Solvency:

- Localization already in place
- No Forum for International Harmonization
- Competing Interest Overwhelm "signals"

Susan Ariel **Aaronson '12** (Research Professor at the Elliott School of International Affairs, George Washington University22 December, "Can trade policy set information free?" http://www.voxeu.org/article/trade-agreements-global-internet-governance)

Although the internet is creating a virtuous circle of expanding global growth, opportunity, and information flows (Lendle et al. 2012), policymakers and market actors are taking steps that undermine access to information, reduce freedom of expression and splinter the internet (Herald 2012). **Almost every country** has adopted policies to protect privacy, enforce intellectual property rights, protect national security, or thwart cyber-theft, hacking, and spam. While these actions may be necessary to achieve important policy goals, these policies may distort cross-border information flows and trade. Meanwhile, US, Canadian and European firms provide much of the infrastructure as well as censorware or blocking services to their home governments and repressive states such as Iran, Russia, and China (Heacock 2011, Horwitz 2011, Ungeleider 2011). As a result, although the internet has become a platform for trade, trade itself and trade policies have served both to enhance and undermine both internet freedom and an open internet. Trade agreements as internet governance Trade agreements and policies have become an important source of rules governing cross-border information flows: Policymakers recognise that when we travel the information superhighway, we are often trading – and internet usage can dramatically expand trade 1 . The internet is not only a tool of empowerment for the world's people, but a major source of wealth for US, EU, and Canadian business. Moreover, internet commerce will grow substantially in the future as much of the world's population is not yet online (OECD 2008, Internet World Stats 2012). US, European and Canadian policymakers want to both protect their firms' competitiveness and increase market share. US, European and Canadian governments understand that while some domestic laws can have global reach, domestic laws on copyright, piracy, and internet security do not have global legitimacy and force. Hence, they recognise they must find common ground on internationally accepted rules governing cross-border data flows In theory, the WTO should be an appropriate venue for such discussions. WTO members agreed not to place tariffs on data flows. In addition, the WTO's dispute settlement body has settled two trade disputes related to internet issues: internet gambling and China's state trading rights on audiovisual products and services (WTO 2007, WTO 2012). However, the member states have not found common ground on how to reduce new trade barriers to information flows 3 . In 2011, several nations stopped a US and EU proposal that members agree not to block internet service providers or impede the free flow of information online 4 . Moreover, the members of the WTO have made little progress on adding new regulatory issues such as privacy and cyber security that challenge internet policymakers 5 . However, many new online activities will require cooperative global regulation on issues that transcend market access – the traditional turf of the WTO. These issues will require policymakers to think less about ensuring that their model of regulation is adopted globally but more about achieving interoperability among different governance approaches (see Burri and Cottier 2012). Alas, policymakers are not consistently collaborating to achieve interoperability. Trade giants and the internet In a recent policy brief (Aaronson and Townes 2012), Miles Townes and I examined how the US, the EU, and Canada use trade policies to govern the internet at home and across borders. We found the three trade giants use bilateral and regional trade agreements to encourage ecommerce, reduce online barriers to trade, and to develop shared policies in a world where technology is rapidly changing and where governments compete to disseminate their regulatory approaches (Coppock and Maclay 2002). Policymakers also use export controls, trade bans or targeted sanctions to protect internet users in other countries or to prevent officials of other countries from using internet related technologies in ways that undermine the rights of individuals abroad. Finally, policymakers may use trade agreements to challenge other governments' online rules and policies as trade barriers. We discuss how these policies, agreements, bans and strategies could affect internet openness, internet governance, and internet freedom The US is actively pushing for binding

provisions in trade agreements that advance the free flow of information while challenging other nations privacy and server location policies as trade barriers. However, the US provisions are incomplete. Hence, we recommended that as trade agreements have long addressed governance, the US and other governments negotiating binding provisions to encourage cross-border information flows should also include language related to the regulatory context in which the internet functions; free expression, fair use, rule of law, and due process. Moreover, the US and other nations should coordinate policies to promote the free flow of information with policies to advance internet freedom. Policymakers may need to develop principles for the proper role of government in balancing Internet freedom and stability at the domestic and global levels. Finally, governments may also need to develop shared principles for steps governments may take when countries do not live up to these principles (a responsibility to protect the open internet). Internet openness We also believe that the US, EU and Canada should also show their commitment to internet openness by annually reporting when and why they blocked specific applications or technologies and/or limited content (or asked intermediaries to limit access) to sites or domains. With this information, policymakers may get better understanding of how to achieve a flexible and effective balance of internet stability and internet openness. Is censorship a barrier to trade? Policymakers don't know if censorship is also a barrier to trade. The US and EU have issued reports describing other countries' internet policies – regarding privacy, censorship, server location and security policies – as potential barriers to trade. However, none of the three governments has yet challenged internet restrictions as a barrier to trade. We recommended that trade policymakers ask the WTO secretariat to analyse if domestic policies that restrict information – short of exceptions for national security or public morals – are also barriers to cross-border information flows which can be challenged in a trade dispute. Moreover, policymakers should develop strategies to quantify how such policies affect trade flows. Conclusions Without deliberate intent, domestic and trade policies may gradually fracture a unified, global internet. Given that countries have different priorities for privacy, free speech, and national security, the international harmonisation of strategies to advance the open internet is unlikely.

Solvency Frontline 2/

Turn: Terrorism

A. Terrorist threats are immanent: only counter-intelligence avoids catastrophic attacks.

James Jay **Carafano** et al **'15** (Ph.D., Charles "Cully" Stimson, Steven P. Bucci, Ph.D.,John Malcolm and Paul Rosenzweig, May 21, Backgrounder #3018 on National Security and Defense, Heritage Foundation, Section 215 of the PATRIOT Act and Metadata Collection: Responsible Options for the Way Forward" http://www.heritage.org/research/reports/2015/05/section-215-of-the-patriot-act-and-metadata-collection-responsible-options-for-the-way-forward

The Real and Growing Threat of Terrorism Any debate about America's counterterrorism capabilities must be conducted in the context of the actual terrorist threat the U.S. faces. Since 9/11, The Heritage Foundation has tracked Islamist terrorist plots and attacks, which now, after the recent shooting in Garland, Texas, total 68.[1] This figure, however, does not consider foiled plots of which the public is unaware. Recently, there has been a dramatic uptick in terrorism: The shooting in Garland is the sixth Islamist terrorist plot or attack in the past five months. Add to that number the surge of Americans seeking to support or join ISIS and al-Qaeda affiliates, and one fact becomes clear: The U.S. is facing the most concentrated period of terrorist activity in the homeland since 9/11. Of course, it is no coincidence that this spike in terrorism parallels the spread of the Islamic State and other radical groups across Syria, Iraq, and other parts of the Middle East. More than 150 American passport holders have traveled to Syria, or attempted to travel there, to join the fighting, along with more than 20,000 fighters from more than 90 countries.[2] Many of these individuals with American passports are believed to have joined ISIS or the Nusra Front, an affiliate of al-Qaeda in Syria. Both the Nusra Front and ISIS espouse an anti-Western Islamist ideology that calls for terrorist attacks against the United States. For example, in July 2012, the leader of ISIS, self-proclaimed caliph Abu Bakr Baghdadi, threatened to launch attacks against the U.S. homeland. Baghdadi warned Americans, "You will soon witness how attacks will resound in the heart of your land, because our war with you has now started."[3] Toward this end, al-Qaeda formed a unit of veteran terrorists to recruit some of the Western foreign fighters in Syria and train them to conduct terrorist attacks in their home countries. This unit, dubbed the Khorasan group by U.S. officials, is embedded in the Nusra Front and is particularly interested in recruiting fighters who hold American passports.[4] These terrorist organizations have undertaken a significant effort to reach out to individuals across the world in order to radicalize and recruit them. In recent testimony before the Senate Appropriations Committee, FBI Director James Comey stated that: The threats posed by foreign fighters, including those recruited from the U.S., traveling to join the Islamic State of Iraq and the Levant (ISIL) and from homegrown violent extremists are extremely dynamic. These threats remain the biggest priorities and challenges for the FBI, the U.S. Intelligence Community, and our foreign, state, and local partners. ISIL is relentless and ruthless in its pursuits to terrorize individuals in Syria and Iraq, including Westerners. We are concerned about the possibility of individuals in the U.S. being radicalized and recruited via the Internet and social media to join ISIL in Syria and Iraq and then return to the U.S. to commit terrorist acts. ISIL's widespread reach through the Internet and social media is most concerning as the group has proven dangerously competent at employing such tools for its nefarious strategy.[5] In the past several weeks, Director Comey has increased the intensity of his warnings, stating that "hundreds, maybe thousands" of individuals across the U.S. are being contacted by ISIS to attack the U.S. homeland.[6] Secretary of Homeland Security Jeh Johnson has echoed these warnings, saying that lone-wolf terrorists inspired by ISIS could strike at any moment."[7] The 2015 Worldwide Threat Assessment of the U.S. Intelligence Community states that: Attacks by lone actors are among the most difficult to warn about because they offer few or no signatures. If ISIL were to substantially increase the priority it places on attacking the West rather than fighting to maintain and expand territorial control, then the group's access to radicalized Westerners who have fought in Syria and Iraq would provide a pool of operatives who potentially have access to the United States and other Western countries.[8] On the same note, the Director of the National Counterterrorism Center also stated in his testimony to the Senate Select Committee on Intelligence this February that there has been a recent "uptick in terror attacks in the West." This increase in attacks "underscores the threat of emboldened Homegrown Violent Extremists and, how the rapid succession of these attacks may motivate some to attempt to replicate these tactics with little-to-no warning."[9] These statements and assessments, together with the explicit and public statements of intent by multiple terrorist groups and the recent surge in terrorist plots and attacks against the U.S. homeland, demonstrate that the threat of terrorism is on the rise. Fortunately, the U.S. has improved its ability to foil these attacks, largely due to intelligence capabilities that include but are not limited to the bulk telephone metadata program under Section 215 of the PATRIOT Act.

Solvency Frontline 3/

B. Extinction:

Alexander '3 (Terrorism myths and realities," The Washington Times, August 27, http://www.washingtontimes.com/news/2003/aug/27/20030827-084256-8999r/print/)

Last week's brutal suicide bombings in Baghdad and Jerusalem have once again illustrated dramatically that the international community failed, thus far at least, to understand the magnitude and implications of the terrorist threats to the very survival of civilization itself. Even the United States and Israel have for decades tended to regard terrorism as a mere tactical nuisance or irritant rather than a critical strategic challenge to their national security concerns. It is not surprising, therefore, that on September 11, 2001, Americans were stunned by the unprecedented tragedy of 19 al Qaeda terrorists striking a devastating blow at the center of the nation's commercial and military powers. Likewise, Israel and its citizens, despite the collapse of the Oslo Agreements of 1993 and numerous acts of terrorism triggered by the second intifada that began almost three years ago, are still "shocked" by each suicide attack at a time of intensive diplomatic efforts to revive the moribund peace process through the now revoked cease-fire arrangements (hudna). Why are the United States and Israel, as well as scores of other countries affected by the universal nightmare of modern terrorism surprised by new terrorist "surprises"? There are many reasons, including misunderstanding of the manifold specific factors that contribute to terrorism's expansion, such as lack of a universal definition of terrorism, the religionization of politics, double standards of morality, weak punishment of terrorists, and the exploitation of the media by terrorist propaganda and psychological warfare. Unlike their historical counterparts, contemporary terrorists have introduced a new scale of violence in terms of conventional and unconventional threats and impact. The internationalization and brutalization of current and future terrorism make it clear we have entered an Age of Super Terrorism (e.g. biological, chemical, radiological, nuclear and cyber) with its serious implications concerning national, regional and global security concerns. Two myths in particular must be debunked immediately if an effective counterterrorism "best practices" strategy can be developed (e.g., strengthening international cooperation). The first illusion is that terrorism can be greatly reduced, if not eliminated completely, provided the root causes of conflicts -- political, social and economic -- are addressed. The conventional illusion is that terrorism must be justified by oppressed people seeking to achieve their goals and consequently the argument advanced by "freedom fighters" anywhere, "give me liberty and I will give you death," should be tolerated if not glorified. This traditional rationalization of "sacred" violence often conceals that the real purpose of terrorist groups is to gain political power through the barrel of the gun, in violation of fundamental human rights of the noncombatant segment of societies. For instance, Palestinians religious movements (e.g., Hamas, Islamic Jihad) and secular entities (such as Fatah's Tanzim and Aqsa Martyr Brigades)) wish not only to resolve national grievances (such as Jewish settlements, right of return, Jerusalem) but primarily to destroy the Jewish state. Similarly, Osama bin Laden's international network not only opposes the presence of American military in the Arabian Peninsula and Iraq, but its stated objective is to "unite all Muslims and establish a government that follows the rule of the Caliphs." The second myth is that strong action against terrorist infrastructure (leaders, recruitment, funding, propaganda, training, weapons, operational command and control) will only increase terrorism. The argument here is that law-enforcement efforts and military retaliation inevitably will fuel more brutal acts of violent revenge. Clearly, if this perception continues to prevail, particularly in democratic societies, there is the danger it will paralyze governments and thereby encourage further terrorist attacks. In sum, past experience provides useful lessons for a realistic future strategy. The prudent application of force has been demonstrated to be an effective tool for short- and long-term deterrence of terrorism. For example, Israel's targeted killing of Mohammed Sider, the Hebron commander of the Islamic Jihad, defused a "ticking bomb." The assassination of Ismail Abu Shanab -- a top Hamas leader in the Gaza Strip who was directly responsible for several suicide bombings including the latest bus attack in Jerusalem -- disrupted potential terrorist operations. Similarly, the U.S. military operation in Iraq eliminated Saddam Hussein's regime as a state sponsor of terror. Thus, it behooves those countries victimized by terrorism to understand a cardinal message communicated by Winston Churchill to the House of Commons on May 13, 1940: "Victory at all costs, victory in spite of terror, victory however long and hard the road may be: For without victory, there is no survival."

Solvency Frontline 4/

Turn: Cyberwar- China will perceive the plan as weakness- leading to catastrophic cyber attacks.

Dan **Blumenthal '13** (Asia, Foreign and Defense Policy Analyst, February 28, Foreign Policy, "The great cyber smackdown: How to win a cyberwar with China,")

The Internet is now a battlefield. China is not only militarizing cyberspace — it is also deploying its cyberwarriors against the United States and other countries to conduct corporate espionage, hack think tanks, and engage in retaliatory harassment of news organizations. These attacks are another dimension of the ongoing strategic competition between the United States and China — a competition playing out in the waters of the East and South China seas, in Iran and Syria, across the Taiwan Strait, and in outer space. With a number of recent high-profile attacks in cyberspace traced to the Chinese government, the cybercompetition seems particularly pressing. It is time for Washington to develop a clear, concerted strategy to deter cyberwar, theft of intellectual property, espionage, and digital harassment. Simply put, the United States must make China pay for conducting these activities, in addition to defending cybernetworks and critical infrastructure such as power stations and cell towers. The U.S. government needs to go on the offensive and enact a set of diplomatic, security, and legal measures designed to impose serious costs on China for its flagrant violations of the law and to deter a conflict in the cybersphere. Fashioning an adequate response to this challenge requires understanding that China places clear value on the cyber military capability. During the wars of the last two decades, China was terrified by the U.S. military's joint, highly networked capabilities. The People's Liberation Army (PLA) began paying attention to the role of command, control, communications, computers, intelligence, surveillance, and reconnaissance (C4ISR) assets in the conduct of war. But the PLA also concluded that the seeds of weakness were planted within this new way of war that allowed the United States to find, fix, and kill targets quickly and precisely — an overdependence on information networks. Consider what might happen in a broader U.S.-China conflict. The PLA could conduct major efforts to disable critical U.S. military information systems (it already demonstrates these capabilities for purposes of deterrence). Even more ominously, PLA cyberwarriors could turn their attention to strategic attacks on critical infrastructure in America. This may be a highly risky option, but the PLA may view cyber-escalation as justified if, for example, the United States struck military targets on Chinese soil. China is, of course, using attacks in cyberspace to achieve other strategic goals as well, from stealing trade secrets to advance its wish for a more innovative economy to harassing organizations and individuals who criticize its officials or policies. Barack Obama's administration has begun to fight back. On Feb. 20, the White House announced enhanced efforts to fight the theft of American trade secrets through several initiatives: building a program of cooperative diplomacy with like-minded nations to press leaders of "countries of concern," enhancing domestic investigation and prosecution of theft, promoting intelligence sharing, and improving current legislation that would enable these initiatives. These largely defensive measures are important but should be paired with more initiatives that start to play offense. Offensive measures may be gaining some steam. The U.S. Justice Department, in creating the National Security Cyber Specialists' Network (NSCS) last year, recognizes the need for such an approach. The NSCS — consisting of almost 100 prosecutors from U.S. attorneys' offices working in partnership with cyber-experts from the Justice Department's National Security Division and the Criminal Division's Computer Crime and Intellectual Property Section — is tasked with "exploring investigations and prosecutions as viable options for deterrence and disruption" of cyberattacks, including indictments of governments or individuals working on the government's behalf. It's a good first step, but Congress could also consider passing laws forbidding individuals and entities from doing business in the United States if there is clear evidence of involvement in cyberattacks. Congress could also create a cyberattack exception to the Foreign Sovereign Immunities Act, which currently precludes civil suits against a foreign government or entity acting on its behalf in the cyber-realm. There is precedent: In the case of terrorism, Congress enacted an exception to immunity for states and their agents that sponsor terrorism, allowing individuals to sue them. Enterprising companies and intelligence personnel are already able to trace attacks with an increasing degree of accuracy. For example, the U.S. security company Mandiant traced numerous incidents going back several years to the Shanghai-based Unit 61398 of the PLA, which was first identified publicly by the Project 2049 Institute, a Virginia-based think tank. Scholars Jeremy and Ariel Rabkin have identified another way to initiate nongovernmental legal action: rekindling the 19th-century legal practice of issuing "letters of marque" — the act of commissioning privateers to attack enemy ships on behalf of the state — to selectively and cautiously legitimize retaliation by private U.S. actors against hacking and cyber-espionage. This would allow the U.S. government to effectively employ its own cybermilitia. Creating new laws or using current ones would force the Chinese government and the entities that support its cyberstrategy to consider the reputational and financial costs of their actions. Of course, if the United States retaliates by committing similar acts of harassment and

hacking, it risks Chinese legal action. But America has a key advantage in that its legal system is respected and trusted; China's is not. Diplomatic action should bolster these efforts. The Obama administration's suggestions for pressuring China and other countries are a good start, but U.S. diplomacy must be tougher. In presenting Chinese leaders with overwhelming evidence of cyber-misdeeds (but without giving away too many details), Washington should communicate how it could respond. To control escalation, the administration should explain what it views as proportionate reprisals to different kinds of attacks. (For instance, an attack on critical infrastructure that led to deaths would merit a different response than harassment of the New York Times.) As the administration's report suggests, the United States is not the only victim and should engage in cooperative diplomacy. The United States should set up a center for cyberdefense that would bring together the best minds from allied countries to develop countermeasures and conduct offensive activities. One such center could be Taiwan, as its understanding of Chinese language, culture, business networks, and political landscape make it invaluable in the fight against cyberattacks. Of course, centers could be placed elsewhere and still utilize Taiwan's knowledge, but even the threat of placing a cyberdefense center just across the strait would be very embarrassing for China's leaders, as Taiwan is viewed as a renegade province. The point is not to be gratuitously provocative, but rather to demonstrate that the United States options that China would not favor. The U.S. military's cyber-efforts presumably already include it own probes, penetrations, and demonstrations of capability. While the leaks claiming the U.S. government's involvement in the Stuxnet operation — the computer worm that disabled centrifuges in the Iranian nuclear program — may have damaged U.S. national security, at least China knows that Washington is quite capable of carrying out strategic cyberattacks. To enhance deterrence, the U.S. government needs to demonstrate these sorts of capabilities more regularly, perhaps through cyber-exercises modeled after military exercises. For example, the U.S. military could set up an allied public training exercise in which it conducted cyberattacks against a "Country X" to disable its military infrastructure such as radars, satellites, and computer-based command-and-control systems. To use the tools at America's disposal in the fight for cybersecurity will require a high degree of interagency coordination, a much-maligned process. But Washington has made all the levers of power work together previously. The successful use of unified legal, law enforcement, financial, intelligence, and military deterrence against the Kim regime of North Korea during a short period of George W. Bush's administration met the strategic goals of imposing serious costs on a dangerous government. China is not North Korea — it is far more responsible and less totalitarian. But America must target those acting irresponsibly in cyberspace. By taking the offensive, the United States can start to impose, rather than simply incur, costs in this element of strategic competition with China. Sitting by idly, however, presents a much greater likelihood that China's dangerous cyberstrategy could spark a wider conflict.

Terrorism Turn- Ext: 702 Key

702 crucial to signals intelligence- empirically prevents major attacks.

James Jay **Carafano** et al **'15** (Ph.D., Charles "Cully" Stimson, Steven P. Bucci, Ph.D.,John Malcolm and Paul Rosenzweig, May 21, Backgrounder #3018 on National Security and Defense, Heritage Foundation, Section 215 of the PATRIOT Act and Metadata Collection: Responsible Options for the Way Forward" http://www.heritage.org/research/reports/2015/05/section-215-of-the-patriot-act-and-metadata-collection-responsible-options-for-the-way-forward

The Way Forward The United States is in a state of armed conflict against al-Qaeda, the Afghan Taliban, ISIS, and associated forces. It must therefore rely on all lawful tools of national security, including but not limited to robust signals intelligence. As the 9/11 Commission Report made crystal clear, one of the key failures of the United States before the 9/11 attacks was the government's inability to "connect the dots" between known or suspected terrorists. The artificial "wall" between domestic law enforcement and U.S. intelligence agencies, enacted during the 1990s, proved to be America's Achilles' heel. Some analysts believe that had America had a Section 215–type program in place before 9/11, U.S. intelligence, along with domestic law enforcement, would have been able to connect the dots and prevent at least some of the hijackers from launching their devastating attack.[14] In fact, according to a report by the House Permanent Select Committee on Intelligence, using the authorities under Section 215 of the PATRIOT Act and Section 702 of the FISA has contributed to thwarting 54 total international terrorist plots in 20 countries.[15] Thirteen of those plots were directed inside the United States. As Americans, we cherish our constitutional rights, including our right to privacy. Numerous court decisions have held that data, in the hands of third-party providers, are not protected by the Fourth Amendment of the Constitution.[16] There is a case pending before the Court of Appeals for the District of Columbia Circuit in which the issue before the court is whether Section 215 violates the Fourth Amendment; that court has not yet issued its opinion.[17] As Section 215 expires at the end of May 2015, policymakers are faced with the following quandary: How do they protect Americans from a determined enemy while respecting this nation's healthy distrust of government surveillance? First, given the increasing nature of the threat and the unique nature of this enemy, it would be unwise to completely abandon the use of telephone metadata in helping to disrupt future terrorist plots and/or gain intelligence about known or suspected foreign terrorists. Second, Senator Mitch McConnell (R–KY) has proposed a straight extension of Section 215 to the year 2020. However, that approach does not address the Second Circuit's ruling that the statute as written does not authorize the bulk metadata collection program and would likely result in the federal district court judge who now has the case enjoining the government from continuing the program. In view of ISIS and al-Qaeda's renewed determination to strike the American homeland, there are three major policy options that Congress should consider. Policy Option No. 1. The first option would be to amend Section 215 specifically to allow the NSA to collect bulk telephone metadata and query that data pursuant to FISC court orders; codify the existing program as it has been modified by the Administration but add in cell phone data as well; and fold in the transparency, privacy, and civil liberties contained within the USA Freedom Act, discussed in detail below. Such an amendment would put the program on stronger statutory grounds and address the Second Circuit's holding. There are technical and business practice arguments in favor of this, but it would not address the concerns of many that the government was maintaining a database of telephony metadata. While this approach offers the simplest method to query and analyze the metadata, as it is housed in one place, this approach currently suffers from lack of transparency, lack of civil liberties protections, and privacy concerns. In 2014, the National Research Council appointed a committee of experts to assess "the feasibility of creating software that would allow the U.S. intelligence community more easily to conduct targeted information acquisition rather than bulk collection"[18] as called for in Section 5(d) of Presidential Policy Directive 28. Committee members and experts included people from Oracle, Microsoft, Google, and other industry and academic experts. After a thorough review, these experts found that there is currently no technologically feasible alternative to the current metadata bulk collection platform. It is safe to assume that the commercial IT world is already working to find a way to provide the tools to do just that sort of analysis. Today, only by keeping all the data together and making appropriate inquiries of the data can the dots be connected, but in the immediate future, other options should become available. Policy Option No. 2. The chief concern among policymakers who are skeptical of government surveillance, and in particular Section 215, is that it is the government that holds the telephony metadata. Such policymakers have also noted that there are not enough privacy protections built into the existing program. One solution to the first concern would be to establish and require that a private, third-party entity house the telephony metadata, including cell phone metadata. The metadata would be collected in bulk but housed by a private third party. Court orders from the FISC would authorize select employees of the private entity, with appropriate security clearances, to query the database. Just as in policy option number one, the Congress could add transparency, civil liberties, and privacy protections to the FISC and program, as discussed below. This alternative would take time to develop and has gained little traction on either side of the debate. Policy Option No. 3. The third policy option is the House-passed USA FREEDOM Act—legislation that reauthorizes Section 215 and reforms it to

end government bulk collection of telephone metadata by the NSA. Instead, the metadata resides with the telephone carriers, where the government will have access to it subject to a court order by the FISC. The USA FREEDOM Act replaces bulk collection with a program called a "Call Detail Record." Under this new program, whenever the NSA feels it has reasonable, articulable suspicion that a phone number is associated with international terrorism, it can seek an order to access information about that number from the FISC. If the FISC gives the order, the NSA will submit one or several queries to the telecom companies for historical and real-time data on the number in question. At that time, both historical and real-time data related to the suspicious number will flow into the NSA, as well as data on the two generations of numbers surrounding it (referred to as "hops"). This information will flow on a 24/7 basis for 180 days, double the amount of time that a FISC order currently authorizes. At the end of 180 days, the NSA can seek renewal for another 180-day time period. Ending the bulk collection of telephone metadata by the government, or even housing it in a private third-party entity, may encumber the ability of the intelligence community to analyze all the data in real time across a known pool of data. Such a change will inevitably slow down investigators, but as the technology changes, this should be rectified. That said, numerous intelligence community leaders have said that while it is far from ideal, they could live with such a system, understanding that America is accepting some risk by doing so. Section 102 provides for emergency authority for the Attorney General to require emergency production of tangible things absent a court order as long as he or she informs a FISC judge and subsequently makes an application to the court within seven days after taking this action. The USA FREEDOM Act also establishes several civil liberties protections for the existing program as it relates to the telephone metadata program. Section 401 of the Act requires the presiding judges of the FISC to designate not fewer than five individuals to be eligible to serve as amicus curiae—friends of the court. Those designated shall be experts in privacy and civil liberties, intelligence collection, and communications technology and be eligible for a security clearance. The amicus curiae serve to assist the court in the consideration of any novel or significant interpretation of the law. Section 402 of the Act also mandates the Director of National Intelligence, in consultation with the Attorney General, to conduct a declassification review of each decision, order, or opinion by the FISC and, to the extent practicable, make those decisions, orders, or opinions publicly available. The USA FREEDOM Act also contains other reforms, including prohibiting bulk collection utilizing FISA pen register and the "trap and trace" procedures in Section 201. The Act is the only legislative vehicle that has passed a chamber of Congress. It is not perfect and could be improved. For example, there should be a uniform period of time for carriers to maintain the telephone metadata. Another could be designating a specific format in which the carriers must maintain the data to allow more expeditious analysis once the data is appropriately obtained. The USA FREEDOM Act strikes a balance between maintaining our national security capabilities and protecting privacy and civil liberties, and this should always be the goal. Conclusion The threat of international terrorism is real and on the rise. The United States remains in a state of armed conflict against non-state actors: al-Qaeda, the Afghan Taliban, ISIS, and associated forces. Winning this armed conflict requires a coordinated, sophisticated, and comprehensive strategy that harnesses all aspects of America's national power. For decades, over many armed conflicts, the United States has relied on and utilized the fruits of lawful signals intelligence to disrupt, degrade, detect, and ultimately defeat the enemies of the United States. Today, because of stunning advances in technology, we have the ability to search through billions of anonymous bits of telephone call data and draw connections among known and suspected foreign terrorists about whom we otherwise might never have known. Those connections and the connections made possible by other aspects of national power enable those who defend our freedoms to keep us safe. In crafting the best policies with respect to mining telephone metadata, Congress has a solemn duty to abide by the Constitution, particularly our Fourth Amendment right to be secure in our persons, houses, papers, and effects against "unreasonable searches and seizures." At the same time, Congress has to recognize that telephone metadata is not a subscriber's personal property: It is owned by the telephone companies as part of their business records. Yet the data is sensitive, and American citizens expect that their phone records, even if they do not own them, are private information. Congress must find a way to balance these two interests, because allowing the capacity to query third-party telephone metadata—signals intelligence—to expire is unwise and dangerous, especially during a time of armed conflict. The three options contained in this paper are all considered viable options by some. None will make everyone happy, but now it is time for Congress to make a choice.

Economy Frontline 1/

Companies are circumventing localization now:

- foreign lobbying
- legislative reform
- foreign data centers

Jonah Force **Hill '14** (technology and international affairs consultant based in San Francisco and a Fellow of the Global Governance Futures program, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS")

In an attempt to stem the data localization trend, U.S. firms and trade associations have launched a multi-pronged campaign to regain the trust of foreign governments and customers. Intense lobbying efforts are underway to reform U.S. surveillance laws,18 which have been viewed as overly permissive with regard to governmental collection of data, and to highlight the many ways that localization could harm economic competitiveness and growth.19 Domestically, Microsoft20 and Google, joined by Apple, Facebook and other firms, successfully sued the U.S. government in order to gain legal authority to provide the public greater detail on the information the U.S. government collects from them.21 Google's Eric Schmidt, Facebook's Mark Zuckerberg, Netflix's Reed Hastings, and the leaders of Dropbox, Palantir, and other top tech executives met with President Barack Obama in March 2014, to discuss potential surveillance reforms.22 **IBM is reportedly spending more than a billion dollars to build 15 new data centers overseas in an effort to preempt formalized localization rules.**23 Salesforce.com, a major cloud services provider, has announced similar plans.

Economy resilient

Donald **Kohn 15**, Senior Fellow in Economic Studies at Brookings, 1/30/15, U.S. Monetary Policy: Moving Toward the Exit in an Interconnected Global Economy, www.brookings.edu/research/speeches/2015/01/30-us-monetary-policy-global-economy-kohn

The global financial authorities have made **major strides in making their systems more resilient** to unexpected developments, in particular with **higher capital and greater liquidity** for banks and bank holding companies. In several jurisdictions, banks have been **stress tested** with scenarios that included rising rates. Moreover, we've seen several episodes in which volatility and risk spreads have risen, including the summer of 2013 during the so-called taper tantrum, and in the past few months amid mounting uncertainty about global economic prospects, plunging oil prices, growing political and economic tensions in the euro area, and strong monetary policy responses. Although there's been some fallout from these financial market developments, **none has threatened financial stability.**

Economy Frontline 2/

Economic decline doesn't cause war.

Ferguson '6 (Niall, Professor of History – Harvard University, Foreign Affairs, 85(5), September / October, Lexis)

Nor can economic crises explain the bloodshed. What may be the most familiar causal chain in modern historiography links the Great Depression to the rise of fascism and the outbreak of World War II. But that simple story leaves too much out. Nazi Germany started the war in Europe only after its economy had recovered. Not all the countries affected by the Great Depression were taken over by fascist regimes, nor did all such regimes start wars of aggression. In fact, no general relationship between economics and conflict is discernible for the century as a whole. Some wars came after periods of growth, others were the causes rather than the consequences of economic catastrophe, and some severe economic crises were not followed by wars.

Economy Frontline 3/

Zero risk of Internet Collapse.

JOHN C. **DVORAK '7** (columnist for PCMag.com, May 1, "Will the Internet Collapse?" http://www.pcmag.com/article2/0,2817,2124376,00.asp

When is the Internet going to collapse? The answer is NEVER. The Internet is amazing for no other reason than that it hasn't simply collapsed, never to be rebooted. Over a decade ago, many pundits were predicting an all-out catastrophic failure, and back then the load was nothing compared with what it is today. So how much more can this network take? Let's look at the basic changes that have occurred since the Net became chat-worthy around 1990. First of all, only a few people were on the Net back in 1990, since it was essentially a carrier for e-mail (spam free!), newsgroups, gopher, and FTP. These capabilities remain. But the e-mail load has grown to phenomenal proportions and become burdened with megatons of spam. In one year, the amount of spam can exceed a decade's worth, say 1990 to 2000, of all Internet traffic. It's actually the astonishing overall growth of the Internet that is amazing. In 1990, the total U.S. backbone throughput of the Internet was 1 terabyte, and in 1991 it doubled to 2TB. Throughput continued to double until 1996, when it jumped to 1,500TB. After that huge jump, it returned to doubling, reaching 80,000 to 140,000TB in 2002. This ridiculous growth rate has continued as more and more services are added to the burden. The jump in 1996 is attributable to the one-two punch of the universal popularization of the Web and the introduction of the MP3 standard and subsequent music file sharing. More recently, the emergence of inane video clips (YouTube and the rest) as universal entertainment has continued to slam the Net with overhead, as has large video file sharing via BitTorrent and other systems. Then VoIP came along, and IPTV is next. All the while, e-mail numbers are in the trillions of messages, and spam has never been more plentiful and bloated. Add blogging, vlogging, and twittering and it just gets worse. According to some expensive studies, the growth rate has begun to slow down to something like 50 percent per year. But that's growth on top of huge numbers. Petabytes. So when does this thing just grind to a halt or blow up To date, we have to admit that the structure of the Net is robust, to say the least. This is impressive, considering the fact that experts were predicting a collapse in the 1990s. Robust or not, this Internet is a transportation system. It transports data. All transportation systems eventually need upgrading, repair, basic changes, or reinvention. But what needs to be done here? This, to me, has come to be the big question. Does anything at all need to be done, or do we run it into the ground and then fix it later? Is this like a jalopy leaking oil and water about to blow, or an organic perpetual-motion machine that fixes itself somehow? Many believe that the Net has never collapsed because it does tend to fix itself. A decade ago we were going to run out of IP addresses—remember? It righted itself, with rotating addresses and subnets. Many of the Net's improvements are self-improvements. Only spam, viruses, and spyware represent incurable diseases that could kill the organism. I have to conclude that the worst-case scenario for the Net is an outage here or there, if anywhere. After all, the phone system, a more machine-intensive system, never really imploded after years and years of growth, did it? While it has outages, it's actually more reliable than the power grid it sits on. Why should the Internet be any different now that it is essentially run by phone companies who know how to keep networks up? And let's be real here. The Net is being improved daily, with newer routers and better gear being constantly hot-swapped all over the world. This is not the same Internet we had in 1990, nor is it what we had in 2000. While phone companies seem to enjoy nickel-and-diming their customers to death with various petty scams and charges, they could easily charge one flat fee and spend their efforts on quality-of-service issues and improving overall network speed and throughput. That will never happen, and phone companies will forever be loathed. But when all is said and done, it's because of them that the Internet will never collapse. That's the good news. The bad news is they now own the Internet—literally—and they'll continue to play the nickel-and-dime game with us.

Economy Ext: 2NC: Resilience

Global economic governance institutions guarantee resiliency

Daniel W. **Drezner '12**, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, "The Irony of Global Economic Governance: The System Worked," http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf

Prior to 2008, numerous foreign policy analysts had predicted a looming crisis in global economic governance. Analysts only reinforced this perception since the financial crisis, declaring that we live in a "G-Zero" world. This paper takes a closer look at the global response to the financial crisis. It reveals a more optimistic picture. Despite initial shocks that were actually more severe than the 1929 financial crisis, global economic governance structures responded quickly and robustly. Whether one measures results by economic outcomes, policy outputs, or institutional flexibility, **g**lobal **e**conomic **g**overnance has displayed surprising resiliency since 2008. Multilateral economic institutions performed well in crisis situations to reinforce open economic policies, especially in contrast to the 1930s. While there are areas where governance has either faltered or failed, on the whole, the system has worked. Misperceptions about global economic governance persist because the Great Recession has disproportionately affected the core economies – and because the efficiency of past periods of global economic governance has been badly overestimated. Why the system has worked better than expected remains an open question. The rest of this paper explores the possible role that the distribution of power, the robustness of international regimes, and the resilience of economic ideas might have played.

Trade Frontline 1/

Turn: Preferential Trade agreements increase the likelihood of conflict by antagonizing excluded nations. Best evidence concludes.

Timothy M **Peterson '15** (Department of Political Science, University of South Carolina, "Insiders versus Outsiders: Preferential Trade Agreements, Trade Distortions, and Militarized Conflict," Journal of Conflict Resolution, Vol. 59(4).)

States entering into preferential trade agreements (PTAs) stand to gain considerably from the reduction or elimination of trade barriers with members. However, since pioneering work by Viner (1950), scholars have noted that gains from preferential liberalization could accrue at the expense of third parties from whom trade is diverted rather than from the creation of trade that would not otherwise exist. Given the potential for some PTAs to reshape trade patterns to the advantage of members, it stands to reason that states excluded from such an agreement might view it as a threat. This perception could, in turn, spark political tension between members and excluded states. Despite the potential for some PTAs to provoke threat perception among states left out of the agreement, there has been little study of the potentially aggravating impact of PTAs on the political relationships of members vis-a`-vis nonmembers. Rather, numerous studies emphasize that PTAs can reduce conflict propensity between members benefiting from trade integration (e.g., Mansfield, Pevehouse, and Bearce 1999/2000; Mansfield and Pevehouse 2000; but see Hafner-Burton and Montgomery 2012). A focus on the peace within PTAs is not surprising, given that trade agreements have proliferated relatively recently, during a period in which militarized conflict between states has been rare. However, regionalism is flourishing, as multilateral liberalization falters (as evidenced, e.g., by the stalling of the Doha round World Trade Organization [WTO] negotiations). Recent years have witnessed the relative decline of US hegemony, which arguably facilitated a global liberal trade regime in the post–World War II period (e.g., Gilpin 1987; Gowa 1986; Keohane 1984; Kindleberger 1973; Krasner 1976; Mansfield 1998). Simultaneously, China, along with other developing states, has begun pursuing PTAs, as its economic and military power grows. These developments suggest a need to examine the potentially competitive nature of (at least some) PTAs, and the consequential possibility of conflict between members and nonmembers thereof. At a minimum, exclusive PTAs could reduce the degree to which members and nonmembers enjoy this era of reduced hostilities. At worst, discriminatory trade agreements could engender zero-sum trade policies and rising inter-bloc conflict in the coming years. In this article, I argue that PTAs promote member versus nonmember conflict when they reduce—at least in relative terms—the exports of nonmembers, leading these states to perceive a threat to their economic security. Accordingly, I examine altered trade patterns associated with PTAs as a predictor of conflict between dyads wherein one state belongs to a PTA excluding the other state. I introduce a new technique to estimate this phenomenon using a triadic extension of the gravity model of trade. Using estimates of the degree to which one dyadic state's exports are affected by the other's membership in an exclusive PTA, I find that trade distortions resulting in relatively lower exports for the non-PTA member are associated with a higher probability that a dyad experiences a militarized interstate dispute (MID) or fatal MID.1 However, I also find that this effect becomes less consistent as dyadic trade becomes more important to each state's economy. As dyadic trade increases, so too Peterson 699 does the variation in the degree to which a PTA outsider harmed by trade distortions tolerates this discriminatory behavior by the PTA insider. This point is particularly salient for foreign policy makers because it suggests that retaliation against perceived threats, for example, through the imposition of import barriers or the formation of a competing bloc, could amplify the risk of hostilities. I proceed with a discussion of the research linking PTAs to economic and political competition. Then, I explore the consequences for dyadic peace of distorted trade patterns associated with PTAs, introducing a triadic extension of the gravity model of trade to estimate the influence of exclusive PTAs on trade. Next, I describe my research design and present a statistical analysis of the link between PTAs, reshaped trade patterns, and militarized conflict between 1961 and 2000. I conclude with a discussion of the relevance of my findings for scholars and policy makers alike amid the accelerating proliferation of PTAs.

Trade Frontline 2/

Globalization unsustainable- 7 Warrants: speed, extension, resources, ecology, population, inequality, systemic market vulnerability.

Sandra **Bhatasara '11** (Lecturer & Member of the Faculty of Social Studies Research Working Committee University of Zimbabwe, "From Globalization to Global Sustainability: Perspectives on Transitions," Journal of Global Citizenship & Equity Education, Volume 1 Number 1)

This paper presents a transition perspective to sustainable globalization. In my view, globalization is not entirely bad. Globalization presents various opportunities in different domains. However, we cannot deny the fact that the current nature of globalization, in terms of the speed, extensiveness and impacts on the earth system is unsustainable. The argument that globalization should be steered towards sustainability is undeniable yet the daunting question is how can that be done? The complexity of globalization and sustainability defy simplistic explanations, thus one should take an interactive perspective on transition by looking at some key scenarios in global governance, global trade, multinational corporations, markets and information systems. However, one ought to acknowledge that transitions should be viewed in long term perspectives. Specific targets, indicators for transition and importance vary. There is no guarantee that transitions to sustainable globalization will be smooth thus, a number of challenges can be seen such as lack of institutional mechanisms, resources, political and ideological resistance among others. In this regard, the imperatives for understanding the necessity for transitions, the possible scenarios and challenges will be understood by subjecting relevant literature to critical scrutiny using the Critical Discourse Analysis approach. This paper should be considered as a "think piece". Globalization, sustainability and transitions are too complex to be considered only from literature reviews. However, on the basis of the literature I have reviewed, it has been possible to derive some scenarios and conclusions on the transition to sustainable globalization. Review and Definitions of Concepts Globalization has a plurality of definitions, some of them proffered by the internalization, liberalization, universalization, westernization, modernization and deterritorialization approaches. This paper is concerned with transition to sustainable globalization which stems from the fact that the current nature of globalization is unsustainable hence the definition proffered here. Globalization refers to the unsustainable, accelerated integration, at the global level, of economic growth, environmental problems, human development, cultural dynamics and political engagements. Sustainability is a difficult concept to define for various reasons. It is normative and there is no global consensus on what should be sustained. Some people argue for sustaining production systems whilst others argue for sustaining consumption patterns. At the same time, there are others who call for sustaining environmental quality, economic and social capital (Kemp and Loorbach, 2003). Borrowing from the World Commission on Environment and Development (1987), the issue of sustainability is related to development or growth that meets the present needs without endangering the ability of future generations to meet their needs. Sustainability should be about equal opportunities to utilize resources intra-generationally and inter-generationally. Sustainability should also be based on the ethical principles of equity in distribution of income, wealth and control of resources. The National Research Council (1999), defines sustainability transition as meeting the needs of a stabilizing future world population while reducing hunger, poverty and maintaining the planet's life support systems. The definitions by the World Commission on Environment and Development and the National Research Council capture the three pillars of sustainability, which are economy, society and ecology on which transitions to sustainability should focus. Grosskurth and Rotmans (2004), argue that one important denominator of these definitions is an implied balance of economic, ecological and social developments. The concept of sustainable development has received criticism from various angles, one example being that it is considered as vague. Some scholars argue that the concept lacks definitional clarity thus it is prone to manipulation. However, the lack of clarity can be a strength in the sense it allows for a multiplicity of contextual interpretations which are absent in classical development discourses. At the same time, sustainability in most cases is interpreted in economic terms to mean sustainable economic development. Bensimon and Benatar (2006), for example argue that sustainable development should not be considered in economic terms, but should reflect other important aspects that are needed for a decent human life as well (e.g. education, a healthy living environment and democracy). As noted by Huynen (2008), they propose an alternate concept the "development of sustainability" instead of sustainable development. Transition is also a highly contested concept, invoking various views from different scholars. According to Rotmans (2000), referring to the ICIS-MERIT (International Center for Integrated Assessment and Sustainable Development–Maastricht University Economic and Social Research Institute for Innovation and Technology) Report, transition is a gradual process of societal change in which society or an important sub-system of society structurally changes. Kemp and Loorbach, (2003) noted that transition is a result of an interplay of developments that sustain and reinforce each other thus transitions are not caused by a single variable and are non-linear in nature. Thus, borrowing from Martens and Rotmans (2002), in this paper, transitions refer to possible policies, strategies, paths or projects that can be undertaken towards the development of sustainability in a globalizing world. A Case for Transitions to Sustainable Globalization The phenomenon of globalization raises a number of questions or even quarrels and one of the most imperative questions is on sustainability. Here I present why we need transitions to sustainability in a globalizing world. Supporters of globalization often associate it with unending

prosperity and peace yet there are built in contradictions that make globalization unsustainable. Globalization supporters address the question of sustainability in a token fashion, if at all. The rapid growth of global markets and corporate capital is evident; however this growth raises the issue of sustainability. Huynen (2008) noted that "today it is acknowledged that achieving sustainable development on a global scale is one of the greatest challenges for the 21st century" (p. 3). In addition, a number of scholars converge on the idea that the current nature of globalization is threatening the earth's capacity to sustain life. Nagarajan (2006) noted that some global indicators of change in the Earth's landscape are distinct signs of human domination of the planet. These are increased atmospheric carbon dioxide, substantial modification of the planet's land surface, increased use of finite fresh water supply, vastly modified nitrogen cycles, overexploitation or depleted fisheries and mass extinction of species (Nagarajan, 2006). Global warming, the thinning of the ozone layer, pollution, loss of biodiversity, depletion of natural resources, widespread desertification and deforestation are occurring within the context of globalization. These environmental problems restrict the set of options at the disposal of future generations to meet their needs thus sustainability becomes problematic. Furthermore, massive population movement and urbanization are also causing an ecological crisis. Ecological degradation reduces land productivity, threatens human health and worsens the conditions of the poor. In this regard, globalization is unsustainable. Globalization may improve the material and social wellbeing of poor people but may be economically, socially, politically and ecologically unsustainable. The volatility of global markets is evident and history may repeat itself. The crash of the Argentine economy, the financial crisis in Asia in 1997 and the 2008 worldwide financial crisis are clear indicators of how financial contagion can produce economic depression. The volatility of global financial markets is systemic and there is nothing that is fully regulating it. Electronic trading makes it impossible to regulate global financial markets and international financial institutions such as the International Monetary Fund (IMF) are unable to do so. The myth of free trade is causing instability and socio-economic exclusion of the poor. According to Baum (2001), the current forms of globalization are making the world a safe place for unfettered market liberalism and the consequent growth of inequities. The developed countries use protectionist policies and subsidies on agricultural and cultural products whilst reducing protection over manufacturing industries. This is leading to the marginalization of the less developed countries in the form of low trade. In addition, there are myopic ideas of economic growth with prosperity. What is happening is not economic growth but, growth of specialization of production in countries such as India and China. The question is who will consume all the innovation and products? Another reason, globalization is economically unsustainable is because of labour requirements and the devaluation of labour. The question is who will provide labour for the entire world? Globalization is socio-culturally unsustainable because it is exclusionary and uneven. Two thirds of humanity is living in endemic poverty yet high growth rates are being witnessed. There is poverty among plenty or growth with poverty. The trickle down effect that proponents of globalization talk about has remained elusive. International and intra national income inequalities have widened. Globalization is distorting and swallowing local and national cultural values. Globalization is destroying subsistence economies of the poor, social security and moral geographies of poor nations. The principles of sustainability are therefore distorted. McMichael, Smith and Corvalan (2000) noted that it is because of unmanaged "transition" to development that is generalized to all countries in the form of unsustainable production patterns and wasteful consumption of rich nations that a new system is urgently required. Financial assistance to the poor nations by the developed nations is reducing the poor nations to super exploited neo-colonies relegated to the roles of primary commodity producers entirely dependent and subordinate to the powers of multinational corporations. Globalization creates a risky and speculative or spoiled dependency. The nation state is said to have been incapacitated by liberalization. On another note, immigration policies of the developed countries are exclusionary. They regulate the free movement of skilled labour yet they advocate free, unregulated trade. Globalization supposes integration yet there are no equal opportunities between the rich and the poor. This inequality negatively affects the economic performance of the poor countries. Global inequalities may also give rise to nationalistic reactions, resentment and terrorism thus upsetting peace and political stability.

Trade Frontline 3/

Turn: Free trade benefits are more than reversed by increasing the wealth gap.

Josh **Bivens** April 22, '**15** (Economic Policy Institute, "No, the TPP Won't Be Good for the Middle Class," http://www.epi.org/blog/no-the-tpp-wont-be-good-for-the-middle-class/)

President Obama has been vociferously defending the Trans-Pacific Partnership (TPP) recently. He insists that it will be good for the American middle class and that TPP's critics arguing otherwise are wrong. But in this case he's wrong and the TPP critics are right: there is no indication at all that the TPP will be good for the American middle class. I tried to take this on in very wonky terms in this long-ish report here, and in this post I'll try to boil it down a bit. The basic argument for why the TPP is likely to be a bad deal for the middle class is pretty simple. For one, even a genuine "free trade agreement" that was passed with no other complementary policies would actually not be good for the American middle class, even if it did generate gains to total national income. For another, the TPP (like nearly all trade agreements the U.S. signs) is not a "free trade agreement"—instead it's a treaty that will specify just who will be protected from international competition and who will not. And the strongest and most comprehensive protections offered are by far those for U.S. corporate interests. Finally, there are international economic agreements that the United States could be negotiating to help the American middle class. They would look nothing like the TPP. Even genuine "free trade" would likely be hard on the American middle class Most (not all, but most) of the countries that would be included in the TPP are poorer and more labor-abundant than the United States. Standard trade theory has a clear prediction of what happens when the United States expands trade with such countries: total national income rises in both countries but so much income is redistributed upwards within the United States that most workers are made worse off. This is sometimes called "the curse of Stolper-Samuelson", after the theory that first predicted it. And there is plenty of evidence to suggest that it's not just a theory, but a pretty good explanation for (part of) the dismal performance of wages for most American workers in recent decades and the rise in inequality. And the scale of the wage-losses are much, much larger than commonly realized—it's not just those workers who lose their jobs to imports. Instead, the majority of American workers (those without a 4-year college degree) see wage declines as a result of reduced trading costs. The intuition is simply that while waitresses and landscapers might not lose their jobs to imports, their wages are hurt by having to compete with trade-displaced apparel and steel workers. All of this evidence means that the burden of proof is awfully high for those claiming that a simple trade agreement that reduces trading costs and expands imports and exports will be affirmatively good for the American middle class. What exactly will this treaty do that will turn the predictions and evidence about past global integration completely on their head? The standard argument from those supporting trade agreements who are genuinely concerned about the middle class (and to be clear—I do believe the President is genuinely concerned about the middle class) is that these agreements generate gains to total national income, and that these gains then could be channeled through subsequent policy maneuvers to those on the losing end. Maybe, but the net national gains from lowering trade costs tend to be wildly overestimated. In short, even "free trade" tends to redistribute a lot more (about 5 or 6 times as much) income as it generates.

Trade Frontline 4/

Total Defense: Free trade theory doesn't apply to current deals. IPR protection guts any benefit.

Josh **Bivens** April 22, '**15** (Economic Policy Institute, "No, the TPP Won't Be Good for the Middle Class," http://www.epi.org/blog/no-the-tpp-wont-be-good-for-the-middle-class/)

Given that complementary policies to re-re-distribute the income redistributed away from typical American workers are a necessary condition to make the middle class better off from "free trade", one is compelled to ask just what are the subsequent policy maneuvers that the current Congress will likely undertake to compensate those on the losing end? Yes, there has been some talk about beefing up Trade Adjustment Assistance (TAA), but this is compensation that is too small by an order of magnitude (see the conclusion in this report for the right comparison). TPP isn't even about free trade—it's about who will and won't face fierce global competition. And guess who won't? And as has been well-documented by now, much of what the U.S. policymaking class champions under the rubric of "free trade" is nothing of the sort. For example, the biggest winners from trade agreements have traditionally been U.S. corporations that rely on enforcing intellectual property monopolies for their profits—pharmaceutical and software companies, for example. These companies have been successful in getting U.S. negotiators to make enforcing their intellectual property monopolies in our trading partners' economies the price of admission to preferential access to the U.S. market. It is not just an irritating bit of chutzpah to label agreements with provisions like this as "free trade agreements" (though it certainly is that), these provisions actually affirmatively make the distributional outcomes even more regressive than simple "free trade" would already make them. Further, between these provisions and the intentional failure to include a strong provision to stop currency management undertaken by our trading partners, the TPP will even manage to substantially blunt any beneficial impact the treaty might have had in expanding access to foreign markets for most U.S. exporters. Because foreign consumers will have to pay more now for US exports covered by intellectual property monopolies and will hence have less income left over to buy other U.S. exports, and because foreign governments will remain free to keep their own currencies artificially competitive relative to the U.S. dollar, U.S. exporters of manufactured goods are likely to see not much improvement at all in their market share in trading partner economies. What would a good international agreement for the middle class look like? Simply put, nothing at all like the TPP.

Trade Frontline 5/

Alt Causality: US dumping is the key barrier to global free trade.

Daniel J. **Ikenson '13** (director of Cato's Herbert A. Stiefel Center for Trade Policy Studies, Forbes on January 16, "Protectionist Antidumping Regime Is a Pox on America's Glass House,")

Other candidates come to mind when contemplating the world's worst international trade scofflaw, but the United States makes a strong case for itself. A recent Commerce Department determination that foreign companies like Samsung, LG, and Electrolux engaged in "targeted dumping" by reducing prices on their washing machines for Black Friday sales confirms that the United States is actively seeking that ignominious distinction. U.S. policies have been the subject of more World Trade Organization disputes (119, followed by the EU with 73, then China with 30) and have been found to violate WTO rules more frequently than any other government's policies. No government is more likely to be out of compliance with a final WTO Dispute Settlement Body (DSB) ruling — or for a longer period — than the U.S. government. To this day, the United States remains out of compliance in cases involving U.S. subsidies to cotton farmers, restrictions on Antigua's provision of gambling services, country of origin labeling requirements on meat products, the so-called Byrd Amendment, a variety of antidumping measures, and several other issues, some of which were adjudicated more than a decade ago. In some of these cases, U.S. trade partners have either retaliated, or been authorized to retaliate, against U.S. exporters or asset holders, yet the non-compliance continues as though the United States considers itself above the rules. Despite all the official high-minded rhetoric about the pitfalls of protectionism and the importance of minding the trade rules, the U.S. government is a serial transgressor. Nowhere is this tendency to break the rules more prevalent than it is with respect to the Commerce Department's administration of the antidumping law. Nearly 38 percent (45 of 119) of the WTO cases in which U.S. policies have been challenged concern U.S. violations of the WTO Antidumping Agreement. The epidemic of targeted dumping findings — such as the one concerning washing machines, if the U.S. International Trade Commission renders an affirmative injury finding next week — will more than likely produce new WTO cases. The antidumping law is purported to exist to protect American companies and their workers from the effects of foreign competitors selling their products in the United States at "unfairly low" prices. Why price competition — encouraged as it is between domestic rivals — suddenly becomes unfair or worth thwarting when foreigners are offering the lower prices is a question without a satisfactory answer. The public is under the false impression that trade is a contest between Team America and the foreign team, and that they should cheer when our government erects barriers to defend us against foreign commercial success. The persistence of that mindset shields U.S. antidumping policy from the scrutiny it deserves. Instead, the law has become a mechanism through which domestic companies — with the assistance of creative lawyers and a captured government agency that is committed to keeping America safe from imports — can saddle their competition (both foreign and domestic) with higher costs, control supply, increase their own prices, and reap higher profits. Nevermind that this "success" comes at the expense of consumers and firms in downstream industries that require access to the restricted product. While President Obama urges U.S. companies to become more competitive at home and abroad, the U.S. antidumping law kneecaps these very same enterprises by making their industrial inputs and intermediate goods scarce and more expensive — as described and documented in this paper. It also inspires retaliatory protectionism abroad. In general terms, dumping is defined as the sale of a product in a foreign market at a lower price than the price obtained by the same producer in his home market. Dumping is measured by comparing a foreign producer's U.S. and home market prices over a specific period of time. For each comparison, the difference between the U.S. price and the home market price is considered the unit margin of dumping. A positive dumping margin results when the U.S. price is lower than the home market price and a negative dumping margin is the result when the U.S. price exceeds the home market price. The antidumping duty ultimately imposed is, in theory, equal to the weighted average dumping margin calculated for all U.S. sales expressed as a percentage of U.S. sales value. Under the WTO Antidumping Agreement (ADA), governments are permitted to have antidumping laws and to apply antidumping duties to redress dumping that is found to be a cause of material injury to the domestic industry producing the same or similar products. Although the ADA is deferential to national governments when it comes to the details of implementing their antidumping laws, it does articulate certain minimum standards intended to limit the scope for abuse, such as reaching affirmative findings of dumping when no dumping has occurred or manufacturing punitively high antidumping duty rates, for example. But this seemingly mechanical exercise of comparing prices and calculating margins is rife with subjective interference and methodological sleights of hand. Under the U.S. antidumping law, the Commerce Department maintains considerable discretion when it comes to determining the existence and measuring the magnitude of dumping. Which sales should be included in calculating average prices? What product models should be collapsed together and treated as a single model for purposes of calculating average prices? What expenses should be subtracted from gross prices before net prices are compared between markets? Is there evidence of targeted dumping? Those are just a few of the many kinds of consequential, results-changing decisions the Commerce Department renders during the course of an antidumping proceeding. That broad discretion has been abused over the years, as confirmed by the hundreds of U.S. court rulings that have found the Commerce Department acting illegally or otherwise beyond it authority. Just as U.S. antidumping administration has so frequently

run afoul of the U.S. law, it has also been found on dozens of occasions to violate U.S. obligations under the WTO Antidumping Agreement. In 12 of the 45 cases in which ADA violations were alleged by U.S. trade partners, the methodological trick known as "zeroing" was at least one of the subjects of controversy. Ultimately, this issue is the motivation behind the Commerce Department's shenanigans in the case involving imported washing machines, targeted dumping, and Black Friday sales. " Despite all the official high-minded rhetoric about the pitfalls of protectionism and the importance of minding the trade rules, the U.S. government is a serial transgressor." To appreciate the affront to fairness and mathematical integrity that zeroing represents, recall that antidumping duty rates are determined by calculating a weighted average dumping margin, which derives from individual dumping margins calculated for multiple comparisons. Some of those comparisons produce positive dumping margins (whenever the U.S. price is lower than the home market price) and some yield negative dumping margins (whenever the U.S. price is higher than the home market price). Zeroing refers to the practice of assigning those negative dumping margins a value of " 0″ before calculating the weighted average dumping margin, which has the effect of increasing the weighted average dumping margin and the applied antidumping duty rate. Analysis from the Cato Institute found that zeroing, in a sample of 18 actual antidumping case records reviewed, artificially inflated antidumping duties by 44 percent. Here's how it works in practice. Let's say a foreign widget producer makes two sales in the United States. He sells one widget at a net price of $1.00 and the other at a net price of $3.00. In his home market, he sells the same widgets for $2.00. Is he dumping? There is a dumping margin of $1.00 on the first sale ($2.00 — $1.00 = $1.00) and a dumping margin of minus (-)$1.00 on the second sale ($2.00 — $3.00 = -$1.00). The weighted average dumping margin is 0 and thus there is no dumping. But when the Commerce Department engages in zeroing, it treats the -$1.00 dumping margin as equal to $0.00, denying its impact on the overall weighted average dumping margin. By zeroing, the Commerce Department would find a total dumping margin of $1.00 and express it over the total value of all U.S. sales ($4.00), which would yield an antidumping duty rate of 25 percent. Magic! Zeroing has been found by the WTO Appellate Body — on numerous occasions and under multiple comparison methodologies — to violate Article 2.4 of the ADA because it precludes consideration of the impact of all export sales in determining the existence and magnitude of dumping, and thus precludes a fair comparison. After many years of appeals and foot-dragging, the United States finally changed its policy to comply, grudgingly, with the jurisprudence that has shut the door on zeroing under all circumstances, using all comparison methodologies…with the possibility of one tiny exception. (This article describes the evolution of the zeroing jurisprudence and provides a detailed analysis of this "tiny exception.") Article 2.4.2 of the Antidumping Agreement states that the existence of margins of dumping during the investigation phase "shall normally be established" by comparing prices on an average-to-average or transaction-to-transaction basis, but may be conducted on a home market average-to-individual export transactions basis: [I]f the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparsion. The justification for the exception under Article 2.4.2 is, presumably, that that comparison methodology allows the authorities to home in on targeted dumping, which may be revealed by patterns of price differences among purchasers, regions or time periods. Some have argued that zeroing must be permissible under the exceptional method because otherwise its prohibition would yield results identical to those obtained under the weighted average-to-weighted average method. This "mathematical equivalence" argument, as it is called, holds that there would be no practical reason for the exception to exist if zeroing were precluded, and that would then violate the rules of effective treaty interpretation by rendering the exception inutile. And, finally, this takes us back to Commerce Department's determination that foreign washing machine manufacturers are engaging in targeted dumping. The Commerce Department is attempting to operationalize the mathematical equivalence argument by making this tiny, rarely-ever-used exception the new rule so that it has license to engage in zeroing and inflate antidumping duty rates on behalf of certain domestic producers. But it is carelessly and defiantly overplaying its hand. For starters, the standards that Commerce is trying to establish for finding a "pattern of export prices which differ significantly among different purchasers, regions or time periods" have no statistical rigor, no theoretical underpinnings, and no relation whatsoever to unmasking, isolating, or measuring targeted dumping. Two arbitrary benchmarks must be met to find targeted dumping. First, at least 33 percent by volume of the sales to an allegedly targeted group must be at prices that are less than one standard deviation below the average price to all other groups. Why 33 percent? Why one standard deviation? Neither figure is supported by statistics literature or law. Second, at least 5 percent of the volume of sales to the allegedly targeted group must be at prices that are lower than the average price of the lowest-priced non-targeted group by a margin (a gap) that is greater than the average gap between the average prices of all the non-targeted groups. The idea here is that the allegedly targeted group should be uniquely identifiable as having received significantly lower prices. The problem again, though, is the arbitrary nature of the 5 percent threshold. Seems way too low anyway. With those benchmarks satisfied, the Commerce Department considers itself free to measure dumping by using the weighted average-to-transaction methodology for all sales, and to engage in zeroing for all sales. Beyond these obvious shortcomings is the fact that if the application of zeroing to all sales to inflate dumping margins is automatically triggered by the idenfication of any customer or any region (however infinitesimally small petitioners wish to define it) or any time period (ranging anywhere from one day to one year) that meets the benchmarks for a targeted dumping analysis without need of any plausible explanation as to why the particular group would be targeted, then every single petitioner in every subsequent case will pour over the numbers and run their own statistical analyses to identify just one group, any group, however imaginatively defined, that satisfies those benchmarks. Black Friday sales are an obvious candidate for a targeted group. This whole enterprise is an absurdity that other governments should and will find offensive. In addition to the shortcomings identified above is the fact that the Commerce Department's statistical tests are not even doing what the Commerce Department thinks they're doing. By comparing average prices instead of actual prices, the standard deviations it uses as benchmarks are significantly tighter because the range of prices, which produce the standard deviations, has been squeezed tighter by averaging them first. So, beyond all of the theoretical objections are these practical misapplications that, at the very least, should be remanded back to Commerce by the courts. The Commerce Department's sloppiness appears to be the product of a brute force effort to clear any annoying obstacles in its drive to recuscitate zeroing as the default practice of the U.S. antidumping authorities. Finally, even if the exceptional method is permitted in any given case, that doesn't grant license for zeroing as Commerce conceives of it. There should be no question that that approach will

run afoul of the Appellate Body's interpretation of what is permitted under the exceptional method. The AB has ruled on numerous occasions that fealty to Article 2.4.2 cannot come at the expense of fealty to the fair comparison language of Article 2.4, and zeroing all sales clearly commits that error. Unmasking and measuring the extent of targeted dumping does not necessitate resort to the exceptional method for all sales. In fact, measuring targeted dumping can be achieved by resorting to the exceptional method and allowing zeroing for only the targeted groups, while using the normal, average-to-average method without zeroing for all other comparisons. This invalidates the "mathematical equivalence" argument. But the Commerce Department will no doubt have to revise its targeted dumping tests first. The United States is definitely one of the world's biggest trade scofflaws and the antidumping regime.

Trade Frontline 6/

They can't reverse the burden of current US non-compliance with WTO.

Skyes 14 (Alan O., Robert A. Kindler Professor of Law at New York University School of Law, "An Economic Perspective on As Such/Facial versus As Applied Challenges in the WTO and U.S. Constitutional Systems," Journal of Legal Analysis, March 5, Winter 2013 5 (2))

Suppose that in the event of (at least any inefficient) harm to a potential claimant, the claimant will have an as applied challenge and a remedy that is fully and accurately compensatory, in the sense that it restores the welfare of the claimant to its level before the occurrence of the harm. Assume further that no third parties are affected by the potential respondent's conduct. Under these assumptions, as such challenges are simply unnecessary and can easily prove counterproductive. The potential complainant by assumption is insulated from harm, the respondent will internalize costs of inefficient harm to the complainant, and the respondent will be induced to act efficiently.48 If a claimant can bring an as such challenge nevertheless, it will simply impose unnecessary costs on the respondent, and a claimant may even pursue a challenge strategically to try and extract surplus. Putting aside third party externalities, these observations suggest that as such challenges are undesirable if claimants can bring successful as applied challenges following inefficient harm and receive full compensation (ignoring litigation cost complications for the moment). Conversely, inadequacy of the ex post remedy is a necessary condition for as such challenges to become desirable from an economic standpoint although, as shall be seen, it is by no means sufficient. An injured party's remedies may prove inadequate for three types of reasons. First, the substantive law at issue may afford no remedy for inefficient harms. For example, imagine a system of tort law under which no injury is compensable unless it is intentionally inflicted. Under these circumstances, the incentive for injurers to take economically worthwhile precautions against accidental harm will be lost, even if the remedy for intentionally inflicted harms is fully compensatory. Although inefficiencies in the substantive law represent an important class of problems in many fields, they afford little basis for choosing between as such and as applied challenges. If the underlying substantive law fails to condemn inefficient behavior (or prevents efficient behavior), it seems unlikely that either type of challenge can promote efficiency. Accordingly, I will assume that the underlying substantive law is efficient, in the sense that it at least allows a claim for relief whenever the complainant suffers inefficient harm. A second possible reason for inadequate remedies is legal error in ex postadjudication. The complainant with a meritorious as applied challenge may be denied relief by mistake. I will not dwell on this possibility either, however, because it seems unlikely to afford a compelling case for as such challenges. Indeed, for reasons that are developed later, a pre-enforcement as such challenge may be more likely to result in error than a post-enforcement as applied challenge. The third reason why remedies may prove inadequate is simply that they may fail to afford full and accurate compensation for harm suffered. With particular reference to the WTO and the U.S. Constitutional systems, serious concerns arise in this regard. Under WTO law, a violator incurs no formal sanction until a complaining member has brought a case, received a favorable adjudication, and the violator has exhausted a "reasonable period of time" to bring its behavior into compliance.49 The practical result is that a violator can break the rules for a period of years before any formal sanction is triggered, and indeed can avoid any formal sanction completely by curing the violation within the "reasonable period." Commentators sometimes refer to this system as the "three-year free pass." In addition, it may be doubted that the formal remedy for WTO violations after the expiration of the "reasonable period"—trade sanctions imposed by the complainant—can compensate complainants even for the prospective harm suffered due to the ongoing violation.50 Small countries, for example, cannot use trade sanctions to improve their terms of trade, and often complain that retaliatory measures amount to "shooting themselves in the foot." Larger countries with the ability to improve their terms of trade through sanctions may also be undercompensated for prospective harm because of the principle that trade sanctions must be "equivalent" to the harm caused by the violation, a vague standard administered in somewhat unclear fashion by WTO arbitrators. If the arbitrators allow only the level of retaliation that restores the complainant's terms of trade, for example, then the complainant is undercompensated because of the decline in trade volume due to the violation.51 In the U.S.

Constitutional system, remedies are also limited in many cases. Depending on the particular constitutional violation in question, damages for past harm suffered may not be available at all, and the remedy may be limited to an order directing the government to desist from the conduct in question going forward (such as an order declaring that the enforcement of a statute against the plaintiff was unconstitutional). Likewise, some violations may involve conduct that irreparably alters the future course of affairs, such as restrictions on speech or voting that affect the outcome of an election. Measures to restore the status quo ante may as a practical matter prove infeasible.

Trade Ext: 2NC PTA Turn 1/

Their attempt to increase trade through TPP-style preferential agreements increases the risk of miscalculation and war. The SQ is safer because bi-lateral trade focus empirically reduces the perception of discrimination.

Timothy M **Peterson '15** (Department of Political Science, University of South Carolina, "Insiders versus Outsiders: Preferential Trade Agreements, Trade Distortions, and Militarized Conflict," Journal of Conflict Resolution, Vol. 59(4).)

Conclusion The results of my statistical analyses suggest that trade distortions provoke hostility between PTA members and nonmembers. However, this effect becomes less consistent as dyadic trade increases. The results of this study demonstrate that economic agreements can be used as a form of discrimination, benefiting insiders at the expense of outsiders. Outsiders suffering from trade distortions potentially could respond with hostility to a perceived economic attack. My findings are critical for scholars and policy makers to consider, given the tension caused by mere negotiations toward PTAs such as the TPP. If China were to perceive economic disadvantage following from successful implementation of the TPP, it could accelerate its pursuit of rival PTAs such as the RCEP. Escalation of such behavior has the potential to cause a conflict spiral. Although all-out war between the United States and China seems unlikely in an era of nuclear deterrence, the pursuit of rival spheres of influence could escalate into a situation not unlike the Cold War. Importantly, however, my results suggest that the negative implications of PTA-distorted trade can be mitigated by continued reliance on dyadic trade. This point is particularly important for policy makers, suggesting that further restriction of trade as retaliation against perceived distortion could be counterproductive to the goal of avoiding conflict. Future research can benefit from examining additional consequences of PTAinduced trade distortions. The perception of threat from such distortions could lead states to increase their own levels of protectionism and may promote the use of sanctions. Finally, it is important to note that division into rival blocs is not the only possible outcome of preferential liberalization. States left out of agreements could lobby to expand the scope of integration in an inclusive manner.33 Accordingly, future research can benefit from uncovering conditions that might preclude states from engaging in discriminatory trade practices,34 which, although welfare enhancing for members, could provoke costly conflict with nonmembers in spite of predictions that the highly interdependent global economy promotes enduring peace.

Trade Ext: 2NC PTA Turn 2/

Our Turn outweighs the case- 3 warrants:

- Their literature is biased to ignore conflict
- The Prisoner's Dilemma creates an incentive for exclusive PTAs
- Domino Effect outweighs solvency

Timothy M **Peterson '15** (Department of Political Science, University of South Carolina, "Insiders versus Outsiders: Preferential Trade Agreements, Trade Distortions, and Militarized Conflict," Journal of Conflict Resolution, Vol. 59(4))

The potential for preferential trade liberalization to enable discrimination by members against nonmembers is discussed by Viner (1950) in his seminal study of the ''customs union issue.'' Specifically, Viner notes that preferential reduction in trade barriers can lead to a perverse form of trade; instead of replacing inefficiently produced domestic commodities with efficiently produced foreign ones, PTAs can lead states to discriminate in favor of insiders, importing from relatively less efficient member states rather than relatively more efficient third parties. In other words, PTAs may be trade diverting rather than trade creating. Economists witnessing early PTAs feared that political relationships could be harmed by these discriminatory agreements. Bhagwati (1991, 64) quotes a statement by John Maynard Keynes suggesting that preferential liberalization is intrinsically adversarial: The separate blocs and all the friction and loss of friendship they must bring with them are expedients to which one may be driven in a hostile world where trade has ceased over wide areas to be cooperative and peaceful and where are forgotten the healthy rules of mutual advantage and equal treatment. But it is crazy to prefer that. Keynes is describing a classic example of a prisoner's dilemma: while all states' welfare would be improved by multilateral liberalization, smaller groups of states face incentives to enact preferential liberalization that benefits them at the expense of outsiders. Because there exists no global authority to prevent states from joining PTAs,2 states may be inclined to do so not simply because they seek to gain an advantage over outsiders (although this motivation is probably quite common),3 but because they fear falling behind if others form agreements from which they are excluded. Once a PTA is formed, cooperation between states could break down throughout the system. Baldwin (1996; see also Mansfield 1998) suggests the 700 Journal of Conflict Resolution 59(4) potential for **a ''domino effect''** in which the formation of one PTA causes outsiders to pursue rival agreements in order to offset the economic harm associated with exclusion. Economists tend to examine the political consequences of PTAs only indirectly; however, they devote considerable attention to the question of whether PTAs are truly welfare enhancing, given the potential for discrimination against more efficient nonmember states (e.g., Lipsey 1957; Wonnacott 1996; Panagariya and Krishna 2002). Additionally, a large literature examines whether PTAs are ''stumbling blocks'' or ''building blocks'' to wider, multilateral liberalization (e.g., Bhagwati 1991; Levy 1997; Baldwin and Seghezza 2008). Studies in the early 1990s warned that regionalism could provoke tariff wars and even precipitate the collapse of international trade (e.g., Bhagwati 1991, 1992; Krugman 1991). However, later studies advocate a more sanguine view of regionalism, concluding that contemporary PTAs tend to be trade creating rather than diverting and that preferential liberalization is enacted by interests favoring multilateral liberalization as a politically viable first step in this direction amid opposition by domestic interests harmed by free trade (Oye 1992; Eichengreen and Frankel 1995; Mansfield and Milner 1999). Yet, other work suggests that PTA-induced discrimination could vary. For example, Kono (2007) suggests that PTAs could facilitate wider liberalization in the specific case where members' intra- and extra-PTA comparative advantages are similar, but have the opposite effect—leading to higher external protectionism—when members' comparative advantages differ for insiders versus outsiders. Given the potential for at least some PTAs to be discriminatory, it follows that foreign policy makers perceiving harm from an exclusive trade agreement might protest what they view as an economic alliance against them. However, these political consequences of discriminatory trade practices have been largely unexplored. Instead, research tends to focus on political benefits—including reduced conflict propensity—gained by states sharing membership in a trade agreement (e.g., Mansfield, Pevehouse, and Bearce, 1999/2000; Mansfield and Pevehouse 2000; Bearce and Omori 2005).4 The generally optimistic view of PTAs could follow from a focus at the agreement or region level of analysis, **which obscures the reality** that many states are enmeshed in a **complex network of partially overlapping trade agreements**. In the next

section, I explore the consequence of PTA involvement from the perspective of a dyad, each state within which also trades with third parties. I outline the conditions under which reshaped trade patterns following from one state's participation in an exclusive PTA can elicit a perception by the nonmember that the trade agreement is threatening to that nonmember's economic security.

NSA DDI

On-Case Answers

Answers to Privacy Rights
1NC – FRONTLINE PRIVACY

1. The NSA is not a rogue agency, there has been no abuse of surveillance.

Lowry 2015,
Rich, Editor, the National Review, 5-27-2015, "Lowry: NSA data program faces death by bumper sticker," Salt Lake Tribune, http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2557534

You can listen to orations on the NSA program for hours and be outraged by its violation of our liberties, inspired by the glories of the Fourth Amendment and prepared to mount the barricades to stop the NSA in its tracks — and still have no idea what the program actually does. That's what the opponents leave out or distort, since their case against the program becomes so much less compelling upon fleeting contact with reality. The program involves so-called metadata, information about phone calls, but not the content of the calls — things like the numbers called, the time of the call, the duration of the call. The phone companies have all this information, which the NSA acquires from them. What happens next probably won't shock you, and it shouldn't. As Rachel Brand of the Privacy and Civil Liberties Oversight Board writes, "It is stored in a database that may be searched only by a handful of trained employees, and even they may search it only after a judge has determined that there is evidence connecting a specific phone number to terrorism." The charge of domestic spying is redolent of the days when J. Edgar Hoover targeted and harassed Martin Luther King Jr. Not only is there zero evidence of any such abuse, it isn't even possible based on the NSA database alone. There are no names with the numbers. As former prosecutor Andrew C. McCarthy points out, whitepages.com has more personal identifying information. The NSA is hardly a rogue agency. Its program is overseen by a special panel of judges, and it has briefed Congress about its program for years.

2. Privacy invasions are inevitable. They will continue to grow, Moore's law proves.

Seemann, 2015,
Michael Seemann studied Applied Cultural Studies in Lünebur, Now he blogs at mspr0.de and writes for various media like Rolling Stone, TIME online, SPEX, Spiegel Online, c't and the DU magazine " Digital Tailspin Ten Rules for the Internet After Snowden" The Network Notebooks series March 2015 http://networkcultures.org/wp-content/uploads/2015/03/NN09_Digital_Tailspin_SP.pdf

That the NSA was eavesdropping on satellite phone connections worldwide was known as early as 2000. Its global network of radio stations and radar domes was called 'Echelon'. The European Parliament called for an investigation, but when the enquiry commission submitted its report on September 5, 2001, it was overshadowed by the events of 9/11 a few days later. Apart from Echelon leaving deep traces in the collective memory of nerd culture, virtually nothing happened – this was a scandal that was to remain without political consequence. Even 'post-Snowden', no political, technical, or legal solutions to surveillance are forthcoming. On the contrary, surveillance will likely keep on spreading, parallel to the datafication of the world. What was

monitored at the time of Echelon was the same as it is today: everything. Only before, 'everything' was less extensive by several orders of magnitude. What can be put under surveillance will be put under surveillance, i.e. the digitized areas of life. These areas are subject to Moore's Law, meaning that their capacities will double every 18 to 24 months. The digital tailspin has only just begun. And it will continue to sink into every nook and cranny of daily life, leaving no corner undigitized. So when in ten years' time the latest eavesdropping operations of intelligence are revealed, we might hear of brain scanners, or of sensors tapping into our bloodstreams. Either way, people will shrug it off, or maybe not even that, as their thoughts on the issue will be publicly available anyway.

3. Privacy is not absolute, corporations and big data make violations of privary inevitable.

Goldsmith, 2015

Jack the Henry L. Shattuck Professor at Harvard Law School, The Ends of Privacy, The New Rambler, Apr. 06, 2015 (reviewing Bruce Schneier, Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World (2015)). Published Version http://newramblerreview.com/images/files/Jack- Goldsmith_Review-of-Bruce-Schneier.pdf

The truth is that consumers love the benefits of digital goods and are willing to give up traditionally private information in exchange for the manifold miracles that the Internet and big data bring. Apple and Android each offer more than a million apps, most of which are built upon this model, as are countless other Internet services. More generally, big data promises huge improvements in economic efficiency and productivity, and in health care and safety. Absent abuses on a scale we have not yet seen, the public's attitude toward giving away personal information in exchange for these benefits will likely persist, even if the government requires firms to make more transparent how they collect and use our data. One piece of evidence for this is that privacy-respecting search engines and email services do not capture large market shares. In general these services are not as easy to use, not as robust, and not as efficacious as their personal-data-heavy competitors.

Schneier understands and discusses all this. In the end his position seems to be that we should deny ourselves some (and perhaps a lot) of the benefits big data because the costs to privacy and related values are just too high. We "have to stop the slide" away from privacy, he says, not because privacy is "profitable or efficient, but because it is moral." But as Schneier also recognizes, privacy is not a static moral concept. "Our personal definitions of privacy are both cultural and situational," he acknowledges. Consumers are voting with their computer mice and smartphones for more digital goods in exchange for more personal data. The culture increasingly accepts the giveaway of personal information for the benefits of modern computerized life.

This trend is not new. "The idea that privacy can't be invaded at all is utopian," says Professor Charles Fried of Harvard Law School. "There are amounts and kinds of information which previously were not given out and suddenly they have to be given out. People adjust their behavior and conceptions accordingly." That is Fried in the 1970 Newsweek story, responding to an earlier generation's panic about big data and data mining. The same point applies today, and will apply as well when the Internet of things makes today's data mining seem as quaint as 1970s-era computation.

4. Weigh consequences — especially when responding to terrorism.

Isaac 2

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University-Bloomington, 2002 ("Ends, Means, and Politics," *Dissent*, Volume 49, Issue 2, Spring, Available Online to Subscribing Institutions via EBSCOhost, p. 35-37)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention **does not ensure** the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of **real violence and injustice**, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. [end page 35] This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; **it is the effects of action, rather than the motives of action, that is most significant**. Just as the alignment with "good" may engender impotence, **it is often the pursuit of "good" that generates evil**. This is the lesson of communism in the twentieth century: it is **not enough** that one's goals be sincere or idealistic; it is **equally important**, **always**, to ask about **the effects of pursuing these goals** and to judge these effects in **pragmatic and historically contextualized** ways. Moral absolutism **inhibits this judgment**. It **alienates** those who are not true believers. It promotes **arrogance**. And it **undermines political effectiveness**.

5. The Constitution is not a suicide pact. If mass surveillance is good policy, it is justified.

Posner 2006

Richard A. Posner, Senior Lecturer in Law at the University of Chicago, Judge on the United States Court of Appeals for the Seventh Circuit in Chicago, was named the most cited legal scholar of the 20th century by *The Journal of Legal Studies*, 2006 "Wire Trap," *New Republic*, February 6th, Available Online at http://www.newrepublic.com/article/104859/wire-trap

The revelation by The New York Times that the National Security Agency (NSA) is conducting a secret program of electronic surveillance outside the framework of the Foreign Intelligence Surveillance Act (FISA) has sparked a hot debate in the press and in the blogosphere. But there is something odd about the debate: It is aridly legal. Civil libertarians contend that the program is

illegal, even unconstitutional; some want President Bush impeached for breaking the law. The administration and its defenders have responded that the program is perfectly legal; if it does violate FISA (the administration denies that it does), then, to that extent, the law is unconstitutional. This legal debate is complex, even esoteric. But, apart from a handful of not very impressive anecdotes (did the NSA program really prevent the Brooklyn Bridge from being destroyed by blowtorches?), there has been little discussion of the program's concrete value as a counter-terrorism measure or of the inroads it has or has not made on liberty or privacy.

Not only are these questions more important to most people than the legal questions; they are fundamental to those questions. Lawyers who are busily debating legality without first trying to assess the consequences of the program have put the cart before the horse. Law in the United States is not a Platonic abstraction but a flexible tool of social policy. In analyzing all but the simplest legal questions, one is well advised to begin by asking what social policies are at stake. Suppose the NSA program is vital to the nation's defense, and its impingements on civil liberties are slight. That would not prove the program's legality, because not every good thing is legal; law and policy are not perfectly aligned. But a conviction that the program had great merit would shape and hone the legal inquiry. We would search harder for grounds to affirm its legality, and, if our search were to fail, at least we would know how to change the law--or how to change the program to make it comply with the law--without destroying its effectiveness. Similarly, if the program's contribution to national security were negligible--as we learn, also from the Times, that some FBI personnel are indiscreetly whispering--and it is undermining our civil liberties, this would push the legal analysis in the opposite direction.

Ronald Dworkin, the distinguished legal philosopher and constitutional theorist, wrote in The New York Review of Books in the aftermath of the September 11 attacks that "we cannot allow our Constitution and our shared sense of decency to become a suicide pact." He would doubtless have said the same thing about FISA. If you approach legal issues in that spirit rather than in the spirit of ruat caelum fiat iusticia (let the heavens fall so long as justice is done), you will want to know how close to suicide a particular legal interpretation will bring you before you decide whether to embrace it. The legal critics of the surveillance program have not done this, and the defenders have for the most part been content to play on the critics' turf.

6. Surveillance increases democratic accountability and makes discriminatory bias impossible.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review,
http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

Broad-based surveillance distributes its burdens widely, which may be fairer.

For democratic accountability, panopticon-style surveillance has an underappreciated advantage. It may more easily accommodate transparency. Electronic surveillance is governed by fully specified algorithms. Thus, disclosure of the algorithms gives a full picture of the practices. By

contrast, when government agents are told to scan for suspicious behavior, we know very little about what criteria they are using. Even if we require the agents to articulate their criteria, they may be unable to do so comprehensively. The concern is not just about good faith, but also about unconscious predisposition. Psychologists have provided extensive evidence of pervasive, unconscious bias based on race and other social stereotypes and stigma. Algorithm-governed electronic surveillance has no such bias.

No Abuse of Surveillance

The NSA is well-regulated and constrained by judicial oversight.

Cohen, 2015

Michael A. Cohen, 15, fellow at The Century Foundation. Previously, Michael served in the U.S. Department of State as chief speechwriter for U.S. Representative to the United Nations Bill Richardson and Undersecretary of State Stuart Eizenstat. , 6-3-2015, "NSA Surveillance Debate Drowned Out on Both Sides by Fear Tactics," World Politics Review, http://www.worldpoliticsreview.com/articles/15905/nsa-surveillance-debate-drowned-out-on-both-sides-by-fear-tacticsa

The arguments of NSA opponents have, for two years, relied on hypothetical, trumped-up fears of the government ransacking our private information. These concerns have been raised even though, from all appearances, the NSA's domestic surveillance activities are reasonably well-regulated and constrained by judicial oversight. NSA opponents like to point out that a recent court decision determined that the bulk records collection program was illegal, which ignores the many other court decisions that accepted its legality. More important, it ignores the decisions of the secret FISA Court, which ordered the NSA not to scrap collection programs that were determined to be operating unconstitutionally, but rather to make changes to them to get them in line with constitutional constraints.

There's no evidence of abuse of surveillance powers.

Simon, 2013,

David Simon, producer of HBO's The Wire, 7/3/13, "We are shocked, shocked...," http://davidsimon.com/we-are-shocked-shocked/

I know it's big and scary that the government wants a data base of all phone calls. And it's scary that they're paying attention to the internet. And it's scary that your cell phones have GPS installed. And it's scary, too, that the little box that lets you go through the short toll lane on I-95 lets someone, somewhere know that you are on the move. Privacy is in decline around the world, largely because technology and big data have matured to the point where it is easy to create a net that monitors many daily interactions. Sometimes the data is valuable for commerce — witness those facebook ads for Italian shoes that my wife must endure — and sometimes for law enforcement and national security. But be honest, most of us are grudging participants in this

dynamic. We want the cell phones. We like the internet. We don't want to sit in the slow lane at the Harbor Tunnel toll plaza.

The question is not should the resulting data exist. It does. And it forever will, to a greater and greater extent. And therefore, the present-day question can't seriously be this: Should law enforcement in the legitimate pursuit of criminal activity pretend that such data does not exist. The question is more fundamental: Is government accessing the data for the legitimate public safety needs of the society, or are they accessing it in ways that abuse individual liberties and violate personal privacy — and in a manner that is unsupervised.

And to that, the Guardian and those who are wailing jeremiads about this pretend-discovery of U.S. big data collection are noticeably silent. We don't know of any actual abuse. No known illegal wiretaps, no indications of FISA-court approved intercepts of innocent Americans that occurred because weak probable cause was acceptable. Mark you, that stuff may be happening. As happens the case with all law enforcement capability, it will certainly happen at some point, if it hasn't already. Any data asset that can be properly and legally invoked, can also be misused — particularly without careful oversight. But that of course has always been the case with electronic surveillance of any kind.

Privacy Losses are Inevitable

Privacy is eroding now because of technological innovation.

Stalder, 2009

Felix. Department of Sociology, Queens University "Privacy is not the Antidote to Surveillance." Surveillance & Society 1.1 (2009): 120-124.

The standard answer to these problems the call for our privacy to be protected. Privacy, though, is a notoriously vague concept. Europeans have developed on of the most stringent approaches where privacy is understood as 'informational self-determination'. This, basically, means that an individual should be able to determine the extent to which data about her or him is being collected in any given context. Following this definition, privacy is a kind of bubble that surrounds each person, and the dimensions of this bubble are determined by one's ability to control who enters it and who doesn't. Privacy is a personal space; space under the exclusive control of the individual. Privacy, in a way, is the informational equivalent to the (bourgeois, if you will) notion of "my home is my castle." As appealing and seemingly intuitive as this concept is, it plainly doesn't work. Everyone agrees that our privacy has been eroding for a very long time – hence the notion of the "surveillance society" – and there is absolutely no indication that the trend is going to slow down, let alone reverse. Even in the most literal sense, the walls of our castles are being pierced by more and more connections to the outside world. It started with the telephone, the TV and the Internet, but imagine when your fridge begins to communicate with your palm pilot, updating the shopping list as you run out of milk, and perhaps even sending a

notice to the grocer for home delivery. Or maybe the stove will alert the fire department because you didn't turn off the hot plate before rushing out one morning.6

A less futuristic example of this connectivity would be smoke detectors that are connected to alarm response systems. Outside the home, it becomes even more difficult to avoid entering into relationships that produce electronic, personal data. Only the most zealous will opt for standing in line to pay cash at the toll both every day, if they can just breeze through an electronic gate instead. This problem is made even more complicated by the fact that there are certain cases in which we want "them" to have our data. Complete absence from databanks is neither practical nor desirable. For example, it can be a matter of life and death to have instant access to comprehensive and up-to-date health-related information about the people who are being brought into the emergency room unconscious. This information needs to be too detailed and needs to be updated too often – for example to include all prescriptiondrugs a person is currently using – to be issued on, say, a smartcard held by the individual, hence giving him or her full control over who accesses it. To make matters worse, with privacy being by definition personal, every single person will have a different notion about what privacy means. Data one person might allow to be collected might be deeply personal for someone else. This makes it very difficult to collectively agree on the legitimate boundaries of the privacy bubble.

Corporations Violate Privacy

Privacy can't be restored – technological and corporate invasions happen all the time.

Lewis 2014

James Andrew Lewis is a senior fellow and director of the Strategic Technologies Program at the Center for Strategic and International Studies. Previously, US Departments of State and Commerce as a Foreign Service officer and as a member of the Senior Executive Service. *"Underestimating Risk in the Surveillance Debate"* - Center For Strategic & International Studies - Strategic Technologies Program – December - http://csis.org/publication/underestimating-risk-surveillance-debate

On average, there are 16 tracking programs on every website.4 This means that when you visit a website, it collects and reports back to 16 companies on what you've looked at and what you have done. These programs are invisible to the user. They collect IP address, operating system and browser data, the name of the visiting computer, what you looked at, and how long you stayed. This data can be made even more valuable when it is matched with other data collections. Everything a consumer does online is tracked and collected. There is a thriving and largely invisible market in aggregating data on individuals and then selling it for commercial purposes. Data brokers collect utility bills, addresses, education, arrest records (arrests, not just convictions). All of this data is recorded, stored, and made available for sale. Social networking sites sell user data in some anonymized form so that every tweet or social media entry can be used to calculate market trends and refine advertising strategies. What can be predicted from this social media data is amazing—unemployment trends, disease outbreaks, consumption patterns for different groups, consumer preferences, and political trends. It is often more accurate than polling because it reflects peoples' actual behavior rather than the answer they think an interviewer wants to hear. Ironically, while the ability of U.S. agencies to use this commercial data is greatly

restricted by law and policy, the same restrictions do not apply to foreign governments. The development of the Internet would have been very different and less dynamic if these business models had not been developed. They provide incentives and financial returns to develop or improve Internet services. There is an implicit bargain where you give up privacy in exchange for services, but in bargains between service providers and consumers, one side holds most of the cards and there is little transparency. But the data-driven models of the Internet mean that it is an illusion to think that there is privacy online or that NSA is the only entity harvesting personal data.

Corporation commit much worse privacy violations.

Lowry 15,
Rich, Editor, the National Review, 5-27-2015, "Lowry: NSA data program faces death by bumper sticker," Salt Lake Tribune,
http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2557534

In the context of all that is known about us by private companies, the NSA is a piker. Take the retailer Target, for example. According to The New York Times, it collects your "demographic information like your age, whether you are married and have kids, which part of town you live in, how long it takes you to drive to the store, your estimated salary, whether you've moved recently, what credit cards you carry in your wallet and what Web sites you visit." Of course, the Fourth Amendment applies to the government, not private entities like Target. The amendment protects against unreasonable searches and seizures of our "persons, houses, papers, and effects." If the NSA were breaking into homes and seizing metadata that people had carefully hidden away from prying eyes, it would be in flagrant violation of the Fourth Amendment. But no one is in possession of his or her own metadata. Even if the NSA didn't exist, metadata would be controlled by someone else, the phone companies. The Supreme Court has held that you don't have an expectation of privacy for such information in the possession of a third party. One frightening way to look at mail delivery is that agents of the state examine and handle the correspondence of countless of millions of Americans. They aren't violating anyone's Fourth Amendment rights, though, because no one expects the outside of their envelopes to be private.

Security Consequences before Privacy

Terrorism and fear chill speech and democracy more than surveillance.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review,
http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

With low crime rates and small risks of terrorism in the United States, privacy advocates do not feel compelled to address the potential chilling effect on speech and conduct that arises from fear

of private lawlessness, but we do not have to look far to see examples of such an effect abroad and to recognize that its magnitude depends on the effectiveness of public law enforcement. To the extent that law enforcement is enhanced by surveillance, we ought to recognize the possibility of a warming effect that strengthens people's confidence that they can act and speak without fear of private aggression.

Security is more important than privacy because if people aren't secure the right to privacy is meaningless.

Himma, 2007

Kenneth Einar, Associate Professor of Philosophy, Seattle Pacific University. "Privacy versus security: Why privacy is not an absolute value or right." San Diego L. Rev. 44 (2007): 857.

The last argument I wish to make in this essay will be brief because it is extremely well known and has been made in a variety of academic and nonacademic contexts. The basic point here is that no right not involving security can be meaningfully exercised in the absence of efficacious protection of security. The right to property means nothing if the law fails to protect against threats to life and bodily security. Likewise, the right to privacy has little value if one feels constrained to remain in one's home because it is so unsafe to venture away that one significantly risks death or grievous bodily injury. This is not merely a matter of describing common subjective preferences; this is rather an objective fact about privacy and security interests. If security interests are not adequately protected, citizens will simply not have much by way of privacy interests to protect. While it is true, of course, that people have privacy interests in what goes on inside the confines of their home, they also have legitimate privacy interests in a variety of public contexts that cannot be meaningfully exercised if one is afraid to venture out into those contexts because of significant threats to individual and collective security-such as would be the case if terrorist attacks became highly probable in those contexts. It is true, of course, that to say that X is a prerequisite for exercising a particular right Y does not obviously entail that X is morally more important than Y, but this is a reasonable conclusion to draw. If it is true that Y is meaningless in the absence of X, then it seems clear that X deserves, as a moral matter, more stringent protection than Y does. Since privacy interests lack significance in the absence of adequate protection of security interests, it seems reasonable to infer that security interests deserve, as a moral matter, more stringent protection than privacy interests.

Security Trumps Constitution

The counter-terror benefits of mass surveillance outweigh privacy and the Constitution.

Posner 5 —

Richard A. Posner, Senior Lecturer in Law at the University of Chicago, Judge on the United States Court of Appeals for the Seventh Circuit in Chicago, was named the most cited legal scholar of the 20th century by *The Journal of Legal Studies*, 2013 "Our Domestic Intelligence

Crisis," *Washington Post*, December 21st, http://www.washingtonpost.com/wp-dyn/content/article/2005/12/20/AR2005122001053.html

These programs are criticized as grave threats to civil liberties. They are not. Their significance is in flagging the existence of gaps in our defenses against terrorism. The Defense Department is rushing to fill those gaps, though there may be better ways. The collection, mainly through electronic means, of vast amounts of personal data is said to invade privacy. But machine collection and processing of data cannot, as such, invade privacy. Because of their volume, the data are first sifted by computers, which search for names, addresses, phone numbers, etc., that may have intelligence value. This initial sifting, far from invading privacy (a computer is not a sentient being), keeps most private data from being read by any intelligence officer. The data that make the cut are those that contain clues to possible threats to national security. The only valid ground for forbidding human inspection of such data is fear that they might be used to blackmail or otherwise intimidate the administration's political enemies. That danger is more remote than at any previous period of U.S. history. Because of increased political partisanship, advances in communications technology and more numerous and competitive media, American government has become a sieve. No secrets concerning matters that would interest the public can be kept for long. And the public would be far more interested to learn that public officials were using private information about American citizens for base political ends than to learn that we have been rough with terrorist suspects – a matter that was quickly exposed despite efforts at concealment. The Foreign Intelligence Surveillance Act makes it difficult to conduct surveillance of U.S. citizens and lawful permanent residents unless they are suspected of being involved in terrorist or other hostile activities. That is too restrictive. Innocent people, such as unwitting neighbors of terrorists, may, without knowing it, have valuable counterterrorist information. Collecting such information is of a piece with data-mining projects such as Able Danger.

The goal of national security intelligence is to prevent a terrorist attack, not just punish the attacker after it occurs, and the information that enables the detection of an impending attack may be scattered around the world in tiny bits. A much wider, finer-meshed net must be cast than when investigating a specific crime. Many of the relevant bits may be in the e-mails, phone conversations or banking records of U.S. citizens, some innocent, some not so innocent. The government is entitled to those data, but just for the limited purpose of protecting national security.The Pentagon's rush to fill gaps in domestic intelligence reflects the disarray in this vital yet neglected area of national security. The principal domestic intelligence agency is the FBI, but it is primarily a criminal investigation agency that has been struggling, so far with limited success, to transform itself. It is having trouble keeping its eye on the ball; an FBI official is quoted as having told the Senate that environmental and animal rights militants pose the biggest terrorist threats in the United States. If only that were so. Most other nations, such as Britain, Canada, France, Germany and Israel, many with longer histories of fighting terrorism than the United States, have a domestic intelligence agency that is separate from its national police force, its counterpart to the FBI. We do not. We also have no official with sole and comprehensive responsibility for domestic intelligence. It is no surprise that gaps in domestic intelligence are being filled by ad hoc initiatives.We must do better. The terrorist menace, far from receding, grows every day. This is not only because al Qaeda likes to space its attacks, often by many years, but also because weapons of mass destruction are becoming ever more accessible to terrorist groups and individuals.

Answers to Privacy Rights First

Privacy rights are not absolute, security and preserving life is more important.

Himma, 2007

Kenneth Einar, Associate Professor of Philosophy, Seattle Pacific University. "Privacy versus security: Why privacy is not an absolute value or right." San Diego L. Rev. 44 (2007): 857.

From an intuitive standpoint, the idea that the right to privacy is an absolute right seems utterly implausible. Intuitively, it seems clear that there are other rights that are so much more important that they easily trump privacy rights in the event of a conflict. For example, if a psychologist knows that a patient is highly likely to commit a murder, then it is, at the very least, morally permissible to disclose that information about the patient in order to prevent the crime-regardless of whether such information would otherwise be protected by privacy rights. Intuitively, it seems clear that life is more important from the standpoint of morality than any of the interests protected by a moral right to privacy. Still one often hears-primarily from academics in information schools and library schools, especially in connection with the controversy regarding the USA PATRIOT Act-the claim that privacy should never be sacrificed for security, implicitly denying what I take to be the underlying rationale for the PATRIOT Act. This also seems counterintuitive because it does not seem unreasonable to believe we have a moral right to security that includes the right to life. Although this right to security is broader than the right to life, the fact that security interests include our interests in our lives implies that the right to privacy trumps even the right to life-something that seems quite implausible from an intuitive point of view. If I have to give up the most private piece of information about myself to save my life or protect myself from either grievous bodily injury or financial ruin, I would gladly do so without hesitation. There are many things I do not want you to know about me, but should you make a credible threat to my life, bodily integrity, financial security, or health, and then hook me up to a lie detector machine, I will truthfully answer any question you ask about me. I value my privacy a lot, but I value my life, bodily integrity, and financial security much more than any of the interests protected by the right to privacy.

Privacy rights Fail

Their understanding of privacy rights as personal will fail because its impossible in modern society.

Stalder, 2009,

Felix. Department of Sociology, Queens University "Privacy is not the Antidote to Surveillance." Surveillance & Society 1.1 (2009): 120-124.

So rather than fight those connections – some of which are clearly beneficial, some of which are somewhat ambiguous, and some are clearly disconcerting – we have to reconceptualize what

these connections do. Rather than seeing them as acts of individual transgression (X has invaded Y's privacy) we have to see them part of a new landscape of social power. Rather than continuing on the defensive, by trying to maintain an ever-weakening illusion of privacy, we have to shift to the offensive and start demanding accountability of those whose power is enhanced by the new connections. In a democracy, political power is, at least ideally, tamed by making the government accountable to those who are governed, not by carving out areas in which the law doesn't apply. It is, in this perspective, perhaps no co-incidence that many of the strongest privacy advocates (at least in the US) lean politically towards libertarianism, a movement which includes on its fringe white militias which try to set up zones liberated from the US government. In our democracies, extensive institutional mechanisms have been put into to place to create and maintain accountability, and to punish those who abuse their power. We need to develop and instate similar mechanisms for the handling of personal information – a technique as crucial to power as the ability to exercise physical violence – in order to limit the concentration of power inherent in situations that involve unchecked surveillance. The current notion of privacy, which frames the issue as a personal one, won't help us accomplish that.9 However, notions of institutionalized accountability will, because they acknowledge surveillance as a structural problem of political power. It's time to update our strategies for resistance and develop approaches adequate to the actual situation rather than sticking to appealing but inadequate ideas that will keep locking us into unsustainable positions.

There should not be a universal ethical rule against surveillance, the context matters.

Stoddart, 2014

Eric. School of Divinity, University of St Andrews "Challenging 'Just Surveillance Theory': A Response to Kevin Macnish's 'Just Surveillance? Towards a Normative Theory of Surveillance'." Surveillance & Society 12.1 (2014): 158-163.

I am sorry to say that I find Macnish's aim of a normative ethics of surveillance to be an unnecessary goal. I could be persuaded that a radically revised model of practical reasoning based on the Just War Tradition might have saliency for investigative strategies involving surveillance technologies. However, 'surveillance' is much too all-encompassing a term to be the subject of its own ethics. There can be no 'ethics of surveillance' but there may be norms appropriate for particular contexts of surveillance. This means examining specific domains in which surveillance is deployed, along with other strategies, to address concerns or challenges. For example, the ethics of surveillance in elderly care or the ethics of surveillance in education are valuable discussions to be had. My point is that it ought to be the ethics of elderly care that is foregrounded within which we would be seek to understand the ethical deployment of surveillance mechanisms.

Surveillance doesn't Violate 4th Amendment

NSA programs don't violate the Fourth Amendment because they information has been given to a third-party.

Herman & Yoo, 2014

Yoo, John, law professor at the University of California, Berkeley, and a visiting scholar at the American Enterprise Institute and Arthur Herman. senior fellow at Hudson Institute. "A Defense of Bulk Surveillance." National Review 65 (2014): 31-33.

Considering the millions of phone numbers making billions of phone calls that year and every year, these levels of surveillance can hardly be considered a major intrusive system. But what about the program's constitutionality and alleged violation of the Fourth Amendment? The Fourth Amendment does not protect some vague and undefined right to privacy. Instead, it declares: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." The Constitution protects only the privacy of the "person," the home, and "papers and effects," which are usually located in the home. It does not reach information or things that we voluntarily give up to the government or to third parties outside of the home or our persons. The Fourth Amendment also does not make such information absolutely immune—it is still subject to search if the government is acting reasonably or has a warrant. These basic principles allow the government to search through massive databases of call and e-mail records when doing so is a reasonable measure to protect the nation's security, which is its highest duty.

A2 Surveillance hurts Freedom

Surveillance doesn't harm freedom or autonomy, because they aren't reliant on digital communication.

Sagar, 2015

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. He was previously assistant professor in the Department of Politics at Princeton University., "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

The second harm Greenwald sees surveillance posing is personal in nature. Surveillance is said to undermine the very essence of human freedom because the "range of choices people consider when they believe that others are watching is . . . far more limited than what they might do when acting in a private realm."16 Internet-based surveillance is viewed as especially damaging in this respect because this is "where virtually everything is done" in our day, making it the place "where we develop and express our very personality and sense of self." Hence, "to permit surveillance to take root on the Internet would mean subjecting virtually all forms of human interaction, planning, and even thought itself to comprehensive state examination."17

This claim too seems overstated in two respects. First, it exaggerates the extent to which our self-development hinges upon electronic communication channels and other related activities that leave electronic traces. The arrival of the Internet certainly opens new vistas, but it does not entirely close earlier ones. A person who fears what her browsing habits might communicate to the authorities can obtain texts offline. Similarly, an individual who fears transmitting materials electronically can do so in person, as Snowden did when communicating with Greenwald. There are costs to communicating in such "old-fashioned" ways, but these costs are neither new nor prohibitive. Second, a substantial part of our self-development takes place in public. We become who we are through personal, social, and intellectual engagements, but these engagements do not always have to be premised on anonymity. Not everyone wants to hide all the time, which is why public engagement—through social media or blogs, for instance—is such a central aspect of the contemporary Internet.

Surveillance doesn't destroy freedom, we're doing fine.

Seemann, 2015,

Michael Seemann studied Applied Cultural Studies in Lünebur, Now he blogs at mspr0.de and writes for various media like Rolling Stone, TIME online, SPEX, Spiegel Online, c't and the DU magazine " Digital Tailspin Ten Rules for the Internet After Snowden" The Network Notebooks series March 2015 http://networkcultures.org/wp-content/uploads/2015/03/NN09_Digital_Tailspin_SP.pdf

Our digital lives have been monitored, not just occasionally or recently, but continuously for the past ten years. That means that if total surveillance were as much a risk to personal freedom and individuality as digital rights activists have been suggesting for a long time, no one in the Western hemisphere would be able to feel free or individualistic any more. In other words, the question of whether we can live with total surveillance has already been answered in a way that is by no means hypothetical, but decidedly empirical: yes, we can, and we have been doing so for more than ten years.

The claims about authoritarianism are hyperbolic and paranoid. All law enforcement practice might be used improperly, but accountability checks the worst practices.

Simon, 2014,

William H. Simon, Arthur Levitt Professor of Law at Columbia University, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

The third trope of the paranoid style is the slippery slope argument. The idea is that an innocuous step in a feared direction will inexorably lead to further steps that end in catastrophe. As The Music Man (1962) puts it in explaining why a pool table will lead to moral collapse in River City, Iowa, "medicinal wine from a teaspoon, then beer from a bottle." In this spirit, Daniel Solove in Nothing to Hide (2011) explains why broad surveillance is a threat even when limited to detection of unlawful activity. First, surveillance will sometimes lead to mistaken conclusions

that will harm innocent people. Second, since "everyone violates the law sometimes" (think of moderate speeding on the highway), surveillance will lead to over-enforcement of low-stakes laws (presumably by lowering the costs of enforcement), or perhaps the use of threats of enforcement of minor misconduct to force people to give up rights (as for example, where police threaten to bring unrelated charges in order to induce a witness or co-conspirator to cooperate in the prosecution of another). And finally, even if we authorize broad surveillance for legitimate purposes, officials will use the authorization as an excuse to extend their activities in illegitimate ways. Yet, slippery slope arguments can be made against virtually any kind of law enforcement. Most law enforcement infringes privacy. ("Murder is the most private act a man can commit," William Faulkner wrote.) And most law enforcement powers have the potential for abuse. What we can reasonably ask is, first, that the practices are calibrated effectively to identify wrongdoers; second, that the burden they put on law-abiding people is fairly distributed; and third, that officials are accountable for the lawfulness of their conduct both in designing and in implementing the practices.

A2: chilling effect

Surveillance does not eliminate dissent, empirical examples demonstrate the opposite.

Sagar, **2015**

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. He was previously assistant professor in the Department of Politics at Princeton University., "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

Greenwald identifies two major harms. The first is political in nature. Mass surveillance is said to stifle dissent because "a citizenry that is aware of always being watched quickly becomes a compliant and fearful one." Compliance occurs because, anticipating being shamed or condemned for nonconformist behavior, individuals who know they are being watched "think only in line with what is expected and demanded."13 Even targeted forms of surveillance are not to be trusted, Greenwald argues, because the "indifference or support of those who think themselves exempt invariably allows for the misuse of power to spread far beyond its original application."14

These claims strike me as overblown. The more extreme claim, that surveillance furthers thought control, is neither logical nor supported by the facts. It is logically flawed because accusing someone of trying to control your mind proves that they have not succeeded in doing so. On a more practical level, the fate met by states that have tried to perfect mass control—the Soviet Union and the German Democratic Republic, for example—suggests that surveillance cannot eliminate dissent. It is also not clear that surveillance can undermine dissident movements as easily as Greenwald posits. The United States' record, he writes, "is suffused with examples of groups and individuals being placed under government surveillance by virtue of their dissenting

views and activism—Martin Luther King, Jr., the civil rights movement, antiwar activists, environmentalists."15 These cases are certainly troubling, but it hardly needs pointing out that surveillance did not prevent the end of segregation, retreat from Vietnam, and the rise of environmental consciousness. This record suggests that dissident movements that have public opinion on their side are not easily intimidated by state surveillance (a point reinforced by the Arab Spring).

Surveillance may make it harder for individuals to associate with movements on the far ends of the political spectrum. But why must a liberal democracy refrain from monitoring extremist groups such as neo-Nazis and anarchists? There is the danger that officials could label as "extreme" legitimate movements seeking to challenge the prevailing order. Yet the possibility that surveillance programs could expand beyond their original ambit does not constitute a good reason to end surveillance altogether. A more proportionate response is to see that surveillance powers are subject to oversight.

Answers to Surveillance is Tyranny

The argument that NSA surveillance enables tyranny is wrong. The data exists inevitably and if you are concerned about the risk of a tyrant taking over, there are much bigger issues than privacy to be concerned about.

Etzioni, Professor of International Relations at the George Washington University, **2014**
Amitai Etzioni , Intelligence and National Security (2014): NSA: National Security vs. Individual Rights, Intelligence and National Security, DOI: 10.1080/02684527.2013.867221

Part VI: The Coming Tyrant?

A common claim among civil libertarians is that, even if little harm is presently being inflicted by government surveillance programs, the infrastructure is in place for a less-benevolent leader to violate the people's rights and set us on the path to tyranny. For example, it has been argued that PRISM 'will amount to a "turnkey" system that, in the wrong hands, could transform the country into a totalitarian state virtually overnight. Every person who values personal freedom, human rights and the rule of law must recoil against such a possibility, regardless of their political preference'.177 And Senator Rand Paul (R-KY) has been 'careful to point out that he is concerned about the possible abuses of some future, Hitler-like president'.178 A few things might be said in response.

First, all of the data that the government is collecting is already being archived (at least for short periods – as discussed above) by private corporations and other entities. It is not the case that PRISM or other such programs entail the collection of new data that was not previously available.

Second, if one is truly concerned that a tyrant might take over the United States, one obviously faces a much greater and all-encompassing threat than a diminution of privacy. And the response has to be similarly expansive. One can join civic bodies that seek to shore up democracies, or work with various reform movements and public education drives, or ally with groups that

prepare to retreat to the mountains, store ammunition and essential foods, and plan to fight the tyrannical forces. But it makes no sense to oppose limited measures to enhance security on these grounds.

Surveillance Protects Rights

Private abuse of digital information is worse and only surveillance can stop that.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

The critics' preoccupation with the dangers of state oppression often leads them to overlook the dangers of private abuse of surveillance. They have a surprisingly difficult time coming up with actual examples of serious harm from government surveillance abuse. Instead, they tend to talk about the "chilling effect" from awareness of surveillance.

By contrast, there have been many examples of serious harm from private abuse of personal information gained from digital sources. At least one person has committed suicide as a consequence of the Internet publication of video showing him engaged in sexual activity. Many people have been humiliated by the public release of a private recording of intimate conduct, and blackmail based on threats of such disclosure has emerged as a common practice. Some of this private abuse is and should be illegal. But the legal prohibitions can only be enforced if the government has some of the surveillance capacities that critics decry. Illicit recording and distribution can only be restrained if the wrongdoers can be identified and their actions effectively restrained. Less compromising critics would deny government these capacities.

Mass Surveillance Decreases Discrimination

Mass surveillance is less discriminatory because it targets everyone equally.

Hadjimatheou 2014
Katerina Hadjimatheou, Security Ethics Group, Politics and International Studies, University of Warwick "The Relative Moral Risks of Untargeted and Targeted Surveillance" Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1

There are good reasons to think that both the extent to which surveillance treats people like suspects and the extent to which it stigmatises those it affects increases the more targeted the measure of surveillance. As has already been established, stigmatisation occurs when individuals are marked out as suspicious. Being marked out implies being identified in some way that distinguishes one from other members of the wider community or the relevant group. Being pulled out of line for further search or questioning at an airport; being stopped and searched on a busy train platform while other passengers are left alone; having one's travel history, credit card, and other records searched before flying because one fits a profile of a potential terrorist-these are all examples of being singled out and thereby marked out for suspicion. They are all stigmatising,

because they all imply that there is something suspicious about a person that justifies the intrusion.

In contrast, untargeted surveillance such as blanket screening at airports, spot screening of all school lockers for drugs, and the use of speed cameras neither single people out for scrutiny nor enact or convey a suspicion that those surveilled are more likely than others to be breaking the rules. Rather, everybody engaged in the relevant activity is subject to the same measure of surveillance, indiscriminately and irrespective of any evidence suggesting particular suspiciousness. Such evidence may well emerge from the application of untargeted surveillance, and that evidence may then be used to justify singling people out for further, targeted surveillance. But untargeted surveillance itself affects all people within its range equally and thus stigmatises none in particular.

Mass surveillance solves discrimination.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review,
http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

More generally, broad-reach electronic mechanisms have an advantage in addressing the danger that surveillance will be unfairly concentrated on particular groups; targeting criteria, rather than reflecting rigorous efforts to identify wrongdoers, may reflect cognitive bias or group animus. Moreover, even when the criteria are optimally calculated to identify wrongdoers, they may be unfair to law-abiding people who happen to share some superficial characteristic with wrongdoers. Thus, law-abiding blacks complain that they are unfairly burdened by stop-and-frisk tactics, and law-abiding Muslims make similar complaints about anti-terrorism surveillance.

Such problems are more tractable with broad-based electronic surveillance. Because it is broad-based, it distributes some of its burdens widely. This may be intrinsically fairer, and it operates as a political safeguard, making effective protest more likely in cases of abuse. Because it is electronic, the efficacy of the criteria can be more easily investigated, and their effect on law-abiding people can be more accurately documented. Thus, plaintiffs in challenges to stop-and-frisk practices analyze electronically recorded data on racial incidence and "hit rates" to argue that the criteria are biased and the effects racially skewed. Remedies in such cases typically require more extensive recording.

Answers to Economy Advantage

1NC FRONTLINE – ECONOMY ADVANTAGE [1/4]

1. The aff can't solve foreign business intrests - non-domestic customers won't be protected by the plan.

Mackinnon 2014

Rebecca Mackinnon Director of the Ranking Digital Rights project at the New America Foundation, 5-19-2014, "Saving Privacy," No Publication, http://bostonreview.net/forum/saving-privacy/rebecca-mackinnon-response-saving-privacy

While Internet companies are essential to the U.S. economy, not all of their work is done domestically. Their future business success depends on overseas markets, but access to those markets depends in turn on the trust of non-American users and customers. This creates a challenge for legal reform. If the consequences of insufficiently accountable NSA surveillance only concerned Americans, then Hundt's law-based solution—combined with commitments by companies and the U.S. government to support encryption and the right of Internet users to be anonymous—would probably do the trick. But U.S. companies have global "constituencies," a term I prefer to "users" for reasons I explain in my 2012 book Consent of the Networked. NSA surveillance—and surveillance by most other governments via corporate-run platforms and networks—affects people around the world who have no leverage over U.S. lawmakers. At the same time, other countries can place before U.S. companies obstacles that American laws are powerless to overturn. So while legal reform in the United States is necessary, we also need parallel processes across the democratic world. The Freedom Online Coalition, a group of twenty-two democracies, has begun to take positive steps in this regard, and the international human rights community is pushing for such reforms.

2. The benefits of cloud computing are too valuable to corporations to pass up, NSA spying doesn't matter.

Perez, 2013

Juan Carlos Perez Assistant News Editor, 12-5-2013, "Why CIOs stick with cloud computing despite NSA snooping scandal," PCWorld, http://www.pcworld.com/article/2069681/why-cios-stick-with-cloud-computing-despite-nsa-snooping-scandal.html

Stealthy monitoring of computer systems and communications by governments currently doesn't rank among the top IT security concerns for many IT leaders. "Every CIO will tell you we worry every minute of every day about security, privacy, redundancy, operational continuity, disaster recovery and the like," said Michael Heim, Whirlpool's corporate vice president and global CIO. "We're probably the most paranoid guys on the planet." Jacques Marzin, director of Disic, France's interministerial IT and communications directorate, said the NSA scandal confirmed the known risks associated with the use of public cloud services. "We are of course concerned about any third party access to our data although we have limited usage of public clouds," he said. However, having everything behind the firewall also carries risks. CIOs worry about the cost and complexity of running servers on their own premises and the potential loss of competitiveness if rivals are taking advantage of the benefits of cloud computing. "At the end of the day, the capabilities and economics around the cloud computing model are so compelling that when you artificially try to not take advantage of them you impact your ability to compete, because others will take advantage of them," Heim said. Whirlpool recently decided to move about 30,000 employees from an on premises IBM Lotus Notes system to the Google Apps public cloud email

and collaboration suite. ”We believe we have a very good plan in place to make sure we’re just as compliant and secure, if not more so, than we were before,” Heim said.

3. Fears of tech industry losses due to the NSA scandal were overblown.

Henderson, 2015

Nicole Henderson, 4-10-2015, "Impact of NSA Surveillance on US Cloud Providers Not as Bad as We Thought: Forrester," Data Center Knowledge, http://www.datacenterknowledge.com/archives/2015/04/10/impact-of-nsa-surveillance-on-us-cloud-providers-not-as-bad-as-we-thought-forrester/

It’s been two years since Edward Snowden leaked details of the NSA’s PRISM surveillance program, and although analysts predicted an exodus from US-based cloud and hosting services in response to the revelations, it hasn’t exactly worked out that way, a new report finds. Forrester released a new report last week that suggests concerns around international customers severing ties with US-based hosting and cloud companies “were overblown.” “Lost revenue from spending on cloud services and platforms comes to just over $500 million between 2014 and 2016. While significant, these impacts are far less than speculated, as more companies reported taking control of security and encryption instead of walking away from US providers,” Forrester’s principal analyst serving security and risk professionals Edward Ferrara said in a blog post.

4. The cloud industry is growing despite NSA spying.

Finley, 2014

Klint Finley, writer with Wired Business, 2-27-2014, "Amazon’s Cloud Keeps Growing Despite Fears of NSA Spying," WIRED, http://www.wired.com/2014/02/amazon-cloud-size/

When former government contractor Edward Snowden revealed that the NSA was conducting digital surveillance on a massive scale, many feared for the future of cloud computing. The Information Technology and Innovation Foundation estimated that Snowden’s revelations could cost U.S. cloud companies $22 billion to $35 billion in foreign business over the next three years, and countless pundits predicted that American businesses would flee the cloud as well. People would prefer to run software and store data on their own computers, the argument went, rather than host their operations atop outside services potentially compromised by the NSA. But it looks like the cloud industry is still growing. And in very big way. The world’s largest cloud computing services — services where you can run software and store data without buying your own hardware — are run by Amazon, and according to a new study from independent researcher Huan Liu, Amazon’s operation grew by a whopping 62 percent over the past two years. What’s more, the study shows that growth has been steady since June 2013, when the Snowden revelations first hit the news. In fact, there’s been a surge since December of last year.

5. Multiple factors generate internet fragmentation, not just surveillance: dominance of international bodies and cyber crime.

Patrick, 2014

Stewart, Senior Fellow and Director, Program on International Institutions and Global Governance, Council on Foreign Relations, "The Obama Administration Must Act Fast to Prevent the Internet's Fragmentation," The Internationalist, 2-26-2014, http://blogs.cfr.org/patrick/2014/02/26/the-obama-administration-must-act-fast-to-prevent-the-internets-fragmentation/

Since the dawn of the digital age, the United States had consistently supported an open, decentralized, and secure cyber domain that remains largely in private hands. Even before the Snowden disclosures, that vision was under threat, thanks to disagreements among governments on three fundamental issues. First, some world leaders are questioning whether the ITU(International Telecommunications Union) ought to play a more active role in regulating cyberspace. To the degree that the Internet is "governed," the primary regulatory body remains ICANN (the Internet Corporation for Assigned Names and Numbers), an independent, nonprofit corporation based in Los Angeles. The outsized role of ICANN—and the widespread perception of U.S. (and broader Western) control over the Internet—has long been a sore point for authoritarian states, as well as many developing countries, which would prefer to move cyber governance to the intergovernmental ITU. A second threat to the open Internet has been a surge in cyber crime—and disagreement over how to hold sovereign jurisdictions accountable for criminality emanating from their territories. Estimates of the magnitude of cyber crime range from large to astronomical. In 2012, NSA director general Keith Alexander put the annual global cost at $1 trillion. Most cyber crime is undertaken by nonstate actors against private sector targets for motives of financial gain. But national authorities have also been involved in economic espionage, both directly and through proxies. The most infamous case involves a unit of China's People's Liberation Army, which allegedly has been at the forefront of Chinese hacking efforts to steal industrial secrets and technology from leading U.S. companies.

6. Economic collapse doesn't cause war

Drezner 2012,

Daniel is a professor in the Fletcher School of Law and Diplomacy at Tufts. ("The Irony of Global Economic Governance: The System Worked", October 2012, http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf)

The final outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea,

and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder.

The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a "Global Peace Index" annually since 2007. A key conclusion they draw from the 2012 report is that "The average level of peacefulness in 2012 is approximately the same as it was in 2007."38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."40

None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard "V"-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of "contained depression."41 The key word is "contained," however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: "that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate."42

Turn - NSA Spying helps Cybersecurity Sector

NSA spying helps the cybersecurity sector.

Menn, 2013

Joseph Menn Reuters, "ANALYSIS-Despite fears, NSA revelations helping U.S. tech industry," Reuters 15 September 2013 Factiva

BOON FOR ENCRYPTION SECTOR

As for the upside, so far only a minority of people and businesses are tackling encryption on their own or moving to privacy-protecting Web browsers, but encryption is expected to get easier with more new entrants. Snowden himself said that strong encryption, applied correctly, was still reliable, even though the NSA has cracked or circumvented most of the ordinary, built-in security around Web email and financial transactions. James Denaro, a patent attorney with security training in Washington, was already using Pretty Good Privacy (PGP), a complicated system for encrypting email, before the Snowden leaks. Afterward, he adopted phone and text encryption as

well to protect client information. "One of the results we see from Snowden is an increased awareness across the board about the incredible cyber insecurity," Denaro said. Some early adopters of encryption have senior jobs inside companies, and they could bring their habits to the office and eventually change the technology habits of the whole workplace, in the same way that executive fondness for iPhones and iPads prompted more companies to allow them access to corporate networks. "Clients are now inquiring how they can protect their data overseas, what kinds of access the states might have and what controls or constraints they could put in with residency or encryption," said Gartner researcher Lawrence Pingree, formerly chief security architect at PeopleSoft, later bought by Oracle. Richard Stiennon, a security industry analyst and author, predicted that security spending will rise sharply. A week ago, Google said it had intensified encryption of internal data flows after learning about NSA practices from Snowden's files, and consultants are urging other big businesses to do the same. Stiennon said that after more companies encrypt, the NSA and other agencies will spend more to break through, accelerating a lucrative cycle. "They will start focusing on the encrypted data, because that's where all the good stuff is," Stiennon said. Already, in a fiscal 2013 federal budget request from the intelligence community published this month by the Washington Post, officials wrote that investing in "groundbreaking cryptanalytic capabilities" was a top priority. (Reporting by Joseph Menn; Editing by Jonathan Weber and Ken Wills)

Cybersecurity is a massive growth sector, its key to the economy.

Sorcher, 2015

Sara Sorcher is the deputy editor of Passcode, a section from The Christian Science Monitor that covers security and privacy in the Digital Age, 5-3-2015, "The cyber gold rush," Christian Science Monitor, http://www.csmonitor.com/USA/Society/2015/0503/The-cyber-gold-rush

While California's Silicon Valley is the technology capital of America, cities and states across the country are now vying to dominate the next big economic frontier – the booming market for securing what actually lies within the nation's electronic networks. From California to Texas to Florida, public and private groups are positioning themselves to win millions in federal contracts and from venture capital firms. Some are going to extraordinary lengths to build what they call "a cybersecurity ecosystem." They are commissioning economic-impact studies, hatching tax-incentive packages, and hiring PR firms to devise branding strategies. They are investing in start-ups with money from state coffers. With as many as 300,000 cybersecurity jobs in the United States going unfilled last year alone, according to security company Symantec, they are also crafting academic programs for public universities to win research grants and generate the next generation of highly skilled workers poised to make six-figure salaries – and stay local. The nation has seen all this before, of course. The cyber gold rush is part of an enduring attempt by cities and states to tap the next great emerging industry in the name of economic salvation. From the birth of the automobile and steel industries, through the aerospace, computer, and biotech eras, communities have sought to ride industrial cycles to prosperity and middle-class comfort. Some were successful. Some weren't. Now cybersecurity promises to produce a similar spreadsheet of winners and losers – with a few notable differences. Unlike the actual gold rush in California in the mid-1800s, or the clustering of manufacturing industries in the Northeast and

upper Midwest decades later, the cybersecurity gold rush is not dependent on the availability of natural resources. And unlike the automobile industry, an ability to build physical structures or sprawling factories to dominate the competition through mass production will not determine which city becomes the epicenter of data protection. Economists note the start-up cost to be a cybersecurity hub – even with pricey data centers – is far less than, say, the relative cost of what it took to create assembly lines in the early 1900s. Yet the potential return for cities is substantial. In 2011, the global cybersecurity market hit $67 billion. It is projected to grow to as high as $156 billion by 2019, according to Markets and Markets, a Dallas-based research firm. The need for cybersecurity is likely only to grow as more giants such as Sony Pictures Entertainment, Target, and Home Depot are hacked; consumers demand better security; and businesses grow more aware of the potential cost to their sales and reputation if they do not provide it. On a consumer level, the way people interact with technology in their homes and on their bodies will also drive the market. Networking giant Cisco predicts there will be some 50 billion devices and objects connected to the Internet by 2020. Already, smart watches track your heart rate, and thermostats in your home can be controlled remotely by cellphone apps. This burgeoning Internet of Things drives a pressing need to protect the increasingly personal data people put online. "This is one of the fastest growing industries – not just in the tech sector, but in the world," says Peter Singer, a strategist who focuses on cybersecurity at the New America think tank in Washington. And no one has yet claimed it, Mr. Singer says. "What's the next Silicon Valley for cybersecurity?"

Foreign Surveillance Key to Solve the Economy

Foreign, not domestic, surveillance is what is driving data pull out – restrictions on domestic surveillance will only further this push

Chander and Le 15

Anupam Chander, Director, California International Law Center, Professor of Law and Martin Luther King, Jr. Hall Research Scholar; Uyên P. Lê Free Speech and Technology Fellow, California International Law Center; "Data Nationalism," Emory Law Journal, Vol. 64:677, http://law.emory.edu/elj/_documents/volumes/64/3/articles/chander-le.pdf

First, the United States, like many countries, concentrates much of its surveillance efforts abroad. Indeed, the Foreign Intelligence Surveillance Act is focused on gathering information overseas, limiting data gathering largely only when it implicates U.S. persons.174 The recent NSA surveillance disclosures have revealed extensive foreign operations.175 Indeed, constraints on domestic operations may well have spurred the NSA to expand operations abroad. As the Washington Post reports, "Intercepting communications overseas has clear advantages for the

NSA, with looser restrictions and less oversight."176 Deterred by a 2011 ruling by the Foreign Intelligence Surveillance Court barring certain broad domestic surveillance of Internet and telephone traffic,177 the NSA may have increasingly turned its attention overseas. Second, the use of malware eliminates even the need to have operations on the ground in the countries in which surveillance occurs. The Dutch newspaper NRC Handelsblad reports that the NSA has infiltrated every corner of the world through a network of malicious malware.178 A German computer expert noted that "data was intercepted here [by the NSA] on a large scale."179 The NRC Handelsblad suggests that the NSA has even scaled the Great Firewall of China,180 demonstrating that efforts to keep information inside a heavily secured and monitored ironclad firewall do not necessarily mean that it cannot be accessed by those on the other side of the earth. This is a commonplace phenomenon on the Internet, of course. The recent enormous security breach of millions of Target customers in the United States likely sent credit card data of Americans to servers in Russia, perhaps through the installation of malware on point-of-sale devices in stores.

They can't solve foreign surveillance which is the critical factor for the tech industry, international clients won't be protected – the USA freedom act proves.

Kuranda, 2015

Sarah Kuranda, Sarah Kuranda is an Associate Editor at CRN covering security. 6-2-2015, "Solution Providers: New NSA Controls Fall Short Of Restoring Trust In Cloud Services," CRN, http://www.crn.com/news/security/300077006/solution-providers-new-nsa-controls-fall-short-of-restoring-trust-in-cloud-services.htm

Grealish said the bill appeared to "bolster" trust in cloud services in the U.S., but failed to extend that trust over the border. "It appears that the new bills do nothing to prevent U.S. authorities, via the appropriate legal mechanisms, to gain access to cloud-based data of foreign enterprises operating in U.S. cloud services, so businesses operating outside of the U.S. will have to continue to deal with conflicting regional laws and regulations if they are contemplating moving data across their borders to the U.S," Grealish said. The U.S.A. Freedom Act is now on its way to President Obama, who said he will sign it into law.

No Economic Losses from NSA Spying

Losses much lower than expected.

Ferrara, 2015

Ed Ferrara,Forrester's principal analyst serving security and risk professionals , 4-1-2015, "Forrester Research : Research : Government Spying Will Cost US Vendors Fewer Billions Than Initial Estimates," Forrester , https://www.forrester.com/Government+Spying+Will+Cost+US+Vendors+Fewer+Billions+Than+Initial+Estimates/fulltext/-/E-res122149

Is Edward Snowden's unveiling of the US National Security Agency's PRISM spying program ruining the fates of US cloud, hosting, and outsourcing businesses as international customers walk away from any vendor within the agency's reach? Forrester's first survey of these customers about the effects of PRISM suggests a significant financial impact, but not to the degree speculated in 2013. Our analysis of the pullback by non-US enterprise spending on US-based cloud and outsourcing vendors suggests an overall three-year loss in potential revenues of $47 billion. Traditional outsourcers are feeling the brunt of this impact. Lost revenue from spending on cloud services and platforms comes to just over $500 million between 2014 and 2016. While significant, these impacts are far less than speculated, as more companies reported taking control of security and encryption instead of walking away from US providers. US-based CIOs need not worry that the fallout of PRISM will cripple US cloud vendors, and CIOs outside the US should understand that there are options besides avoiding these US vendors.

Cloud companies have increased revenues after Snowden leaks – Customers aren't leaving.

Verton, 2014

Dan Verton Editorial Director, Editorial Director - FedScoop, 11-3-2014, "Is the post-Snowden cloud apocalypse real?," FedScoop, http://fedscoop.com/happened-post-snowden-cloud-predictions

When news broke last year of the National Security Agency's PRISM surveillance program, which enabled direct access to the servers of some of the nation's largest Internet companies, industry executives and analysts immediately warned that U.S.-based cloud providers would lose hundreds of billions of dollars in revenue as European and other foreign organizations moved their data elsewhere. But so far, the mass exodus from U.S.-based cloud providers doesn't appear to have materialized. Not only have the biggest players in the U.S. cloud market reported increases in foreign revenues and users, many have outlined aggressive international expansion plans for cloud services and data centers, according to Securities and Exchange Commission filings reviewed by FedScoop. In a series of telephone and email interviews, however, analysts and industry executives paint a more complex picture of the post-Snowden cloud market. Although anecdotal evidence remains strong that European companies and governments are more wary of U.S. cloud providers, the length of cloud contract commitments and the resources necessary to move to the cloud have led organizations to focus more on security and data localization rather than a mass abandonment of the biggest U.S. cloud providers.

NSA surveillance does not effect actual corporate decisions.

Perez, 2013

Juan Carlos Perez Assistant News Editor, 12-5-2013, "Why CIOs stick with cloud computing despite NSA snooping scandal," PCWorld, http://www.pcworld.com/article/2069681/why-cios-stick-with-cloud-computing-despite-nsa-snooping-scandal.html

Explosive revelations in the past six months about the U.S. government's massive cyber-spying activities have spooked individuals, rankled politicians and enraged privacy watchdogs, but top IT executives aren't panicking—yet. So far, they are monitoring the issue, getting informed and taking steps to mitigate their risk in various ways. But the alarming reports haven't prompted them to roll back their decisions to host applications and data in the cloud. That's the consensus from about 20 high-ranking IT executives interviewed in North America and Europe about the effect that the U.S. National Security Agency's snooping practices have had on their cloud computing strategy. The news broke in June, after former NSA contractor Edward Snowden began leaking the earth-shaking secrets to the media. Many of the IT executives interviewed say that they're not thrilled with the situation, and that it has made them more careful about cloud computing plans and deployments, prompting them to review agreements with vendors, double-check best practices and tighten security controls. However, these IT executives haven't been completely surprised by the revelations. Whether by overt means or through covert operations, it's well known that governments engage in surveillance of telecommunications and Internet traffic. "Government surveillance hasn't changed our opinion about cloud computing. The cloud model is attractive to us, and I was never that naive to think that this type of government monitoring wasn't going on," said Kent Fuller, director of enterprise infrastructure services at BCBG MaxAzria Group, a Los Angeles-based women's fashion designer and seller that uses Microsoft's Office 365 public cloud suite primarily for employee email.

No evidence of businesses losing clients due to Snowden.

Menn, 2013

Joseph Menn Reuters, "ANALYSIS-Despite fears, NSA revelations helping U.S. tech industry," Reuters 15 September 2013 Factiva

Edward Snowden's unprecedented exposure of U.S. technology companies' close collaboration with national intelligence agencies, widely expected to damage the industry's financial performance abroad, may actually end up helping. Despite emphatic predictions of waning business prospects, some of the big Internet companies that the former National Security Agency contractor showed to be closely involved in gathering data on people overseas - such as Google Inc. and Facebook Inc. - say privately that they have felt little if any impact on their businesses. Insiders at companies that offer remote computing services known as cloud computing, including Amazon and Microsoft Corp, also say they are seeing no fallout. Meanwhile, smaller U.S. companies offering encryption and related security services are seeing a jump in business overseas, along with an uptick in sales domestically as individuals and companies work harder to

protect secrets. "Our value proposition had been that it's a wild world out there, while doing business internationally you need to protect yourself," said Jon Callas, co-founder of phone and text encryption provider Silent Circle, where revenue quadrupled from May to June on a small base. "Now the message people are getting from the newspapers every day is that it's a wild world even domestically." PROPHESIES OF DOOM Shortly after Snowden's leaked documents detailed collaboration giving the NSA access to the accounts of tens of thousands of net companies' users, the big Internet companies and their allies issued dire warnings, predicting that American businesses would lose tens of billions of dollars in revenue abroad as distrustful customers seek out local alternatives. In a federal court filing last week, Google said that still-unfolding news coverage was causing "substantial harm to Google's reputation and business". The company said that could be mitigated if it were allowed to comment with precision about its intelligence dealings. Likewise, last month, six technology trade groups wrote to the White House to urge reforms in the spy programs, citing what it called a "study" predicting a $35 billion cumulative shortfall by 2016 in the vital economic sector. That number, it turns out, was extrapolated from a security trade group's survey of 207 non-U.S. members - and the group, the Cloud Security Alliance, had explicitly cautioned that its members weren't representative of the entire industry. "I know you want sectors and numbers, but I don't have it," said Ed Black, president of the Computer & Communications Industry Association, one of the trade groups behind the letter. "Anybody who tells you they do is making it up." The trade groups aren't the only ones issuing dismal, and headline-grabbing, forecasts. Forrester Research analyst James Staten wrote of the $35 billion figure: "We think this estimate is too low and could be as high as $180 billion, or a 25 percent hit to overall IT [information technology] service provider revenues." Staten's comments generated dozens of media stories, some of which neglected to mention that Staten said the worst would come to pass only if businesses decided that spying was a bigger issue than the savings they gained from a shift to cloud computing. In an interview with Reuters, Staten said he didn't believe that would be the case. "I don't think there's going to be a significant pullback," he said, though the rate of growth could slow for a couple of years. LITTLE IMPACT Google employees told Reuters that the company has seen no significant impact on its business, and a person briefed on Microsoft's business in Europe likewise said that company has had no issues. At Amazon, which was not named in Snowden's documents but is seen as a likely victim because it is a top provider of cloud computing services, a spokeswoman said global demand "has never been greater."

No Losses – Cloud too valuable

Upside of cloud computing is bigger than any NSA risk for businesses.

Kim 2014

Gary Kim, Contributing Editor for Techzone360, 7-11-2014, "What is Impact of Spy Scandal on U.S. Cloud Computing Business?," Techzone360, http://www.techzone360.com/topics/techzone/articles/2014/07/11/383598-what-impact-spy-scandal-us-cloud-computing-business.htm

One might argue the impact of the spying scandal is hard to quantify, as it will be expressed primarily as a loss of new sales to competitors based elsewhere, and perhaps slower growth than might otherwise have been the case.

On the other hand, there are counterbalancing trends at work. U.S. enterprises and smaller businesses are shifting information technology spending from “premises” to “cloud” sources. So, despite any potential sales headwinds created by the spying threats, business customer spending on cloud services seems destined to grow, irrespective of new security threats. After all, many customers could conclude, the upside is greater than the potential downside. Spend is shifting from internal to external, in direction of cloud services, says Arthur Gruen, principal at Wilkofsky Gruen Associates. It is hard to see new machine to machine apps being abandoned because security issues now loom larger. Instead, entities are likely to pursue M2M apps because there are clear business advantages, and simply spend more money on security.

No Losses – Increased Security

Companies have increased security and encryption to keep customers, they haven’t lost business.

Verton, 2014

Dan Verton Editorial Director, Editorial Director - FedScoop, 11-3-2014, "Is the post-Snowden cloud apocalypse real?," FedScoop, http://fedscoop.com/happened-post-snowden-cloud-predictions

"With or without the Snowden controversy, security is still the biggest hurdle for cloud adoption, particularly in the enterprise segment," Poon said. "Industry verticals that are still subject to stringent regulatory requirements, they are unlikely to offload workloads to third-party public cloud providers. The typical, preferred model we see so far is private cloud deployment — a dedicated private cloud with physical isolation (both on-net / off-net), followed by virtual private cloud [and] hybrid cloud." The new demands being placed on cloud providers by European customers may be manageable, but they are also an added cost, Neivert said. "Much of the [Snowden] fallout is also hidden in the cost line, not the revenue line," he said, referring to emerging requirements to store data locally and add new encryption requirements.

No alternative to Cloud

There’s no alternative to American cloud companies, the won’t lose business.

Menn, 2013

Joseph Menn Reuters, “ANALYSIS-Despite fears, NSA revelations helping U.S. tech industry,” Reuters 15 September 2013 Factiva

FEW GOOD ALTERNATIVES

There are multiple theories for why the business impact of the Snowden leaks has been so minimal. One is that cloud customers have few good alternatives, since U.S. companies have most of the market and switching costs money. Perhaps more convincing, Amazon, Microsoft and some others offer data centers in Europe with encryption that prevents significant hurdles to snooping by anyone including the service providers themselves and the U.S. agencies. Encryption, however, comes with drawbacks, making using the cloud more cumbersome. On Thursday, Brazil's president called for laws that would require local data centers for the likes of Google and Facebook. But former senior Google engineer Bill Coughran, now a partner at Sequoia Capital, said that even in the worst-case scenario, those companies would simply spend extra to manage more Balkanized systems. Another possibility is that tech-buying companies elsewhere believe that their own governments have scanning procedures that are every bit as invasive as the American programs.

Cloud Sector Growing now

Trust in cloud computing has increased, not decreased in the aftermath of Snowden.

Kim, 2014,

Gary, Contributing Editor for Techzone360, COVER STORY: Telecoms in the post-Snowden era, 4 September 2014, Capacity Magazine, Proquest

Ironically, an earlier Lieberman Software study in November 2012 – prior to the Snowden revelations – found 48% of respondents were discouraged from using the cloud because of fear of government snooping, while 86% said they preferred to keep sensitive data on their own network, rather than the cloud. "These findings indicate that trust in the security of the cloud has increased over the past year," Lieberman Software says. To be sure, a few US firms reported an initial sales dip after the Snowden revelations. One can point to a few instances where firms such as Cisco have reported significant sales slowdowns, but the Edward Snowden revelations might not have been the primary and principal cause of the sales dips.

Data localization is inevitable

Data localization was not caused by Snowden's NSA revelations.

Fontaine, 2014

Richard Fontaine is the President of the Center for a New American Security, He has also worked at the State Department, the National Security Council and on the staff of the Senate Foreign Relations Committee. "Bringing Liberty Online Reenergizing the Internet Freedom Agenda in a Post-Snowden Era." Center for a New American Security (9/2014). http://www.cnas.org/internetfreedom#.VaClavlViko

A cautionary note is in order when interpreting the reactions to the Snowden affair. Some developments – such as data localization requirements and worries about a splintering Internet – predated the revelations and have been accelerated rather than prompted by them. Autocratic governments also drew lessons from the technology-fueled Arab Spring, resulting in actions aimed at limiting Internet freedom. Other white-hot responses cooled when rhetoric turned to action. Brazil's new "Marco Civil" Internet law, approved in April 2014, left out a number of the strongest responses that had been widely debated in the run-up to its adoption. The EU did not go through with its threatened Safe Harbor data-exchange boycott. And for all of the worries about laws that would require the local storage of users' data, few countries have actually passed them. Nevertheless, the potential for such fallout remains.

Much broader questions drive international conflicts over "internet freedom," the plan can't solve.

Nocetti,2015

Julien Research Fellow at the French Institute of International Relations (IFRI) in Paris. (2015), Contest and conquest: Russia and global internet governance. International Affairs, 91: 111–130. doi: 10.1111/1468-2346.12189

It is not surprising that it is the younger nation-states that seem to be the most strongly committed to a neo-Westphalian approach to internet governance. In many respects, the battle over the vision of internet governance cannot be characterized entirely accurately as between authoritarian, undemocratic states and liberal, freedom-loving states; it is also, and indeed more centrally, a conflict between long-established, cosmopolitan states and newer states that do not yet feel safe in their sovereignty. Russia fits into the latter category, as a relatively young nation-state that has been experiencing, since the chaotic 1990s transition to a free market economy and pluralism, a potent feeling of insecurity. This feeling stems in part from the complex interactions between state authorities and the media ecosystem since the 1980s, when Soviet leaders tolerated increased access to previously suppressed information, thus opening the 'information gates' to the masses. In the 2000s, with Russia striving to recover its full sovereignty and struggling against the 'permeability' of its neighbourhood, Putin gradually saw the information revolution—driven by the considerable growth in (domestic) internet access—as one of the most pervasive components of US expansionism in the post-Soviet sphere, most notably in Russia itself. Russia's policy on global internet governance issues therefore cannot be separated from a domestic political context in which digital technologies are increasingly used for purposes of contention by an active and articulate 'netizen' middle class.

Decline doesn't cause war

No war from economic collapse

Barnett '09

(Thomas P.M. Barnett is the Chief Analyst at Wikistrat, 8/24/9, " The New Rules: Security Remains Stable Amid Financial Crisis", http://www.worldpoliticsreview.com/articles/4213/the-new-rules-security-remains-stable-amid-financial-crisis)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: *No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); *The usual frequency maintained in civil conflicts (in all the usual places); *Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); *No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); *A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and *No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic

crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade

Decline doesn't cause war

Jervis, Colubmia international affairs professor, 2011

(Robert, "Forces in Our Times", Survival, 25.4, December, ebsco)

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

Answers to Internet Advantage

1NC FRONTLINE – INTERNET FREEDOM

1. Internet Freedom doesn't work, the best empirical data proves that expansion of access to the web does not create democracy.

Geelmuyden and Weidmann, 2015.

Espen Geelmuyden Rød, Department of Politics and Public Administration, University of Konstanz & Peace Research Institute Oslo (PRIO) Nils B Weidmann Department of Politics and Public Administration, University of Konstanz "Empowering activists or autocrats? The Internet in authoritarian regimes." Journal of Peace Research 52.3 (2015): 338-351.

In doing so, we distinguish regimes that worry about public opinion and those that do so to a lesser extent. If the former are more likely to expand, this should be due to the fact that modern communication technology, in particular the Internet, is not immune to government interference. Rather, as illustrated in the examples above, autocratic regimes benefit from these technologies through ample opportunities to censor and influence public opinion and to track members of the opposition. Our first empirical analysis confirms this suspicion: regimes that are concerned about public opinion – and go to great lengths to censor it – are more likely to expand the Internet. In our second analysis, we turn to the question of how Internet expansion affects changes towards democracy. Here, we fail to find any evidence that the Internet is linked to positive changes in democracy scores. When looking more closely at democratic and autocratic changes from 2006 to 2010, the data indicate that movements toward democracy are more frequent in countries with low Internet penetration. No country in the low penetration group experienced autocratic change in this period, while six countries in the high penetration group did. Our findings shed considerable doubt on the frequently held assumption that the Internet universally, and unconditionally, fosters freedom and democracy. Autocrats are likely aware of the tremendous potential this technology has for creating and maintaining a tightly controlled sphere of public opinion. Looking back at ~~mankind's~~ first two decades of experience with Internet technology, our results suggest that in the wrong hands, Internet, cell phones, and other modern means of communication can serve evil purposes.

2. Internet Freedom is not free, the American push for governance of the internet is about profits, not human rights.

Powers and Jablonski, 2015

Shawn Powers is an Assistant Professor of Communication at Georgia State University. Michael Jablonski is an attorney and presidential fellow in communication at Georgia State University. "Introduction: Geopolitics and the Internet " The Real Cyber War: The Political Economy of Internet Freedom. Champaign: University of Illinois Press, 2015. Project MUSE. Web.

The chapter concludes with a discussion of Google's role in the internet freedom movement. While the company routinely espouses the economic and political benefits of a free flow of

information between people and countries, there is little evidence that this is the reason it pursues greater global connectivity. Numerous examples of Google's compliance with law enforcement agencies in both democratic and authoritarian countries suggest that its desire for freedom of expression is certainly not driving its global business strategy. Instead, a more compelling explanation for Google's interest in internet freedom and connectivity is the simple fact that its survival (in the political economy sense of the word) depends on getting more and more people online to use its complimentary services. Connecting commodification and structuration, chapter 4 focuses on the economics of internet connectivity and the fight over which international institutions are responsible for the regulation of digital information flows. We suggest that, at a basic level, U.S. internet policy can be boiled down to getting as many people using the network of networks as possible, while protecting the status quo legal, institutional, and economic arrangements governing connectivity and exchanges online. From the global infrastructure facilitating exchanges of data to the creation of unique content and services online, American companies are dominant, extraordinarily profitable, and, in most cases, well ahead of foreign competition. Building on chapters 2 and 3, chapter 4 traces how economic logic continues to drive U.S. policy as well as U.S. negotiating strategy in the international arena. From this perspective the real cyber war is not over offensive capabilities or cybersecurity but rather about legitimizing existing institutions and norms governing internet industries in order to assure their continued market dominance and profitability.

3. The aff can't solve internet freedom because it doesn't stop surveillance of foreign targets, which is what matters to the rest of the world.

Fontaine, 2014

Richard Fontaine is the President of the Center for a New American Security, He has also worked at the State Department, the National Security Council and on the staff of the Senate Foreign Relations Committee. "Bringing Liberty Online Reenergizing the Internet Freedom Agenda in a Post-Snowden Era." Center for a New American Security (9/2014). http://www.cnas.org/internetfreedom#.VaClavlViko

Despite the international outrage, and both public and private criticism of U.S. surveillance policies, the U.S. government has continued its Internet freedom–related activities, albeit at a lower public volume. In early 2014, Secretary of State John Kerry, addressing the Freedom Online Coalition conference in Estonia, called for an "open, secure, and inclusive Internet."33 U.S. Internet freedom programming continues: the State Department's Bureau of Democracy, Human Rights and Labor alone planned to expend roughly $18 million in 2014 on anti-censorship technology, secure communications, technology training and rapid response to bloggers under threat.34 In June, the United States sponsored a successful U.N. Human Rights Council resolution reaffirming that the same rights that people have offline, including freedom of expression, must be protected online, regardless of frontiers.35 While continuing to execute the

Internet freedom agenda, U.S. officials have attempted to reconcile their government's surveillance practices with its expressed desire for greater online freedom. This is challenging, to say the least. U.S. officials draw a critical distinction between monitoring communications for purposes of protecting national security and surveillance aimed at repressing political speech and activity. While this distinction is intuitive to many Americans, it is likely to be lost on many others, particularly where autocratic regimes consider domestic political dissent to be a national security threat. At its bluntest, the American position is that it is legitimate, for example, for the U.S. government, but not for the Chinese government, to surveil Chinese citizens. This is and will remain a tough sell.

4. The US isn't modeled and domestic surveillance isn't key

Naughton 2015

John Naughton is professor of the public understanding of technology at the Open University. "Surveillance laws are being rewritten post-Snowden, but what will really change?; The ripples from the revelations of NSA surveillance can be felt around the world - but intelligence and law-enforcement agencies will carry on regardless," Lexis Nexis, 6/17/2015

At one level it's a significant moment: one in which - as a Guardian leader writer put it - "an outlaw rewrites the law". And in a few other countries, notably Germany, Snowden's revelations do seem to be having a demonstrable impact - as witnessed, for example, by the Bundestag's inquiry into NSA surveillance within the Federal Republic. These are non-trivial outcomes, but we shouldn't get carried away. The revelations have had close to zero effect on the way the British security agencies - and their political masters - go about things. And now that the Tories are liberated from the tiresome obsession of the Lib Dems with privacy and human rights, who knows what Theresa May and the spooks are cooking up? (The relevant passage in the Queen's speech merely says that "new legislation will modernise the law on communications data".) On the other side of the Atlantic, although the USA Freedom Act does introduce a number of reforms, the surveillance landscape remains largely unchanged. Americans' phone records will still be hoovered up - but now by the telephone companies, not the NSA - and access to them will require a warranting process. And elements of transparency around government surveillance and the operations of the secret Fisa court will be introduced. So while there is some good news for American citizens in the new legislation, the position for the rest of the world is that nothing changes. The US retains the right to snoop on us in any way it pleases - and of course to spy on any US citizen who has the misfortune to exchange a phone call or an email message with us. Edward Snowden's revelations have thus brought about some amelioration in the domestic surveillance regime within the US, but so far they have done little to protect those who live outside that benighted realm and quaintly regard privacy as a basic human right.

5. Democracy doesn't prevent war.

Goldstein, '11 (Joshua, is professor emeritus of international relations at American University and author of Winning the War on War: The Decline of Armed Conflict Worldwide, Sept/Oct 2011, "Think Again: War. World peace could be closer than you think", *Foreign Policy*)

"A More Democratic World Will Be a More Peaceful One." Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight nondemocracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things). Why then do democracies limit their wars to non-democracies rather than fight each other? Nobody really knows As the University of Chicago's Charles Lipson once quipped about the notion of a democratic peace, "We know it works in practice. Now we have to see if it works in theory!" The best explanation is that of political scientists Bruce Russett and John Oneal, who argue that three elements -- democracy, economic interdependence (especially trade), and the growth of international organizations -- are mutually supportive of each other and of peace within the community of democratic countries. Democratic leaders, then, see themselves as having less to lose in going to war with autocracies.

Internet doesn't create Democracy

The internet does not create democracy.

Morozov, 2009

Evgeny, writer and researcher of Belarusian origin who studies political and social implications of technology. He is currently a senior editor at The New Republic. "How dictators watch us on the web," 11-18-09. http://www.prospectmagazine.co.uk/features/how-dictators-watch-us-on-the-web

Yet while the internet may take the power away from an authoritarian (or any other) state or institution, that power is not necessarily transferred to pro-democracy groups. Instead it often flows to groups who, if anything, are nastier than the regime. Social media's greatest assets—anonymity, "virality," interconnectedness—are also its main weaknesses.

No evidence that the internet actually spurs democratization

Aday et al. 10

Sean Aday is an associate professor of media and public affairs and international affairs at The George Washington University, and director of the Institute for Public Diplomacy and Global Communication. August 2010, "Blogs And Bullets: new media in contentious politics", http://www.usip.org/files/resources/pw65.pdf

New media, such as blogs, Twitter, Facebook, and YouTube, have played a major role in episodes of contentious political action. They are often described as important tools for activists seeking to replace authoritarian regimes and to promote freedom and democracy, and they have been lauded for their democratizing potential. Despite the prominence of "Twitter revolutions," "color revolutions," and the like in public debate, policymakers and scholars know very little about whether and how new media affect contentious politics. Journalistic accounts are inevitably based on anecdotes rather than rigorously designed research. Although data on new media have been sketchy, new tools are emerging that measure linkage patterns and content as well as track memes across media outlets and thus might offer fresh insights into new media. The impact of new media can be better understood through a framework that considers five levels of analysis: individual transformation, intergroup relations, collective action, regime policies, and external attention. New media have the potential to change how citizens think or act, mitigate or exacerbate group conflict, facilitate collective action, spur a backlash among regimes, and garner international attention toward a given country. Evidence from the protests after the Iranian presidential election in June 2009 suggests the utility of examining the role of new media at each of these five levels. Although there is reason to believe the Iranian case exposes the potential benefits of new media, other evidence—such as the Iranian regime's use of the same social network tools to harass, identify, and imprison protesters—suggests that, like any media, the Internet is not a "magic bullet." At best, it may be a "rusty bullet." Indeed, it is plausible that traditional media sources were equally if not more important. Scholars and policymakers should adopt a more nuanced view of new media's role in democratization and social change, one that recognizes that new media can have both positive and negative effects.

Internet Freedom is a Myth

"Internet freedom" is about the expansion of American economic power, not human rights.

Kiggins, 2012

Ryan D. University Of Central Oklahoma, Department of Political Science, Faculty Member "US Identity, Security, and Governance of the Internet." Cyberspaces and Global Affairs eds: Jake Perry, Professor Sean S Costigan p 189.

My study is able to demonstrate how agents shape structures through ideas. I am also able to show how ideas held by U.S. policy-makers concerning the appropriate normative structure for

global politics and the global economy were shaped by concerns over the economic performance of the U.S. economy and especially over the relative position of U.S. high-technology companies in the emerging digital economy of the twenty-first century. Foremost on the minds of U.S. policymakers was spurring job creation for U.S. high-technology workers. Job creation, preserving the relative dominance of U.S. high-technology companies, and positioning the Internet as a platform for the global expansion of commerce and freedom are important cogs in broader U.S. national security policy. Policy-makers within the U.S. government engaged in a well-planned and executed strategy to discursively construct the Internet as the lynchpin for future global and domestic economic growth. Within that discourse, the idea of freedom played the starring role.

Domestic Surveillance doesn't solve

Limits on domestic surveillance will not solve American leadership, they don't limit foreign surveillance and aren't credible because its all secret.

Fontaine, 2014

Richard Fontaine is the President of the Center for a New American Security, He has also worked at the State Department, the National Security Council and on the staff of the Senate Foreign Relations Committee. "Bringing Liberty Online Reenergizing the Internet Freedom Agenda in a Post-Snowden Era." Center for a New American Security (9/2014). http://www.cnas.org/internetfreedom#.VaClavlViko

Secretary Kerry has defended the Obama administration's reforms to signals intelligence collection, saying that they are based on the rule of law, conducted pursuant to a legitimate purpose, guided by proper oversight, characterized by greater transparency than before and fully consistent with the American vision of a free and open Internet.36 In March 2014, Deputy Assistant Secretary of State Scott Busby addressed the linkage between surveillance and Internet freedom and added two principles to Kerry's – that surveillance should not be arbitrary but rather as tailored as possible, and that decisions about intelligence collection priorities should be informed by guidance from an authority outside the collection agency.37 In addition, the U.S. government has taken other steps to temper the international reaction. For example, the Department of Commerce opted to relinquish its oversight of ICANN – the organization that manages domain name registries – to the "global Internet community."38

Such moves are destined to have only a modest effect on foreign reactions. U.S. surveillance will inevitably continue under any reasonably likely scenario (indeed, despite the expressions of outrage, not a single country has said that it would cease its surveillance activities). Many of the demands – such as for greater transparency – will not be met, simply due to the clandestine nature of electronic espionage. Any limits on surveillance that a government might announce will not be publicly verifiable and thus perhaps not fully credible. Nor will there be an international "no-spying" convention to reassure foreign citizens that their communications are unmonitored. As it has for centuries, statesponsored espionage activities are likely to remain accepted international practice, unconstrained by international law. The one major possible shift in policy following the Snowden affair – a stop to the bulk collection of telecommunications metadata in the United States – will not constrain the activity most disturbing to foreigners; that is, America's

surveillance of them. At the same time, U.S. officials are highly unlikely to articulate a global "right to privacy" (as have the U.N. High Commissioner for Human Rights and some foreign officials), akin to that derived from the U.S. Constitution's fourth amendment, that would permit foreigners to sue in U.S. courts to enforce such a right.39 The Obama administration's January 2014 presidential directive on signals intelligence refers, notably, to the "legitimate privacy interests" of all persons, regardless of nationality, and not to a privacy "right."40

The aff can't solve credibility, curtailing domestic surveillance won't solve surveillance of people around the world.

Sagar, **2015**

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

So far I have focused on the limited credibility of domestic oversight. If we accept the view that all persons, regardless of citizenship, have privacy rights, then there is a further set of difficulties to overcome. To begin with, we lack an established set of norms that overseers can utilize to regulate international surveillance. Such norms will not be easy to generate given competing conceptions of privacy (China, for instance, is unlikely to consent to a norm that forbids it from operating its so-called Great Firewall). We also confront grave enforcement difficulties. It is hard to see who could fairly adjudicate between the interests of a particular state (for example, the United States) and a foreign national (for example, an Iraqi). It is hard to foresee support for an international regulatory body. Not only the United States but also countries such as China and Russia are likely to balk at sharing intelligence with an international regulator whose internal controls may be less robust than theirs and whose members may be drawn from rival states. Yet if compliance with international norms were allowed to be voluntary, then little would prevent foreign powers from monitoring peoples and organizations as they see fit. In this event, curtailing the NSA's surveillance operations would not remedy the loss of privacy experienced by persons around the world, since their communications would still be monitored by other nations.

Foreign and domestic surveillance affect soft power

Champion 2014

Marc, writes editorials on international affairs, "U.S. soft power takes a hit in wake of report," The Japan Times, 12/16/14, http://www.japantimes.co.jp/opinion/2014/12/16/commentary/world-commentary/u-s-soft-power-takes-a-hit-in-wake-of-report/#.VYhSy9NVjZF

A second area where the U.S. is suffering severe damage to its image is from the National Security Agency's claim to have the collection of Internet metadata from citizens anywhere and everywhere. As with the U.S. renditions policy, America's closest allies collude in this collection effort and have suffered a public backlash as a result. Again, the publics of these countries aren't wholly naive: They know that governments spy on other governments, as well as on criminals and terrorists. Indeed, they mostly support spying on terrorists. But the NSA revelations were disruptive, because they created the perception that the U.S. was using its dominance of the Internet to collect data on ordinary citizens across the globe. Again, according to the Pew global survey, majorities disapprove of the U.S. monitoring foreign citizens in all except five countries (one of which was the U.S.). Americans should hardly be surprised: More than 60 percent of them find it unacceptable for the U.S. to spy on its own citizens — so why would Germans or Italians feel otherwise?

The US is not a Model

Countries don't model U.S. policy – it's a myth.

Moravcsik 2005

Andrew - Professor of Government and Director of the European Union Program at Harvard University, January 31, 2005, Newsweek, "Dream On, America," lexis

Not long ago, the American dream was a global fantasy. Not only Americans saw themselves as a beacon unto nations. So did much of the rest of the world. East Europeans tuned into Radio Free Europe. Chinese students erected a replica of the Statue of Liberty in Tiananmen Square. You had only to listen to George W. Bush's Inaugural Address last week (invoking "freedom" and "liberty" 49 times) to appreciate just how deeply Americans still believe in this founding myth. For many in the world, the president's rhetoric confirmed their worst fears of an imperial America relentlessly pursuing its narrow national interests. But the greater danger may be a delusional America--one that believes, despite all evidence to the contrary, that the American Dream lives on, that America remains a model for the world, one whose mission is to spread the word. The gulf between how Americans view themselves and how the world views them was summed up in a poll last week by the BBC. Fully 71 percent of Americans see the United States as a source of good in the world. More than half view Bush's election as positive for global security. Other studies report that 70 percent have faith in their domestic institutions and nearly 80 percent believe "American ideas and customs" should spread globally. Foreigners take an entirely different view: 58 percent in the BBC poll see Bush's re-election as a threat to world peace. Among America's traditional allies, the figure is strikingly higher: 77 percent in Germany, 64 percent in Britain and 82 percent in Turkey. Among the 1.3 billion members of the Islamic world, public support for the United States is measured in single digits. Only Poland, the Philippines and India viewed Bush's second Inaugural positively. Tellingly, the anti-Bushism of the president's first term is giving way to a more general anti-Americanism. A plurality of voters (the average is 70 percent) in each of the 21 countries surveyed by the BBC oppose sending any troops to Iraq, including those in most of the countries that have done so. Only one third, disproportionately in the poorest and most dictatorial countries, would like to see American values spread in their country. Says Doug Miller of GlobeScan, which conducted the BBC report: "President Bush has further isolated America from the world. Unless the administration changes its approach, it will

continue to erode America's good name, and hence its ability to effectively influence world affairs." Former Brazilian president Jose Sarney expressed the sentiments of the 78 percent of his countrymen who see America as a threat: "Now that Bush has been re-elected, all I can say is, God bless the rest of the world." The truth is that Americans are living in a dream world. Not only do others not share America's self-regard, they no longer aspire to emulate the country's social and economic achievements. The loss of faith in the American Dream goes beyond this swaggering administration and its war in Iraq. A President Kerry would have had to confront a similar disaffection, for it grows from the success of something America holds dear: the spread of democracy, free markets and international institutions--globalization, in a word. Countries today have dozens of political, economic and social models to choose from. Anti-Americanism is especially virulent in Europe and Latin America, where countries have established their own distinctive ways--none made in America. Futurologist Jeremy Rifkin, in his recent book "The European Dream," hails an emerging European Union based on generous social welfare, cultural diversity and respect for international law--a model that's caught on quickly across the former nations of Eastern Europe and the Baltics. In Asia, the rise of autocratic capitalism in China or Singapore is as much a "model" for development as America's scandal-ridden corporate culture. "First we emulate," one Chinese businessman recently told the board of one U.S. multinational, "then we overtake."

Democracy doesn't solve war

Democratic peace theory false- competing interests

Larison 12. (Daniel Larison columnist for The Week. PhD in history from the University of Chicago. April 17, 2012. "Democratic Peace Theory Is False" http://www.theamericanconservative.com/larison/democratic-peace-theory-is-false/

Rojas' claim depends entirely on the meaning of "genuine democracy." Even though there are numerous examples of wars between states with universal male suffrage and elected governments (including that little dust-up known as WWI), the states in question probably don't qualify as "genuine" democracies and so can't be used as counter-examples. Regardless, democratic peace theory draws broad conclusions from a short period in modern history with very few cases before the 20th century. The core of democratic peace theory as I understand it is that democratic governments are more accountable to their populations, and because the people will bear the costs of the war they are going to be less willing to support a war policy. This supposedly keeps democratic states from waging wars against one another because of the built-in electoral and institutional checks on government power. One small problem with this is that it is rubbish. Democracies in antiquity fought against one another. Political equality and voting do not abolish conflicts of interest between competing states. Democratic peace theory doesn't account for the effects of nationalist and imperialist ideologies on the way democratic nations think about war. Democratic nations that have professional armies to do the fighting for them are often enthusiastic about overseas wars. The Conservative-Unionist government that waged the South African War (against two states with elected governments, I might add) enjoyed great popular support and won a huge majority in the "Khaki" election that followed. As long as it goes well and doesn't have too many costs, war can be quite popular, and even if the war is costly it may still be popular if it is fought for nationalist reasons that appeal to a majority of the public. If the

public is whipped into thinking that there is an intolerable foreign threat or if they believe that their country can gain something at relatively low cost by going to war, the type of government they have really is irrelevant. Unless a democratic public believes that a military conflict will go badly for their military, they may be ready to welcome the outbreak of a war that they expect to win. Setting aside the flaws and failures of U.S.-led democracy promotion for a moment, the idea that reducing the number of non-democracies makes war less likely is just fantasy. Clashing interests between states aren't going away, and the more democratic states there are in the world the more likely it is that two or more of them will eventually fight one another.

Democracy doesn't prevent the main threats to peace

Ostrowski '2

(James, Staff – Rockwell, "The Myth of Democratic Peace, Spring, http://www.lewrockwell.com/ostrowski/ostrowski72.html)

Spencer R. Weart alleges that democracies rarely if ever go to war with each other. Even if this is true, it distorts reality and makes people far too sanguine about democracy's ability to deliver the world's greatest need today – peace. In reality, the main threat to world peace today is not war between two nation-states, but (1) nuclear arms proliferation; (2) terrorism; and (3) ethnic and religious conflict within states. As this paper was being written, India, the world's largest democracy, appeared to be itching to start a war with Pakistan, bringing the world closer to nuclear war than it has been for many years. The United States, the world's leading democracy, is waging war in Afghanistan, which war relates to the second and third threats noted above – terrorism and ethnic/religious conflict. If the terrorists are to be believed – and why would they lie?—they struck at the United States on September 11th because of its democratically-induced interventions into ethnic/religious disputes in their parts of the world.

Solvency

1NC FRONTLINE – SOLVENCY

1. The affirmative is unneccessary, the USA freedom act solved the abusive parts of NSA surveillance.

Kaplan 15,
Fred, American author and Pulitzer Prize-winning journalist, PhD in Political Science from MIT. 6-1-2015, "The USA Freedom Act Won't Harm National Security," Slate Magazine, http://www.slate.com/articles/news_and_politics/war_stories/2015/06/don_t_worry_about_the_patriot_act_expiring_the_usa_freedom_act_won_t_hurt.2.html

So does the new law have any significance whatever? Can it properly be called a reform law? Yes, for three main reasons. First, it adopts another of the Obama commission's recommendations: requiring the appointment of a privacy advocate on the FISA Court. This may

make the court hearings—which are held in secret—less of a rubber-stamp exercise. Second, it requires periodic declassification review of the court's rulings (another commission recommendation), which may lead to greater accountability.Third, and most significant, the very removal of metadata from NSA headquarters substantially reduces the potential for abuse. The Obama commission found no evidence that the NSA has used metadata analysis to go after political opponents—or, for that matter, any target other than suspected members or associates of three specific terrorist organizations. It is worth noting that Snowden's documents have revealed no such evidence, either. However, one can imagine what Richard Nixon or J. Edgar Hoover might have done with the technology that the NSA has at its disposal—and it's hardly a farfetched notion that the likes of Nixon or Hoover could again ascend to national power. The NSA has set its metadata-search algorithms to trace terrorists, but there's no physical reason why they couldn't be set to search for domestic drug traffickers, criminals, political enemies, or troublemakers of whatever category some rogue director might choose. (Currently the NSA is crawling with lawyers, who assiduously follow reporting requirements, but one can imagine a climate in which a director might tear down this whole apparatus.) Removing the metadata from the NSA removes the temptation, or opportunity, for abuse. Given the fears tapped by Snowden's disclosures, and some harrowing chapters of 20th-century American history, this is a very good thing. And it's been accomplished with no compromise of national security.

2. The NSA's actions taken under Section 702 have sufficient oversight in the status quo.

Carrie **Cordero 14,**

Director, National Security Studies Georgetown Law Formerly worked for the Justice Department and argued in front of the FISA court, The Brookings Institution A Debate One Year After Snowden: The Future Of U.S. Surveillance Authorities Washington, D.C. Thursday, June 5, 2014 http://www.brookings.edu/events/2014/06/05-debate-snowden-future-us-surveillance-nsa#/full-event/

So, the driving question becomes what problem is it that we're actually trying to solve because some of the reforms that are currently on the table are wildly out of sync with the actual information that has been revealed. And it's also worth noting that there have been significant harms from the disclosures, including operational, economic, and political harms.What has not been revealed is that there is any type of systematic, deliberate, strategic-level misuse or abuse of NSA's authorities, and what we also have learned is that there is actually a significant amount of oversight and accountability that exists over NSA's activities, and this involves oversight of all three branches of government. It involves federal judges who sit on the Foreign Intelligence Surveillance Court, inspectors general, compliance offices, and so when we want to think about what might be meaningful reform going forward, one area that we can focus on is ensuring that those oversight and accountability mechanisms continue to be well-funded, well-staffed, and are continually evaluated for their effectiveness. We also can focus on making sure that there's more information made publicly available regarding how those oversight mechanisms monitor what's going on.

3. Domestic communications are a tiny fraction of data collected by the NSA.

Etzioni, Professor of International Relations at the George Washington University, **2014**
Amitai Etzioni , Intelligence and National Security (2014): NSA: National Security vs. Individual Rights, Intelligence and National Security, DOI: 10.1080/02684527.2013.867221

Critics contend that these standards and procedures are far from rigorous and do not satisfactorily ensure that targeted persons are not American citizens or residents.127 Numbers are difficult to come by, as the intelligence community maintains that it is 'not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority' of the FISA Amendments Act that authorizes PRISM.128 John D. Bates, the chief judge of the Foreign Intelligence Surveillance Court, has noted that, given the scale of the NSA's data collection, 'the court cannot know for certain the exact number' of wholly domestic communications collected under the act.129

Critics cite an NSA internal audit dated May 2012, which found 2776 incidents in the preceding 12months of unauthorized collection, storage, access to or distribution of protected communications. Most of these incidents were unintended, many involved failures of due diligence or violations of operating procedures. However, 'the most serious incidents included a violation of a court order and unauthorized use of data about more than 3000 Americans and greencard holders.'

Other reports show that (1) these violations make up just a tiny fraction of 250 million communications that are collected by the NSA each year;130 (2) practically all were inadvertent, mostly technical mistakes e.g., syntax errors when making database queries 131 or the programming error that interchanged the Washington DC area code 202 with the international dialing code for Egypt which is 20; 132 (3) measures were taken to reduce error rate; 133 (4) wilful violations of privacy led to termination of the offending employees;134 and (5) the NSA was responsive to internal audits and deferred to court guidance – which shows that oversight works.135

4. Circumvention Turn - NSA Surveillance is much more than a single program, the aff is just playing a game of "Whack-A-Mole." Surveillance will just pop up with another name.

Howell & Zeisberg, 2015
William, Sydney Stein Professor of American Politics at the University of Chicago; Mariah, Associate Professor of Political Science at the University of Michigan; 7-1-2015, "Executive Secrecy," Boston Review, http://bostonreview.net/books-ideas/howell-zeisberg-executive-secrecy

Consider too the development of new computing systems underwriting the surveillance state. Like most legal scholars, Kitrosser focuses her attention on the kinds of information the federal

government can collect and the purposes to which this information can be put. But she does not adequately grapple with the sheer size and breadth of the new capacities that underlie the collection and analysis of information. As Arnold reports, the Department of Defense is working on a "global information grid" with the power to store and process "possibly yottabytes" of data—that is, 1024 bytes, or 100,000 gigabytes, which amounts to 500 quintillion pages of text.

An apparatus of this scale presents a dazzling array of opportunities for mischief. It is as if the government has created an unimaginably large game of Whack-a-Mole: while checking may be an effective way to suppress one troubling program, the existence of this grid will create constant opportunities for new information gathering regimes. For example, although President Barack Obama openly supported the recent restrictions on the NSA implemented by the 2015 Freedom Act, other legislation provides opportunities for him and his successors to continue collecting such data. Through FISA legislation (the legal basis for PRISM and other surveillance and data programs) and Executive Order 12333 (which provides authority for NSA foreign surveillance, and may encompass domestic communications data that travel outside the U.S), presidents will be able to continue programs of mass surveillance despite the Freedom Act—a fact lamented by stalwart critics such as Rand Paul.

Moreover, Kitrosser's framework may call in vain upon legislators and judges to exert independence and oversight they would just as soon disavow. The FISA Court's record of granting 99 percent or more of the warrants that the government requests—including, according to a Snowden leak, permitting the NSA to compel a Verizon company to turn over daily information on every phone call made, foreign or domestic—demonstrates that courts may be only too willing to cooperate with the executive.

5. The NSA will simply come up with new legal authorities and technology to continue surveillance.

Waldman 2015,
Paul contributor to The Plum Line blog, and a senior writer at The American Prospect., 6-3-2015, "A reality check on the future of government spying," Washington Post, http://www.washingtonpost.com/blogs/plum-line/wp/2015/06/03/a-reality-check-on-the-future-of-government-spying/

And let's not forget that the NSA and other government agencies are certain — not possible, not likely, but certain — to come up with new ways to spy on Americans as new technologies become available. Just as the NSA did with the bulk phone data collection, they'll probably take a look at earlier laws and decide that there's a legal basis for whatever new kind of surveillance they want to begin — and that it's best if the public didn't know about it. Indeed, just this week an investigation by the Associated Press revealed that the FBI is using aircraft with advanced cameras to conduct investigations without warrants. That's a relatively mundane use of technology, but there will always be new tools and capabilities coming down the pike, and the impulse will always be to put them into operation, then figure out afterward if it's legally justifiable. The story of the bulk telephone data collection tells us that the only thing likely to

restrain the expansion of government surveillance is public exposure. If you're hoping that politicians who care about privacy will do it on their own, you're likely to be disappointed.

USA Freedom Act Solves Violations

USA Freedom increases transparency and limits the NSA's worst programs.

Nakashima 15,
Ellen, National Security Reporter for the Washington Post 6-1-2015, "Congressional action on NSA is a milestone in the post-9/11 world," Washington Post, http://www.washingtonpost.com/world/national-security/congressional-action-on-nsa-is-a-milestone-in-the-post-911-world/2015/06/02/f46330a2-0944-11e5-95fd-d580f1c5d44e_story.html

The USA Freedom Act, passed by Congress and signed into law by President Obama on Tuesday, marks the first piece of legislation to rein in surveillance powers in the wake of disclosures two years ago by former intelligence contractor Edward Snowden and the national debate he catalyzed. It comes as Obama is winding down the nation's wars overseas and as fears of another terrorist attack on the scale of Sept. 11, 2001, no longer galvanize and unify lawmakers in the same way they once did. Today, Congress and the nation are much more divided about the proper balance between liberty and security. The inability of the Senate for weeks to resolve the issue, forcing the lapse of three surveillance powers at midnight Sunday, reflected the fissures between those who think that the terrorist threat is as potent as ever and those who believe that the government has overreached in its goal to keep Americans safe. With the passage of the USA Freedom Act, though, Congress has answered Obama's call to end the National Security Agency's bulk storage of Americans' phone data while preserving a way for the agency to obtain the records of terrorism suspects. "The Senate's passage of the USA Freedom Act today is a huge win for national security and the Fourth Amendment," said Sen. Mike Lee (R-Utah), a lead sponsor of the bill. At the same time, the legislation doesn't end the surveillance debate or go as far as some members of the president's liberal base or the libertarian right would like. Some lawmakers have vowed to press for further changes to protect citizens' privacy and enhance transparency. "The fight to protect Americans' constitutional rights against government overreach is not over," Sen. Ron Wyden (D-Ore.), who has long called for an end to secret surveillance law, said in a statement. He added: "Everybody who has supported our fight for surveillance reform over the last two years is responsible for our victory today and I'm looking forward to working with a bipartisan coalition to push for greater reforms in the future." The bill's passage is a milestone in the post-9/11 world. "For the first time since 9/11, Congress has placed significant limits on the government's ability to spy on Americans," said Elizabeth Goitein, a national security expert at New York University Law School's Brennan Center for Justice. But the bill's significance, some analysts say, will become apparent only with time. "Is it the beginning of a recalibration of intelligence policy, or is it the most that Congress can accomplish and the end of the reform process?" said Steven Aftergood, a national security and transparency expert at the Federation of American Scientists. "We won't really know that until we get further down the

line." Stewart Baker, a former NSA general counsel, said the law is a landmark — but not a good one. "It is going to make the National Security Agency risk-averse in ways that the CIA has occasionally been risk-averse," he said. "They followed the rules. They believed they were following the rules, and they got punished nonetheless." The USA Freedom Act not only ends NSA bulk collection but also narrows the collection of other types of records under the USA Patriot Act and other intelligence authorities. It increases transparency in surveillance court decisions and provides the opportunity for a public advocate in normally closed court hearings. It also reinstates the three lapsed authorities, while amending one of them.

Oversight works now

Oversight of section 702 is working now.

Cordero, 2014

Carrie F. Cordero, Director, National Security Studies Georgetown Law Formerly worked for the Justice Department and argued in front of the FISA court 6-13-2014, "Fear vs. Facts: Exploring the Rules the NSA Operates Under," Cato Unbound, http://www.cato-unbound.org/2014/06/13/carrie-f-cordero/fear-vs-facts-exploring-rules-nsa-operates-under

It is worth exploring. Here is how oversight of the Section 702 surveillance works, as one example, since it has been the subject of a significant part of the debate of the past year. Section 702 was added to FISA by the FISA Amendments Act of 2008. It authorizes the NSA to acquire the communications, for foreign intelligence purposes, of non-U.S. persons reasonably believed to be outside the United States. These are persons with no Constitutional protections, and yet, because the acquisition requires the assistance of a U.S. electronic communications provider, there is an extensive approval and oversight process. There is a statutory framework. Specifically, the Attorney General and Director of National Intelligence jointly approve certifications. According to declassified documents, the certifications are topical, meaning, the way the statute is being implemented, the certifications are not so specific that they identify individual targets; but they are not so broad that they cover any and everything that might be foreign intelligence information. The certifications are filed with the FISC, along with targeting and minimization procedures. Targeting procedures are the rules by which NSA selects valid foreign intelligence targets for collection. Minimization procedures are rules by which NSA handles information concerning U.S. persons. The FISC has to approve these procedures. If it does not approve them, the government has to fix them. The Court reviews these procedures and processes annually. The Court can request a hearing with government witnesses (like senior intelligence officials, even the NSA Director, if the judge wanted or needed to hear from him personally) or additional information in order to aid in its decisionmaking process. Information about the 702 certifications is reported to the Congressional intelligence committees.

Once the certifications are in effect, attorneys from the Department of Justice's (DOJ) National Security Division and attorneys and civil liberties officials from the Office of the Director of National Intelligence (ODNI) review the NSA's targeting decisions and compliance with the rules. They conduct reviews at least every 90 days. During that 90-day period, oversight personnel are in contact with NSA operational and compliance personnel. Compliance incidents

can be discovered in one of at least two ways: the NSA can self-report them, which it does; or the DOJ and ODNI oversight personnel may discover them on their own. Sometimes the NSA does not report a compliance incident in the required timeframe. Then the time lag in reporting may become an additional compliance incident. The DOJ and ODNI compliance teams write up semi-annual reports describing the results of their reviews. The reports are approved by the Attorney General and Director of National Intelligence and provided to the FISC and to Congress. According to the one report that has been declassified so far, in August 2013, for a six-month period in 2012, the rate of error for the NSA's compliance under Section 702 collection was .49% - less than half of one percent. If we subtract the compliance incidents that were actually delays in reporting, then the noncompliance rate falls to between .15-.25% - less than one quarter of one percent. Hardly an agency run amok.

Amount of Surveillance is Limited

The program under Section 702 does not collect a large amount of data.

Dempsey, 2014

James X Dempsey, Member of the President's Civil Liberties Oversight Board, 7-10-2014, "Take it from a civil liberties watchdog: not everything is bulk surveillance," Guardian, http://www.theguardian.com/commentisfree/2014/jul/10/nsa-privacy-civil-liberties-oversight-board

Our report on the so-called "702 program" provides probably the most complete accounting of any national security surveillance program published by any country in the world. In my personal view, many details about the program could have been made public before Edward Snowden's leaks without hindering the intelligence agencies in doing their job. Indeed, they should have been. There are huge benefits, in terms of democratic legitimacy, to the public knowing what its government is doing. We found that the 702 program does not scan internet communications for keywords. It targets specific individuals using specific identifiers such as email addresses and phone numbers. We saw a demonstration of the government's targeting process. We reviewed sample targeting decisions. We considered how data is filtered before it enters the government's coffers. In sum, what we found is not a bulk collection program.

Collection under Section 702 is miniscule.

Dickerson, 2015

Julie, 3L at Harvard Law School, and previously served as Senior Editor for the Harvard National Security Journal, 2-17-2015, "Harvard National Security Journal – Meaningful Transparency: The Missing Numbers the NSA and FISC Should Reveal," Harvard National Security Journal, http://harvardnsj.org/2015/02/meaningful-transparency-the-missing-numbers-the-nsa-and-fisc-should-reveal/

Under § 702 of the USA-PATRIOT Act, the NSA uses information from U.S. electronic communication service providers to target non-Americans outside the United States for documented foreign intelligence purposes. The NSA collects more than 250 million internet communications under this power each year. While a large absolute number, it is unclear what percent of total internet communications these § 702 communications constitute. The NSA has revealed that the internet carries 1,826 Petabytes of information per day, the NSA touches 1.6% of that data in its foreign intelligence mission, and the NSA only selects 0.025% of that data for review. The net result is that NSA analysts look at a mere 0.00004% of the world's traffic. These percentages of total data traffic, though indicative that the percent of § 702 communications collected is likely miniscule, do not map perfectly onto percentages of total communications.

NSA will Circumvent Restrictions

Limits on NSA surveillance fail, they will simply seek other ways to collect the data, which may be more intrusive.

Pozen, 2015

Pozen, David, Associate Professor, Columbia Law School. Privacy-Privacy Tradeoffs (June 28, 2015). University of Chicago Law Review, Forthcoming. Available at SSRN: http://ssrn.com/abstract=

Restated in more general and prescriptive terms, the suggested tradeoff is that tighter limits on what sorts of data the NSA can electronically collect or mine at the front end might lead to looser—and more privacy-invasive—investigatory practices at the back end. Beyond the automated "sifting" function identified by Posner, a variety of mechanisms could conceivably produce such a result. In the absence of bulk metadata collection under Section 215 of the PATRIOT Act, for instance, the NSA might seek to identify suspected foreign terrorists' American associates in a less surgical manner, through ever-widening wiretaps instead of link analysis and contact chaining. 71

Tighter limits on what may be acquired under any particular authority, such as Section 215, could push NSA officers to submit broader warrant applications to the FISC 72 or to make greater use of other legal authorities, as by expanding the targeting of non-U.S. persons under Section 702 of the Foreign Intelligence Surveillance Act on the hope or expectation that this would yield more "incidental" collection of U.S. persons' communications.73 Barriers to domestic acquisition could likewise lead to more aggressive "privacy shopping," whereby the NSA relies on foreign partners to obtain data it cannot lawfully or efficiently obtain on its own.74

In short, it is not implausible to think that collection limits could backfire; or that the more (meta)data the NSA has at its disposal, the less it will need officers to review intercepted communications. Big Data analytics can take over, to some extent, from old-fashioned listening and reading. And if one deems the latter to be an especially or uniquely significant privacy problem, one can arrive at the unsettling paradox of preferring that the NSA "collect it all"75 on privacy grounds.

Empirically, Presidents have done anything to avoid restrictions on their authority.

Howell & Zeisberg, 2015

William, Sydney Stein Professor of American Politics at the University of Chicago; Mariah, Associate Professor of Political Science at the University of Michigan; 7-1-2015, "Executive Secrecy," Boston Review, http://bostonreview.net/books-ideas/howell-zeisberg-executive-secrecy

But presidents, Arnold reminds us, had no desire to toil in the light of day for all to see. If Congress longed for an information revolution, presidents responded with policy retrenchment. Rather than bend to Congress's wishes, subsequent presidents—Democrats and Republicans alike—went to extraordinary lengths to conceal their activities, defy the clear intent of statutory law, suppress scientific information—in short, to circumvent, hedge, and deny at nearly every turn. "A complete history of the era," Arnold says, "reveals episode after episode of evasive maneuvers, rule bending, clever rhetorical gambits, and outright defiance."

In their effort to work around the legal architecture of the sunshine era, presidents have not merely lurked in the shadows. Arnold catalogs a multitude of cases in which presidents, long before September 11, 2001, developed formal procedures with the express intent of evading the watchful eyes of Congress and the courts. Presidents have repeatedly asserted the authority to classify information that, by all rights, ought to be the subject of public deliberation. Through national security directives and Office of Legal Counsel memos, they have propagated secret laws that are not subject to the checks that Madison and his intellectual descendants considered so vital.

Circumvention of laws banning surveillance is empirically proven.

Ackerman 15,

Spencer, national security editor for the Guardian US. 6-1-2015, "Fears NSA will seek to undermine surveillance reform," Guardian, http://www.theguardian.com/us-news/2015/jun/01/nsa-surveillance-patriot-act-congress-secret-law

Yet in recent memory, the US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004. Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, an internal NSA draft history records that attorneys found a different legal rationale that "essentially gave NSA the same authority to collect bulk internet metadata that it had". After a New York Times story in 2005 revealed the existence

of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along – precisely the contention that the second circuit court of appeals rejected in May.

Offcase

Topicality

1NC – TOPICALITY DOMESTIC SURVEILLANCE

1. Interpretation - ***Domestic surveillance is surveillance that physically takes place on the surveilling state's territory, which is distinct from foreign surveillance which is in surveillance across state borders and surveillance entirely overseas.***

Deeks, 2015

Ashley. Associate Professor, University of Virginia Law School. "An International Legal Framework for Surveillance." Virginia Journal of International Law 55 (2015): 2014-53.

As a result, this Article is focused on the category of spying that consists of foreign surveillance. "Foreign surveillance" here refers to the clandestine surveillance by one state during peacetime of the communications of another state's officials or citizens (who are located outside the surveilling state's territory) using electronic means, including cyber-monitoring, telecommunications monitoring, satellites, or drones. Foreign surveillance is comprised of two types of surveillance: "transnational surveillance" and "extraterritorial surveillance."13 Transnational surveillance refers to the surveillance of communications that cross state borders, including those that begin and end overseas but incidentally pass through the collecting state. Extraterritorial surveillance refers to the surveillance of communications that take place entirely overseas. For example, if Australia intercepted a phone call between two French nationals that was routed through a German cell tower, this would be extraterritorial surveillance. In contrast, surveillance that takes place on the surveilling state's territory ("domestic surveillance") against either that state's nationals or any other individual physically present in that state generally would be regulated by the ICCPR, as discussed below.14 This Article focuses predominately on transnational and extraterritorial surveillance, arguing that states should close the gap between the ways in which they regulate the two.

2. Violation – The NSA collection of internet traffic under 702 is foreign surveillance the communications of at least one party are outside the US.

Simcox 2015

Robin Simcox is a Research Fellow at The Henry Jackson Society "Surveillance After Snowden Effective Espionage in an Age of Transparency" 5/26/2015 Henry Jackson Society http://henryjacksonsociety.org/2015/05/26/surveillance-after-snowden-effective-espionage-in-an-age-of-transparency/

Foreign Intelligence Surveillance Act Section 702 Section 702 of the Foreign Intelligence Surveillance Act (FISA) governs the interception of communications – for the specific purpose of acquiring foreign intelligence information – of those based outside the US. It is widely considered to be more integral to the NSA's work than that of Section 215.

3. The Affirmative interpretation is bad for debate

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. They make the domestic limit meaningless. All surveillance becomes topical by their standards.

4. Topicality is a Voting Issue because the opportunity to prepare promotes better debating

2NC Topicality – Domestic Interpretation

Domestic Surveillance must be entirely within the territorial boundaries of a state.

Forcese, 2011

Craig. Associate Professor, Faculty of Law, University of Ottawa, Canada"Spies Without Borders: International Law and Intelligence Collection." Journal of National Security Law and Policy 5 (2011).

Likewise, electronic surveillance may have a domestic, foreign, and transnational nexus. As noted, a domestic wiretap may be the source of intelligence. In another scenario, one state may covertly monitor communications arising in another state from a listening facility housed in the first state's embassy in the second state's capital. In addition, signals emanating from the territory of one state may be intercepted on the territory of another.

The range of geographic permutations on spying is laid out in table 1. For the purposes of this paper, I shall use the terms "territorial" to describe purely domestic spying, "extraterritorial" to describe purely foreign spying and "transnational" to describe spying that straddles state borders.

Table 1: Geography of Spying

	Territorial	Extraterritorial	Transnational

Human intelligence	Collection of information by a state agent from people and their associated documents and media sources that takes place within the state.	Collection of information by a state agent from people and their associated documents and media sources that takes place on the territory of another the state.	Collection of information by a state agent from peo and their associated documents and media sources in which the sou (but not the agent) is located on the territory o another state.
Electronic surveillance	Interception of communications or actions passed by radio, wire, or other electromagnetic, photo-electronic and/or photooptical means and of electromagnetic radiations in which both the communication and the interception takes place within the state.	Interception of communications or actions passed by radio, wire, or other electromagnetic, photo-electronic and/or photooptical means and of electromagnetic radiations in which both the communication and the interception take place on the territory of another the state.	Interception of communications or actio passed by radio, wire, or other electromagnetic, photo-electronic and/or photo-optical means and electromagnetic radiatio in which the communication (but not interception) takes place the territory of another state

2NC Topicality – Domestic Interpretation Good

The distinction between domestic and foreign is the critical question in determining how to handle surveillance. Their blurring of this distinction means we don't learn about the law.

Freiwald, 2008

Susan. Professor, University of San Francisco School of Law. "Electronic Surveillance at the Virtual Border." Mississippi Law Journal 78 (2008): 2009-15.

While the FISA scheme is a creature of Congress, it must conform to constitutional constraints.26 As Part II discusses, Fourth Amendment precedents require the judiciary to oversee executive branch surveillance of purely "domestic" surveillance.27 But the Fourth Amendment has much less, if anything, to say about executive branch conduct of purely "foreign" surveillance.28 One could defensibly arrange the scenarios along a spectrum from most "domestic," and therefore protected by the Fourth Amendment, to most "foreign," and therefore least protected.

Rather than viewing the Fourth Amendment as providing decreasing judicial oversight as the character of the electronic surveillance becomes increasingly foreign, however, one could instead view Fourth Amendment protection as being all or nothing. In other words, one could view the Fourth Amendment as providing strict regulation for purely domestic investigations and no regulation for purely foreign investigations because the latter are governed by executive branch discretion. Then one would view the rules for cases that fall in the middle as designed to determine whether to treat the investigation as domestic or foreign. Under this view, in cases that are neither clearly domestic nor clearly foreign, the judge's role would be to review the executive's decision to deprive the target of judicial oversight of the surveillance that the Fourth Amendment mandates. The executive makes such a determination when a target effectively acts in the interest of a foreign power; in such a case, the executive may be said to "exile" that target if she is a U.S. Person.29

In this analysis, the virtual border plays a key role. On this side of the virtual border, domestic targets enjoy extensive judicial review of executive branch surveillance, pursuant to the dictates of the Fourth Amendment.30 On the other side, foreign targets are subject to whatever electronic surveillance the executive branch chooses to conduct in the exercise of its foreign affair powers.31 Foreign targets have no right to complain about surveillance techniques in our courts, though they may of course raise their complaints in their own courts.32

2NC Topicality – Clear Definition Good

Clear definition of domestic surveillance is critical to good policy making.

Yoo and Sulmasy 2007,

Yoo, John, Judge Advocate and Associate Professor of Law, United States Coast Guard Academy. Sulmasy, Glenn, Professor of Law, Boalt Hall School of Law, University of California–Berkeley; visiting scholar, American Enterprise Institute Counterintuitive: Intelligence Operations and International Law. Michigan Journal of International Law, Vol. 28, 2007; UC Berkeley Public Law Research Paper No. 1030763. Available at SSRN: http://ssrn.com/abstract=1030763

Domestically, so many components and issues comprise "intelligence" that it remains difficult to pin down a specific definition.22 Mark Lowenthal, an expert in intelligence gathering, has noted that "[v]irtually every book written on the subject of intelligence begins with a discussion of what the author believes 'intelligence' to mean, or at least how the he or she intends to use the term. This editorial fact tells us much about the field of intelligence."23 Even those who have spent years in the field find the term vague.24 Any international convention on the peacetime conduct of intelligence collection would prove unsuccessful at the very least because of difficulties in defining exactly what it would seek to regulate. Defining intelligence and intelligence gathering often derives from such vague subject terms as counterintelligence, business intelligence, foreign intelligence, espionage, maritime intelligence, space-related intelligence, signals intelligence, and human intelligence. These subject terms themselves then need an established universal definition and further simplification in order to reduce the ambiguity associated with attempts to regulate the practice. Currently, the United States defines intelligence as a body of evidence and the

conclusions drawn from it. It is often derived from information that is concealed or not intended to be available for use by the inquirer."25 This vague and overly broad definitional statement reveals the problems with actually articulating what intelligence is and what it is not. Without a clear definition of the term (from the United States or any other state for that matter), we should not expect regulation of intelligence activities at the international level.

2NC Topicality – NSA is Foreign Surveillance

The NSA is a Foreign Intelligence agency.

De, 2014,

Rajesh De, General Counsel, National Security Agency, 10-16-2014, "The NSA and Accountability in an Era of Big Data," Journal Of National Security Law & Policy, http://search.proquest.com/docview/1547942293/D7CD0D4112B54FC9PQ/2?accountid=10422

As noted earlier, NSA is a foreign intelligence agency. Executive Order 12333 defines foreign intelligence as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." This language largely mirrors that which Congress adopted in the National Security Act of 1947. FISA contains a more intricate definition of foreign intelligence information for the specific purposes of that statutory scheme, but all support the same overall conclusion - NSA's mission is neither open-ended, nor is it discretionary. NSA may only collect signals intelligence for a foreign purpose.

Section 702 collects communications of non-Americans outside of the US.

Dickerson, 2015

Julie, 3L at Harvard Law School, and previously served as Senior Editor for the Harvard National Security Journal, 2-17-2015, "Harvard National Security Journal – Meaningful Transparency: The Missing Numbers the NSA and FISC Should Reveal," Harvard National Security Journal, http://harvardnsj.org/2015/02/meaningful-transparency-the-missing-numbers-the-nsa-and-fisc-should-reveal/

Under § 702 of the USA-PATRIOT Act, the NSA uses information from U.S. electronic communication service providers to target non-Americans outside the United States for documented foreign intelligence purposes. The NSA collects more than 250 million internet communications under this power each year. While a large absolute number, it is unclear what percent of total internet communications these § 702 communications constitute. The NSA has revealed that the internet carries 1,826 Petabytes of information per day, the NSA touches 1.6% of that data in its foreign intelligence mission, and the NSA only selects 0.025% of that data for review. The net result is that NSA analysts look at a mere 0.00004% of the world's traffic. These percentages of total data traffic, though indicative that the percent of § 702 communications collected is likely miniscule, do not map perfectly onto percentages of total communications.

Terrorism DA
1NC TERRORISM DA LINK

Link –Section 702 is the most valuable NSA surveillance program, it has prevented multiple terror attacks.

Taylor 14

Stuart Taylor, JD (Harvard), author and freelance journalist focusing on legal and policy issues, a Brookings Institution nonresident senior fellow, and a National Journal contributing editor. The Big Snoop: Life, Liberty, and the Pursuit of Terrorists

April 28, 2014 http://www.brookings.edu/research/essays/2014/big-snoop

Yet there's no denying that PRISM's mining of emails and other Internet messages has produced a mother lode of useful information. An internal NSA document leaked by Snowden described the program as "the most prolific contributor to the President's Daily Brief" and the NSA's "leading source of raw material, accounting for nearly one in seven [of all the intelligence community's secret] reports."

More to the point, PRISM has often contributed to the collection of actionable intelligence used in the fight against terrorism. Even Wyden, the NSA's strongest congressional critic, acknowledges as much. He and his ally on the surveillance issue, Senator Mark Udall (D-Colo.), said in a joint statement last summer that "multiple terrorist plots have been disrupted at least in part because of information obtained under Section 702."

Link Terrorism- 702 and Prism

Surveillance under section 702 is crucial to detect and act on threats of terrorism.

Hines 13

Pierre Hines is a defense council member of the Truman National Security Project, "Here's how metadata on billions of phone calls predicts terrorist attacks" http://qz.com/95719/heres-how-metadata-on-billions-of-phone-calls-predicts-terrorist-attacks, June 19th, 2013

Yesterday, when NSA Director General Keith Alexander testified before the House Committee on Intelligence, he declared that the NSA's surveillance programs have provided "critical leads to help prevent over 50 potential terrorist events." FBI Deputy Director Sean Boyce elaborated by describing four instances when the NSA's surveillance programs have had an impact: (1) when an intercepted email from a terrorist in Pakistan led to foiling a plan to bomb of the New York subway system; (2) when NSA's programs helped prevent a plot to bomb the New York Stock Exchange; (3) when intelligence led to the arrest of a U.S. citizen who planned to bomb the Danish Newspaper office that published cartoon depictions of the Prophet Muhammad; and (4) when the NSA's programs triggered reopening the 9/11 investigation. So what are the practical applications of internet and phone records gathered from two NSA programs? And how can "metadata" actually prevent terrorist attacks? Metadata does not give the NSA and intelligence

community access to the content of internet and phone communications. Instead, metadata is more like the transactional information cell phone customers would normally see on their billing statements—metadata can indicate when a call, email, or online chat began and how long the communication lasted. Section 215 of the Patriot Act provides the legal authority to obtain "business records" from phone companies. Meanwhile, the NSA uses Section 702 of the Foreign Intelligence Surveillance Act to authorize its PRISM program. According the figures provided by Gen. Alexander, intelligence gathered based on Section 702 authority contributed in over 90% of the 50 cases. One of major benefits of metadata is that it provides hindsight—it gives intelligence analysts a retrospective view of a sequence of events. As Deputy Director Boyce discussed, the ability to analyze previous communications allowed the FBI to reopen the 9/11 investigation and determine who was linked to that attack. It is important to recognize that terrorist attacks are not orchestrated overnight; they take months or years to plan. Therefore, if the intelligence community only catches wind of an attack halfway into the terrorists' planning cycle, or even after a terrorist attack has taken place, metadata might be the only source of information that captures the sequence of events leading up to an attack. Once a terrorist suspect has been identified or once an attack has taken place, intelligence analysts can use powerful software to sift through metadata to determine which numbers, IP addresses, or individuals are associated with the suspect. Moreover, phone numbers and IP addresses sometimes serve as a proxy for the general location of where the planning has taken place. This ability to narrow down the location of terrorists can help determine whether the intelligence community is dealing with a domestic or international threat.

Link Terrorism – Online Surveillance

Surveillance of internet communication is critical to stop terrorism.

De, 2014

Rajesh De, General Counsel, National Security Agency, 10-16-2014, "The NSA and Accountability in an Era of Big Data," Journal Of National Security Law & Policy, http://search.proquest.com/docview/1547942293/D7CD0D4112B54FC9PQ/2?accountid=10422

NSA performs its mission in an ever more rapidly evolving operational environment, one characterized by persistent change in both the nature of our adversaries and their communications. Foreign threats are no longer limited to traditional nation state actors, or even widely-recognized terrorist groups like al Qaeda and its affiliates. Moreover, adversaries today communicate through means more operationally simple yet technically sophisticated than ever before. As you know better than most, these changes are taking place against a backdrop of increasingly complex, dynamic, and voluminous communications data flows around the globe. Industry and academic estimates regularly chart the growth of such trends, often in metrics of such dizzying scale that they can become mind numbing: as of 2012, about 2.5 exabytes of data are created each day; more data crosses the internet every second today than was stored on the entire internet 20 years ago; global mobile traffic grew 70 percent in 2012, reaching 885 petabytes per month; and it is estimated that the number of mobile-connected devices will exceed the world's population in 2013. Scale, however, is merely one of the challenges for a signals intelligence agency like NSA-trends toward greater mobility and the increasing adoption of internet- based encryption pose additional challenges as well.

Perhaps the most alarming trend is that the digital communications infra- structure is increasingly also becoming the domain for foreign threat activity. In other words, it is no longer just a question of "collecting" or even "connecting" the dots in order to assess foreign threats amidst more and more digital noise, it is also a question of determining which of the so-called "dots" may constitute the threat itself. As President Obama has recognized, "the cyber threat to our nation is one of the most serious economic and national security challenges we face."

Blocking intelligence from using the internet is a huge risk- terrorists use the internet.

Cordero, 2013

Carrie Director of National Security Studies & Adjunct Professor of Law Georgetown University Law Center "Continued Oversight of US Government Surveillance Authorities: Hearing Before the S. Committee on the Judiciary, 113th Cong., December 11, 2013 (Statement by Professor Carrie F. Cordero, Geo. UL Center)." (2013).

Some will argue that Congress should outlaw bulk collection under FISA, based on the "power of metadata" argument as well as arguments about our changing expectation of privacy in light of the methods of modern communications. But everyday Americans, or friends in foreign nations, are not the only people using the Internet to communicate. We all - - regular people, government leaders, as well as those who pose national security threats such as terrorists, terrorist financiers and facilitators, proliferators of weapons of mass destruction, spies, sophisticated hackers, and cyber intruders - - use the Internet, computers, and smart phones to communicate. And so just as regular people should not be expected to turn off their modern communications and revert to old fashioned modes of communication, neither should the Intelligence Community or law enforcement resort to pen, paper and index cards to conduct national security collection or investigations. It is just as unrealistic to expect citizens to unplug, as it is to expect or require the NSA or FBI to use 20th century collection, analytic or investigative techniques or methods to protect the nation from 21st century threats.

Link Terrorism – Delay

The plan results in a huge amount of paperwork for the NSA – makes them really slow

Cordero, 2013

Carrie Director of National Security Studies & Adjunct Professor of Law Georgetown University Law Center "Continued Oversight of US Government Surveillance Authorities: Hearing Before the S. Committee on the Judiciary, 113th Cong., December 11, 2013 (Statement by Professor Carrie F. Cordero, Geo. UL Center)." (2013).

In light of recent unauthorized disclosures, concerns have also been expressed regarding the NSA's collection targeting or pertaining to foreign persons located outside the United States. Suggestions have been made that U.S. foreign intelligence collection should recognize some sort of privacy right for non-U.S. persons. In fact, the U.S. Intelligence Community has a recent history of affording Constitutional protections to persons who are not entitled to them. Congress made a deliberate decision with the passage of the FISA Amendments Act of 2008 to end that practice. And for good reason: prior to 2007, the U.S. government was, in fact, going through incredible hoops to acquire certain communications of foreign terrorist targets overseas. Two parallel processes caused this to happen. The first was described in a written statement for the record by the Director of National Intelligence before this Committee in September 2007

"…[P]rior to Congress passing the Protect America Act last month, in a significant number of cases, IC agencies were required to make a showing of probable cause in order to target for surveillance the communications of a foreign intelligence target located overseas. Then, they needed to explain that probable cause finding in documentation, and obtain approval of the FISA Court to collect against a foreign terrorist located in a foreign country. Frequently, although not always, that person's communications were with another foreign person located overseas. In such cases, prior to the Protect America Act, FISA's requirement to obtain a court order, based on a showing of probable cause, slowed, and in some cases prevented altogether, the Government's ability to collect foreign intelligence information, without serving any substantial privacy or civil liberties interests."

In other words, the Intelligence Community, because of the requirements of the FISA statute prior to 2007, found itself in a position where it was seeking individual probable cause-based orders from the FISC to target terrorists overseas. When the government needed to obtain certain communications of a terrorist target, located in, as examples, Pakistan or Yemen, it was preparing a full application to the FISC, with a detailed factual showing providing probable cause that the target was an agent of a foreign power, and obtaining the signatures of a high ranking national security official and the Attorney General, and then submitting that application to the FISC for approval. This extensive process, in addition to being unnecessary from a Constitutional perspective, was a crushing force on the system.

Terrorism – Answers to "Too much Data"

The NSA needs all of the data – its like taking out 200 pieces of a 1000 piece puzzle, it becomes a lot harder to understand the picture when you eliminate data.

Lewis, 2014

James Andrew Lewis is a senior fellow and director of the Strategic Technologies Program at the Center for Strategic and International Studies in Washington, D.C., where he writes on technology, security, and the international economy. "Underestimating Risk in the Surveillance Debate" Center for Strategic and International Studies http://csis.org/publication/underestimating-risk-surveillance-debate

This effort takes place over months and involves multiple intelligence, law enforcement, and military agencies, with more than a dozen individuals from these agencies collaborating to build up a picture of the bomb-maker and his planned attack. When the bomb-maker leaves the Middle East to carry out his attack, he is prevented from entering the United States. An analogy for how this works would be to take a 1,000-piece jigsaw puzzle, randomly select 200 pieces, and provide them to a team of analysts who, using incomplete data, must guess what the entire picture looks like. The likelihood of their success is determined by how much information they receive, how much time they have, and by experience and luck. Their guess can be tested by using a range of

collection programs, including communications surveillance programs like the 215 metadata program.

What is left out of this picture (and from most fictional portrayals of intelligence analysis) is the number of false leads the analysts must pursue, the number of dead ends they must walk down, and the tools they use to decide that something is a false lead or dead end. Police officers are familiar with how many leads in an investigation must be eliminated through legwork and query before an accurate picture emerges. Most leads are wrong, and much of the work is a process of elimination that eventually focuses in on the most probable threat. If real intelligence work were a film, it would be mostly boring. Where the metadata program contributes is in eliminating possible leads and suspects.

There's not too much data – computer processing power solves the problem.

Sagar, 2015

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. He was previously assistant professor in the Department of Politics at Princeton University., "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

Greenwald also raises objections from a national security perspective. He warns that mass surveillance undermines national security because "it swamps the intelligence agencies with so much data that they cannot possibly sort through it effectively."11 He also questions the efficacy of communications surveillance, arguing that it has little to show in terms of success in combating terrorism. But these criticisms are equally unpersuasive. It is certainly possible that a surveillance program could generate so much raw data that an important piece of information is overlooked. But in such a case the appropriate response would not be to shut down the program but rather to bulk up the processing power and ~~manpower~~ devoted to it. Finally, both the President's Review Group and the Privacy and Civil Liberties Oversight Board have examined the efficacy of the NSA's programs. Both report that the NSA's foreign surveillance programs have contributed to more than fifty counterterrorism investigations, leading them to conclude that the NSA "does in fact play an important role in the nation's effort to prevent terrorist attacks across the globe."12

Bulk data is critical to eliminate false positives.

Lewis, 2014

James Andrew Lewis is a senior fellow and director of the Strategic Technologies Program at the Center for Strategic and International Studies in Washington, D.C., where he writes on technology, security, and the international economy. "Underestimating Risk in the Surveillance

Debate" Center for Strategic and International Studies http://csis.org/publication/underestimating-risk-surveillance-debate

Assertions that a collection program contributes nothing because it has not singlehandedly prevented an attack reflect an ill-informed understanding of how the United States conducts collection and analysis to prevent harmful acts against itself and its allies. Intelligence does not work as it is portrayed in films—solitary agents do not make startling discoveries that lead to dramatic, last-minute success (nor is technology consistently infallible). Intelligence is a team sport. Perfect knowledge does not exist and success is the product of the efforts of teams of dedicated individuals from many agencies, using many tools and techniques, working together to assemble fragments of data from many sources into a coherent picture. Analysts assemble this mosaic from many different sources and based on experience and intuition. Luck is still more important than anyone would like and the alternative to luck is acquiring more information. This ability to blend different sources of intelligence has improved U.S. intelligence capabilities and gives us an advantage over some opponents.

Portrayals of spying in popular culture focus on a central narrative, essential for storytelling but deeply misleading. In practice, there can be many possible narratives that analysts must explore simultaneously. An analyst might decide, for example, to see if there is additional confirming information that points to which explanation deserves further investigation. Often, the contribution from collection programs comes not from what they tell us, but what they let us reject as false. In the case of the 215 program, its utility was in being able to provide information that allowed analysts to rule out some theories and suspects. This allows analysts to focus on other, more likely, scenarios.

Offcase Other
POLITICS DISAD LINK

The plan is unpopular because PRISM works, Congress got rid of metadata in the USA Freedom act because it was ineffecitve.

Volz and Fox 15,
Dustin Volz is a staff correspondent for National Journal covering tech policy. Dustin is a graduate of Arizona State University. *Lauren Fox* is a staff correspondent for National Journal. She graduated from the University of Oregon. 6-3-2015, "The War Over NSA Spying Is Just Beginning," nationaljournal, http://www.nationaljournal.com/tech/the-war-over-nsa-spying-is-just-beginning-20150603

The momentum to end the NSA's phone dragnet snowballed over the past year and a half as two review panels deemed it ineffective. President Obama pledged to end it "as it currently exists" and a federal appeals court deemed it illegal. But further reforms—such as to the Internet surveillance program known as PRISM, which Snowden also revealed—are likely to be tougher sells in Congress. For PRISM especially, that's in part because the program is considered more useful and because it deals primarily with surveillance of foreigners. U.S. tech companies that are subject to PRISM, including Facebook, Yahoo, and Google, have called for changes to the program. Yet when asked about whether he would work to take down PRISM, even Wyden bristled at the question. "I am going to keep it to the three that I am going to

change," Wyden said. Even reformers outside the confines of the Senate recognize that ending PRISM is a complicated pursuit. "It is not going to be quite as easy to drum up the same support," says Liza Goitein, codirector for the Liberty & National Security Program at the Brennan Center for Justice.

Executive Counter-plan Solvency

The President should limit NSA programs on their own. Congressional limits are too inflexible and link to the Terrorism disad.

Carrie **Cordero 14,**
Director, National Security Studies Georgetown Law Formerly worked for the Justice Department and argued in front of the FISA court, The Brookings Institution A Debate One Year After Snowden: The Future Of U.S. Surveillance Authorities Washington, D.C. Thursday, June 5, 2014 http://www.brookings.edu/events/2014/06/05-debate-snowden-future-us-surveillance-nsa#/full-event/

MS. CORDERO: One additional point on the President's initiative. So, there have been policy directives. The President issued a new order in January that does place additional limits on the collection. That is completely within the President's authority and is appropriate and so forth.

Where I think this debate over the last year is now taking a turn is now the President can make those determinations, and if it determines that those policy decisions are having an adverse impact on national security and he needs to adjust them, he currently has the flexibility to do that.

The problem with some of the legislative proposals that are currently on the table is that they will outlaw certain activity, and it will be in law if bulk collection, for example, is outlawed, can't be conducted under the FISA statute. And that's where we risk the potential to create an environment that nobody in the legal community or the national security community wants to revisit, which is the environment that we faced in the pre-9/11 days and right after where the law, the statutes, had become so outdated with respect to the way the technology occurred and the threats that we were facing that the Executive needed to act on Executive authority alone. And unfortunately some of the proposals that are currently on the table risk putting us down that path in the years to come.

The President can unilaterally end the programs.

Brand, 2015
Rachel L. Brand 15, Hon. Rachel L. Brand is a member of the US Privacy and Civil Liberties Oversight Board. Previously, Ms. Brand served as assistant attorney general for legal policy and as an associate counsel to President George W. Bush. She was a law clerk to Justice Anthony Kennedy of the US Supreme Court., 5-20-2015, "Opinion: What Congress gets wrong about NSA surveillance practices," Christian Science Monitor,

http://www.csmonitor.com/World/Passcode/Passcode-Voices/2015/0520/Opinion-What-Congress-gets-wrong-about-NSA-surveillance-practices

The debate about this program is important, and reasonable people differ on whether its benefits outweigh its privacy impacts. But if the goal is to do away with this program, legislation is unnecessary. The president could unilaterally end the program today without any action by Congress. This would be simpler and have fewer unintended consequences than passing legislation that permanently removes this investigative tool from the toolbox and tinkers with a number of other important counterterrorism tools.

NSA Michigan 7

Advantage answers

Privacy

1nc – privacy advantage

Overwhelming corporate and government tracking is inevitable – the aff is a meaningless half-measure

Schneier, 15 - fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Introduction)//AK

There's a whole industry devoted to tracking you in real time. Companies use your phone to track you in stores to learn how you shop, track you on the road to determine how close you might be to a particular store, and deliver advertising to your phone based on where you are right now.

Your location data is so valuable that cell phone companies are now selling it to data brokers, who in turn **resell it** to anyone willing to pay for it. Companies like Sense Networks specialize in using this data to build personal profiles of each of us.

Phone companies are not the only source of cell phone data. The US company Verint sells cell phone tracking systems to both **corporations and governments worldwide**. The company's website says that it's "a global leader in Actionable Intelligence solutions for customer engagement optimization, security intelligence, and fraud, risk and compliance," with clients in "more than 10,000 organizations in over 180 countries." The UK company Cobham sells a system that allows someone to send a "blind" call to a phone—one that doesn't ring, and isn't detectable. The blind call forces the phone to transmit on a certain frequency, allowing the sender to track that phone to within one meter. The company boasts government customers in Algeria, Brunei, Ghana, Pakistan, Saudi Arabia, Singapore, and the United States. Defentek, a company mysteriously registered in Panama, sells a system that can "locate and track any phone number in the world … undetected and unknown by the network, carrier, or the target." It's not an idle boast; telecommunications researcher Tobias Engel demonstrated the same thing at a hacker conference in 2008. Criminals do the same today.

All this location tracking is based on the cellular system. There's another entirely different and more accurate location system built into your smartphone: GPS. This is what provides location data to the various apps running on your phone. Some apps use location data to deliver service: Google Maps, Uber, Yelp. Others, like Angry Birds, just want to be able to collect and sell it.

You can do this, too. HelloSpy is an app that you can surreptitiously install on someone else's smartphone to track her. Perfect for an anxious mom wanting to spy on her teenager—or an

abusive man wanting to spy on his wife or girlfriend. Employers have used apps like this to spy on their employees.

The US National Security Agency (NSA) and its UK counterpart, Government Communications Headquarters (GCHQ), use location data to track people. The NSA collects cell phone location data from a variety of sources: the cell towers that phones connect to, the location of Wi-Fi networks that phones log on to, and GPS location data from Internet apps. Two of the NSA's internal databases, code-named HAPPYFOOT and FASCIA, contain comprehensive location information of devices worldwide. The NSA uses the databases to track people's movements, identify people who associate with people of interest, and target drone strikes.

The NSA can allegedly track cell phones even when they are turned off. I've just been talking about location information from one source—your cell phone— but the issue is far larger than this. The computers you interact with are constantly producing intimate personal data about you. It includes what you read, watch, and listen to. It includes whom you talk to and what you say. Ultimately, it covers what you're thinking about, at least to the extent that your thoughts lead you to the Internet and search engines. We are living in the **golden age of surveillance**.

Sun Microsystems' CEO Scott McNealy said it plainly way back in 1999: "You have zero privacy anyway. Get over it." He's wrong about how we should react to surveillance, of course, but he's right that it's becoming harder and harder to avoid surveillance and maintain privacy.

Surveillance is a politically and emotionally loaded term, but I use it deliberately. The US military defines surveillance as "systematic observation." As I'll explain, modern-day electronic surveillance is exactly that. **We're all open books** to both governments and corporations; their ability to peer into our collective personal lives is greater than it has ever been before.

The bargain you make, again and again, with various companies is surveillance in exchange for free service. Google's chairman Eric Schmidt and its director of ideas Jared Cohen laid it out in their 2013 book, The New Digital Age. Here I'm paraphrasing their message: if you let us have all your data, we will show you advertisements you want to see and we'll throw in free web search, e-mail, and all sorts of other services. It's convenience, basically. We are social animals, and there's nothing more powerful or rewarding than communicating with other people. Digital means have become the easiest and quickest way to communicate. And why do we allow governments access? Because we fear the terrorists, fear the strangers abducting our children, fear the drug dealers, fear whatever bad guy is in vogue at the moment. That's the NSA's justification for its mass surveillance programs; if you let us have all of your data, we'll relieve your fear.

No privacy intrusion – legal restraints prevent data collection of non-targets

De 14 - General Counsel, National Security Agency (Rajesh, "The NSA and Accountability in an Era of Big Data", JOURNAL OF NATIONAL SECURITY LAW & POLICY, 2014, p.6-8//DM)

False Myth: #2: NSA is spying on Americans at home and abroad with questionable or no legal basis.

This false myth reflects both deep philosophical distrust of the secretive NSA by some, and the reality that signals intelligence activities, unlike some other intelligence activities, inevitably

implicate the privacy rights of U.S. persons. It also reflects more recent controversy over so-called "warrantless wiretapping" under the President's Terrorist Surveillance Program (TSP). Without getting into details about the TSP (the authorization for which ended in 2007, but much of which is still classified and the subject of litigation) or FISA (an intricate statutory scheme), I would like to make a few general points about our current operations to help dispel this myth.

First, without an individualized determination of probable cause by a federal judge, NSA does not target the communications of any unconsenting U.S. person anywhere in the world when there is a reasonable expectation of privacy and a warrant would be required for law enforcement purposes in the United States (note that pursuant to statute and regulation, under certain emergency scenarios the Attorney General can make an initial finding of probable cause, but if within the purview of FISA, the Foreign Intelligence Surveillance Court must subsequently make that determination). One point worth highlighting in particular is that, amidst the controversy over the recent amendments made to FISA in 2008 and reauthorized in 2012, an important change was made: targeting a U.S. person abroad now requires a probable cause finding by a federal judge, whereas previously it could be approved by the Attorney General alone under Executive Order 12333.

Second, under even one of the more controversial provisions of the recent FISA amendments, Section 702, where no individualized probable cause finding is required, express limits were enacted:

● Section 702 may only be used to target non-U.S. persons reasonably believed to be located outside the United States.

● Section 702 may not be used to intentionally target any person in the United States or a U.S. person outside the United States.

● Section 702 may not be used to conduct "reverse targeting" – i.e., targeting of a person outside the United States if the purpose is to target a particular, known person inside the United States.

● Section 702 may not be used to intentionally acquire a "wholly-domestic communication" – i.e., a communication where all communicants are inside the United States.

● Section 702 must be implemented in a manner consistent with the Fourth Amendment.

2nc – corporate surveillance inevitable

Corporate surveillance is inevitable and they'll willingly provide data to the government

Schneier, 15 - fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Introduction)//AK

Corporate surveillance and government surveillance aren't separate. They're intertwined; the two support each other. It's a **public-private surveillance partnership** that spans the world. This isn't a formal agreement; it's more an alliance of interests. Although it isn't absolute, it's become a de facto reality, with many powerful stakeholders supporting its perpetuation. And though Snowden's revelations about NSA surveillance have caused rifts in the partnership—we'll talk about those in Chapter 14—it's still strong. The Snowden documents made it clear how much the NSA relies on US corporations to eavesdrop on the Internet. The NSA didn't build a massive Internet eavesdropping system from scratch. It noticed that the corporate world was already building one, and tapped into it. Through programs like PRISM, the NSA legally compels Internet companies like Microsoft, Google, Apple, and Yahoo to provide data on several thousand individuals of interest. Through other programs, the NSA gets direct access to the Internet backbone to conduct mass surveillance on everyone. Sometimes those corporations **work with the NSA willingly**. Sometimes they're forced by the courts to hand over data, largely in secret. At other times, the NSA has hacked into those corporations' infrastructure without their permission.

This is happening all over the world. Many countries use corporate surveillance capabilities to monitor their own citizens. Through programs such as TEMPORA, the UK's GCHQ pays telcos like BT and Vodafone to give it access to bulk communications all over the world. Vodafone gives Albania, Egypt, Hungary, Ireland, and Qatar—possibly 29 countries in total—direct access to Internet traffic flowing inside their countries. We don't know to what extent these countries are paying for access, as the UK does, or just demanding it. The French government eavesdrops on France Télécom and Orange. We've already talked about China and Russia in Chapter 5. About a dozen countries have data retention laws—declared unconstitutional in the EU in 2014—requiring ISPs to keep surveillance data on their customers for some months in case the government wants access to it. Internet cafes in Iran, Vietnam, India, and elsewhere must collect and retain identity information of their customers.

Similar things are happening off the Internet. Immediately after 9/11, the US government bought data from data brokers, including air passenger data from Torch Concepts and a database of Mexican voters from ChoicePoint. US law requires financial institutions to report cash transactions of $10,000 or larger to the government; for currency exchangers, the threshold is $1,000. Many governments require hotels to report which foreigners are sleeping there that night, and many more make copies of guests' ID cards and passports. CCTV cameras, license plate capture systems, and cell phone location data are being used by numerous governments.

By the same token, corporations obtain government data for their own purposes. States like Illinois, Ohio, Texas, and Florida sell driver's license data, including photos, to private buyers. Some states sell voter registration data. The UK government proposed the sale of taxpayer data in 2014, but public outcry has halted that, at least temporarily. The UK National Health Service also plans to sell patient health data to drug and insurance firms. There's a feedback loop: corporations argue for more government data collection, then argue that the data should be released under open government laws, and then repackage the data and sell it back to the government.

The net result is that a lot of surveillance data moves back and forth between government and corporations. One consequence of this is that it's hard to get effective laws passed to curb corporate surveillance—governments don't really want to limit their own access to data by crippling the **corporate hand that feeds them**.

The government can just ask for or buy the data – surveillance unnecessary

Turner, 15 - Brad Turner is a graduate of Duke Law School and a practicing attorney in Ohio. ("When Big Data Meets Big Brother: Why Courts Should Apply United States v. Jones to Protect People's Data" 16 N.C. J.L. & Tech. 377, January, lexis)

The government can obtain second-hand data from private parties in a variety of ways. First, the government can simply ask for it. According to Google, nearly 1% of requests for its user data from law enforcement are emergency requests. n185 A bill that has been proposed in Congress, called the Cyber Intelligence Sharing and Protection Act ("CISPA"), might dramatically increase this percentage. CISPA would make it legal for the government to ask companies for data about their customers and then protect those companies from lawsuits related to the handing over of that data, "notwithstanding any other provision of law." n186

Second, the government can demand the data with a subpoena. A subpoena need not be reviewed or pre-approved by a court to be valid and enforceable. n187 Google says that 68% of its data requests from the government are in the form of a subpoena. n188 Subpoenas can request any information or documents that are at all relevant to an investigation. Relevance is defined very broadly and includes any information or documents that "might have the potential to lead to relevant information." n189 So long as a subpoena meets this very lenient standard, a court will deem the subpoena valid to the extent that the subpoena's demands are not overbroad or unduly burdensome. n190

Third, the government can demand the information with a court order, which, by definition, does require prior approval by a [*411] court. n191 Google says that 22% of its requests for data by the government are from warrants, and another 6% are from court orders. n192 The NSA collects much of its data by using secret FISA court orders, collecting huge sums of data from U.S. telephone companies, including AT&T, Verizon, and Sprint, and Internet service-providers like Facebook, Apple, Google, Microsoft, Yahoo, and AOL. n193 Statutes regulate these data-collection efforts. n194

Fourth, the government **can purchase the information**. Big Data is valuable and companies are willing to sell. n195 For the right price, [*412] government can access the same rich data-troves held by private organizations. For example, the federal government recently started buying access to a private database maintained by the credit bureau Equifax, called "The Work Numbers." n196 The database contains 54 million active salary and employment records and more than 175 million historical records from approximately 2,500 U.S. employers. n197 Equifax also sells this same data to credit card issuers, property managers, and auto lenders. n198

Can't solve privacy – private sector and foreign government collection

Lewis 5/28 – Director and Senior Fellow, Strategic Technologies Program (James Lewis, "What Happens on June 1?", CSIS Strategic Technologies Program, http://www.csistech.org/blog/2015/5/28/what-happens-on-june-1, 5/28/2015)//MBB

Privacy itself will not increase. The privacy battle was lost years ago when extracting your personal data became the business model of the internet. Americans have far less privacy than they did in 1995 and NSA has nothing to do with this. There are several ironies in this situation, not the least being that NSA collection operated under far more rules than private sector or foreign government collection, and many of the immense private sector databases are likely **accessible to foreign governments** (if they decide they can use them).

Economic incentives for corporate surveillance overwhelm the plan on a massive scale

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Historically, surveillance was difficult and expensive. We did it only when it was important: when the police needed to tail a suspect, or a business required a detailed purchasing history for billing purposes. There were exceptions, and they were extreme and expensive. The exceptionally paranoid East German government had 102,000 Stasi surveilling a population of 17 million: that's one spy for every 166 citizens, or one for every 66 if you include civilian informants.

Corporate surveillance has grown from collecting as little data as necessary to collecting as much as possible. Corporations always collected information on their customers, but in the past they didn't collect very much of it and held it only as long as necessary. Credit card companies collected only the information about their customers' transactions that they needed for billing. Stores hardly ever collected information about their customers, and mail-order companies only collected names and addresses, and maybe some purchasing history so they knew when to remove someone from their mailing list. Even Google, back in the beginning, collected far less information about its users than it does today. When surveillance information was expensive to collect and store, corporations made do with as little as possible.

The cost of computing technology has declined rapidly in recent decades. This has been a profoundly good thing. It has become cheaper and easier for people to communicate, to publish their thoughts, to access information, and so on. But that same decline in price has also brought down the price of surveillance. As computer technologies improved, corporations were able to collect more information on everyone they did business with. As the cost of data storage became cheaper, they were able to save more data and for a longer time. As big data analysis tools became more powerful, it became profitable to save more information. This led to the surveillance-based business models I'll talk about in Chapter 4.

Government surveillance has gone from collecting data on as few people as necessary to collecting it on as many as possible. When surveillance was manual and expensive, it could only be justified in extreme cases. The warrant process limited police surveillance, and resource constraints and the risk of discovery limited national intelligence surveillance. Specific individuals were targeted for surveillance, and maximal information was collected on them alone. There were also strict minimization rules about not collecting information on other people. If the

FBI was listening in on a mobster's phone, for example, the listener was supposed to hang up and stop recording if the mobster's wife or children got on the line.

As technology improved and prices dropped, governments broadened their surveillance. The NSA could surveil large groups—the Soviet government, the Chinese diplomatic corps, leftist political organizations and activists—not just individuals. Roving wiretaps meant that the FBI could eavesdrop on people regardless of the device they used to communicate with. Eventually, US agencies could spy on entire populations and save the data for years. This dovetailed with a changing threat, and they continued espionage against specific governments, while expanding mass surveillance of broad populations to look for potentially dangerous individuals. I'll talk about this in Chapter 5.

The result is that corporate and government surveillance interests have converged. Both now want to know everything about everyone. The motivations are different, but the methodologies are the same. That is the primary reason for the strong public-private security partnership that I'll talk about in Chapter 6.

All personal information is freely available – the aff is a meaningless gesture

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The result of this declining cost of surveillance technology is not just a difference in price; it's a difference in kind. Organizations end up doing more surveillance—a lot more. For example, in 2012, after a Supreme Court ruling, the FBI was required to either obtain warrants for or turn off 3,000 GPS surveillance devices installed in cars. It would simply be impossible for the FBI to follow 3,000 cars without automation; the agency just doesn't have the manpower. And now the prevalence of cell phones means that everyone can be followed, all of the time.

Another example is license plate scanners, which are becoming more common. Several companies maintain databases of vehicle license plates whose owners have defaulted on their auto loans. Spotter cars and tow trucks mount cameras on their roofs that continually scan license plates and send the data back to the companies, looking for a hit. There's big money to be made in the repossession business, so lots of individuals participate—all of them feeding data into the companies' centralized databases. One scanning company, Vigilant Solutions of Livermore, California, claims to have 2.5 billion records and collects 70 million scans in the US per month, along with date, time, and GPS location information.

In addition to repossession businesses, scanning companies also sell their data to divorce lawyers, private investigators, and others. They sometimes relay it, in real time, to police departments, which combine it with scans they get from interstate highway onramps, toll plazas, border crossings, and airport parking lots. They're looking for stolen vehicles and drivers with outstanding warrants and unpaid tickets. Already, the states' driver's license databases are being used by the FBI to identify people, and the US Department of Homeland Security wants all this

data in a single national database. In the UK, a similar government-run system based on fixed cameras is deployed throughout the country. It enforces London's automobile congestion charge system, and searches for vehicles that are behind on their mandatory inspections.

Expect the same thing to happen with automatic face recognition. Initially, the data from private cameras will most likely be used by bounty hunters tracking down bail jumpers. Eventually, though, it will be sold for other uses and given to the government. Already the FBI has a database of 52 million faces, and facial recognition software that's pretty good. The Dubai police are integrating custom facial recognition software with Google Glass to automatically identify suspects. With enough cameras in a city, police officers will be able to follow cars and people around without ever leaving their desks. This is mass surveillance, impossible without computers, networks, and automation. It's not "follow that car"; it's "follow every car." Police could always tail a suspect, but with an urban mesh of cameras, license plate scanners, and facial recognition software, they can tail everyone—suspect or not.

Similarly, putting a device called a pen register on a suspect's land line to record the phone numbers he calls used to be both time-consuming and expensive. But now that the FBI can demand that data from the phone companies' databases, it can acquire that information about everybody in the US. And it has.

In 2008, the company Waze (acquired by Google in 2013) introduced a new navigation system for smartphones. The idea was that by tracking the movements of cars that used Waze, the company could infer real-time traffic data and route people to the fastest roads. We'd all like to avoid traffic jams. In fact, all of society, not just Waze's customers, benefits when people are steered away from traffic jams so they don't add to them. But are we aware of how much data we're giving away?

For the first time in history, governments and corporations have the ability to conduct mass surveillance on entire populations. They can do it with our Internet use, our communications, our financial transactions, our movements … everything. Even the East Germans couldn't follow everybody all of the time. Now it's easy.

Internet freedom

1nc – NSA overreach

Existing oversight checks NSA overreach

Cordero, 14 - Carrie F. Cordero is the Director of National Security Studies at Georgetown University Law Center ("Fear vs. Facts: Exploring the Rules the NSA Operates Under" 6/13, http://www.cato-unbound.org/2014/06/13/carrie-f-cordero/fear-vs-facts-exploring-rules-nsa-operates-under

There is no doubt the Snowden disclosures have launched a debate that raises significant issues regarding the extent of U.S. government national security surveillance authorities and activities. And Julian Sanchez's essay Snowden: Year One raises a number of these issues, including whether the surveillance is too broad, with too few limits and too little oversight. But an overarching theme of Sanchez's essay is fear – and fear of what might be overshadows what actually is, or is even likely. Indeed, he suggests that by just "tweaking a few lines of code" the NSA's significant capabilities could be misdirected from targeting valid counterterrorism suspects to Americans involved in the Tea Party or Occupy movements.

So really, what would it take to turn NSA's capabilities inward, to the dark corner of monitoring political activity and dissent? It turns out, quite a lot. So much, in fact, that after a considered review of the checks and balances in place, it may turn out to be not worth fearing much at all.

First, a little history. Prior to 1978, NSA conducted surveillance activities for foreign intelligence purposes under Executive authority alone. In 1978, Congress passed the Foreign Intelligence Surveillance Act (FISA), which distinguished between surveillance that occurred here at home and that which occurred overseas. FISA requires that when electronic surveillance is conducted inside the United States, the government seek an order from the Foreign Intelligence Surveillance Court (FISC or the Court) based on probable cause. So, if the government wants to conduct surveillance targeting a foreign agent or foreign power here in the United States, it must obtain FISC approval to do so. By law, the Court may not issue an order targeting an American based solely on activities protected by the First Amendment to the Constitution. The Attorney General is required to report on the full range of activities that take place under FISA to four congressional committees: both the intelligence and judiciary committees in Congress. The law requires that the committees be "fully informed" twice each year.

There have been a number of amendments to FISA over the years. In 1994, the statute was amended to require that physical searches for national security purposes conducted inside the United States also happen by an order from the FISC. The USA-PATRIOT Act of 2001 amended several provisions of FISA, one of which enabled better sharing of information between terrorism and criminal investigators. And in 2008, FISA was amended to provide a statutory framework for certain approvals by the Attorney General, Director of National Intelligence, and FISC regarding the targeting of non-U.S. persons reasonably believed to be outside the United States for foreign intelligence purposes, when the cooperation of a U.S. communications service provider is needed.

So how do we know that this system of approvals is followed? Is the oversight over NSA's activities meaningful, or "decorative," as Sanchez suggests?

It is worth exploring. Here is how oversight of the Section 702 surveillance works, as one example, since it has been the subject of a significant part of the debate of the past year. Section 702 was added to FISA by the FISA Amendments Act of 2008. It authorizes the NSA to acquire the communications, for foreign intelligence purposes, of non-U.S. persons reasonably believed to be outside the United States. These are persons with no Constitutional protections, and yet, because the acquisition requires the assistance of a U.S. electronic communications provider, there is an extensive approval and oversight process. There is a statutory framework. Specifically, the Attorney General and Director of National Intelligence jointly approve certifications. According to declassified documents, the certifications are topical, meaning, the way the statute is being implemented, the certifications are not so specific that they identify individual targets; but they are not so broad that they cover any and everything that might be foreign intelligence

information. The certifications are filed with the FISC, along with targeting and minimization procedures. Targeting procedures are the rules by which NSA selects valid foreign intelligence targets for collection. Minimization procedures are rules by which NSA handles information concerning U.S. persons. The FISC has to approve these procedures. If it does not approve them, the government has to fix them. The Court reviews these procedures and processes annually. The Court can request a hearing with government witnesses (like senior intelligence officials, even the NSA Director, if the judge wanted or needed to hear from him personally) or additional information in order to aid in its decisionmaking process. Information about the 702 certifications is reported to the Congressional intelligence committees.

Once the certifications are in effect, attorneys from the Department of Justice's (DOJ) National Security Division and attorneys and civil liberties officials from the Office of the Director of National Intelligence (ODNI) review the NSA's targeting decisions and compliance with the rules. They conduct reviews at least every 90 days. During that 90-day period, oversight personnel are in contact with NSA operational and compliance personnel. Compliance incidents can be discovered in one of at least two ways: the NSA can self-report them, which it does; or the DOJ and ODNI oversight personnel may discover them on their own. Sometimes the NSA does not report a compliance incident in the required timeframe. Then the time lag in reporting may become an additional compliance incident. The DOJ and ODNI compliance teams write up semi-annual reports describing the results of their reviews. The reports are approved by the Attorney General and Director of National Intelligence and provided to the FISC and to Congress. According to the one report that has been declassified so far, in August 2013, for a six-month period in 2012, the rate of error for the NSA's compliance under Section 702 collection was .49% - less than half of one percent. If we subtract the compliance incidents that were actually delays in reporting, then the noncompliance rate falls to between .15-.25% - **less than one quarter of one percent**. Hardly an agency run amok.

PPD-28 means the US already has the strongest global surveillance protection

Edgar, 15 - Timothy H. Edgar is a visiting scholar at the Brown University's Watson Institute for International Studies and has also taught at the Georgetown University Law Center and Boston University ("Why Should We Buy Into The Notion That The United States Doesn't Care About Privacy?" Lawfare, 2/23, http://www.lawfareblog.com/why-should-we-buy-notion-united-states-doesnt-care-about-privacy

Here, the record is clear: the United States wins, hands down. A comprehensive analysis of worldwide surveillance laws undertaken by the Center for Democracy and Technology shows just how little is required in most countries around the world, including in Europe, for undertaking national security surveillance. For example, under the UK's Regulation of Investigatory Powers Act (RIPA), such surveillance can be obtained with the approval of a Secretary of State. Germany authorizes such surveillance through a parliamentary committee. These safeguards, structurally inferior to the court orders required by FISA, have been determined by European courts to satisfy the fundamental liberties required by the European Convention on Human Rights.

What about external surveillance? New rules issued by the Obama administration under Presidential Policy Directive 28 (PPD-28) provide practical protection for the privacy of

foreigners in NSA collection. These may make only modest changes to surveillance practices in the short run, but it is a mistake to see them as mere "tweaks" in surveillance policy. **They are a major paradigm shift**. When I served as a privacy official in the intelligence community, I had no law, executive order, or directive that told me that the privacy rights of foreigners matter. The new rules change that. The mechanisms of intelligence oversight---privacy officials and boards, inspectors general, and lawyers---now must pay attention to everyone's privacy. No other nation has publicly committed its external intelligence services to specific rules designed to respect everyone's privacy. Germany and many other European nations have protested NSA spying. Will their intelligence services issue oversight rules protecting the privacy not just of their own citizens, but of all of us?

On transparency, the United States wins again. While the United States continues to declassify more and more details of its intelligence operations in the wake of the Snowden revelations, European countries play catch up. Last month, a UK court that oversees UK intelligence services---the Investigatory Powers Tribunal---found in a case brought by civil liberties groups that, although its information sharing with the NSA was consistent with European human rights law, it needed to be much more transparent about the rules under which it operates.

I'm looking forward to the launch of "GCHQ on the record."

The United States should not be shy in talking about its record on intelligence oversight, nor should it accept the premise that Europeans care more about privacy than Americans. The United States **leads the world** when it comes to privacy protection in intelligence activities – if only because the rest of the world's rules are so weak. We should start talking about it.

AT: Nonbinding

Obama policy statement minimizes data abuse risks and is binding US policy

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

Edward Snowden's disclosures have thus far centered on two NSA programs. One is domestic - the so-called metadata program, operated pursuant to section 215 of the USA PATRIOT Act, n13 and entailing the bulk collection of call record information, including phone numbers and times of calls. n14 The other is foreign - the PRISM program, operated pursuant to section 702 of the Foreign Intelligence Surveillance Act (FISA). n15 Under section 702, the government may conduct surveillance targeting the contents of communications of non-U.S. persons reasonably believed to be located abroad when the surveillance will result in acquiring foreign intelligence information. n16 The FISC must approve any government request for surveillance under section 702, although these requests can [*2141] describe broad types of communications without identifying particular individuals. n17

Under section 702, "foreign intelligence information" that the government may acquire includes a number of grounds related to national security, such as information relating to an "actual or potential attack" or "other grave hostile acts of a foreign power or an agent of a foreign power." n18 It also includes information relating to possible sabotage n19 and clandestine foreign "intelligence activities." n20 Another prong of the definition appears to sweep more broadly, including information relating to "the conduct of the foreign affairs of the United States." n21 Despite the greater breadth of this provision, President Obama informed a domestic and global audience that U.S. intelligence agencies seek a narrow range of information centering on the national security and foreign intelligence concerns described above. n22 While the U.S. intelligence agencies acquire a substantial amount of data that does not fit under these rubrics, the president's speech confirmed that U.S. analysts do not rummage through such data randomly or for invidious purposes. n23 A scatter-shot approach of this kind would be unethical, illegal, and ineffective. Instead, NSA officials query communications using specific "identifiers" such as phone numbers and email addresses that officials reasonably believe are used by non-U.S. persons abroad to communicate foreign intelligence information. n24 The government must also have in place minimization procedures to limit the acquisition, retention, and dissemination of nonpublic information about U.S. persons. n25 The NSA deletes all irrelevant content, including content from non-U.S. persons, after five years. n26

In acknowledging the "legitimate privacy interests" of both U.S. and non-U.S. persons, President Obama affirmed the U.S. commitment to core principles in January 2014. n27 First, he narrowed the operating definition of [*2142] foreign intelligence information, limiting it to "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." n28 In addition, he asserted that the NSA would engage in bulk collection of communications for purposes of "detecting and countering" terrorism, espionage, nuclear proliferation, threats to U.S. forces, and financial crimes, including evasion of duly enacted sanctions. n29 Addressing anticipated concerns that these limits still left the NSA with too much discretion, President Obama declared what the United States would not do. First, it would not collect communications content "for the purpose of suppressing or burdening criticism or dissent, or for disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion." n30 Second, it would disseminate and store information regarding any person based on criteria in section 2.3 of Executive Order 12,333 n31: cases involving "foreign intelligence or counterintelligence," public safety, or ascertainment of a potential intelligence source's credibility. n32

Of course, President Obama's speech did not quell the complaints of NSA critics. One could argue that even the description the president provided has legal flaws under domestic and/or international law. One can also argue that the president's policy directive, statutory provisions, and case law cannot wholly eliminate the possibility of systemic or individual abuse of NSA authority. That said, there are compelling reasons for treating the president's speech and directive as an **authoritative and binding** statement of U.S. policy. The most compelling reason may be the simplest: no American president has ever been so forthright on the subject of intelligence collection, and few heads of state around the globe have ventured down the path that President Obama chose. n33 That alone counsels treating President Obama's guidance as more than "cheap talk."

AT: Wheeler

Wheeler is wrong – Obama reforms restored trust

Cordero, 14 – Director of National Security Studies, Georgetown University Law Center, Adjunct Professor of Law (Carrie, "Correcting some Inaccuracies about NSA Surveillance" 6/20,

http://www.cato-unbound.org/2014/06/20/carrie-f-cordero/correcting-some-inaccuracies-about-nsa-surveillance

In her response essay, Marcy Wheeler keys on an important, and serious, consequence of the unauthorized disclosures and their aftermath: the developing adversarial relationship between the government and the private sector. Now past the first year of the disclosures, it is clear that companies on the receiving end of orders or directives issued under the Foreign Intelligence Surveillance Act (FISA) may be more likely to challenge them in the future. At least one company has already increased its challenges to requests for data from the government issued under National Security Letters or the Electronic Communications Privacy Act (ECPA). But Wheeler is wrong to suggest that – whatever it is the government may have done to effect the collection of foreign intelligence information overseas (which has happened for decades and continues to occur under Executive Order 12333) – somehow "violated…the deal" that was reached through the FISA Amendments Act of 2008 (FAA). Instead, the information that has been released and declassified over the last year has demonstrated that the FAA has been implemented consistently with how it was described in the public record of legislative text and Congressional hearings that took place up to its passage in 2008.

It is also not accurate to describe the steps the Obama Administration has taken as "refus[ing] to do anything" to limit NSA surveillance. Indeed, the President has already implemented significant reforms to the telephone metadata program, including requiring advance approval from the Foreign Intelligence Surveillance Court (FISC) before querying the data, and limiting the extent of analysis of that data. His Presidential Policy Directive-28 (PPD-28), issued in January 2014, limits the categories of bulk collection the NSA may collect. He has adopted the Surveillance Review Group's principle of "risk management," to more formally involve foreign policy implications, for example, in making collection decisions. And he has directed that procedures and rules be changed in order to add privacy protections for foreigners in how the NSA handles information it has acquired. Although it is too soon to assess how the details of some of these and other changes will be implemented, their significance should not be underestimated.

AT: XO12333

XO12333 has the same minimization procedures as FISA – no abuse

Joel, 14 - Alexander W. Joel is the civil liberties protection officer for the Office of the Director of National Intelligence and reports directly to Director of National Intelligence James R. Clapper ("The Truth About Executive Order 12333" Politico, 8/18,

http://www.politico.com/magazine/story/2014/08/the-truth-about-executive-order-12333-110121.html#.VYomBfl4pyg

Under EO 12333, intelligence agencies may collect, retain, and disseminate information about Americans "only in accordance with procedures … approved by the Attorney General … after consultation with the Director [of National Intelligence]." Tye noted that he is not familiar with the details of these procedures, but nonetheless said that Americans should be troubled by "the collection and storage of their communications" under the executive order.

As the civil liberties protection officer for the director of national intelligence (DNI), I work with intelligence agencies on these procedures, and would like to describe how they safeguard privacy and civil liberties.

But first I want to commend Tye for raising his concerns through the processes established for that purpose. Using those processes, he has been able to review his concerns with intelligence oversight bodies as well as with the public, all while continuing to protect classified information.

At the outset, remember that FISA, with very limited exceptions, requires the government to seek an individualized court order before it can intentionally target a United States person anywhere in the world to collect the content of his or her communications. The FISA court must be satisfied, based on a probable cause standard, that the United States person target is an agent of a foreign power, or, as appropriate, an officer or employee of a foreign power.

But even when the government targets foreign nationals overseas in response to valid foreign intelligence requirements, it will inevitably collect some communications about Americans. As the Privacy and Civil Liberties Oversight Board noted in its examination of Section 702 of FISA, "[t]he collection of communications to and from a target inevitably returns communications in which non-targets are on the other end, some of whom will be U.S. persons." Indeed, when Congress first enacted FISA in 1978, it required the government to follow what are called "minimization procedures." These procedures, which must be approved by the FISA court, restrict what the government can do with collected information about U.S. persons (such as for how long that information may be retained, and under what circumstances it may be shared).

Similarly, EO 12333 requires procedures to minimize how an agency collects, retains or disseminates U.S. person information. These procedures must be approved by the attorney general, providing an important additional check. The National Security Agency's procedures are reflected in documents such as United States Signals Intelligence Directive SP0018 (USSID 18), issued in 1993 and updated in 2011. These procedures generally provide that communications may not be retained for more than five years. In addition, NSA personnel may not use U.S. person "selection terms" (such as names, phone numbers or email addresses) to retrieve communications from its collection under EO 12333 without a finding by the attorney general that the U.S. person is an agent of a foreign power (or in other similarly narrow circumstances). And even if the NSA determines that information about an American constitutes foreign intelligence, it routinely uses a generic label like "U.S. Person 1" in intelligence reporting to safeguard the person's identity. The underlying identity may be provided only in a very limited set of circumstances, such as if it's necessary to understand the particular foreign intelligence being conveyed.

Oversight is extensive and multi-layered. Executive branch oversight is provided internally at the NSA and by both the Department of Defense and the Office of the DNI by agency inspectors general, general counsels, compliance officers and privacy officers (including my office and the NSA's new Civil Liberties and Privacy Office). The Department of Justice also provides oversight, as do the Privacy and Civil Liberties Oversight Board and the president's Intelligence Oversight Board. In addition, Congress has the power to oversee, authorize and fund these activities.

2nc – squo oversight solves

Squo Congressional oversight prevents abuse and oversight reform is better than scaling back

Cordero, 14 - Carrie F. Cordero is the Director of National Security Studies at Georgetown University Law Center ("Fear vs. Facts: Exploring the Rules the NSA Operates Under" 6/13, http://www.cato-unbound.org/2014/06/13/carrie-f-cordero/fear-vs-facts-exploring-rules-nsa-operates-under

Generally, however, Congressional committees charged with oversight of the Intelligence Community do their job. The Intelligence Committees of Congress have professional staff, often with deep experience in national security matters. The Committees conduct substantive hearings, although, due to the sensitive and operational nature of the topics discussed, often in classified session. Congressional staff also receive briefings. During the debate surrounding the passage of the FISA Amendments Act of 2008, many members of Congress and their staffs visited the NSA and received dozens of briefings regarding its details and subsequent implementation.

Decorative? Returning to the question implicitly posed by Sanchez's argument: what would it take to turn this system inside out? Most likely, it would take either a conspiracy of the highest order, or the complete incompetence of everyone involved in the process – from operators to leadership inside the Intelligence Community, from lawyers to senior officials at the Justice Department, from legal advisors to judges of the FISC, from staff to members of Congress.

Here's what happens in the real world: people make mistakes; technological implementation goes awry; bureaucracy gets in the way of getting down to the bottom line. The adequacy and rigor of Congressional oversight waxes and wanes based, at times, on the quality of the leadership of the various committees at any time. Government employees also sometimes do the wrong thing, such as the twelve cases in ten years that the NSA has explained to Congress, and then they are held accountable. Oversight and compliance systems sometimes fail, too, such as the delay in recognizing the problems in the technical implementation of the phone metadata program that was subsequently brought to the Court's attention. These are all valid reasons to work on improving auditing, compliance, oversight and accountability mechanisms. They are not valid reasons for adopting reforms that would dramatically scale back important national security capabilities that keep the nation safe.

The NSA collects a miniscule amount of info

Dickerson, 15 - Julie Dickerson is currently a 3L at Harvard Law School, and previously served as Senior Editor for the Harvard National Security Journal ("Meaningful Transparency: The Missing Numbers the NSA and FISC Should Reveal" Harvard National Security Journal, http://harvardnsj.org/2015/02/meaningful-transparency-the-missing-numbers-the-nsa-and-fisc-should-reveal/

Under § 702 of the USA-PATRIOT Act, the NSA uses information from U.S. electronic communication service providers to target non-Americans outside the United States for documented foreign intelligence purposes. The NSA collects more than 250 million internet communications under this power each year. While a large absolute number, it is unclear what percent of total internet communications these § 702 communications constitute. The NSA has revealed that the internet carries 1,826 Petabytes of information per day, the NSA touches 1.6% of that data in its foreign intelligence mission, and the NSA only selects 0.025% of that data for review. The net result is that NSA analysts look at a mere 0.00004% of the world's traffic. These percentages of total data traffic, though indicative that the percent of § 702 communications collected is **likely miniscule**, do not map perfectly onto percentages of total communications.

No NSA overreach – it's subject to external security from multiple entities

De 14 - General Counsel, National Security Agency (Rajesh, "The NSA and Accountability in an Era of Big Data", JOURNAL OF NATIONAL SECURITY LAW & POLICY, 2014, p.8-10//DM)

False Myth #3: NSA operates in the shadows free from external scrutiny or any true accountability.

This false myth is obviously a product of the necessarily secretive nature of NSA's day-to-day operations. There is no doubt that in a democracy like ours, an important form of accountability is public transparency. However, it is absolutely essential not to assume that the legitimacy afforded by public transparency is the only way to achieve accountability, which may – in fact, must, with respect to NSA – primarily be achieved through alternate means. There is no perfect substitute for public transparency in a democracy; but when there is also no way to provide information to those whom you seek to protect without also providing it to those from whom you seek to protect them, we must largely rely on such alternate means of accountability.

It is evident to me that I am the General Counsel for one of the most highly regulated entities in the world. It is a reality that most audiences cannot appreciate given the classified nature of intelligence work. Given NSA's unique mission, however, it makes perfect sense. NSA is part of the Department of Defense as well as the Intelligence Community. This means that NSA is subject to the relevant rules and regulations for DOD as well as to those applicable to other members of the IC. More broadly, NSA is subject to a spectrum of detailed scrutiny from across

all three branches of government as a matter of law, policy, and practice. First, within the executive branch alone, NSA is responsible to multiple stakeholders, including:

● internal oversight officials, including an Inspector General to whom Congress recently provided independent statutory authority under the 2010 Intelligence Authorization Act;

● the Department of Defense, which pursuant to presidential directive and statute exercises supervisory authority over NSA, to include offi- cials such as the Assistant to the Secretary for Intelligence Oversight, the Under Secretary of Defense for Intelligence, the General Counsel, and the DOD Inspector General;

● the Office of the Director of National Intelligence, which pursuant to presidential directive and statute is responsible for coordination of the Intelligence Community, and has an oversight role with respect to certain FISA activities, to include its own General Counsel, Inspector General, and Civil Liberties Protection Officer;

● the Department of Justice, which by statute also has an oversight role with respect to certain FISA activities, and to which NSA like other intelligence agencies is obligated by statute and Executive Order 12333 to report violations of federal law;

● the White House, to include the National Security Council, the President's Intelligence Advisory Board, and the Intelligence Oversight Board, to whom NSA like other intelligence agencies is required to report "any intelligence activities... that they have reason to believe may be unlawful or contrary to executive order or presidential directive"; and

● independent entities such as the Privacy and Civil Liberties Oversight Board.

Second, apart from the multiple layers of accountability within the executive branch, NSA is by law accountable to the legislative branch. As a member of the Intelligence Community, NSA is required by law to keep the intelligence oversight committees of the Senate and House of Representatives "fully and currently informed" with respect to the Agency's activities. Given the unique role of NSA and the range of its activities, however, oversight is exercised as well by a host of additional committees as diverse as the armed services, judiciary, and homeland security committees of both chambers of Congress. NSA, for example, is required by statute to provide both the intelligence and judiciary committees a copy of any decision, order, or opinion of the FISC that includes "significant construction or interpretation" of any provision of FISA. NSA also keeps Congress apprised of its activities routinely via testimony at open and closed hearings; formal notifications; other written submissions; informal briefings, visits; and other means. In other words, we interact with our Congressional overseers virtually every day.

Third, NSA is directly accountable to the Foreign Intelligence Surveillance Court for those activities conducted pursuant to FISA. The Court is comprised of eleven federal district judges appointed by the Chief Justice of the U.S. Supreme Court. The FISC not only authorizes certain activities pursuant to FISA, but it plays an active and constructive role in ensuring those activities are carried out appropriately. As I noted earlier, it is evident that the manner in which NSA operates is just as important as the authority under which it operates. The rules of the FISC, for example, reflect this commitment in that "[i]f the government discovers that any authority or approval granted by the Court has been implemented in a manner that did not comply with the Court's authorization or approval or with applicable law," the government must "immediately"

notify the Court. This obligation is one that NSA, together with our partners at the Department of Justice, take seriously every single day.

2nc – PPD-28 solves

PPD-28 solves international criticism without constraining the US

Wittes 14 *senior fellow in Governance Studies at The Brookings Institution (Benjamin, "Obama's NSA Speech Wasn't an Apology. It Was a Clever Defense", New Republic 01/21/14, http://www.newrepublic.com/article/116284/obamas-nsa-speech-wasnt-apology-it-was-clever-defense)//GK

Before turning to the substance of the speech and the PPD, we should pause a moment and consider the very fact that the President of the United States has issued, in public, a policy directive on signals intelligence at all. For, indeed, the first notable thing about the PDD is that it exists. My Brookings colleague Bruce Riedel, a longtime CIA veteran, focused on this—quite rightly, in my view—in our event on Friday, saying that the document "is in my judgment unprecedented. In two hours, I couldn't really check, but I don't think we've ever had a document like this that lays out the protocols and principles for American signals intelligence collection." Nor, I might add, do many other countries have public documents that lay out principles and doctrines of surveillance permission and restraint. In other words, the mere fact of this document puts the United States in a very forward-leaning place with respect to surveillance transparency—a place it was already coming to occupy with the big declassifications following the Snowden disclosures. How many of the countries that have been so quick to criticize US surveillance practices will follow suit and issue their own formal documents spelling out what they do and what they do not do both with regard to their own citizens and those of other countries? Obama begins the speech by situating his discussion of the NSA controversies against the activities of the Sons of Liberty and Paul Revere in Boston in revolutionary times. "Throughout American history, intelligence has helped secure our country and our freedoms," he says. It is against this highly-favorable background—one in which intelligence is central to liberty, not in tension or at odds with it—that Obama mentions the birth of NSA. Indeed, the entire first portion of the speech offers a strong defense of NSA and its intelligence programs. While Obama acknowledges that intelligence gathering can be abused and has been abused, and while he reiterates that aspects of the post-9/11 response "contradicted our values," that is not the frame he uses for NSA's current activities. To the contrary, when he came into office, he reports, he had a "healthy skepticism towards our surveillance programs" and ordered that they be reviewed. But the biggest problems had already been corrected "through a combination of action by the courts, increased congressional oversight, and adjustments by the previous Administration." So while in some cases, there were changes, "What I did not do is stop these programs wholesale—not only because I felt that they made us more secure; but also because nothing in that initial review, and nothing that I have learned since, indicated that our intelligence community has sought to violate the law or is cavalier about the civil liberties of their fellow citizens." In what will surely be one of the more important passages in the speech for many people in the intelligence community, Obama then says: To the contrary, in an extraordinarily difficult job, one in which actions are second-guessed, success is unreported, and failure can be catastrophic, the men and women of the intelligence community, including the NSA, consistently follow protocols designed to protect the privacy of ordinary people. They are not abusing authorities in order to listen to your private phone calls, or read your emails. When mistakes are made—which is inevitable in any large and complicated human enterprise—they correct those mistakes. Laboring in obscurity, often unable to discuss their work even with family and friends, they know that if another 9/11 or massive cyber-attack occurs, they will be asked, by Congress and the media, why they failed to connect the dots. With this statement, Obama squarely aligns himself with the intelligence community's own central narrative of recent events: Its activities are essential, the president says; its activities are lawful and non-abusive (mistakes notwithstanding); and the community's critics will hold it accountable for failures to connect the dots just as breezily as they now hold it accountable for the use of available tools to connect those dots. That said, Obama goes on, we need changes. But Obama is careful to describe the reasons we need changes. It's not to rein in an out of control intelligence community. It's because "for our intelligence community to be effective over the long haul, we must maintain the trust of the American people, and people around the world." These are confidence-building steps for an apparatus that is essentially law-abiding. And that brings us to the changes that Obama announces—beginning with those in the PPD. The PPD is an exceedingly-clever document, one that conveys and writes into policy a great deal of values without

constraining a great deal of practice. It does this by, in essence, using values-based statements as justifications for policies that already exist, at least de facto, for purely functional reasons. PPD-28 is long on rhetoric about how "all persons should be treated with dignity and respect, regardless of their nationality or wherever they might reside, and [how] all persons have legitimate privacy interests in the handling of their personal information." It comes back to this theme over and over again. And the theme is genuinely important. The United States is now on record as a formal matter of presidential policy announcing that it respects the privacy of non-citizens abroad and takes that into account when it conducts espionage; it doesn't just disseminate and retain information about people willy nilly with no regard for the information's importance relative to that material's value to foreign intelligence. That's an amazing statement. But it actually does not require a revolution—or even much change—in intelligence affairs to implement.

PPD 28 proves that surveillance has been curbed and overreach has been solved in the squo

Litt, 15 [Robert S., second General Counsel of the Office of the Director of National Intelligence, U.S. Intelligence Community Surveillance One Year After President Obama's Address, file:///C:/Users/Jonah/Downloads/3_NatlSecLJ_210-231_Litt.pdf] Schloss1

I began by noting the huge amount of private information that we all expose today, through social media, e-commerce, and so on. But I acknowledged that government access to the same information worries us more—with good reason—because of what the government could do with that information. So I suggested we should address that problem directly. And in fact, I said, we can and do protect both privacy and national security by a regime that not only puts limits on collection but also restricts access to, and use of, the data we collect based on factors such as the sensitivity of the data, the volume of the collection, how it was collected, and the reason for which it was collected, and that backs up those restrictions with technological and human controls and auditing. This approach has largely been effective. The information that has come out since my speech, both licitly and illicitly, has validated my statement then: while there have been technological challenges and human error in our current signals intelligence activities, there has been no systematic abuse or misuse akin to the very real illegalities and abuses of the 1960s and 1970s.

Well, you may have noticed that my speech did not entirely put the public concerns to rest.

Questions have continued to be asked, and we've continued to address them. In particular, just over a year ago, President Obama gave a speech about surveillance reform, and issued Presidential Policy Directive 28 ("PPD-28"). The President reaffirmed the critical importance of signals intelligence activity to protect our national security and that of our allies against terrorism and other threats. But he took note of the concerns that had been raised and directed a number of reforms to "give the American people greater confidence that their rights are being protected, even as our intelligence and law enforcement agencies maintain the tools they need to keep us safe," as well as to provide "ordinary citizens in other countries . . . confidence that the United States respects their privacy, too."2

The Intelligence Community has spent the year since the President's speech implementing the reforms he set out, as well as many of the recommendations of the Privacy and Civil Liberties Oversight Board ("PCLOB") and the President's Review Group on Intelligence and Communications Technologies. And I'd note in passing that the PCLOB last week issued a report finding that we have made substantial progress towards implementing the

great majority of its recommendations. We've consulted with privacy groups, industry, Congress, and foreign partners. In particular, we have a robust ongoing dialogue with our European allies and partners about privacy and data protection. We've participated in a wide variety of public events at which reform proposals have been discussed and debated. And yesterday, the Office of the Director of National Intelligence ("ODNI") released a report detailing the concrete steps we have taken so far, along with the actual agency policies that implement some of those reforms.3 What I want to do today is drill down on what we have done in the last year, and in particular explain how we have responded to some of the concerns that have been raised in the last year and a half.

PPD 28 solves the perception of abuse caused by XO 12333

Litt, 15 [Robert S., second General Counsel of the Office of the Director of National Intelligence, U.S. Intelligence Community Surveillance One Year After President Obama's Address, file:///C:/Users/Jonah/Downloads/3_NatlSecLJ_210-231_Litt.pdf] Schloss1

One persistent but mistaken charge in the wake of the leaks has been that our signals intelligence activity is overly broad, that it is not adequately overseen and is subject to abuse—in short, that NSA "collects whatever it wants." This is and always has been a myth, but in addition to greater transparency we have taken a number of concrete steps to reassure the public that we conduct signals intelligence activity only within the scope of our legal authorities and applicable policy limits.

To begin with, in PPD-28, the President set out a number of important general principles that govern our signals intelligence activity:

§ The collection of signals intelligence must be authorized by statute or Presidential authorization, and must be conducted in accordance with the Constitution and law.

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§ Privacy and civil liberties must be integral considerations in planning signals intelligence activities.

§ Signals intelligence will be collected only when there is a valid foreign intelligence or counterintelligence purpose.

§ We will not conduct signals intelligence activities for the purpose of suppressing criticism or dissent.

§ We will not use signals intelligence to disadvantage people based on their ethnicity, race, gender, sexual orientation or religion.

§ We will not use signals intelligence to afford a competitive commercial advantage to U.S. companies and business sectors.

§ Our signals intelligence activity must always be as tailored as feasible, taking into account the availability of other sources of information.

The President also directed that we set up processes to ensure that we adhere to these restrictions, and that we have appropriate policy review of our signals intelligence collection. I

want to spend a little time now talking about what these processes are—how we try to ensure that signals intelligence is only collected in appropriate circumstances. And you'll forgive me if I get a bit down into the weeds on this, but I think this is important for people to understand. To begin with, neither NSA nor any other intelligence agency decides on its own what to collect. Each year, the President sets the nation's highest priorities for foreign intelligence collection after an extensive, formal interagency process. Moreover, as a result of PPD-28, the rest of our intelligence priorities are now also reviewed and approved through a high-level interagency policy process. Overall, this process ensures that all of our intelligence priorities are set by senior policymakers who are in the best position to identify our foreign intelligence requirements, and that those policymakers take into account not only the potential value of the intelligence collection but also the risks of that collection, including the risks to privacy, national economic interests, and foreign relations.

The DNI then translates these priorities into the National Intelligence Priorities Framework, or "NIPF." Our Intelligence Community Directive ("ICD") about the NIPF, ICD 204, which in corporates the requirements of PPD-28, is publicly available on ourwebsite.7 And while the NIPF itself is classified, much of it is reflected annually in the DNI's unclassified Worldwide Threat Assessment.

But the priorities in the NIPF are at a fairly high level of generality. They include topics such as the pursuit of nuclear and ballistic missile capabilities by particular foreign adversaries, the effects of drug cartel corruption in Mexico, and human rights abuses in specific countries. And they apply not just to signals intelligence, but to all intelligence activities. So how do the priorities in the NIPF get translated into actual signals intelligence collection?

The organization that is responsible for doing this is called the National Signals Intelligence Committee, or "SIGCOM." (We have acronyms for everything.) It operates under the auspices of the Director of the NSA, who is designated by Executive Order 12333 as what we call the functional manager for signals intelligence, responsible for overseeing and coordinating signals intelligence across the Intelligence Community under the oversight of the Secretary of Defense and the DNI. The SIGCOM has representatives from all elements of the community and, as we fully implementPPD-28, also will have full representation from other departments and agencies with a policy interest in signals intelligence.

All departments and agencies that are consumers of intelligence submit their requests for collection to the SIGCOM. The SIGCOM reviews those requests, ensures that they are consistent with the NIPF, and assigns them priorities using criteria such as:

§ Can SIGINT provide useful information in this case?

Perhaps imagery or human sources are better or more cost effective sources of information to address the requirement.

§ How critical is this information need? If it is a high priority in the NIPF, it will most often be a high SIGINT priority.

§ What type of SIGINT could be used? NSA collects three types of signals intelligence: collection against foreign weapons systems (known as "FISINT"), foreign communications (known as "COMINT"), and other foreign electronic signals such as radar (known as "ELINT").

§ Is the collection as tailored as feasible? Should there be time, focus, or other limitations?

And our signals intelligence requirements process also requires explicit consideration of other factors, namely:

§ Is the target of the collection, or the methodology used to collect, particularly sensitive? If so, it will require review by senior policy makers.

§ Will the collection present an unwarranted risk to privacy and civil liberties, regardless of nationality? And . . .

§ Are additional dissemination and retention safeguards necessary to protect privacy or national security interests?

Finally, at the end of the process, a limited number of trained

NSA personnel take the priorities validated by the SIGCOM and research and identify specific selection terms, such as telephone numbers or email addresses, that are expected to collect foreign intelligence responsive to these priorities. Any selector must be reviewed and approved by two persons before it is entered into

NSA's collection systems. Even then, however, whether and when actual collection takes place will depend in part on additional considerations such as the availability of appropriate collection resources. And, of course, when collection is conducted pursuant to the Foreign Intelligence Surveillance Act, NSA and other agencies must follow additional restrictions approved by the court.

So that's how we ensure that signals intelligence collection targets reflect valid and important foreign intelligence needs. But, as is typically the case with our signals intelligence activities, we don't just set rules and processes at the front end; we also have mechanisms to ensure that we are complying with those rules and processes.

Cabinet officials are required to validate their SIGINT requirements each year NSA checks signals intelligence targets throughout the collection process to determine if they are actually providing valuable foreign intelligence responsive to the priorities, and will stop collection against targets that are not. In addition, all selection terms are reviewed by supervisors annually.

Based on a recommendation from the President's Review Group, the DNI has established a new mechanism to monitor the collection and dissemination of signals intelligence that is particularly

sensitive because of the nature of the target or the means of collection, to ensure that it is consistent with the determinations of policymakers.

Finally, ODNI annually reviews the Intelligence Community's allocation of resources against the NIPF priorities and the intelligence mission as a whole. This review includes assessment so the value of all types of intelligence collection, including SIGINT, and looks both backward—how successful have we been in achieving our goals?—and forward—what will we need in the future?—and helps ensure that our SIGINT resources are applied to the most important national priorities.

The point I want to make with this perhaps excessively detailed description is that the Intelligence Community does not 2015] U.S. Intelligence Community Surveillance 221decide on its own which conversations to listen to, nor does it try to collect everything. Its activities are focused on priorities set by policymakers, through a process that involves input from across the government, and that is overseen both within NSA and by the ODNI and Department of Defense. The processes put in place by PPD-28,which are described in the report we issued yesterday,8 have further strengthened this oversight to ensure that our signals intelligence activities are conducted for appropriate foreign intelligence purposes and with full consideration of the risks of collection as well as the benefits.

AT: PRISM overreach

The NSA already implemented technical reforms to PRISM that prevent overreach

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

The second program--known as PRISM or section 702--uses court orders issued under section 702 of FISA n18 to collect the content of certain international communications. In particular, the NSA targets specific non-Americans who are reasonably believed to be located outside the country, and also engages in bulk collection of some foreign-to-foreign communications that happen to be passing through telecommunications infrastructure in the United States. n19 The FISA [*527] court does not approve individual surveillance applications each time the NSA wishes to intercept these communications; instead, it issues once-a-year blanket authorizations. n20 As detailed below, in 2011 the FISA court struck down the program on constitutional and statutory grounds after the government disclosed that it was inadvertently intercepting a significant number of communications involving Americans; n21 the court later upheld the program when the NSA devised a technical solution that prevented such over-collection. n22

Zero incentive exists to expand PRISM – practicality prevents abuse

Lempert, 13 - Richard O. Lempert is a Visiting Fellow in Governance Studies at the Brookings Foundation and the University of Michigan's Eric Stein Distinguished University Professor of Law and Sociology emeritus ("PRISM and Boundless Informant: Is NSA Surveillance a Threat?" 6/13, http://www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert

The protection most of us enjoy under PRISM may be more practical than legal. The amount of data that can be collected limits the reach of the program. Not only is capturing too much information from innocent Americans a waste of resources, but also suspicious communications can be lost in a forest of irrelevant data. The NSA thus has powerful reasons to limit impermissible observations, at least where there is no good reason to suspect Americans of terrorist involvements. Still we lack two bits of information important in assessing this program. One is the fate of information pertaining to Americans who should not have been observed in the first place. If this information is purged from all databases except perhaps when the person is dangerous, erroneous capture is less of a concern than it otherwise would be. Second, we don't know how monitoring targets are determined or the number of targets selected. To the extent that individuals, organizations and sites are targeted based on target-specific concerns about the threats they pose, the net cast is likely to be narrow, and even if the reasons for targeting do not rise to the level of legally cognizable probable cause, they tend in this direction. But if targets are selected based on the impersonal outputs of other data mining efforts like the telephone records that feed Boundless Informant, all bets are off. Depending on the algorithms used and the degree to which they have been empirically validated, the net could be wide or narrow, and the likelihood that a target would be involved in terrorism or that citizens would be swept into the net may be great or small. Congress in overseeing PRISM should demand this information if it is not already provided.

It is easy to be cynical about government and the respect that agencies show for the laws under which they operate. Cynicism is fed by occasional scandals and by the more frequent pseudo-scandals which make it appear that within the Beltway things are out of control. Having spent four years as a Division Director at the National Science Foundation and three years as Chief Scientist in the Human Factors/ Behavioral Science Division of DHS's Science and Technology Directorate, I am not cynical. Time and again I have seen government employees seek to follow the law even when it seems silly and interferes with their mission. When I joined DHS I was most surprised by the fierceness of efforts to comply with the U.S. Privacy Act. At times interpretations of what the Act protected were so broad as to border on the ridiculous, and costs were real: research projects with national security implications were delayed, redesigned or even precluded because privacy officers, sometimes with little basis in the statute, felt there was a risk that personally identifiable information (PII) would be impermissibly collected. The absence of any reason to fear revelation or misuse made no difference. The strict scrutiny applied to research that might involve PII is, to be sure, relaxed in front line operational settings like PRISM and legal restrictions may differ, but my experience in two agencies as well as conversations with people in the intelligence community (IC) lead me to believe that it is a mistake to regard as a sham the legal restrictions on PRISM or other IC data mining and surveillance activities.

Through its PRISM and Boundless Informant efforts, NSA is working to protect the nation, apparently with some success. The 99.9% of us who pose no threat of terrorism and do not inadvertently consort with possible terrorists should not worry that the government will track our phone or internet exchanges or that our privacy will be otherwise infringed.

Corporate surveillance wrecks internet freedom

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 6)//AK

Most of the big US defense contractors, such as Raytheon, Northrop Grumman, and Harris Corporation, build cyberweapons for the US military. And many big IT companies help build surveillance centers around the world. The French company Bull SA helped the Libyan government build its surveillance center. Nigeria used the Israeli firm Elbit Systems. Syria used the German company Siemens, the Italian company Area SpA, and others. The Gadhafi regime in Libya purchased telephone surveillance technology from China's ZTE and South Africa's VASTech. We don't know who built the Internet surveillance systems used in Azerbaijan and Uzbekistan, but almost certainly some Western companies helped them. There are few laws prohibiting this kind of technology transfer, and the ones that exist are easily bypassed.

These are not only specially designed government eavesdropping systems; much government surveillance infrastructure is built for corporate use. US-based Blue Coat sells monitoring and content filtering systems for corporate networks, which are also used for government surveillance in countries like Burma, China, Egypt, Indonesia, Nigeria, Qatar, Saudi Arabia, Turkey, and Venezuela. Netsweeper is a Canadian corporate filtering product used for censorship by governments in Qatar, Yemen, the UAE, Somalia, and Pakistan. Filtering software from the US company Fortinet is used to censor the Internet in Burma; SmartFilter, from the US company McAfee and normally used in schools, helps the governments of Tunisia and Iran censor the Internet in their countries. Commercial security equipment from the UK company Sophos has been used by Syria and other oppressive regimes to surveil and arrest their citizens.

Technology is value neutral. You can use your phone to call 911 or to plan a bank robbery. There's no technical difference between a government's using a tool to identify criminals or using it to identify dissidents. There's no technical difference between corporate and government uses. Legitimate corporate tools for blocking employees from e-mailing confidential data can be used by repressive governments for surveillance and censorship. Conversely, the same anti-censorship tools that Saudi and Iranian dissidents use to evade their governments can be used by criminals to distribute child porn. Encryption allows the good guys to communicate without being eavesdropped on by the bad guys, and also allows the bad guys to communicate without being eavesdropped on by the good guys. And the same facial recognition technology that Disney uses in its theme parks to pick out photos its patrons might want to buy as souvenirs can identify political protesters in China, and Occupy Wall Street protesters in New York.

The OPM hack outweighs NSA's effect on internet freedom

Wittes, 15 - editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution (Benjamin, "Turns Out Privacy Groups are Outraged About the OPM Hack—At Me" 6/18, http://tinyurl.com/oz4kkog

Conversely, if you're a privacy group devoted to protecting the privacy of Americans, the OPM hack should be unthinkable to ignore. It is, after all, a far bigger threat to the interests you are pledged to protect than is any activity by your own government. You may have an argument for leaving Chinese domestic collection to Chinese civil libertarians to restrain, but to the extent you don't speak up against the bulk collection of the health records of kids of U.S. federal employees, you are tolerating an absurd double standard in which anyone can ride roughshod over Americans' privacy except the United States government.

Recall, moreover, that the whole theory of international outrage at NSA's behavior was that global collection implicates some kind of international social contract, not just the relationship between individuals and their own governments. Remember all that talk about the international right to privacy, that idea—now embraced by the U.S. government—that U.S. collection must take into account the privacy interests of foreigners overseas? U.S. privacy groups have had no trouble invoking the ICCPR to restrain U.S. surveillance practices. Surely, surely, surely they are not more concerned about using the ICCPR to "hold the US to account for its [surveillance] abuses"—as CDT recently put it—than they are in that dcoument's restraining Chinese abuses against U.S. nationals.

To put it simply, whether you're a privacy group focused narrowly on the privacy interests of Americans or a citizen of the world who believes that espionage must be conducted in general with a solicitude for the privacy of all, the sort of collection reflected in this hack ought to be far more upsetting than NSA collection under Section 702 or Executive Order 12333.

Violence is innate – the internet solves nothing

Elias, 12 – doctor in Sydney (Phillip, "Will humanity perish without the internet?" 1/19, http://www.mercatornet.com/articles/view/will_humanity_perish_without_the_internet

The Wikipedian view of the past is the 21st century's 'Whig interpretation of history': everything has been building towards a world in which there is open, secure and free internet. Without this resource is it any wonder that societies of the past were (relatively) despotic and cruel? It is easy to forget that Wikipedians didn't invent sharing, or honesty, or even freedom. Facebook didn't invent friends. We inherited all of these from the Dark Ages before the iPod was even a glint in Apple's eye.

The new Encyclopaedists make the opposite mistake about the future. Inherent in their worldview is the idea that setting up a system where information can be shared quickly, widely, and freely will somehow eliminate corruption, greed and violence from the world. It is almost as though human foibles were glitches in the software of society. But human vices can never be reduced to social viruses. They come from deep within us and can find their way into the most scientific settings.

Do Wikipedians think themselves immune from the temptation to wield their power towards their own ends?

Free access to information for everyone could be said to be the Wikipedian creed. It encapsulates the Enlightenment values of liberty and equality. But, like the French terror of the 1790s, it neglects that other ideal needed to give them gumption -- a genuine concern for other human beings.

But fraternité is not achieved by giving everyone more information, more freedom and more equality. And it is what is so often lacking on the internet, on blogs, and in other forms of web communication. Online interaction is so often vitriolic it is unreadable, and it is at its worst when the tech-savvy confront each other. I have seen very few geeks who try to love their enemies.

Fraternité comes from empathising with others. This is difficult to learn online. But without it, how can we understand the point of view of those who have different concepts of freedom or equality, or of troglodytes who don't blog, or of nematodes who don't have access to the internet. Believe it or not, there is a life offline and wisdom is wider than the web.

2nc - OPM hack

Chinese hacking is a greater threat than the NSA

Wittes, 15 - editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution (Benjamin, "Is the Privacy Community Focused on the Wrong Government?" Lawfare, 6/15, http://www.lawfareblog.com/privacy-community-focused-wrong-government

A giant government surveillance program has scooped up sensitive personal information on literally millions of Americans. The spying almost certainly includes the creation of digital dossiers on people. It is apparently conducted without minimization requirements, without court orders, or legislative oversight—indeed, without any publicly known rules. The dossiers include mental health information, individuals' alcohol and drug histories, and people's past criminal histories; they include intimate contacts, family networks and friends. They include social security numbers. It's everything civil libertarians and privacy activists have been warning about for years.

Yet the privacy community is virtually silent. Look on the websites of the major privacy groups and you'll see almost nothing about this program. Don't look for breathless coverage of it on the The Intercept either.

The reason? This giant surveillance program isn't being run by the United States government. It's being run against the U.S. government—by the Chinese government. And for some reason, even the grossest of privacy violations—in this case the pilfering of millions of background investigations and personnel records—just doesn't seem so bad when someone other than the United States is doing it.

For the record, I have no problem with the Chinese going after this kind of data. Espionage is a rough business and the Chinese owe as little to the privacy rights of our citizens as our intelligence services do to the employees of the Chinese government. It's our government's job to protect this material, knowing it could be used to compromise, threaten, or injure its people—not

the job of the People's Liberation Army to forebear collection of material that may have real utility.

Yet I would have thought that privacy groups that take such strong views of the need to put limits on American collection, even American collection overseas against non-U.S. persons, would look a little askance at a foreign intelligence operation consisting of the bulk collection of the most highly-personal information—an operation involving not only government employees but also those close to them. You'd think this would raise someone's privacy hackles, if not mine.

Yet take a look at CDT's website. It's busy triumphing over the passage of the USA FREEDOM Act and, ironically enough, worrying about the privacy implications of pending cybersecurity legislation. The ACLU also responds to the news of the OPM breaches by criticizing cybersecurity legislation. EFF? Nope. That group doesn't seem to mention the OPM hacks at all. The Intercept has one good story, but you'd certainly never know how badly these hacks outmatch the NSA's most aggressive programs as threats to Americans' privacy from reading the publication founded to pick the Snowden scab.

Why the difference? I'm really not sure how to explain it. One possibility is simply that privacy advocates expect the Chinese to run roughshod over people's privacy, so they're not that outraged when the Chinese go and do it. Another possibility is that they have such totally inflated expectations of the moral purity of our own country's foreign intelligence activities that they become outraged when those agencies behave like, well, intelligence agencies. Still another possibility, I suppose, is that they would contend that this material, consisting of government records, is fair game. I could actually accept that argument, except that I don't believe the same privacy groups would sit still for the bulk collection by our own intelligence services of, say, all personnel records of the Chinese government.

To put the matter simply, there's a huge double-standard at play here. In the wake of this spate of revelations, I'd like to hear some privacy advocate explain why I should continue to regard the world's great threat to privacy as NSA.

2nc – internet solves nothing

Reject their ahistorical idealism – the internet accelerates the worst parts of humanity

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 256)//TT

Even worse, the supposed lawlessness and networked anarchy enabled by the Internet have resulted in greater social pressure to tame the Web. In a sense, the more important the Internet becomes, the greater the onus to rein in its externalities. Promoting the freedom to connect will be a tricky proposal to sell to voters, many of whom actually want the government to promote the freedom to disconnect—at least for particular political and social groups. If the last decade is anything to judge by, the pressure to regulate the Web is as likely to come from concerned

parents, environmental groups, or various ethnic and social minorities as it is from authoritarian governments. The truth is that many of the opportunities created by a free-for-all anonymous Internet culture have been creatively exploited by people and networks that undermine democracy. For instance, it's almost certain that a Russian white supremacist group that calls itself the Northern Brotherhood would have never existed in the pre-Internet era. It has managed to set up an online game in which participants—many of them leading a comfortable middleclass existence—are asked to videotape their violent attacks on migrant guest workers, share them on YouTube, and compete for cash awards.

Crime gangs in Mexico have also become big fans of the Internet. Not only do they use YouTube to disseminate violent videos and promote a climate of fear, but they are also reportedly going through social networking sites hunting for personal details of people to kidnap. It doesn't help that the offspring of Mexico's upper classes are all interconnected on Facebook. Ghaleb Krame, a security expert at Alliant International University in Mexico City, points out that "criminals can find out who are the family members of someone who has a high rank in the police. Perhaps they don't have an account on Twitter or Facebook, but their children and close family probably do." It's hard to imagine Mexican police officers becoming braver as a result. And social networking can also help to spread fear: In April 2010, a series of Facebook messages warning of impending gang wars paralyzed life in Cuernavaca, a popular resort, with only a few brave people daring to step outside (it proved to be a false alarm).

The leaders of al-Shabab ("The Lads"), Somalia's most prominent Islamist insurgency group, use text messaging to communicate with their subordinates, avoiding any face-to-face communication and the risks it entails. It's not a particularly contentious conclusion that they have become more effective—and thus more of a menace—as a result.

Plenty of other less notorious (and less violent) cases of networked harm barely receive any global attention. According to a 2010 report from the Convention on International Trade in Endangered Species, an international intergovernmental organization, the Internet has created a new market for trade in extinct species, allowing buyers and sellers to find each other more easily and trade more effectively. Kaiser's spotted newt, found only in Iran, may be the first real victim of the Twitter Revolution. According to reports in the Independent, more than ten companies are selling wild-caught specimens over the Internet. Not surprisingly, the newt's population was reduced 80 percent between 2001 and 2005 alone.

Another informal market the Internet has boosted is organ trading. Desperate individuals in the developing world are bypassing any intermediaries and are offering their organs directly to those who are willing to pay up. Indonesians, for example, use a website called iklanoke.com, a local alternative to Craigslist, where their postings usually go unmonitored by police. A typical ad from Iklanoke reads, "16-year-old male selling a kidney for 350 million rupiah or in exchange for a Toyota Camry."

Text messaging has been used to spread hate in Africa, most recently in Muslim-Christian squabbles that erupted in the central Nigerian city of Jos in early 2010 that took the lives of more than three hundred people. Human rights activists working in Jos identified at least 145 such messages. Some instructed the recipients how to kill, dispose of, and burn bodies ("kill before they kill you. Dump them in a pit before they dump you"); others spread rumors that triggered even more violence. According to Agence France-Presse, one such message urged Christians to

avoid food sold by Muslim hawkers, as it could have been poisoned; another message claimed political leaders were planning to cut water supplies to dehydrate members of one faith.

Two years earlier Kenya lived through an eerily similar tumultuous period. The political crisis that followed Kenya's disputed election that took place on December 27, 2007, showed that the networks fostered by mobile technology, far from being "net goods," could easily escalate into uncontrollable violence. "If your neighbor is kykuyu, throw him out of his house. No one will hold you responsible," said a typical message sent at the peak of the violence; another one, also targeting Kykuyus, said, "Let's wipe out the Mt. Kenya mafia," adding, "Kill 2, get 1 free." But there was also a more disturbing effort by some Kykuyus to use text messaging to first collect sensitive information about members of particular ethnic groups and then distribute that information to attack and intimidate them. "The blood of innocent Kykuyus will cease to flow! We will massacre them right here in the capital. In the name of justice put down the names of all the Luos and Kaleos you know from work, your property, anywhere in Nairobi, not forgetting where and how their children go to school. We will give you a number on where to text these messages," said one such message. At one point, the Kenyan authorities were considering shutting down mobile networks to avoid any further escalation of violence (between 800 and 1,500 people died, and up to 250,000 were displaced).

Even though text messaging also proved instrumental in setting up a system that helped to track how violence spread around Kenya—a success story that gained far more attention in the media—one can't just disregard the fact that text messaging also helped to mobilize hate. In fact, text messages full of hatred and highly intimidating death threats kept haunting witnesses who agreed to testify to the high-level Waki Commission set up to investigate the violence two years after the clashes. ("You are still a young man and you are not supposed to die, but you betrayed our leader, so what we shall do to you is just to kill you" was the text of a message received by one such witness.)

The bloody Uighur-Han clashes that took place in China's Xinjiang Province in the summer of 2009 and resulted in a ten-month ban on Internet communications appear to have been triggered by a provocative article posted to the Internet forum www.sg169.com. Written by an angry twenty-three-year-old who had been laid off by the Xuri Toy Factory in China's Guangdong Province, 3,000 miles from Xinjiang, the article asserted that "six Xinjiang boys raped two innocent girls at the Xuri Toy Factory." (China's official media stated that the rape accusations were fake, and foreign journalists could not find any evidence to substantiate such claims either.) Ten days later, the Uighur workers at the toy factory were attacked by a group of angry Han people (two Uighurs were killed, and over a hundred were injured). That confrontation, in turn, triggered even more rumors, many of which overstated the number of people who had been killed, and the situation got further out of control soon thereafter, with text messaging and phone calls helping to mobilize both sides (the authorities eventually turned off all phone communications soon thereafter). A gruesome video that showed several Uighur workers being beaten by a mob armed with metal pipes quickly went viral as well, only adding to the tensions.

Even countries with a long democratic tradition have not been sparred some of the SMS-terror. In 2005, many Australians received text messages urging attacks on their fellow citizens of Lebanese descent ("This Sunday every Fucking Aussie in the shire, get down to North Cronulla to help support Leb and wog bashing day. . . . Bring your mates down and let's show them this is our beach and they're never welcome back"), sparking major ethnic fights in an otherwise peaceful country. Ethnic Lebanese got similar messages, only calling for attacks on non-Lebanese

Australians. More recently, right-wing extremists in the Czech Republic have been aggressively using text messaging to threaten local Roma communities. Of course, even if text messaging had never been invented, neo-Nazis would still hate the Roma with as much passion; to blame their racism on mobile phones would be yet another manifestation of focusing on technology at the expense of political and social factors. But the ease, scale, and speed of communications afforded by text messaging makes the brief and previously locally contained outbursts of neo-Nazi anger resonate in ways that they could have never resonated in an era marked by less connectedness.

Perhaps, the freedom to connect, at least in its current somewhat abstract interpretation, would be a great policy priority in a democratic paradise, where citizens have long forgotten about hate, culture wars, and ethnic prejudice. But such an oasis of tolerance simply does not exist. Even in Switzerland, commonly held up as a paragon of decentralized democratic decision making and mutual respect, the freedom to connect means that a rather small and marginalized fraction of the country's population managed to tap the power of the Internet to mobilize their fellow citizens to ban building new minarets in the country. The movement was spearheaded by right-wing blogs and various groups on social networking sites (many of them featuring extremely graphic posters—or "political Molotov cocktails," as Michael Kimmelman of the New York Times described them—suggesting Muslims are threatening Switzerland, including one that showed minarets rising from the Swiss flag like missiles), and even peace-loving Swiss voters could not resist succumbing to the populist networked discourse. Never underestimate the power of Twitter and Photoshop in the hands of people mobilized by prejudice.

The internet is a global cesspool that reflects the worst of everyone

Barnhizer 13 - Professor Emeritus, Cleveland-Marshall College of Law (David, "Through a PRISM Darkly: Surveillance and Speech Suppression in the "Post-Democracy Electronic State"", working paper, September 2013, p.27//DM)

Much of what is occurring has to do with the incredible expansion of our communications linkages and technologies over the past twenty years. As the capabilities of the Internet have expanded and penetrated our society the volume of "instant accusations" and criticisms has exploded. But the Internet is not simply a communications and information acquisition system. The Internet has been converted into a weapon for psychological warfare and propaganda (not to mention actual criminal activity).64

The Internet-as-weapon has been refined into a tool for surveillance, persuasion and intimidation by government, private business and political interests.65Everything anyone says electronically is now captured and permanently stored--ready to be dredged up years later when it provides useful ammunition against an opponent.66With blogs, e-mails, "tweets", Facebook postings and the like anything can suddenly "go viral" and be distributed to millions of people with no controls over truth, accuracy, context or fairness. Such messages take on a permanent life and prove the classic observation that you "can't put the genie back in the bottle" (or toothpaste into the tube). Deliberate distortions, lies and half-truths have become important elements of political strategy used by people for whom the ends do justify the means, including many of our top political leaders.

Internet freedom inhibits rational policymaking

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 266)//TT

As the Internet mediates more and more of our foreign policy, we are poised to surrender more and more control over it. Of course, the era when diplomats could take the time to formulate deep and extremely careful responses to events was already over with the arrival of the telegraph, which all but killed the autonomy of the foreign corps. As far as thoughtful foreign policy is concerned, it's all been downhill from there. It's hardly surprising that John Herz, the noted theorist of international relations, observed in 1976 that "where formerly more leisurely but also cooler and more thoroughly thought-out action was possible, one now must act or react immediately."

The age of Internet politics deprives the diplomats of more than just autonomy. It's also the end of rational policymaking, as policymakers are bombarded with information they cannot process, while a digitally mobilized global public demands an immediate response. Let's not kid ourselves: Policymakers cannot craft effective policies under the influence of blood-curling videos of Iranian protesters dying on the pavement.

By 1992 George Kennan, the don of American diplomacy and author of the famous "Long Telegram" from Moscow, which shaped much of American thinking during the Cold War and helped to articulate the policy of containment, had come to believe that the media killed America's ability to develop rational foreign policy. Back then viral political videos were still the bread and butter of network television. After he watched the gruesome footage of several dead U.S. Army rangers being dragged through the streets of Mogadishu on CNN, Kennan made the following bitter note in his diary, soon republished as an op-ed in the New York Times: "If American policy from here on out . . . is to be controlled by popular emotional impulses, and particularly ones invoked by the commercial television industry, then there is no place—not only for myself but for what have traditionally been regarded as the responsible deliberative organs of our government, in both executive and legislative branches." Kennan's words were soon seconded by Thomas Keenan, the director of the Human Rights Project at Bard College, who believes that "the rational consideration of information, with a view to grounding what one does in what one knows, now seems overtaken and displaced by emotion, and responses are now somehow controlled or, better, remote-controlled by television images."

Now that television images have been superseded by YouTube videos and angry tweets, the threshold of intervention has dropped even lower. All it took to get the U.S. State Department to ask Twitter to put off their maintenance was a high number of tweets of highly dubious provenance. When the whole world expects us to react immediately—and the tweets are piling up in the diplomats' in-boxes—we are not likely to rely on history, or even our own experiences and earlier mistakes, but instead decide that tweets + young Iranians holding mobile phones = a Twitter Revolution.

William Scheuerman, a political theorist who studies the role of speed in international affairs, is right to worry that "the historical amnesia engendered by a speed-obsessed society invites

propagandistic and fictional retellings of the past, where political history is simply recounted to the direct advantage of presently dominant political and economic groups." Apparently, it's also fictional retellings of the most recent present that a speed-obsessed society should be concerned about. When facts no longer shape their reactions, policymakers are likely to produce wrong responses.

The viral aspect of today's Internet culture is hardly exerting a positive influence on diplomats' ability to think clearly. Back in the 1990s, many pundits and policymakers liked to denigrate (and a select few worship) the so-called "CNN effect," referring to the power of modern media to exert pressure on decision makers by streaming images from the scene of a conflict, eventually forcing them to make decisions they may not have otherwise made. CNN's supposed—but mostly unproven—influence on foreign policy in the 1990s could at least be justified by the fact that it was speaking on behalf of some idealistic and even humanistic position; we knew who was behind CNN, and we knew what their (mostly liberal) biases were.

The humanism of a bunch of Facebook groups is harder to verify. Who are these people, and what do they want? Why are they urging us to interfere or withdraw from a given conflict? Where the optimists see democratization of access, the realists may see the ultimate victory of special interests over agenda setting. Governments, of course, are not stupid. They are also taking advantage of this tremendous new opportunity to cover their own attempts to influence global public opinion in the cloth of vox populi, either directly or through the work of proxies. Take Megaphone, a technology developed by a private Israeli firm. It keeps track of various online polls and surveys, usually run by international newspapers and magazines, that ask their readers questions about the future of the Middle East, Palestine, the legitimacy of Israeli policies, etc. Whenever a new poll is found, the tool pings its users, urging them to head to a given URL and cast a pro-Israel vote. Similarly, the tool also offers to help mass-email articles favorable to Israel, with the objective of pushing such articles to the "most emailed" lists that are available on many newspaper websites.

But it's not only nimble guerilla-like Web experiments like Megaphone that are influencing global public opinion. The truth is that Russia and China have created their own CNNs, which aim to project their own take on the world news. Both have vibrant websites. As American and British news media are experimenting with paywalls to remain afloat, it's government-owned English-language media from Russia and China that stand to benefit the most. They would even pay people to read them!

For all intents and purposes, navigating the new "democratized" public spaces created by the Internet is extremely difficult. But it's even more difficult to judge whether the segments that we happen to see are representative of the entire population. It's never been easier to mistake a few extremely unrepresentative parts for the whole. This in part ex plains why our expectations about the transformative power of the Internet in authoritarian states are so inflated and skewed toward optimism: The people we usually hear from are those who are already on the frontlines of using new media to push for democratic change in authoritarian societies. Somehow, the Chinese bloggers who cover fashion, music, or pornography—even though those subjects are much more popular in the Chinese blogosphere than human rights or rule of law—never make it to congressional hearings in Washington.

The media is not helping either. Assuming they speak good English, those blogging for the Muslim Brotherhood in Egypt may simply have no intention of helping BBC or CNN to produce

yet another report about the power of the blogosphere. That's why the only power Western media cover is usually secular, liberal, or pro-Western. Not surprisingly, they tell us what we wanted to hear all along: Bloggers are fighting for secularism, liberalism, and Western-style democracy. This is why so many Western politicians fall under the wrong impression that bloggers are natural allies, even harbingers, of democracy. "If it's true that there are more bloggers per head of population in Iran than any other country in the world, that makes me optimistic about the future of Iran," said then UK's foreign minister, David Miliband, while visiting Google's headquarters. Why this should be the case—given that Iran's conservative bloggers, who are often more hard-line than the government and are anything but a force for democracy, equality, and justice, are a formidable and rapidly expanding force in the Iranian blogosphere—is unclear. Chances are that Miliband's advisors simply never ventured beyond a handful of pro-Western Iranian blogs that dominate much of the media coverage of the country. It's hard to say what Miliband would make of certain groups of Chinese nationalists who, when they're not making anti-Western or anti-CNN videos, are busy translating books by Western philosophers like Leibniz and Husserl.

Things get worse when Western policymakers start listening to bloggers in exile. Such bloggers often have a grudge against their home country and are thus conditioned to portray all domestic politics as an extension of their own struggle. Their livelihoods and careers often depend on important power brokers in Washington, London, and Brussels making certain assumptions about the Internet. Many of them have joined various new media NGOs or even created a few of their own; should the mainstream assumptions about the power of blogging shift, many of these newly created NGOs are likely to go under.

Not surprisingly, people who get grants to harness the power of the Internet to fight dictators are not going to tell us that they are not succeeding. It's as if we've produced a few million clones of Ahmed Chala - bi, that notoriously misinformed Iraqi exile who gave a highly inaccurate picture of Iraq to those who were willing to listen, and hired them to tell us how to fix their countries. Of course, the influence of exiles on foreign policy is a problem that most governments have had to deal with in the past, but bloggers, perhaps thanks to the inevitable comparisons to Soviet dissidents and the era of samizdat, are often not subjected to the level of scrutiny they deserve.

1nc Internet freedom – at: democracy

Internet centrism and cyber-utopianism wrecks global democracy

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, Introduction)//TT

To be truly effective, the West needs to do more than just cleanse itself of cyber-utopian bias and adopt a more realist posture. When it comes to concrete steps to promote democracy, cyber-utopian convictions often give rise to an equally flawed approach that I dub "Internetcentrism." Unlike cyber-utopianism, Internet-centrism is not a set of beliefs; rather, it's a philosophy of action that informs how decisions, including those that deal with democracy promotion, are made and how long-term strategies are crafted. While cyber-utopianism stipulates what has to be done,

Internet-centrism stipulates how it should be done. Internet-centrists like to answer every question about democratic change by first reframing it in terms of the Internet rather than the context in which that change is to occur. They are often completely oblivious to the highly political nature of technology, especially the Internet, and like to come up with strategies that assume that the logic of the Internet, which, in most cases, they are the only ones to perceive, will shape every environment than it penetrates rather than vice versa.

While most utopians are Internet-centrists, the latter are not necessarily utopians. In fact, many of them like to think of themselves as pragmatic individuals who have abandoned grand theorizing about utopia in the name of achieving tangible results. Sometimes, they are even eager to acknowledge that it takes more than bytes to foster, install, and consolidate a healthy democratic regime.

Their realistic convictions, however, rarely make up for their flawed methodology, which prioritizes the tool over the environment, and, as such, is deaf to the social, cultural, and political subtleties and indeterminacies. Internet-centrism is a highly disorienting drug; it ignores context and entraps policymakers into believing that they have a useful and powerful ally on their side. Pushed to its extreme, it leads to hubris, arrogance, and a false sense of confidence, all bolstered by the dangerous illusion of having established effective command of the Internet. All too often, its practitioners fashion themselves as possessing full mastery of their favorite tool, treating it as a stable and finalized technology, oblivious to the numerous forces that are constantly reshaping the Internet— not all of them for the better. Treating the Internet as a constant, they fail to see their own responsibility in preserving its freedom and reining in the ever-powerful intermediaries, companies like Google and Facebook.

As the Internet takes on an even greater role in the politics of both authoritarian and democratic states, the pressure to forget the context and start with what the Internet allows will only grow. All by itself, however, the Internet provides nothing certain. In fact, as has become obvious in too many contexts, it empowers the strong and disempowers the weak. It is impossible to place the Internet at the heart of the enterprise of democracy promotion without risking the success of that very enterprise.

The premise of this book is thus very simple: To salvage the Internet's promise to aid the fight against authoritarianism, those of us in the West who still care about the future of democracy will need to ditch both cyber-utopianism and Internet-centrism. Currently, we start with a flawed set of assumptions (cyber-utopianism) and act on them using a flawed, even crippled, methodology (Internet-centrism). The result is what I call the **Net Delusion.** Pushed to the extreme, **such logic is poised to have significant global consequences that may risk undermining the very project of promoting democracy**. It's a folly that the West could do without.

Instead, we'll need to opt for policies informed by a realistic assessment of the risks and dangers posed by the Internet, matched by a highly scrupulous and unbiased assessment of its promises, and a theory of action that is highly sensitive to the local context, that is cognizant of the complex connections between the Internet and the rest of foreign policymaking, and that originates not in what technology allows but in what a certain geopolitical environment requires.

In a sense, giving in to cyber-utopianism and Internet-centrism is akin to agreeing to box blindfolded. Sure, every now and then we may still strike some powerful blows against our authoritarian adversaries, but in general this is a poor strategy if we want to win. The struggle

against authoritarianism is too important of a battle to fight with a voluntary intellectual handicap, even if that handicap allows us to play with the latest fancy gadgets.

2nc – Internet freedom hurts democracy

Internet freedom wrecks democracy – information overload prevents stable transitions

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 271)//TT

It may be that what we gain in the ability to network and communicate, we lose in the inevitable empowerment of angry online mobs, who are well-trained to throw "data grenades" at their victims. This may be an acceptable consequence of promoting Internet freedom, but we'd better plan ahead and think of ways in which we can protect the victims. It's irresponsible to put people's lives on the line while hoping we can deal at some later point with the consequences of opening up all the networks and databases.

That the excess of data can pose a danger to freedom and democracy as significant as (if not more significant than) the lack of data has **mostly been lost on those cheerleading for Internet freedom**. This is hardly surprising, for this may not be such an acute problem in liberal democracies, where the dominant pluralist ideology, growing multiculturalism, and a strong rule of law mitigate the consequences of the data deluge.

But most authoritarian or even transitional states do not have that luxury. Hoping that simply opening up all the networks and uploading all the documents would make a transition to democracy easier or more likely is just an illusion. If the sad experience of the 1990s has taught us anything, it's that successful transitions require a strong state and a relatively orderly public life. **The Internet**, so far, **has posed a major threat to both.**

Internet freedom empowers anti-democratic forces more quickly

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 261)//TT

All the recent chatter about how the Internet is breaking down institutions, barriers, and intermediaries can make us oblivious to the fact that strong and well-functioning institutions, especially governments, are essential to the preservation of freedom. Even if we assume that the Internet may facilitate the toppling of authoritarian regimes, it does not necessarily follow that it would also facilitate the consolidation of democracy. If anything, the fact that various antidemocratic forces— including extremists, nationalists, and former elites—have suddenly

gained a new platform to mobilize and spread their gospel suggests that the consolidation of democracy may become harder rather than easier.

Concerns that the information revolution will weaken the nation state are not new. Arthur Schlesinger Jr., the Pulitzer-winning historian who advised John F. Kennedy, foresaw where increasing computerization might lead, if left unchecked, when he wrote in 1997: "The computer turns the untrammeled market into a global juggernaut crashing across frontiers, enfeebling national powers of taxation and regulation, undercutting national management of interest rates and exchanges rates, widening disparities of wealth within and between nations, dragging down labor standards, degrading the environment, denying nations the shaping of their own economic destiny, accountable to no one, creating a world economy without a world polity." Fortunately, things haven't proved as dramatic as he expected, but Schlesinger's prophecy does point to the importance of thinking through what it is we value about state institutions in the context of democratization and ensuring that the Internet does not fully erode those qualities. While it's tempting to use the Internet to cut off all the heads of the authoritarian hydra, no one has yet succeeded in building a successful democracy with that dead hydra (the state apparatus) still lying there. It's then hardly surprising that those living in democracies may not appreciate the fact that without a strong state any kind of journalism—regardless of whether it's performed by mainstream media or bloggers—is impossible.

As Silvio Waisbord, a scholar of press freedom at the George Washington University, points out: "'the state' means functional mechanisms to institutionalize the rule of law, observe legislation to promote access to information, facilitate viable and diversified economies to support mixed media systems, ensure functional and independent tribunals that support 'the public's right to know,' control corruption inside and outside newsrooms, and stop violence against reporters, sources, and citizens." If the cyber-utopians believe their own rhetoric about crumbling institutions, they've got a major problem on their hands, and yet they repeatedly refuse to engage with it.

Nowhere is this more evident than in countries like Afghanistan, where an already weak government is made even weaker by various political, military, and social forces. We can continue celebrating the potential role of the mobile phone in empowering Afghan women, but the Taliban has terrorized many of the mobile networks into shutting down their services between certain hours of the day (avoiding compliance with the Taliban's demands is not an option; when some carriers tried that, the Taliban responded by attacking cellphone towers and murdering their staff). The Taliban doesn't want to shut the system down entirely—for they also use cellphones to communicate—but they still manage to show who is in control and to dictate how technology should be used. Without a strong Afghan government, the numerous empowerment opportunities associated with the mobile phone will never be realized.

Stephen Holmes, a professor of law at New York University, makes this point in an essay titled "How Weak States Threaten Freedom" published in the American Prospect in 1997. Commenting on how Russia was slowly disintegrating under the pressures of gangsterism and corrupt oligarchy, Holmes explains what many Westerners have overlooked: "Russia's politically disorganized society reminds us of liberalism's deep dependence on efficacious government. The idea that autonomous individuals can enjoy their private liberties if they are simply left unpestered by the public power dissolves before the disturbing realities of the new Russia."

Internet enthusiasts often forget that if a government, even an authoritarian one, loses the ability to exercise control over its population or territory, democracy is not necessarily inevitable. As tempting as it is to imagine all authoritarian states as soulless Stalinist wastelands, where every single thing the government does aims at restricting the freedom of the individual, this is a simplistic conception of politics. Were the Russian or Chinese state bureaucracies to collapse tomorrow, it would not be pure democracy that would replace them. It would probably be anarchy and possibly even ethnic strife. This does not mean that either country is unreformable, but reforms can't start by blowing up the state apparatus first.

This is yet another one of those instances in which the peaceful transition to democracy in postcommunist Eastern Europe was interpreted by the West as the ultimate proof that once a government run by authoritarian crooks is out, something inherently democratic would inevitably emerge in its place. The peaceful transition did happen, but it was the result of economic, cultural, and political forces that were rather unique both to the region and to that particular moment in history. The manner in which the transition took place was not predefined by some general law of nature, positing that people always want democracy and, once all barriers are removed, it will necessarily triumph over every single challenge. The utopian vision inherent in such views was on full display in 2003, when, after the statue of Saddam Hussein was toppled in Baghdad, nothing even remotely resembling Eastern European postcommunist democracy ever came to replace it. (Holmes, in another essay, vividly summed up such reductionist views as "remove the lid and out leaps democracy.")

The only thing worse than an authoritarian state is a failed one. The fact that the Internet empowers and amplifies so many forces that impinge on citizen's rights and hurt various minorities is likely to result in more aggressive public demands for a stronger state to protect citizens from the lawlessness of cyberspace. As child pornographers, criminal gangs, nationalists, and terrorists use the Internet to cause more and more harm, the public's patience will sooner or later run out. When Chinese netizens find themselves targets of attacks by "human flesh search engines," they are not waiting for Robin Hood to come and protect them. They expect their otherwise authoritarian government to draft adequate privacy laws and enforce them. Similarly, when corrupt Russian police officers leak databases containing the personal details of many citizens, including their passport details and cell phone numbers, and these databases resurface on commercial Internet sites, it hardly makes Russians celebrate the virtues of limited government. Multiply the power of the Internet by the incompetence of a weakened state, and what you get is a lot of anarchy and injustice. The reason why so many otherwise astute observers see democracy where there is none is that they confuse the democratization of access to tools with the democratization of society. But one does not necessarily lead to the other, especially in environments where governments are too weak, too distracted, or too unwilling to mitigate the consequences of the democratization of tool access. More and cheaper tools in the wrong hands can result in less, not more, democracy.

It's much like the perpetual debate about blogging versus journalism. Today anyone can blog because the tools for producing and disseminating information are cheap. Yet giving everyone a blog will not by itself increase the health of modern-day Western democracy; in fact, the possible side effects—the disappearance of watchdogs, the end of serendipitous news discovery, the further polarization of society—may not be the price worth paying for the still unclear virtues of the blogging revolution. (This does not mean, of course, that a set of smart policies—implemented by the government or private actors—won't help to address those problems.) Why

should it be different with the Internet and politics? For all we know, many social ills may have become considerably worse since the dawn of social media. We need to start looking at the totality of side effects, not just at the fact that the costs of being a political activist have fallen so dramatically.

In debunking the "more access to technology = more democracy" fallacy, Gerald Doppelt, a professor of philosophy at the University of California at San Diego, suggests some further issues we need to ponder. "In order to evaluate the impact of any particular case of technical politics on the democratization of technology and society," writes Doppelt, "we need to ask who is this group of users challenging technology, where do they stand in society, what have they been denied, and what is the ethical significance of the technical change they seek for democratic ideals?" Without asking those questions, even the sharpest observers of technology will keep circling around the paradoxical conclusion that the blogging Al-Qaeda is good for democracy, because blogs have opened up new and cheap vistas for public participation. Any theory of democracy that doesn't go beyond the cost of mobilization as its only criteria of democratization is a theory that policymakers would be well-advised to avoid, even more so in the digital age, when many costs are plummeting across the board.

Not asking those questions would also prevent us from identifying the political consequences of such democratization of access to technology. Only irresponsible pundits would advocate democratizing access to guns in failed states. But the Internet, of course, has so many positive uses—some of which promote freedom of expression—that the gun analogy is rarely invoked by anyone. The good uses, however, do not always cancel out all the bad ones; if guns could also be used as megaphones, they would still make good targets for regulation. The danger is that the colorful banner of Internet freedom may further conceal the fact that the Internet is much more than the megaphone for democratic speech, that its other uses can be extremely antidemocratic in nature, and that without addressing those uses the very project of democracy promotion might be in great danger. The first prerequisite to getting Internet freedom policy right is convincing its greatest advocates that the Internet is more important and disruptive than they have previously theorized.

Internet freedom gives unlimited power to democratic enemies

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 253)//TT

The problem is that the West began its quest for Internet freedom based on the mostly untested cyber-utopian assumption that more connections and more networks necessarily lead to more freedom or more democracy. In her Internet freedom address, Hillary Clinton spoke of the importance of promoting what she dubbed a "freedom to connect," saying that it's "like the freedom of assembly, only in cyberspace. It allows individuals to get online, come together, and hopefully cooperate. Once you're on the internet, you don't need to be a tycoon or a rock star to have a huge impact on society." The U.S. State Department's Alec Ross, one of the chief

architects of Clinton's Internet freedom policy, said that "the very existence of social networks is a net good."

But are social networks really goods to be treasured in themselves? After all, the mafia, prostitution and gambling rings, and youth gangs are social networks, too, but no one would claim that their existence in the physical world is a net good or that it shouldn't be regulated. Ever since Mitch Kapor, one of the founding fathers of cyber-utopianism, proclaimed that "life in cyberspace seems to be shaping up exactly like Thomas Jefferson would have wanted: founded on the primacy of individual liberty and a commitment to pluralism, diversity, and community" in 1993, many policymakers have been under the impression that the only networks to find homes online would be those promoting peace and prosperity. But Kapor hasn't read his Jefferson closely enough, for the latter was well aware of the antidemocratic spirit of many civil associations, writing that "the mobs of the great cities add just so much to the support of pure government as sores do to the strength of the human body." Jefferson, apparently, was not persuaded by the absolute goodness of the "smart mobs," a fancy term to describe social groups that have been organized spontaneously, usually with the help of technology.

As Luke Allnut, an editor with Radio Free Europe, points out, "where the techno-utopianists are limited in their vision is that in this great mass of Internet users all capable of great things in the name of democracy, they see only a mirror image of themselves: progressive, philanthropic, cosmopolitan. They don't see the neo-Nazis, pedophiles, or genocidal maniacs who have networked, grown, and prospered on the Internet." The problem of treating all networks as good in themselves is that it allows policymakers to ignore their political and social effects, delaying effective response to their otherwise harmful activities. "Cooperation," which seems to be the ultimate objective of Clinton's network building, is too ambiguous of a term to build meaningful policy around.

A brief look at history—for example, at the politics of Weimar Germany, where increased civic engagement helped to delegitimize parliamentary democracy—would reveal that an increase in civic activity does not necessarily deepen democracy. American history in the post Tocqueville era offers plenty of similar cues as well. The Ku Klux Klan was also a social network, after all. As Ariel Armony, a political scientist at Colby College in Maine, puts it, "civic involvement may. . . be linked to undemocratic outcomes in state and society, the presence of a 'vital society' may fail to prevent outcomes inimical to democracy, or it may contribute to such results." It's political and economic factors, rather than the ease of forming associations, that primarily set the tone and the vector in which social networks contribute to democratization; one would be naïve to believe that such factors would always favor democracy. For example, if online social networking tools end up over empowering various nationalist elements within China, it is quite obvious that the latter's influence on the direction of China's foreign policy will increase as well. Given the rather peculiar relationship between nationalism, foreign policy, and government legitimacy in China, such developments may not necessarily be particularly conducive to democratization, especially if they lead to more confrontations with Taiwan or Japan.

Even Manuel Castells, a prominent Spanish sociologist and one of the most enthusiastic promoters of the information society, has not been sold on the idea of just "letting a thousand networks bloom." "The Internet is indeed a technology of freedom," writes Castells, "but it can make the powerful free to oppress the uninformed" and "lead to the exclusion of the devalued by the conquerors of value." Robert Putnam, the famed American political theorist who lamented the sad state of social capital in America in his best-selling Bowling Alone, also cautioned against the

"kumbaja interpretation of social capital." "Networks and associated norms of reciprocity are generally good for those inside the network," he wrote, "but the external effects of social capital are by no means always positive." From the perspective of American foreign policy, social networks may, indeed, be net goods, but only as long as they don't include anyone hiding in the caves of Waziristan. When senator after senator deplores the fact that YouTube has become a second home to Islamic terrorists, they hardly sound like absolute believers in the inherent democratic nature of the networked world.

One can't just limit the freedom to connect to the pro-Western nodes of the Web, and everyone—including plenty of anti-Western nodes— stands to profit from the complex nature of the Internet. When it comes to democracy promotion, one major problem with a networked society is that it has also suddenly over empowered those who oppose the very process of democratization, be they the church, former communists, or fringe political movements. As a result, it has become difficult to focus on getting things done, for it's not immediately obvious if the new, networked threats to democracy are more ominous than the ones the West originally thought to fight. Have the nonstate enemies of democracy been empowered to a greater degree than the previous enemy (i.e., the monolith authoritarian state) has been disempowered? It certainly seems like a plausible scenario, at least in some cases; to assume anything otherwise is to cling to an outdated conception of power that is incompatible with the networked nature of the modern world. "People routinely praise the Internet for its decentralizing tendencies. Decentralization and diffusion of power, however, is not the same thing as less power exercised over human beings. Nor is it the same thing as democracy. . . . The fact that no one is in charge does not mean that everyone is free," writes Jack Balkin of Yale Law School. The authoritarian lion may be dead, but now there are hundreds of hungry hyenas swirling around the body.

Internet freedom increases the risk of nationalistic groups

Morozov, 2012– Contributing editor at The New Republic and author of two books ; has written for The New York Times, The Economist, The Wall Street Journal, Financial Times, London Review of Books, Times Literary Supplement (Evgeny, The Net Delusion: The Dark Side of Internet Freedom, p. 247)//TT

The good news is that we are not rushing toward a globalized nirvana where everyone eats at MacDonald's and watches the same Hollywood films, as feared by some early critics of globalization. The bad news is that, under the pressure of religious, nationalist, and cultural forces reignited by the Internet, global politics is poised to become even more complex, contentious, and fragmented. While many in the West view the Internet as offering an excellent opportunity to revive the least credible bits of modernization theory—the once popular belief that, with some assistance, all developing societies can reach a take-off point where they put their history, culture, and religion on hold and simply follow in the policy steps of more developed nations—such ideas don't have much basis in reality.

Egypt's Muslim Brotherhood certainly does not perceive the Internet to be a tool of hyper-modernization, because they reject the very project of hyper-modernization, at least as it is being marketed by the neoliberal institutions that are propping up the Mubarak regime they oppose. And although others have doubts about their vision for the future of Egypt and the Middle East in

general, the Brothers have nothing against using modern tools like the Internet to achieve it. After all, modern technologies abet all revolutions, not just those that are decidedly pro-Western in character. Even such a devout conservative as Ayatollah Khomeini did not shy away from using audiotapes to distribute his sermons in the shah's Iran. "We are struggling against autocracy, for democracy, by means of xeroxracy," was one of the numerous technology worshiping slogans adopted by the anti-shah intelligentsia in the late 1970s. Had Twitter been around at the time, the anti-shah demonstrators would surely be celebrating Twitterocracy. And even though the Islamic Republic did embrace many elements of modernity—cloning, a vibrant legal market in organ donations, string theory, to name just a few areas where contemporary Iran is far ahead of its peers in the Middle East—its politics and public life are still shaped by religious discourse. It's quite likely that a large chunk of both the West's funds and its attention will need to go toward mitigating the inevitable negative effects that Internet-powered religion will have on world affairs. This is not a moral evaluation of religion: It has proved to be good for democracy and freedom at some points in history, but history has also shown how pernicious its influence can be.

A commitment to Internet freedom—or a combination of its various elements—may be the right and inevitable moral choice the West needs to make (albeit with a thousand footnotes), but the West must also understand that a freer Internet, by its very nature, may significantly change the rest of the agenda, creating new problems and entrenching old ones. This doesn't mean that the West should embark on an ambitious global censorship campaign against the Internet. Rather, different countries require a different combination of policies, some of them aimed at countering and mitigating the influence of religion and other cultural forces and some of them amplifying their influence.

Smallpox Strikes Back

Nationalism, too, is going through a major revival on the Web. Members of displaced nations can find each other online, and existing nationalist movements can delve into the freshly digitized national archives to produce their own version of history. New Internet services often open up new venues for contesting history. Nations are now arguing about whether Google Earth renders their borders in accordance with their wishes. Syria and Israel continue battling about how the contested Golan Heights territory should be listed in Facebook's dropdown menus. Indian and Pakistan bloggers have been competing to mark parts of the contested territory of Kashmir as belonging to either of the two countries on Google Maps. The site had also been under attack for listing some Indian villages in the Arunachal Pradesh province, on the Indian-Chinese border, under Chinese names and as belonging to China. Cambodians, too, have been outraged by Google Earth's decision to mark eleventh-century Preah Vihear temple, ownership of which was awarded to Cambodia in a 1962 court ruling, as part of Thailand.

But such fights over the proper marking of digital assets aside, has the Internet reduced our prejudices against other nations? Was Nicholas Negroponte, one of the intellectual fathers of cyber-utopianism, correct when he predicted in 1995 that "[on the Internet] there will be no more room for nationalism than there is for smallpox"? The evidence for such sweeping claims is thin. In fact, quite the opposite may have happened. Now that South Koreans can observe their old enemies from Japan through a 24/7 digital panopticon, they are waging cyber-wars over such petty disputes as figure skating. Many of the deeply rooted national prejudices cannot be cured by increased transparency alone; if anything, greater exposure may only heighten them. Ask Nigerians how they feel about the entire world believing them to be a nation of scammers who only use the Internet to inform us that a Nigerian chieftain was kind enough to include us in his

will. Perversely, it's Nigerians themselves who—often quite willingly—use the Internet to create and perpetuate stereotypes about their nation. Had Facebook and Twitter been around in the early 1990s, when Yugoslavia was rapidly descending into madness, cyber-utopians like Negroponte would have been surprised to see Facebook groups calling for Serbs, Croats, and Bosnians to be exterminated popping up all over the Web.

Perhaps, nationalism and the Internet are something of natural allies. Anyone eager to satisfy their nostalgia for the mighty Soviet, Eastern German, or Yugoslavian past can do so easily on YouTube and eBay, basking in a plethora of historical memorabilia. But it's not just memorabilia; historical facts, too, can now be easily compiled and twisted to suit one's own interpretation of history. Fringe literature dealing with revisionist or outright racist interpretations of history used to be hard to find. Major publishers would never touch such contentious material, and the independent publishers that took the risk usually published only a handful of copies. That world of scarcity is no more: Even the most obscure nationalistic texts, which previously could only be found in select public libraries, have been digitized by their zealous fans and widely disseminated online. Thus, extreme Russian nationalists who believe that the Great Ukrainian Hunger of 1933 was a myth or, at any rate, does not deserve to be called a genocide, can now link to a number of always-available scanned texts, residing somewhere in the cloud, that look extremely persuasive, even if historically incorrect.

And it's not just myth-making based on frivolous interpretations of history that thrives online. The Internet also abets many national groups in formulating legitimate claims against the titular nation. Take the case of the Circassians, a once great nation scattered all over the Northern Caucasus. History was not kind to them: The Circassian nattion was broken into numerous ethnic pieces that were eventually crammed into Russia's vast possessions in the Caucasus. Today, the Circassians make up titular nations of three Russian federal subjects (Adygeya, Karachay-Cherkessia, and Kabardino-Balkaria) and, according to the 2002 Russian population census, number 720,000 people. During the Soviet era, the Kremlin's strategy was to suppress Circassian nationalism at all costs; thus most Circassians were separated into subgroups, depending on their dialect and place of residence, becoming Adygeys, Adygs, Cherkess, Kabards, and Shapsugs. For much of the twentieth century, Circassian nationalism lay dormant, in part because the Soviets banned any competing interpretations of what happened in the Russian-Circassian war in the nineteenth century. Today, however, most of the scholarly and journalistic materials related to the war have been scanned and uploaded to several Circassian websites, so that anyone can access them. Not surprisingly, Circassian nationalism has been quite assertive of late. In 2010 a dedicated website was set up to call on residents of the five nations to list themselves simply as "Circassians" in Russia's 2010 census, and an aggressive online campaign followed. "The internet seems to offer a lifeline to Circassian activists in terms of rejuvenating their mass appeal," notes Zeynel Abidin Besleney, an expert on Circassian nationalism at the School of Oriental and African Studies at the University of London.

Russia, with its eighty-nine federal subjects, has certainly more than one Circassian problem on its plate. Tatars, the largest national minority in Russia, for a long time had to suffer under the policy of Russification imposed by Moscow. Now their youngsters are turning to popular social networking sites to set up online groups that focus on the issue of national Tatar revival. Not only do they use such groups to watch new videos and share links to news and music, but they are also exposed to information, often missing from Russia's own media, about Tatar history and culture and the internal politics of Tatarstan.

As the Circassian and the Tatar cases illustrate, thanks to the Internet many of the Soviet (and even Tsarist) myths that seemed to tie the nation together no longer sound tenable, with many previously captive nations beginning to rediscover their national identities. How Russia will keep its territorial integrity in the long run—especially if more nations try to secede or at least to overcome artificial ethnic divisions of the Soviet era—is anyone's guess. Not surprisingly, the Kremlin's ideologists like Konstantin Rykov have begun emphasizing the need to use the Internet to tie the Russian nation together. At this point, it's impossible to tell what such increased contentiousness means for the future of democracy in Russia, but it would take a giant dose of optimism to assume that, somehow, modern-state Russia would simply choose to disintegrate as peacefully as the Soviet Union did and, more, that democracy would prevail in all of its new parts. Developing an opinion about the long-term impact of the Internet on Russian democracy would inevitably require asking—if not answering—tough questions about nationalism, separatism, center-periphery relations, and so forth. (And not just in Russia: Similar problems are also present in China and, to a lesser degree, Iran, which have sizable minorities of their own.)

The influence of the diasporas—many of whom are not always composed of progressive and democracy-loving individuals—is also poised to rise in an age when Skype facilitates so much of the cultural traffic. Will some of that influence be positive and conducive to democratization? Perhaps, but there will also surely be those who will try to stir things up or promote outdated norms and practices. Thomas Hylland Eriksen, an anthropologist at the University of Oslo, notes that "sometimes, the elites-in-waiting use the Net to coordinate their takeover plans; sometimes diasporas actively support militant and sometimes violent groups 'at home,' knowing that they themselves do not need to pay the price for an increase in violence, remaining as they do comfortably in the peaceful diaspora."

The problem with Internet freedom as a foundation for foreign policy is that in its simplification of complex forces, it may actually make policymakers overlook their own interests. To assume that it's in the American, German, or British interest to simply let all ethnic minorities use the Internet to carve out as much space as they can from the dominant nation, whether it is in Russia, China, or Iran (not to mention much more complicated cases like Georgia), would simply be to badly misread their current policies and objectives. One might argue that these are cunning policies, and it's an argument worth having. The first rather ambiguous articulation of Internet freedom policy by Hillary Clinton simply preferred to gloss over the issue altogether, as if, once armed with one of the most powerful tools on Earth, all nations would realize that, compared to YouTube, all those bloody wars they've been fighting for centuries have been a gigantic waste of time. Finding a way to grapple with the effects of new, digitally empowered nationalism is a formidable task for foreign policy professionals; one can only hope that they won't stop working on it even if the imperative to promote Internet freedom would divert their time and attention elsewhere.

Internet Freedom – AT: human rights

The plan is discrimination against non-US persons under IHRL

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance

Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM)

US surveillance law violates the Principle of Illegitimacy because it involves unjustified **discrimination against non-US persons**—providing **less favorable standards to them than its own citizens**. Human rights law must protect "everyone," meaning all human beings. As the Universal Declaration of Human Rights has stated, ""All human beings are born free and equal in dignity and rights." Indeed, everyone must be entitled to equal protection under the law and the Constitution.

The domestic-only limit violates international human rights law

Greene and Rodriguez 14 – David Greene is an EFF Senior Staff Attorney, and Katitza Rodriguez is an EEF International Rights Director (David and Katitza, "NSA Mass Surveillance Programs - Unnecessary and Disproportionate", Electronic Frontier Foundation, May 29, 2014//DM)

The US contends that its human rights treaty obligations under the ICCPR do not apply to its actions abroad, a view that **defeats the object and purpose of the treaty**. The Human Rights Committee rejected the United States' position and reiterated that the United States has an extraterritorial duty to protect human rights—including the right to privacy —to its actions abroad regardless of the nationality or location of the individuals.40 The United States asserts control over any data held by companies based in the United States regardless of where the data may be physically stored. Thus, the US controls data located outside the US, even as it argues that it is not responsible for any interference with privacy that results.41

Given the extraordinary capabilities and programs of the US to monitor global communications, it is essential that the protection of privacy applies extraterritorially to innocent persons whose communications the NSA scans or collects. Without such protections, the object and purpose of the United States' international human rights obligations—with regard to the right of privacy in borderless global communications— would be defeated.42

1nc - Data Localization

Surveillance is a proxy for larger disputes with US internet hegemony – and the alt causes matter more

Hill 14* Technology policy consultant at Monitor 360, fellow of the Global Governance Futures 2025 program at the Brookings Institution (Jonah, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS" p.19-20)//GK

Upon first glance, the preceding case studies present a consistent narrative: for the nations now considering localization for data, the Snowden revelations exposed an NSA that had overstepped the boundaries of acceptable surveillance, violated citizen privacy, and catalyzed public and government opinion in favor of forceful action in response. For policymakers, data localization offers a seemingly simple and effective solution. Under closer examination, however, a more complicated picture emerges. The localization movement is in fact a complex and multilayered phenomenon, with the objective **not** only—or even **primarily—of protecting privacy.** Depending on the country in which it is being advanced, localization also serves to protect domestic businesses from foreign competition, to support domestic intelligence and law enforcement ambitions, to suppress dissent and to stir up populist enthusiasms for narrow political ends. Direct evidence of these other objectives for which privacy seems to be a pretext is by its nature difficult to uncover: rarely to policy-makers admit to seeking protectionist goals, to spying on their populations, to suppressing dissent or to exploiting populist emotions. Yet, by viewing the localization movement in the context of other state and corporate interests and activities, it is possible to uncover these other, less exalted ends. Powerful business interests undoubtedly see data localization as an effective and convenient strategy for gaining a competitive advantage in domestic IT markets long dominated by U.S. tech firms. To localization proponents of this stripe, the NSA programs serve as a powerful and **politically expedient excuse** to pursue policies protective of domestic businesses. As an illustration, data localization in Germany presents clear economic benefits for a most powerful industry advocate for localization, Deutsche Telekom (DT). Whether by way of its "email made in Germany" system or the Schengen area routing arrangement, DT looks poised to gain from efforts to reduce the prominence of American tech firms in Europe. It is no wonder that the company has been spearheading many of the localization proposals in that country. As telecommunications law expert Susan Crawford has noted, DT has been seeking to expand its cloud computing services for years, but has found its efforts to appeal to German consumers stifled by competition from Google and other American firms. 79 T-Systems International GmbH, DT's 29,000-employee distribution arm for information-technology solutions, has been steadily losing money as a result.80 Moreover, Crawford suggests that DT would not be content with gaining a greater share of the German market; she points out that through a Schengen routing scheme, "Deutsche Telekom undoubtedly thinks that it will be able to collect fees from network operators in other countries that want their customers' data to reach Deutsche Telekom's customers."81 Similarly, companies and their allies in government in Brazil and India look to profit from data localization proposals. Indeed, the governments of both nations have for years sought to cultivate their own domestic information technology sectors, at times by protecting homegrown industries with import tariffs and preferential taxation. Brazilian President Rousseff has on numerous occasions stated that her government intends to make Brazil a regional technology and innovation leader; in recent years the government has proposed measures to increase domestic Internet bandwidth production, expand international Internet connectivity, encourage domestic content production, and promote the use of domestically produced network equipment.82 India, more controversially, has at times required foreign corporations to enter into joint ventures to sell e- commerce products, and has compelled foreign companies to transfer proprietary technology to domestic firms after a predetermined amount of time.83 Brazil and India are, of course, not alone in this respect. Indonesian firms are constructing domestic cloud service facilities with the help of government grants, 84 while Korea is offering similar support to its own firms. For the governments and corporations of these nations, long frustrated by their inability to develop a domestic IT industry that can compete on an even playing field with the U.S. technology giants, data localization is one means to confront, and perhaps overcome, the American Internet hegemony. 85

2nc – alt causes matter more

Localization is driven by the desire for surveillance and freedom from American dependence

Hill 14* Technology policy consultant at Monitor 360, fellow of the Global Governance Futures 2025 program at the Brookings Institution (Jonah, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS" p.21-22)//GK

If a government already has a sophisticated communications surveillance capacity, it would not be surprising that that it would want to enhance that capacity – certainly, that is what the United States has done. It would seem naïve to suppose that other governments would act differently. Data localization in both German and India and elsewhere, would offer just such enhancement, through two important intelligence functions. First, it allows domestic intelligence agencies to better monitor domestic data by either forcing data to be stored in local servers (indeed, India has previously required two international firms, Research in Motion and Nokia, to locate servers and data domestically91 for intelligence collection purposes), or by requiring that data to be held by local firms over which domestic intelligence and law enforcement agencies may have greater coercive power. Second, in light of the often-overlooked fact that many intelligence services, such as the BND, cooperate with the NSA in a variety of information sharing programs,92 governments may view localization as a tactic to gain additional bargaining power with the NSA in negotiations over how much information the American spy agency will share.93 Moreover, domestic law enforcement agencies (to the extent that, in most democratic countries, law enforcement is administratively and actually separate from intelligence services) surely have reason to view data localization as a potentially valuable evidence gathering tool, useful in identifying and then prosecuting conventional criminal activities. In connection with investigations and prosecutions, foreign law enforcement often complain that the process by which they request data from U.S. firms (the rules of which are generally negotiated between the United States and foreign governments and then ratified in a Mutual Legal Assistance Treaty) is slow and cumbersome, and that American firms and the U.S. Justice Department are too often uncooperative. The President's Review Group on Intelligence and Communication Technologies estimated that the average time from request to delivery is 10 months, and sometimes years pass before a response arrives.94 There is uncertainty about when data can be shared, with whom, and on what terms; and it all happens with very little transparency.95 This process presents annoying and seemingly unjustified interference to foreign law enforcement officials who want to apprehend criminals. The Brazilian government, for example, has requested information from Google for several pending cases in the Brazilian Supreme Court, but has yet to receive it.96 Similarly, India has often asked the U.S. to serve summonses upon Google, as well as on Facebook, Twitter, and others, for failing to prevent the dissemination of speech prohibited under Indian Law, but has been rejected due to U.S. civil liberties sensibilities.97 Data localization, for frustrated and impatient law enforcement agencies and their political allies, looks like a straightforward mechanism to free themselves from some of this bothersome dependence on Americans.

Data localization is motivated by external factors – surveillance is only a public excuse

Hill 14 - technology and international affairs consultant, formerly worked in the Office of the Cybersecurity Coordinator on the National Security Staff at the White House (Jonah, "The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Business Leaders", Conference on the Future of Cyber Governance, 5/1/14)//DBI

The problem for U.S. tech companies is that there are actually a wide variety of forces and interest groups driving the data localization movement, and many of these forces and groups have objectives beyond the professed goals of data protection and counter-NSA surveillance. One can easily discern in foreign governments' interest in data localization a combination of **anti-American populism**, a **desire for greater ease of foreign (and domestic) surveillance**, and a sense among policymakers and business that the Snowden backlash presents an opportunity to cultivate domestic cloud and other tech services industries, industries that have long been outcompeted by American tech companies in their home markets—**old-fashioned protectionism** tailored for the digital age.

Technological leadership

1nc – tech leadership

Chinese technological leadership inevitable – not possible for the US to reclaim

Sharif 15 – Associate Professor in the Division of Social Science at the Hong Kong University of Science and Technology (Naubahar, Global Technology Leadership: The Case of China, Hong Kong University of Science and Technology Institute for Emerging Market Studies, February, http://iems.ust.hk/wp-content/uploads/2015/02/IEMSWP2015-11.pdf)//JJ

However, such skepticism overlooks **several important factors** that have positioned China to compete for **global technological leadership**. We see three distinct sources of competitive advantage that we believe China will leverage in developing its capacity for technological innovation. One of these factors — a **large and rapidly growing domestic market** — is no secret, while the other two — a **firm government hand in industrial policy** and **globalization** — complement the first factor, market size, in providing China with a path to global technological leadership. China's rapidly growing domestic market — now the second largest in the world — will continue to grow and is likely to **surpass the US market around 2020**. As market size is an important determinant of innovation activities, burgeoning demand will drive Chinese companies to **continuously advance** their technological capabilities to profit from successful innovation, providing a global advantage such as no other economy enjoys. In spite of China's openness to market forces, however, Beijing's autocratic system of governance largely persists, providing **ample room** for the Chinese government to enact and implement industrial and innovation policy to enhance the technological capabilities of Chinese companies to an extent that mature Western market - oriented economies and democratic governments **cannot match**. This represents the second advantage we discuss here. Able to enact policy facing little or no opposition, Beijing can steer economic development as it sees fit. Benefiting from 7 China's so - called 'indigenous innovation' strategy, Chinese companies enjoy government support of R&D,

enabling them to develop technologies independently and to own intellectual property rights. Large - scale government grants and low - interest loans from state - owned banks under the framework of the indigenous innovation strategy provide Chinese firms with strong incentives to become global technological leaders. Finally, **intensified globalization** will continue to benefit Chinese companies in the coming decades, providing a third advantage in its drive to become a **worldwide force in technology**. On the one hand, Chinese firms need not develop every advanced technology on their own in a globalized world. Backed by the government's 'goglobal' strategy, they can acquire such technologies through mergers and acquisitions abroad. On the other hand, as the economy grows and indigenous companies move up the technological ladder, foreign multinational corporations will be increasingly tempted, or perhaps feel compelled, to bring their advanced products to China, eventually even patenting their cutting - edge techno ogies there. This will in turn generate demonstration, labor mobility, and competition effects — or 'spillovers' — to benefit local firms. With all these opportunities looming on the horizon, Chinese companies are **sparing no effort** to seize them in an effort to possibly assume global leadership in technology and innovation. After tracing the trajectory of global technological leadership as **indicated in the economics and innovation literature**, we subsequently consider each of the three factors we have identified as competitive advantages for China — market size, governmental power, and globalization — in greater depth.

2nc – China alt cause

Alt cause to leadership – Chinese market share

Sharif 15 – Associate Professor in the Division of Social Science at the Hong Kong University of Science and Technology (Naubahar, Global Technology Leadership: The Case of China, Hong Kong University of Science and Technology Institute for Emerging Market Studies, February, http://iems.ust.hk/wp-content/uploads/2015/02/IEMSWP2015-11.pdf)//JJ

Thus, China's emergence as a **rapidly growing major market** offers it a **unique advantage**, one the likes of which no nation other than the United States has hitherto enjoyed. As Chinese consumers' expectations regarding price, quality, and features differ markedly from those of consumers in developed economies, it is local Chinese firms (as opposed to foreign firms) who are best situated to satisfy the singular tastes of the Chinese market. Chinese companies seeking global market share have therefore accumulated both **significant cash flow** and **considerable business experience** (from their efforts in the domestic Chinese market) that adds to their competitiveness. Additionally, the size and speed of China's market expansion allows local companies to move rapidly along the learning curve. Many Chinese firms take advantage of the larger size of the Chinese market and increased opportunities to interact with users expediting the speed with which new products are introduced to the market and improved thereafter. Just as American firms achieved leadership in the production of nearly all major raw materials by the end of the nineteenth century, so Chinese manufacturers today are leading producers in **seven of the twenty - two two - digit manufacturing sectors.** Indeed, China leads the world in producing the most **steel**, **cement**, **automobiles**, **fertilizer**, and more than **200 other products**.

Alt. cause to technological leadership – China

Sharif 15 – Associate Professor in the Division of Social Science at the Hong Kong University of Science and Technology (Naubahar, Global Technology Leadership: The Case of China, Hong Kong University of Science and Technology Institute for Emerging Market Studies, February, http://iems.ust.hk/wp-content/uploads/2015/02/IEMSWP2015-11.pdf)//JJ

The United States and much of Western Europe have, however, been mired in economic turmoil and, in some cases, political chaos since the Recession, although signs of steady improvement have begun to emerge, especially in the United States. Still, investment by Western powers in education, research and technology are either stagnating or on the decline. Meanwhile, China continues to **strengthen its innovation system**; the rate of spending on research and development (R&D) in China outpaces overall economic growth. In terms of R&D intensity, in 201 3 China spent US$ 191 billion (current prices) or 2.08 per cent of its rapidly increasing GDP on R&D, placing it second only to the United States (in terms of absolute amount of annual expenditure on R&D) (Ministry of Science and Technology, 2014) . Moreover, there were over 3.2 million R&D personnel in China in 2013. The rapid expansion of degree production in China in science and engineering fields is particularly noteworthy as it is more than **double US levels**. In 2010, science and engineering degrees represented 40 per cent of all new university degrees awarded in China (compared with just 15 per cent in the United States). The yawning gap is most evident in engineering, which represents nearly 30 per cent of all new university degrees awarded in China, compared with just 6 per cent in the United States. In absolute terms, China's science and engineering doctorate production has gr own by an average of 18 per cent per year since 1998 (thanks in part to a lower base level) . By 2012, China's S&E doctorate production had surpassed US levels (National Science Foundation [NSF] 2014). 1 According to Thomson Reuters' Science Citation Index, for the period covering 2001 – 2011, China ranked second in the world in research output as measured by number of papers published in research journals (Thomson Reuters 2011) . China also ranked fifth in number of citations in 2013 and fourth in number of highly cited papers published in 2003 – 2013, which rank in the top 1 per cent by citations for field and year indexed in the Web of Science (Institute of Scientific and Technical Information of China, 2013). In 201 3 , China trailed only the United States and Japan in patent filings under the Patent Cooperation Treaty (PCT) administered by the World Intellectual Property Office (World Intellectual Property Organization 201 4). Furthermore, in 201 3 , two large Chinese telecommunications equipment manufacturers, ZTE and Huawei Technologies, filed 2,309 and 2,094 patents, respectively, which ranked them second and third in the worldwide ranking of top PCT patent applicants. At the US Patent and Trademark Office, the number of patent applications originating in China grew 14 per cent from 2012 to 2013 alone, a rate that is higher than those of the other top countries and regions (the United States, Japan, Germany, South Korea and Taiwan) (US Patent and Trademark Office 2014).

NSA surveillance doesn't undermine cloud computing

Henderson, 4/9/15 (Nicole, "Impact of NSA Surveillance on US Cloud Providers Not as Bad as We Thought: Forrester" 4/9, http://www.thewhir.com/web-hosting-news/impact-nsa-surveillance-us-cloud-providers-not-bad-thought-forrester

It's been two years since Edward Snowden leaked details of the NSA's PRISM surveillance program, and although analysts predicted an exodus from US-based cloud and hosting services in response to the revelations, it hasn't exactly worked out that way, a new report finds.

Forrester released a new report last week that suggests concerns around international customers severing ties with US-based hosting and cloud companies "were overblown."

"Lost revenue from spending on cloud services and platforms comes to just over $500 million between 2014 and 2016. While significant, these impacts are far less than speculated, as more companies reported taking control of security and encryption instead of walking away from US providers," Forrester's principal analyst serving security and risk professionals Edward Ferrara said in a blog post.

Snowden recently told a crowd of cloud and hosting providers that use of encryption is growing, and encrypted traffic has doubled since 2013.

In 2013, Forrester predicted that US cloud providers cloud lose up to $180 billion in business by 2016 due to concerns around the scope of NSA's PRISM program.

According to NextGov, Forrester finds that 26 percent of enterprises based in Asia Pacific, Canada, Europe and Latin America have stopped or reduced their spending with US-based firms for Internet-based services. Thirty-four percent said these concerns were related to fears of US surveillance, while others said they want to support businesses in their own country, or data sovereignty rules prevent them from storing data abroad.

Forrester surveyed more than 3,000 businesses between June and July 2014.

More than half of respondents said that they did not trust US-based outsourcers to handle sensitive information, with only 8 percent reporting to trust their company's intellectual property with a US-based outsourced company.

Ninety-percent of decision-makers have taken steps to encrypt their data, according to the report.

Cloud computing not feasible – security hurdles

Xiao and Chen 15 – *professor at the Department of Software Engineering at Hainan Software Profession Institute AND **Assistant Professor in Operations Management at New York University, PhD (Ziqian and Jingyou, Cloud Computing Security Issues and Countermeasures, Proceedings of the 4th International Conference on Computer Engineering and Networks p. 731-737, 2015, http://link.springer.com/chapter/10.1007/978-3-319-11104-9_85)//JJ

Cloud Computing Security Challenges

New Risks Brought by Virtual Technologies

Virtualization brings new risks mainly in the virtual machine being **abused**, the virtual **machine escape**, and multi-tenant isolation between the **failures of security policy** migration of virtual machines.

Shared Data Security Environment

Under the cloud service model, users are very worried about whether the data stored in the service provider will be **compromised**, **tampered**, or **lost**. Man-made threats facing the user data mainly come from **service providers**, **hackers**, **malicious neighboring tenants**, and subsequent tenants.

Cloud Platform Application Security

There are some **application security problems** existing in Cloud Computing Services, no matter Saas, Paas or Iaas, mainly including three categories. The first one is the malicious **program review**. The second one is the application **interface security**. The third one is **code and test safety**.

Authentication and Access Control in the Cloud Service Model

Under the cloud service model, user authentication and access control face new challenges, for example, the authentication and authorization of massive users, the rational division of access rights, and the management of accounts, passwords, and keys. In dealing with massive users' changeable business and their identification, the cloud service providers need to fully automate users' authentication and access management.

Cloud computing improvements now – new tech and legal measures

Rubinstein and Hoboken 14 – *Senior Fellow at the Information Law Institute (ILI) and NYU School of Law, AND **Microsoft Research Fellow in the Information Law Institute at New York University, PhD from the University of Amsterdam (Ira and Joris Van, PRIVACY AND SECURITY IN THE CLOUD: SOME REALISM ABOUT TECHNICAL SOLUTIONS TO TRANSNATIONAL SURVEILLANCE IN THE POST- SNOWDEN ERA, 66 Maine L. Rev. 488, September 2014, http://ssrn.com/abstract=2443604)//JJ

High-security demanding customers such as government agencies and corporate and organizational users with particularly strict demands for information security are likely to drive these market responses.214 Customers will insist upon better guarantees of security and confidentiality and may refuse to do business with popular, U.S.-based cloud services subject

to far-reaching government surveillance powers. Indeed, they may be barred from doing so under new proposals in Europe and elsewhere requiring their citizens to rely on local cloud services.215 In the market for individual users of cloud resources, there may generally be an increasing demand for better security and privacy safeguards as a result of the widely discussed examples of mass surveillance of online interactions and communication. In addition, law and regulation may increasingly require that certain types of disproportionate lawful access to cloud data be excluded if cloud providers want unrestricted access to the market.

Are these measures likely to be effective against intelligence agencies with the skills and resources of NSA or GCHQ? The answer depends on a variety of factors, which will be discussed further in this Section. One thing is clear: the range of technical solutions described in Part III is not binary, and recent announcements of 'NSA-proof' services seem highly oversimplified.

A better way of framing this topic is to ask a series of more nuanced questions as follows: First, can technological and organizational design of services help to protect against backdoor access of data in the cloud? Second, and related, can the cloud industry help to prevent bulk and dragnet access to the data of their customers? **Third, to what extent can the technical and organizational design of cloud services help to shape lawful access dynamics, such as where and how lawful access takes place (i.e., which entity and in which geographical location)?** And, finally, to what extent can government agencies armed with surveillance orders counter the design choices of industry players when new technologies undermine lawful access to data in the cloud the government is seeking?

Based on the analysis outlined herein, the first question should be answered positively. As cloud services roll out new security and encryption measures with the goal of preventing bulk data collection by surreptitious means, this will undoubtedly interfere with large scale intelligence gathering, such as the interception of client-server and server-server data streams. Firms like Google, Microsoft, Yahoo, and Facebook have already begun to implement well-established techniques such as TLS/SSL and perfect forward secrecy, just as various security organizations have begun to review how they develop cryptographic standards.216 At the end of the day, the protection against backdoor access is also a matter of resources, however. Certain technological solutions may prevent effective bulk collection through specific intelligence programs, but intelligence agencies could in turn deploy targeted intelligence operations to undo some of these protections implemented by cloud services.

The second question, which concerns the possibility of cloud firms preventing dragnet surveillance, cannot generally be answered affirmatively. Technological design may have some impact on front-door collection but where surveillance regimes like Section 702 of the FAA authorize large scale transnational surveillance directed at cloud services, industry has limited options. It may oppose orders in court, or it may take a public stance to the effect that certain types of lawful access should not be legally permissible under current statutes and strive for legal reforms that would enhance the privacy interests of cloud customers.218

The third question must be answered positively also, at least in theory. Technological and organizational design of services can help to shape lawful access dynamics and could be used precisely to do so. While few cloud services have actively implemented privacy-preserving encryption protocols, there is reason to believe that this is changing. As discussed in the previous section, both the cloud industry and the Internet security engineering community have taken the first steps towards implementing technical and organizational measures to shape the lawful access dynamics induced by the use of their services and further innovations may be anticipated. The extent to which local jurisdictions may force multinational cloud service providers to comply with domestic laws notwithstanding these new security measures remains a particularly hotly debated issue.

2nc – surveillance not hurt cloud

No significant impact on cloud computing

Weise, 4/7/15 (Elizabeth, "PRISM revelations didn't hit U.S. cloud computing as hard as expected" 4/7, http://americasmarkets.usatoday.com/2015/04/07/prism-revelations-didnt-hit-u-s-cloud-computing-as-hard-as-expected/

When Edward Snowden revealed the extent of the U.S. National Security Agency's PRISM spying program, there were concerns that American cloud, hosting and outsourcing businesses would lose customers running to non-U.S.-based companies safe from NSA's prying eyes.

"The assertion was that this would be a death blow to U.S. firms trying to operating in Europe and Asia," said Forrester Research analyst Ed Ferrara.

But two recent reports from Forrester find it was less catastrophic than expected.

That's good news for companies like Box (BOX), DropBox and others that make their money by selling U.S.-based data storage.

Forrester had originally predicted U.S. companies could lose as much as $180 billion in sales.

Instead, just 29% of technology decision-makers in Asia, Canada, Europe and Latin America halted or reduced spending with U.S.-based firms offering Internet-based services due to the PRISM scandal, Forrester's Business Technographics Global Infrastructure Survey for 2014 found

"It's a relatively small amount of data," Ferrara said.

That's because most of the companies didn't need to move all their data, much of which was stored in-house. Instead, only 33% of the data held by that 29% of companies was at a third-party data center or in a cloud system.

Forrester believes the overall loss to U.S. cloud providers for 2015 will be about $15 billion and in 2016, $12 billion, a far cry from projections that were ten times that a year ago.

Forrester also found that companies are looking at other ways to protect the integrity of their data, not just from the NSA but also from surveillance by other nations.

Chief among them was encryption. Eighty-four percent of the companies said they're using various encryption methods to protect sensitive material.

The survey's definition of cloud providers is broad, and includes both platform as a service, infrastructure as a service and software as a service companies, said Ferrara.

2nc - cloud not feasible

Tons of alt. causes to cloud computing –

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In the short term, U.S. companies lose out on contracts, and over the long term, other countries create protectionist policies that lock U.S. businesses out of foreign markets. This not only hurt s U.S. technology companies, but

costs American jobs and weakens the U.S. trade balance. To reverse this trend, ITIF recommend s that policymakers: Increase transparency about U.S. surveillance activities both at home and abroad. Strengthen information security by opposing any government efforts to introduce backdoors in software or weaken encryption. Strengthen U.S. mutual legal assistance treaties (MLATs) . Work to establish international legal standards for government access to data. Complete trade agreements like the Trans Pacific Partnership that ban digital protectionism, and pressure nations that seek to erect protectionist barriers to abandon those efforts .

Cloud computing not feasible – security hurdles

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Cloud Computing Security Challenges

New Risks Brought by Virtual Technologies

Virtualization brings new risks mainly in the virtual machine being **abused**, the virtual **machine escape**, and multi-tenant isolation between the **failures of security policy** migration of virtual machines.

Shared Data Security Environment

Under the cloud service model, users are very worried about whether the data stored in the service provider will be **compromised**, **tampered**, or **lost**. Man-made threats facing the user data mainly come from **service providers**, **hackers**, **malicious neighboring tenants**, and subsequent tenants.

Cloud Platform Application Security

There are some **application security problems** existing in Cloud Computing Services, no matter Saas, Paas or Iaas, mainly including three categories. The first one is the malicious **program review**. The second one is the application **interface security**. The third one is **code and test safety**.

Authentication and Access Control in the Cloud Service Model

Under the cloud service model, user authentication and access control face new challenges, for example, the authentication and authorization of massive users, the rational division of access

rights, and the management of accounts, passwords, and keys. In dealing with massive users' changeable business and their identification, the cloud service providers need to fully automate users' authentication and access management.

2nc – Squo solves

New protection standards and tech solve

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V. CONCLUSION

This Article describes and places in a legal perspective the cloud industry's technological responses to the revelations about ongoing transnational surveillance. By focusing on industry responses and exploring the ways in which the technological design of cloud services could further address surveillance concerns, we provide insights into the prospects of these services shaping lawful government access to the cloud. This intersection of service design, on the one hand, and government demands for access to data, on the other hand, signals a dynamic new chapter in the ongoing debate between industry and governments about the possibility and conditions of secure and privacy-friendly information and communications technologies (ICTs) for global markets.

In particular, we have shown that it is helpful to distinguish between front-door and backdoor access to data in the cloud. Our analysis of industry responses has shown the cloud industry is <u>moving quickly</u> to address interception of their customers' data without their knowledge or involvement by adopting technological solutions that limit lawful access (as far as possible) to legal processes directed at the cloud service itself and/or its customers. Many of these measures could have been implemented much earlier on. They are now becoming <u>industry norms</u>. Industry standards like SSL/TLS and HTTPS, together with a new generation of PETs offering "end-to-end"

protection, can be effective tools in preventing bulk acquisition through the targeting of the worldwide communications infrastructure.

In short, technologies can help the industry shape lawful access even though they do not change the legal framework, nor do they overcome the lack of progress in reforming existing legal authorities (such as Section 702 of the FAA) to confine lawful access to the front-door of service providers. We expect that this lack of progress—with respect to transnational legal guarantees of privacy and information security, not only in the U.S. but also elsewhere—will be a strong driver for the wider adoption of more robust and comprehensive privacy technologies in the cloud service context. And we argue that under current conditions, the U.S. cloud industry will increasingly rely on technologies to 'regulate' government data access in an effort to enhance the privacy and information security protections of their foreign customers.

This raises the pertinent question of how the U.S. government may respond to increased resilience of cloud services against lawful surveillance. While FISA and ECPA allow government agencies to obtain orders that ensure the cooperation of providers notwithstanding strong technological protections, existing law does not allow for unlimited bargaining room. Most of the services in question are not subject to CALEA obligations and an extension of CALEA seems neither warranted nor politically feasible under present conditions. Moreover, most of these services have responded to the Snowden revelations by implementing stronger privacy protections (and even some advanced cryptographic protocols). No doubt they await the outcome of the ongoing litigation in the Lavabit case, which may clarify the government's power to compel a service to break its security model in response to a valid surveillance order. However, the Lavabit case does not yet present a scenario in which a service's use of advanced cryptography makes it impossible to comply with a surveillance order by furnishing unencrypted data. 2014] PRIVACY AND SECURITY IN THE CLOUD 533 A U.S. government win in the Lavabit case may therefore be little more than a pyrrhic victory, for it could simply further incentivize industry to adopt even stronger technological solutions against surveillance, including both actively implemented and client-side encryption protocols preserving privacy in the cloud.

Encryption solves – major companies prove

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It is hardly surprising, then, that cloud firms like Microsoft have started taking steps to ensure that governments use legal process rather than "technological brute force to access customer data." engineering effort to strengthen the encryption of customer data across [its] networks and services."159 This matches similar activity of Google, which had started to encrypt data more comprehensively even before the specific revelations about the MUSCULAR program.160 As a Google security engineer explained shortly after these revelations, "the traffic shown in the [MUSCULAR] slides below is now all encrypted and the work the NSA/GCHQ (U.K. Government Communications Headquarters) staff did on understanding it, **ruined**."161 Finally, Yahoo has announced it will "[e]ncrypt all information that moves between [its] data centers by the end of Q1 2014." The **encryption measures** discussed above could **help the cloud industry to counteract** programs like MUSCULAR and UPSTREAM, which rely on the bulk collection of data by targeting communication links and the telecommunications infrastructure. Of course, this assumes that the NSA does not seek to undermine these protections by relying on security weaknesses in the implementation or use of SSL or the underlying encryption 158 Microsoft recently announced "a comprehensive algorithms.

2nc – at: https encryption

HTTPS encryption protocols fail –

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In terms of securing web-based communications, however, the HTTPS system is **no panacea** against government surveillance. First, the protocol must be **properly implemented**.147 Second,

there are **known attacks** on the use of encrypted web communications through SSL.148 Third, intelligence agencies may work around the protections and attempt to **secretly install software** on the computers of targeted users, thereby allowing them to **capture their communications before** they are transmitted across an encrypted connection.149 Finally, and most importantly, **HTTPS is not designed to protect data at rest**. Even if a cloud provider properly implements this protocol, this does nothing to prevent a government agency from obtaining the data it seeks by means of a **compulsory order** requiring the service provider to furnish this data. Indeed, as Professor Peter Swire argues, the trend towards encrypting data in transit between users and cloud services may well result in governments shifting their attention from attacking the communication infrastructure to demanding that **cloud service providers hand over stored data** after it has been securely transmitted.150 The Snowden revelations already provide some evidence of this shift and the measures detailed in this Section could accelerate this trend. To counter this trend, governments confronted with encrypted communication channels could try to compel cloud providers to hand over their encryption keys, enabling the continued effective interception over telecommunications infrastructure (an option discussed further in Part IV).

2nc – at: pets

PETs fail – not technologically or economically feasible

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It is important to emphasize that adoption of the solutions discussed remains low even though some of them are ready for use. There are a number of reasons for this. First, some of these solutions, such as FHE, are at the very early stages of development.188 If service provision is limited to the mere storage of data in the cloud, it may be technically feasible for the service provider to anticipate and organize for encryption under the control of cloud users. However, if the cloud provider also has to perform processing operations on the encrypted data stored by its customers, the implementation of privacy-preserving PETs in the cloud context is far more challenging and may even be impossible for complex operations.189

Second, many cloud providers lack the incentive to adopt and further develop PETs based on advanced cryptographic solutions that would prevent them

from having access to user data. The reasons are obvious: many business models in the cloud industry depend on generating revenue based on access to customers' data (e.g., profiling users for purposes of serving them targeted ads).190 Thus, for many cloud service providers, the costs of implementing these PETs (loss of profits) outweigh the potential benefits (improved security and privacy guarantees for their customers).191 Arguably, the new emphasis on security and privacy in the cloud in response to the Snowden revelations might incentivize industry to consider developing and adopting similar measures. Notwithstanding the current lack of adoption, the point this Article seeks to emphasize is that if service providers were to deploy such measures, it would interfere with lawful access requests to cloud providers in some obvious ways. For example, a provider might simply be unable to share unencrypted customer data with law enforcement or intelligence agencies notwithstanding a lawful request for such access.192

Too many hurdles to client-side PETs – their ev. is theoretical

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What happens if the government serves a lawful request for the content of communications on a service provider whose customers utilize a client-side PET for encrypted email or chat? At best, the service providers may hand over encrypted data but these PETs prevent it from furnishing unencrypted data. On the other hand, the provider may fully comply with requests for traffic data unless the user combines a client-side PET with a collaborative PET like Tor.197

Cloud providers' attitudes to these client-side PETs are likely to remain ambivalent. On the one hand, they may decide to block their use because they interfere with their business model and desired uses of the service;198 on the other hand, they may embrace PETs as proof of their good faith efforts to ensure customer privacy in the cloud. By pointing out the possibility to adopt end-to-

end encryption solutions, companies could reassure users who are rightly worried about the surveillance of their communications.199

Although the availability of encryption solutions may seem attractive for users, they come with some well-documented downsides in terms of usability.200 As a result, only dedicated or expert users tend to take advantage of them. In fact this is another oft-cited reason for industry to shy away from promoting client-side encryption solutions. In addition, the client-side approach to security tends to rely on the free or open source software model, in which developers release their source code, thereby allowing the security community to review the code and determine that the software is indeed secure. From an ordinary user's perspective, this substitutes trust in a group of security experts in lieu of trusting the third-party services. Finally, it is true that the implementation of end-to-end encryption may help to protect against third party access to raw data through the service provider. From the perspective of managing information security more generally, however, many organizations and individuals may prefer trusting a dedicated service provider over having to rely on their own expertise.

Of course, the Snowden revelations may boost the adoption of end-to-end encryption as a way of limiting the widely publicized systematic monitoring of global Internet communications. Certainly, the NSA's targeting of major cloud service providers through programs like PRISM has spiked interest in end-to-end encryption solutions, at least according to all the **hoopla in the popular press.201 For the moment, however, there seems to be only a small niche market for services that cater to the demand for properly implemented end-to-end security, as evidenced by services such as Lavabit,202 Hushmail,203 Silent Circle,204 and Heml.is.205**

2nc – at: hushmail/lavabit

Our ev accounts for Hushmail and Lavabit – s-quo progression of corporate encryption solves

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TO TRANSNATIONAL SURVEILLANCE IN THE POST- SNOWDEN ERA, 66 Maine L. Rev. 488, September 2014, http://ssrn.com/abstract=2443604)//JJ

This may (or may not) be an accurate description of what happened in the Hushmail case.273 Hushmail secure email service offers its customers two options: a high-security option, which requires that users install and run a Java-based encryption applet and encrypts and decrypts email only on the customer's computer; and a low-security (non-Java) option, which is more convenient but less secure because it handles encryption and decryption on Hushmail's web server.274 As a result, Hushmail retains the ability to decrypt user's emails when they select the low-security option (via an "insider attack" like that against Lavabit) but no ability to do so when the customer selects the high-security option.275 Of course, Hushmail's design does not prevent the company from modifying the Java applet so that it captures the user's passphrase and sends it to Hushmail, thereby enabling the company to decrypt the email and share it with a third-party including the government. But it seems unlikely that the company would destroy its own business by subverting its software in this way and subject itself to a likely deceptive practice enforcement action under Section 5 of the FTC Act.276 Unlike Lavabit, none of the sealed documents in the Hushmail case have been leaked, so less information is available. Also, it is not clear whether the 2007 court order pertained to a high-security or a low-security user; or if Hushmail modified its Java encryption engine; or if, in the interests of full disclosure, it merely pointed out the possibility of doing so.277 In short, the Hushmail case exemplifies the dilemmas that the government may begin to face if service providers take the next logical step of adding government agencies to their threat models and designing systems that protect against valid court orders. And while the government has prevailed in its efforts to force niche players like Lavabit and Hushmail to capitulate, it may face a much greater challenge if major Internet firms like Microsoft, Google, and Facebook go down this path in response to the Snowden revelations.

AT: Space debris impact

Status quo solves space debris- NASA and NOAA prove

Haar and Leslie 14, Audrey Haar works at NASA's Goddard Space Flight Center and John Lesilie works at the NOAA Office of Communications and External Affairs, (10/22/14, NASA-NOAA Suomi NPP Satellite Team Ward Off Recent Space Debris Threat,

https://www.nasa.gov/content/goddard/nasa-noaa-suomi-npp-satellite-team-ward-off-recent-space-debris-threat)//AK

While space debris was the uncontrolled adversary in the award-winning space thriller film "Gravity," space debris, also known as "space junk," is an ongoing real-life concern for teams managing satellites orbiting Earth, including NOAA-NASA's Suomi National Polar-orbiting Partnership, or Suomi NPP, satellite. It is not unusual for satellites that have the capability of maneuvering to be repositioned to avoid debris or to maintain the proper orbit.

On an otherwise quiet Sunday on September 28, the Suomi NPP mission team was monitoring a possible close approach of a debris object. By early evening, the risk was assessed to be high enough to start planning a spacecraft maneuver to put the satellite into a safer zone, out of the path of the object classified in a size range of 4 inches up to 3.3 feet.

It was determined that the object (travelling at almost 17,000 mph) was approaching at a nearly "head on" angle, and could potentially only miss the Suomi NPP satellite by approximately 300 feet on Tuesday, September 30, if no action was taken. With that knowledge, the decision was made at 1:30 p.m. on Monday, September 29, for NOAA's Satellite Operations Facility, or NSOF, in Suitland, Maryland, to reposition Suomi NPP. Operational control as well as planning and execution of all Suomi NPP maneuvers take place at NSOF.

"Because Suomi NPP moves at a similar speed as the debris object, if there had been an impact, it would have occurred at a combined speed of nearly 35,000 mph. This would have been catastrophic not only to the satellite, but would result in thousands of pieces of new debris," said Harry Solomon, Mission Manager for Suomi NPP at NASA's Goddard Space Flight Center.

Space around Earth is littered with numerous man-made objects that could potentially collide with operating spacecraft and each other (creating more debris). There are more than 20,000 objects being monitored by the U.S. Department of Defense for satellite managers around the world.

Only about 1,000 of those 20,000 objects are operating spacecraft. The rest of the monitored space debris ranges in size from the size of a softball, to massive rocket bodies, all orbiting uncontrolled at relative speeds averaging about 22,300 mph in low-Earth orbit, where the majority of the objects reside.

Yet it is the unknown, often smaller, untracked objects that pose the biggest threat. "If a spacecraft is lost due to being hit by debris, the odds are the satellite will be hit by something the trackers can't see," said Nicholas Johnson, NASA chief scientist (retired) for orbital debris at Johnson Space Center in Houston.

That is exactly the scenario Solomon and his counterpart, Martin England, mission operations engineering lead at NSOF hope will never happen.

Risk Team Monitors Unmanned Missions Threats for NOAA and NASA

While NASA's Johnson Space Center manages monitored debris threats for spacecraft related to U.S. manned missions such as the International Space Station, the responsibility for unmanned missions managed by NASA falls to the Conjunction Assessment Risk Analysis, or CARA, team operating out of NASA Goddard.

About seven days before a potential threat, information from the Department of Defense is analyzed by the CARA team to evaluate predicted close approaches. CARA monitors and provides updated information about potential threats to satellite mission managers who then make a decision about the need to reposition their satellites in a procedure known as a Risk Mitigation Maneuver.

Since Suomi NPP's launch in October 2011, this recent reposition was the fourth Risk Mitigation Maneuver to avoid space debris. In this case, the object was a section of a Thorad-Agena launch vehicle used between 1966 and1972 primarily for Corona U.S. reconnaisssance satellites.

A previous Suomi NPP risk mitigation maneuver in January 2014 avoided a discarded booster from a Delta 1 launch vehicle, a type of rocket made in the United States for a variety of space missions from 1960 to 1990. There is also a significant amount of debris in Suomi NPP's orbit from the Chinese Fengyun-1C, a meteorological satellite China destroyed in January 2007 in a test of an anti-satellite missile. Another threat near Suomi NPP's orbit is the debris resulting from a 2009 collision of a functioning commercial communications satellite and a defunct Russian satellite.

Suomi NPP's job is to collect environmental observations of atmosphere, ocean and land for both NOAA's weather and oceanography operational missions and NASA's research mission to continue the long-term climate record to better understand the Earth's climate and long-term trends.

To accomplish those goals, the satellite maintains a position on orbit such that the desired path across the ground does not vary by more than 20 km (12 miles) on each side. This orbit is adjusted with regular planned maneuvers to maintain the proper orbit and angles for best information collection. But if a Risk Mitigation Maneuver to avoid space debris were to necessitate moving out of that desired collection zone, then yet another maneuver would be necessary to return to the optimum orbit position. These unplanned maneuvers tap into the finite amount of fuel on satellites and could potentially shorten mission life of a spacecraft if fuel is used more quickly than anticipated.

The amount of space debris is not constant. It generally increases every year, sometimes generated from debris collisions, which can potentially create additional debris fragments. But there are also debris reductions. One tracked object generally falls back to Earth daily, sometimes burning up to nothing upon re-entry, or falling into water or the large areas of low population density.

In addition, there are also natural events that help control debris. The sun is currently going through a period known as solar maximum, the term for a high period of solar activity. The increased number of sunspots and solar storms during solar maximum takes place approximately every 11 years. During this period, the extent of Earth's atmosphere increases due to solar heat generated by the increased amount of solar activity. As the atmosphere extends to higher altitudes, debris at these altitudes are then subjected to increased friction, known as drag, and as a result, space debris typically fall to Earth at a higher rate during solar maximum.

The Suomi NPP mission is a bridge between NOAA and NASA legacy Earth observing missions and NOAA's next-generation Joint Polar Satellite System, or JPSS. The next satellite, JPSS-1, is targeted for launch in early 2017.

Status quo mechanisms being strengthened now to solves space debris threats

Bonard 14, expert on the ISS and a space analyst, (Michael, 11/10/14, Commentary | Space Debris Mitigation: A New Hope for a Realistic Solution?, http://spacenews.com/42511space-debris-mitigation-a-new-hope-for-a-realistic-solution/)//AK

On Jan. 11, 2007, a Chinese antisatellite missile test completely fragmented a Chinese target satellite into millions of pieces of debris — nearly 800 debris fragments 10 centimeters or larger, nearly 40,000 debris fragments between 1 and 10 centimeters, and some 2 million fragments of 1 millimeter or larger.

On Feb. 10, 2009, the operational Iridium 33 and decommissioned Kosmos-2251 satellites collided at a speed of 42,120 kilometers per hour, destroying both satellites. In July 2011, more than 2,000 large debris fragments resulting from this collision were detected.

The international space station is routinely dodging debris that are tracked by ground-based radars.

Space debris constitutes a continuously growing threat to satellites and manned spacecraft. Very small debris creates potentially nonthreatening damage. Large debris can be detected by ground-based radars and avoided by spacecraft maneuvers. However, small- to medium-sized debris in low or medium Earth orbits constitutes the biggest threat. These orbits have the largest density of debris and the highest relative speeds, while the atmospheric drag is small enough that it may take centuries to have the debris re-enter the atmosphere.

In 1978, NASA scientist Donald J. Kessler showed that if the density of space debris in low Earth orbit is high enough, each collision generating space debris would increase the likelihood of further collisions. One serious implication is that the multiplication of debris in orbit will render space exploration, and even the use of satellites, increasingly dangerous and costly for many generations.

Multiple solutions to remove space debris have been explored and published.

One of these solutions involves physical contact between debris and the spacecraft:

Shielding of in-orbit spacecraft has been considered. However, the satellite community has recognized that the sheer weight of any reasonably efficient shielding would make launch not economically viable. Furthermore, the speeds involved in physical contacts would generate a cloud of additional debris.

“Catcher” spacecraft have also been proposed. Conceptually, highly mobile and agile spacecraft equipped with a “catching device” like a net or a robotic arm could be launched from Earth to intercept and catch debris. However, unless the catcher spacecraft are able to precisely match the speed and direction of the debris, any high-speed physical contact between a component of the catcher spacecraft and space debris will result in a collision, multiplying the debris. The cost of designing, developing, testing and launching such a spacecraft, with sufficient fuel onboard to

repeatedly intercept multiple debris fragments at different speeds, orbits and altitudes, does not seem to be economically viable.

Other solutions would use high-power lasers that could vaporize the surface of the debris in space, deflecting it and possibly changing its orbit to intersect the atmosphere. These solutions have the advantage of not requiring physical contact with the debris.

Space-based laser systems require designing, building, launching and operating a spacecraft equipped with a very high-power laser system. Such a design is utterly complex and expensive and very likely will not be economically viable.

Airborne laser systems are facing the same obstacles: The Boeing YAL-1 Airborne Laser Test Bed program, which was designed as a missile defense system to destroy tactical ballistic missiles, was terminated because of cost.

Ground-based laser systems are handicapped by the very long propagation distance, atmospheric absorption and distortion of the laser beam. Such parameters make this solution also not economically viable. Furthermore, being located in a single country, a ground-based laser system would raise serious political issues within the international community because of its implied antisatellite capability.

In summary, the cost/benefit ratio of the above solutions appears to be the main reason none has been implemented to date to proactively mitigate the most dangerous debris.

A more affordable approach for cleaning low and medium Earth orbits of small- to medium-sized orbital debris may be achievable. This approach would use the principle of deflecting an electrically charged, moving object in a magnetic field. The old television tube is probably the most common example of this principle, where electrical charges (electrons) are deflected by the magnetic fields generated by the tube deflection coils.

The application of this principle would use a space-based electron gun to generate an electron beam directed at the orbital debris. The beam would remotely impart an electric charge to the debris. Earth's magnetic field would exert a force on the electric charge of such debris crossing the magnetic field at high speed, modifying its orbit. Over time, the orbit would become highly elliptical and would intersect the upper atmosphere, where the debris would vaporize or fall to Earth. Preliminary calculations have shown that this concept is sound. The benefits include:

Cost: Lower cost is the major advantage of electromagnetic deflection.

Feasibility: There is no new or speculative technology to develop. Used in particle accelerators and in millions of old-style television tubes, the electron gun technology is very mature. The energy used to generate the electron beam is orders of magnitude lower than high-power lasers.

Risk: It would reduce the probability of creating additional debris by avoiding any physical contact.

The electron gun device could be integrated in an add-on module to the international space station.

The ISS is already in space, and there would be no new spacecraft to develop and launch.

The ISS has a large power-generation capability, while the electron gun would require only intermittent and modest amounts of energy to operate.

This solution would be more easily adopted by the international space community, since it does not have the capability to damage or destroy a spacecraft. This feature would be expected to encourage support and funding of the project by all the nations involved in space operations. The electromagnetic deflection concept would best be implemented as an international program, managed and coordinated by the space agencies of several countries.

As with any new technology development, there are still open questions associated with the deployment of this concept. A formal study would have to be conducted by space specialists to validate and test the concept and determine the optimum design parameters.

Areas that should be explored include:

The ability to precisely direct the electron beam at the debris. Although electrons can be sent at near-light speed, they are also deflected by the very magnetic field that will act on the debris, requiring precise aiming of the electron gun.

The ability of the target to store the electrons.

The retention of the charge by the target. Due to the constant bombardment of the target by the solar wind that comprises ionized particles, it is expected that the charge of the target will dissipate over time.

The dynamic response of the target trajectory under the influence of the deflecting force.

In conclusion, civil and government satellites as well as manned missions are currently exposed to the growing risk of collisions with debris, which may result in costly incidents, or accidents that could take human lives. It is essential to have a solution implemented as soon as possible. As of today, the electromagnetic deflection approach seems to be one of the most cost effective, most realistically achievable and least risky. It deserves to be further evaluated and pursued.

Space debris not a threat to humans

Chun 11, space debris analyst and contributor at People's Daily, (Yao, 9/28/11, Experts: No need to worry about falling space debris, http://en.people.cn/202936/7606918.html) //AK

As more and more satellites are being launched into the space, will the debris of the failed satellites bring disaster to earth? The experts from the Center for Space Science and Applied Research (CSSAR) under the Chinese Academy of Sciences say: "Don't panic, space junk will not fall on your head."

"Recently some reports may have caused certain panic in the public, who are worried that space debris will threaten people's survival. But, in fact we can rest assured that space debris will not hit people because the probability is minimal," said Gong Jiancun, deputy director of CSSAR.

Space debris will not pose a threat to humans, he said. However, the real reason why scientists are concerned about space debris is because of its potential to harm or hinder spacecraft.

Since 1957, when the first artificial satellite was launched into space, the amount of space debris has increased year by year. As of this week, there are more than 16,000 pieces of debris with a diameter of more than 10 centimeters in space, according to observation data from the United States.

This debris is distributed in different earth orbits: low orbit, hundreds of kilometers away from the earth; moderate-altitude orbit, thousands of kilometers away, and high orbit, tens of thousands of kilometers away. Because of this, the debris is not concentrated in a dense region of space.

Generally speaking, space debris is divided in three categories: large space debris, with a diameter of more than 10 centimeters; small space debris, with a diameter of less than 1 millimeter, and dangerous debris, with a diameter between large and small debris.

"If the debris falls to the earth, most of it will be burned away by the high temperature of thousands of degrees produced by the high-speed friction with the atmosphere. Even if a large chunk of space debris penetrated the atmosphere and posed a threat to the earth, mankind should be capable of defending against it," Gong said.

First, we can roughly estimate its orbit. With the estimation of its orbit, we can intercept it. Gong said that the U.S. has successfully intercepted a failed satellite using a missile. That satellite contained highly toxic substances. In order to prevent it from falling into the sea, the U.S. destroyed the satellite by a missile launched from a warship. China also has similar technologies and can disintegrate it in the space before it causes harm."

"Scientists also have come up with many other methods to clear the space debris. For example, we can leave some fuel in satellites and control the satellite to fly out of the original track," Gong said. "Some countries have developed passive technologies, such as launching a spacecraft to catch space debris and take it away. Other countries are developing satellites with mechanical arms, which not only can repair satellites but also can pull the failed satellites out of the orbit."

However, these technologies are not very mature. It is still uncertain when they will come into use, he said.

China turn

Chinese and U.S. tech industries are zero-sum – surveillance crowds out the U.S. market

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USA Freedom Act: How U.S. Surveillance Still Subverts U.S. Competitiveness, Information Technology and Innovation Foundation, June 2015, http://www2.itif.org/2015-beyond-usa-freedom-act.pdf?_ga=1.33178294.940386433.1435342104)//JJ

Protectionist policies in China have further strained the U.S. tech industry. In January 2015, the Chinese government adopted new regulations that forced companies that sold equipment to Chinese banks to turn over secret source code, submit to aggressive audits, and build en cryption keys into their products. 38 While ostensibly an attempt to strengthen cybersecurity in critical Chinese industries, many western tech companies saw these policies as a shot across the bow trying to force them out of China's markets. After all, the Chinese government ha d already launched a "de - IOE" movement — IOE stands for IBM, Oracle and EMC — to convince its state - owned banks to stop buying from these U.S. tech giants. 39 To be sure, the Chinese government recently halted this policy under U.S. pressur e. 40 However, the halted policy can be seen as a part of a larger clash between China and the United States over trade and cybersecurity. Indeed, these proposed barriers were in part a quid pro quo from China, after the United States barred Huawei, a major Chinese computer maker, from selling its products in the United States due to the fear that this equipment had "back doors" for the Chinese government. 41 Since the Snowden revelations essentially gave them cover, Chinese lawmakers have openly called for the use of domestic tech products over foreign goods both to boost the Chinese economy and in response to U.S. surveillance tactics. This system of retaliation has not only led to a degradation of business interests for U.S. tech companies in China, but also disrupted the dialogue between the U.S. government and China on cybersecurity issues. 4

Cybersecurity

1nc – no impact

No impact to cyberattacks – empirics – their ev is fear-mongering

Valeriano and Maness 5/13/15 – co-authors of Cyber War versus Cyber Realities, AND *Senior Lecturer in Social and Political Sciences at the University of Glasgow, AND **Visiting Fellow of Security and Resilience Studies at Northeastern University (Brandon and Ryan C., The Coming Cyberpeace: The Normative Argument Against Cyberwarfare, Foreign

Affairs, https://www.foreignaffairs.com/articles/2015-05-13/coming-cyberpeace)//JJ

The era of cyberconflict is upon us; at least, experts seem to accept that cyberattacks are the new normal. In fact, however, evidence suggests that cyberconflict is not as prevalent as many believe. Likewise, the severity of individual cyber events is not increasing, even if the frequency of overall attacks has risen. And an emerging norm against the use of severe state-based cybertactics contradicts fear-mongering news reports about a coming cyberapocalypse. The few isolated incidents of successful state-based cyberattacks do not a trend make. Rather, what we are seeing is cyberespionage and probes, not cyberwarfare. Meanwhile, the international consensus has stabilized around a number of limited acceptable uses of cybertechnology—one that prohibits any dangerous use of force.

Despite fears of a boom in cyberwarfare, there have been no major or dangerous hacks between countries. The closest any states have come to such events occurred when Russia attacked Georgian news outlets and websites in 2008; when Russian forces shut down banking, government, and news websites in Estonia in 2007; when Iran attacked the Saudi Arabian oil firm Saudi Aramco with the Shamoon virus in 2012; and when the United States attempted to sabotage Iran's nuclear power systems from 2007 to 2011 through the Stuxnet worm. The attack on Sony from North Korea is just the latest overhyped cyberattack to date, as the corporate giant has recovered its lost revenues from the attack and its networks are arguably more resilient as a result. Even these are more probes into vulnerabilities than full attacks. Russia's aggressions show that Moscow is willing to use cyberwarfare for disruption and propaganda, but not to inflict injuries or lasting infrastructural damage. The Shamoon incident allowed Iran to punish Saudi Arabia for its alliance with the United States as Tehran faced increased sanctions; the attack destroyed files on Saudi Aramco's computer network but failed to do any lasting damage. The Stuxnet incident also failed to create any lasting damage, as Tehran put more centrifuges online to compensate for virus-based losses and strengthened holes in their system. Further, these supposedly successful cases of cyberattacks are balanced by many more examples of unsuccessful ones. If the future of cyberconflict looks like today, the international community must reassess the severity of the threat.

Cyberattacks have demonstrated themselves to be more smoke than fire. This is not to suggest that incidents are on the decline, however. Distributed denial-of-service attacks and infiltrations increase by the minute—every major organization is probed constantly, but only for weaknesses or new infiltration methods for potential use in the future. Probes and pokes do not destabilize states or change trends within international politics. Even common cyber actions have little effect on levels of cooperation and conflict between states.

Cyberattacks won't result in nuclear war - airgapping solves

Green 2 – editor of The Washington Monthly (Joshua, "The Myth of Cyberterrorism", Washington Monthly, http://www.washingtonmonthly.com/features/2001/0211.green.html//DM)

There's just one problem: There is no such thing as cyberterrorism--no instance of anyone ever having been killed by a terrorist (or anyone else) using a computer. Nor is there compelling evidence that al Qaeda or any other terrorist organization has resorted to computers for any sort of serious destructive activity. What's more, outside of a Tom Clancy novel, computer security specialists believe it is virtually impossible to use the Internet to inflict death on a large scale, and many scoff at the notion that terrorists would bother trying. "I don't lie awake at night worrying about cyberattacks ruining my life," says Dorothy Denning, a computer science professor at Georgetown University and one of the country's foremost cybersecurity experts. "Not only does [cyberterrorism] not rank alongside chemical, biological, or nuclear weapons, but it is not anywhere near as serious as other potential physical threats like car bombs or suicide bombers."

Which is not to say that cybersecurity isn't a serious problem--it's just not one that involves terrorists. Interviews with terrorism and computer security experts, and current and former government and military officials, yielded near unanimous agreement that the real danger is from the criminals and other hackers who did $15 billion in damage to the global economy last year using viruses, worms, and other readily available tools. That figure is sure to balloon if more isn't done to protect vulnerable computer systems, the vast majority of which are in the private sector. Yet when it comes to imposing the tough measures on business necessary to protect against the real cyberthreats, the Bush administration has balked.

Crushing BlackBerrys

When ordinary people imagine cyberterrorism, they tend to think along Hollywood plot lines, doomsday scenarios in which terrorists hijack nuclear weapons, airliners, or military computers from halfway around the world. Given the colorful history of federal boondoggles--billion-dollar weapons systems that misfire, $600 toilet seats--that's an understandable concern. But, with few exceptions, it's not one that applies to preparedness for a cyberattack. "The government is miles ahead of the private sector when it comes to cybersecurity," says Michael Cheek, director of intelligence for iDefense, a Virginia-based computer security company with government and private-sector clients. "Particularly the most sensitive military systems."

Serious effort and plain good fortune have combined to bring this about. Take nuclear weapons. The biggest fallacy about their vulnerability, promoted in action thrillers like WarGames, is that they're designed for remote operation. "[The movie] is premised on the assumption that there's a

modem bank hanging on the side of the computer that controls the missiles," says Martin Libicki, a defense analyst at the RAND Corporation. "I assure you, there isn't." Rather, nuclear weapons and other sensitive military systems enjoy the most basic form of Internet security: they're "air-gapped," meaning that they're not physically connected to the Internet and are therefore inaccessible to outside hackers. (Nuclear weapons also contain "permissive action links," mechanisms to prevent weapons from being armed without inputting codes carried by the president.) A retired military official was somewhat indignant at the mere suggestion: "As a general principle, we've been looking at this thing for 20 years. What cave have you been living in if you haven't considered this [threat]?"

When it comes to cyberthreats, the Defense Department has been particularly vigilant to protect key systems by isolating them from the Net and even from the Pentagon's internal network. All new software must be submitted to the National Security Agency for security testing. "Terrorists could not gain control of our spacecraft, nuclear weapons, or any other type of high-consequence asset," says Air Force Chief Information Officer John Gilligan. For more than a year, Pentagon CIO John Stenbit has enforced a moratorium on new wireless networks, which are often easy to hack into, as well as common wireless devices such as PDAs, BlackBerrys, and even wireless or infrared copiers and faxes.

The September 11 hijackings led to an outcry that airliners are particularly susceptible to cyberterrorism. Earlier this year, for instance, Sen. Charles Schumer (D-N.Y.) described "the absolute havoc and devastation that would result if cyberterrorists suddenly shut down our air traffic control system, with thousands of planes in mid-flight." In fact, cybersecurity experts give some of their highest marks to the FAA, which reasonably separates its administrative and air traffic control systems and strictly air-gaps the latter. And there's a reason the 9/11 hijackers used box-cutters instead of keyboards: It's impossible to hijack a plane remotely, which eliminates the possibility of a high-tech 9/11 scenario in which planes are used as weapons.

Another source of concern is terrorist infiltration of our intelligence agencies. But here, too, the risk is slim. The CIA's classified computers are also air-gapped, as is the FBI's entire computer system. "They've been paranoid about this forever," says Libicki, adding that paranoia is a sound governing principle when it comes to cybersecurity. Such concerns are manifesting themselves in broader policy terms as well. One notable characteristic of last year's Quadrennial Defense Review was how strongly it focused on protecting information systems.

2nc – no impact

No escalation – restraint and third-party allies

Valeriano and Maness 5/13/15 – co-authors of Cyber War versus Cyber Realities, AND *Senior Lecturer in Social and Political Sciences at the University of Glasgow, AND **Visiting Fellow of Security and Resilience Studies at Northeastern University (Brandon and Ryan C., The Coming Cyberpeace: The Normative Argument Against Cyberwarfare, Foreign

Affairs, https://www.foreignaffairs.com/articles/2015-05-13/coming-cyberpeace)//JJ

NORMCORE IS HERE TO STAY

A protocol of restraint has emerged as the volume of cyberattacks has increased. State-based cyberattacks are expected, and in some cases tolerated, as long as they do not rise to the level of total offensive operations—direct and malicious incidents that could destroy infrastructure or critical facilities. These options are apparently off the table for states, since they would lead to physical confrontation, collateral damage, and economic retaliation.

The reproducibility of cyberattacks has also led states to exercise restraint. Enemies can replicate successful cyberweapons easily if source code and programs find their way into the wild or are reverse-engineered. Cyberweapons are not simple to design, either, which makes their use limited: Stuxnet took years of work by U.S. intelligence (with help from Israel) and cost hundreds of millions of dollars—and it still failed. The risk of creating collateral damage is high, since cyberweaponry cannot provide surgical precision and can spread into other networks of possible allies of the attackers. For example, the Stuxnet worm, intended for Iran's nuclear program's network, showed up in Azerbaijan, India, Indonesia, and Pakistan, among other countries. As witnessed in the Russian attack on Georgia, the potential for conflict diffusion is high, as third-party allies can enter conflicts easily. Estonia sent its Computer Emergency Readiness Team experts to Georgia to keep the country's crucial networks up and running. Poland freed up bandwidth for servers in its territory to keep Georgian government websites up and its people informed. Finally, the risk of retaliation is high, as it is in any war, especially as attribution of perpetrators is getting easier to trace with better forensic techniques. The only drawback is that exposing attribution capabilities often exposes ongoing infiltration methods.

Attacks severity is nil

Valeriano and Maness 5/13/15 – co-authors of Cyber War versus Cyber Realities, AND *Senior Lecturer in Social and Political Sciences at the University of Glasgow, AND **Visiting Fellow of Security and Resilience Studies at Northeastern University (Brandon and Ryan C., The Coming Cyberpeace: The Normative Argument Against Cyberwarfare, Foreign

Affairs, https://www.foreignaffairs.com/articles/2015-05-13/coming-cyberpeace)//JJ

All of these considerations have meant that, so far, cyberconflict has adhered to existing international conflict norms. That there have been no major operations resulting in death or the destruction of physical equipment (outside of the Saudi Aramco incident and Stuxnet) suggests trends toward stability and safety. Cyberoperations are increasing, but only in terms of small-scale actions that have limited utility or damage potential. The truly dangerous cyberactions that many warn against have not occurred, even in situations where observers would think them most likely: within the Ukrainian conflict or during NATO's 2011 operations in Libya. The only demonstrable cyberactivity in the Ukraine crisis has been espionage-level attacks. There is no propaganda, denial of service, or worm or virus activity, as there was in past conflicts involving Russia and post-Soviet states.

The overall trend in cyberwarfare indicates that the international community is enjoying a period of stability. The chart below demonstrates that although cybertactics are increasingly popular, the severity of these attacks remains low. On a scale of one to five, where one is a nuisance attack (a website being defaced, for example) and five is a cyber-related death, few attacks register above a two.

The risk of harmful cyberattacks is exaggerated

Tucker 14 – Patrick Tucker is technology editor for Defense One. He's also the author of The Naked Future: What Happens in a World That Anticipates Your Every Move? (Current, 2014). Previously, Tucker was deputy editor for The Futurist for nine years. Tucker has written about emerging technology in Slate, The Sun, MIT Technology Review, Wilson Quarterly, The American Legion Magazine, BBC News Magazine, Utne Reader, and elsewhere. (Patrick, "Major Cyber Attack Will Cause Significant Loss of Life By 2025, Experts Predict", Defense One, October 29, 2014, http://www.defenseone.com/threats/2014/10/cyber-attack-will-cause-significant-loss-life-2025-experts-predict/97688//DM)

Other experts told Pew that military contractors, facing declining business for missiles and tanks, have purposefully overblown the threats posed by cyber attacks to scare up an enemy for the nation to arm against.

"…This concern seems exaggerated by the political and commercial interests that benefit from us directing massive resources to those who offer themselves as our protectors. It is also exaggerated by the media because it is a dramatic story," said Joseph Guardin, a principal researcher at Microsoft Research. "It is clear our leaders are powerless to rein in the military-industrial-intelligence complex, whose interests are served by having us fearful of cyber attacks. Obviously there will be some theft and perhaps someone can exaggerate it to claim tens of billions in losses, but I don't expect anything dramatic and certainly don't want to live in fear of it."

Guardin, (remember, he does work for Microsoft) is joined by other experts who agree that future cyber attacks will resemble those of today: big headlines to little real effect. Data and intellectual property theft will happen, possibly causing inconvenience for consumers and revenue loss for corporations, but the digital apocalypse is not nigh.

"There will have been major cyber attacks, but they are less likely to have caused widespread harm. They will be stealth attacks to extract information and exploit it for commercial and political gain. Harm to an enemy is only a desire of less sophisticated individuals. Anyone who amasses the ability to mount a major cyber attack, better than their opponent, also doesn't want to lose their position of advantage. They are likely to shift to strategies of gain for their own position, rather than explicit harm to their victim, which would alert their victim and close off their channels of attack, and set back their advantageous position," said Bob Briscoe, chief researcher in networking and infrastructure for British Telecom.

Cyberattacks lower violence – they don't put people in danger

Rid 13 - THOMAS RID is a Reader in War Studies at King's College London. His most recent book is Cyber War Will Not Take Place (Oxford University Press, 2013), from which this essay is adapted. (Thomas, "Cyberwar and Peace: Hacking can reduce real world violence", Foreign Affairs, December 2013, https://www.foreignaffairs.com/articles/2013-10-15/cyberwar-and-peace//DM)

Cyberwar Is Coming!" declared the title of a seminal 1993 article by the RAND Corporation analysts John Arquilla and David Ronfeldt, who argued that the nascent Internet would fundamentally transform warfare. The idea seemed fanciful at the time, and it took more than a decade for members of the U.S. national security establishment to catch on. But once they did, a chorus of voices resounded in the mass media, proclaiming the dawn of the era of cyberwar and warning of its terrifying potential. In February 2011, then CIA Director Leon Panetta warned Congress that "the next Pearl Harbor could very well be a cyberattack." And in late 2012, Mike McConnell, who had served as director of national intelligence under President George W. Bush, warned darkly that the United States could not "wait for the cyber equivalent of the collapse of the World Trade Centers."

Yet the hype about everything "cyber" has obscured three basic truths: cyberwar has never happened in the past, it is not occurring in the present, and it is highly unlikely that it will disturb the future. Indeed, rather than heralding a new era of violent conflict, so far the cyber-era has been defined by the opposite trend: a computer-enabled assault on political violence. Cyberattacks diminish rather than accentuate political violence by making it easier for states, groups, and individuals to engage in two kinds of aggression that do not rise to the level of war: sabotage and espionage. Weaponized computer code and computer-based sabotage operations make it possible to carry out highly targeted attacks on an adversary's technical systems without directly and physically harming human operators and managers. Computer-assisted attacks make it possible to steal data without placing operatives in dangerous environments, thus reducing the level of personal and political risk.

Cyber conflicts are nonviolent - empirics

Rid 13 - THOMAS RID is a Reader in War Studies at King's College London. His most recent book is Cyber War Will Not Take Place (Oxford University Press, 2013), from which this essay

is adapted. (Thomas, "Cyberwar and Peace: Hacking can reduce real world violence", Foreign Affairs, December 2013, https://www.foreignaffairs.com/articles/2013-10-15/cyberwar-and-peace//DM)

THE THIN CASE FOR CYBERWAR

One reason discussions about cyberwar have become disconnected from reality is that many commentators fail to grapple with a basic question: What counts as warfare? Carl von Clausewitz, the nineteenth-century Prussian military theorist, still offers the most concise answer to that question. Clausewitz identified three main criteria that any aggressive or defensive action must meet in order to qualify as an act of war. First, and most simply, all acts of war are violent or potentially violent. Second, an act of war is always instrumental: physical violence or the threat of force is a means to compel the enemy to accept the attacker's will. Finally, to qualify as an act of war, an attack must have some kind of political goal or intention. For that reason, acts of war must be attributable to one side at some point during a confrontation.

No known cyberattack has met all three of those criteria; indeed, very few have met even one. Consider three incidents that today's Cassandras frequently point to as evidence that warfare has entered a new era. The first of these, a massive pipeline explosion in the Soviet Union in June 1982, would count as the most violent cyberattack to date -- if it actually happened. According to a 2004 book by Thomas Reed, who was serving as a staffer on the U.S. National Security Council at the time of the alleged incident, a covert U.S. operation used rigged software to engineer a massive explosion in the Urengoy-Surgut-Chelyabinsk pipeline, which connected Siberian natural gas fields to Europe. Reed claims that the CIA managed to insert malicious code into the software that controlled the pipeline's pumps and valves. The rigged valves supposedly resulted in an explosion that, according to Reed, the U.S. Air Force rated at three kilotons, equivalent to the force of a small nuclear device.

But aside from Reed's account, there is hardly any evidence to prove that any such thing happened, and plenty of reasons to doubt that it did. After Reed published his book, Vasily Pchelintsev, who was reportedly the KGB head of the region when the explosion was supposed to have taken place, denied the story. He surmised that Reed might have been referring to a harmless explosion that happened not in June but on a warm April day that year, caused by pipes shifting in the thawing ground of the tundra. Moreover, no Soviet media reports from 1982 confirm that Reed's explosion took place, although the Soviet media regularly reported on accidents and pipeline explosions at the time. What's more, given the technologies available to the United States at that time, it would have been very difficult to hide malicious software of the kind Reed describes from its Soviet users.

Another incident often related by promoters of the concept of cyberwar occurred in Estonia in 2007. After Estonian authorities decided to move a Soviet-era memorial to Russian soldiers who died in World War II from the center of Tallinn to the city's outskirts, outraged Russian-speaking Estonians launched violent riots that threatened to paralyze the city. The riots were accompanied by cyber-assaults, which began as crude disruptions but became more sophisticated after a few days, culminating in a "denial of service" attack. Hackers hijacked up to 85,000 computers and used them to overwhelm 58 Estonian websites, including that of the country's largest bank, which the attacks rendered useless for a few hours.

Estonia's defense minister and the country's top diplomat pointed their fingers at the Kremlin, but they were unable to muster any evidence. For its part, the Russian government denied any

involvement. In the wake of the incident, Estonia's prime minister, Andrus Ansip, likened the attack to an act of war. "What's the difference between a blockade of harbors or airports of sovereign states and the blockade of government institutions and newspaper websites?" he asked. It was a rhetorical question, but the answer is important: unlike a naval blockade, the disruption of websites is not violent -- indeed, not even potentially violent. The choice of targets also seemed unconnected to the presumed tactical objective of forcing the government to reverse its decision on the memorial. And unlike a naval blockade, the attacks remained anonymous, without political backing, and thus unattributable.

A year later, a third major event entered the cyber-Cassandras' repertoire. In August 2008, the Georgian army attacked separatists in the province of South Ossetia. Russia backed the separatists and responded militarily. The prior month, in what might have been the first time that an independent cyberattack was launched in coordination with a conventional military operation, unknown attackers had begun a campaign of cyber-sabotage, defacing prominent Georgian websites, including those of the country's national bank and the Ministry of Foreign Affairs, and launching denial-of-service attacks against the websites of Georgia's parliament, its largest commercial bank, and Georgian news outlets. The Georgian government blamed the Kremlin, just as the Estonians had done. But Russia again denied sponsoring the attacks, and a NATO investigation later found "no conclusive proof" of who had carried them out.

The attack set off increasingly familiar alarm bells within American media and the U.S. national security establishment. "The July attack may have been a dress rehearsal for an all-out cyberwar," an article in The New York Times declared. Richard Clarke, a former White House cybersecurity czar, warned that the worst was yet to come: the Georgian attack did not "begin to reveal what the Russian military and intelligence agencies could do if they were truly on the attack in cyberspace." Yet the actual effects of these nonviolent events were quite mild. The main damage they caused was to the Georgian government's ability to communicate internationally, thus preventing it from getting out its message at a critical moment. But even if the attackers intended this effect, it proved short-lived: within four days after military confrontations had begun in earnest, the Georgian Foreign Ministry had set up an account on Google's blog-hosting service. This move helped the government keep open a channel to the public and the news media. What the Internet took away, the Internet returned.

Cyberweapons can't do damage directly and can't inflict fear

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Yet even cyberattacks that cause damage do so only indirectly. As an agent of violence, computer code faces a very basic limit: it does not have its own force or energy. Instead, any cyberattack with the goal of material destruction or harming human life must utilize the force or energy embedded in its target: for example, shutting down an air traffic control system and causing trains or planes to crash or disrupting a power plant and sparking an explosion. Yet besides Stuxnet, there is no proof that anyone has ever successfully launched a major attack of this sort. Lethal cyberattacks, while certainly possible, remain the stuff of fiction: none has ever killed or even injured a single human being. Thanks to its lack of direct physical impact, code-induced violence

also has less emotional impact. It would be difficult for a cyberattack to produce the level of fear that coordinated campaigns of terrorism or conventional military operations produce.

Owing to their invisibility, cyberweapons also lack the symbolic power of traditional ones. Displays of weaponry, such as the elaborate military parades put on by China and North Korea, sometimes represent nothing more than nationalist pageantry. But revealing one's arsenal can also serve tactical and strategic ends, as when countries deploy aircraft carriers to demonstrate their readiness to use force or carry out operations designed to intimidate the enemy, such as using military aircraft to conduct deliberately low flyovers. Indeed, displaying weapons systems and threatening to use them can prove more cost-efficient than their actual use. But cyberweapons are hard to brandish.

AT: China impact

Chinese cyberattack threats are exaggerated – the US maintains significant competitive advantages

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Policymakers in the United States often portray China as posing a serious cybersecurity threat. In 2013 U.S. National Security Adviser Tom Donilon stated that Chinese cyber intrusions not only endanger national security but also threaten U.S. firms with the loss of competitive advantage. One U.S. member of Congress has asserted that China has "laced the U.S. infrastructure with logic bombs." Chinese critics, meanwhile, denounce Western allegations of Chinese espionage and decry National Security Agency (NSA) activities revealed by Edward Snowden. The People's Daily newspaper has described the United States as "a thief crying 'stop thief.'" Chinese commentators increasingly call for the exclusion of U.S. internet firms from the Chinese market, citing concerns about collusion with the NSA, and argue that the institutions of internet governance give the United States an unfair advantage.

The rhetorical spiral of mistrust in the Sino-American relationship threatens to undermine the mutual benefits of the information revolution. Fears about the paralysis of the United States' digital infrastructure or the hemorrhage of its competitive advantage are exaggerated. Chinese cyber operators face underappreciated organizational challenges, including information overload and bureaucratic compartmentalization, which hinder the weaponization of cyberspace or absorption of stolen intellectual property. More important, both the United States and China have strong incentives to moderate the intensity of their cyber exploitation to preserve profitable interconnections and avoid costly punishment. The policy backlash against U.S. firms and liberal internet governance by China and others is ultimately more worrisome for U.S. competitiveness than espionage; ironically, it is also counterproductive for Chinese growth.

The United States is unlikely to experience either a so-called digital Pearl Harbor through cyber warfare or death by a thousand cuts through industrial espionage. There is, however, some danger of crisis miscalculation when states field cyberweapons. The secrecy of cyberweapons' capabilities and the uncertainties about their effects and collateral damage are as likely to confuse friendly militaries as they are to muddy signals to an adversary. Unsuccessful preemptive cyberattacks could reveal hostile intent and thereby encourage retaliation with more traditional (and reliable) weapons. **Conversely, preemptive escalation spurred by fears of cyberattack could encourage the target to use its cyberweapons before it loses the opportunity to do so.** Bilateral dialogue is essential for reducing the risks of misperception between the United States and China in the event of a crisis.

THE U.S. ADVANTAGE

The secrecy regarding the cyber capabilities and activities of the United States and China creates difficulty in estimating the relative balance of cyber power across the Pacific. Nevertheless, the United States appears to be gaining an increasing advantage. For every type of purported Chinese cyber threat, there are also serious Chinese vulnerabilities and growing Western strengths.

Much of the international cyber insecurity that China generates reflects internal security concerns. China exploits foreign media and digital infrastructure to target political dissidents and minority populations. The use of national censorship architecture (the Great Firewall of China) to redirect inbound internet traffic to attack sites such as GreatFire.org and GitHub in March 2015 is just the latest example of this worrisome trend. Yet prioritizing political information control over technical cyber defense also damages China's own cybersecurity. Lax law enforcement and poor cyber defenses leave the country vulnerable to both cybercriminals and foreign spies. The fragmented and notoriously competitive nature of the Communist Party state further complicates coordination across military, police, and regulatory entities.

There is strong evidence that China continues to engage in aggressive cyber espionage campaigns against Western interests. Yet it struggles to convert even legitimately obtained foreign data into competitive advantage, let alone make sense of petabytes of stolen data. Absorption is especially challenging at the most sophisticated end of the value chain (e.g., advanced fighter aircraft), which is dominated by the United States. At the same time, the United States conducts its own cyber espionage against China , as the Edward Snowden leaks dramatized, which can indirectly aid U.S. firms (e.g., in government trade negotiations). **China's uneven industrial development, fragmented cyber defenses, erratic cyber tradecraft, and the market dominance of U.S. technology firms provide considerable advantages to the United States.**

Despite high levels of Chinese political harassment and espionage, there is little evidence of skill or subtlety in China's military cyber operations. Although Chinese strategists describe cyberspace as a highly asymmetric and decisive domain of warfare, China's military cyber capacity does not live up to its doctrinal aspirations. A disruptive attack on physical infrastructure requires careful testing, painstaking planning, and sophisticated intelligence. Even experienced U.S. cyber operators struggle with these challenges. By contrast, the Chinese military is rigidly hierarchical and has no wartime experience with complex information systems. Further, China's pursuit of military "informatization" (i.e., emulation of the U.S. network-centric style of operations) increases its dependence on vulnerable networks and exposure to foreign cyberattack.

To be sure, China engages in aggressive cyber campaigns, especially against nongovernmental organizations and firms less equipped to defend themselves than government entities. These

activities, however, do not constitute major military threats against the United States, and they do nothing to defend China from the considerable intelligence and military advantages of the United States.

No Chinese cyberattack – China is exercising restraint

Kyodo News Service 15 – Japan's leading news network. ("China urges caution after N. Korean hacking sanctions", Kyodo News Service, proquest, January 5, 2015//DM)

China called for restraint Monday on actions that could lead to increased tension on the Korean Peninsula after the United States sanctioned North Korea over recent provocations, including alleged cyber attacks.

"Relevant parties should act with caution, avoid taking actions that might further escalate tension and jointly safeguard the peace and stability of the peninsula," Chinese Foreign Ministry spokeswoman Hua Chunying said at a regular press briefing.

The U.S. Treasury Department announced a package of sanctions Friday aimed at three North Korean entities and 10 individuals, some of which have links to China.

The announcement came after a U.S. Federal Bureau of Investigations report named Pyongyang as the perpetrator of a major hacking attack on Sony Pictures Entertainment Inc. thought to be motivated by anger over a film depicting the assassination of North Korean leader Kim Jong Un.

While criticizing the release of the film, Pyongyang has denied involvement in the cyberattack.

Although Hua did not mention any country by name, she said **China "opposes cyber attacks of all forms"** and "does not allow any country or individual to launch cyber attacks and illegal activities using China's infrastructure or doing so inside China."

1nc – solvency

Alt cause to cybersecurity threat – lack of cybersecurity professionals

Sarkar 14 – writer for Fierce Government. (Dibya, "Shortage of cybersecurity pros in government, business potentially undermines national cybersecurity, finds RAND", Fierce Government IT, http://www.fiercegovernmentit.com/story/shortage-cybersecurity-pros-government-business-potentially-undermines-nati/2014-06-20//DM)

Is there a shortage of cybersecurity professionals in the federal government and private sector that's leaving the U.S. vulnerable to cyber attacks?

In a new report, (pdf) RAND researchers sought to answer this question by thoroughly reviewing studies on the subject, interviewing experts and examining what's been written about the labor market for this field.

The short answer is yes.

RAND researchers found that several "excellent" reports from Booz Allen Hamilton and the Department of Homeland Security, among others, **have said that indeed there's a shortage, potentially undermining the nation's cybersecurity.**

Alt cause to poor cybersecurity – lax governmental policies

Castro 15 – Contributing writer at The Hill (Daniel, "Government apathy is the barrier to better cybersecurity", The Hill, June 17th, 2015, http://thehill.com/blogs/pundits-blog/technology/245262-government-apathy-is-the-barrier-to-better-cybersecurity//DM)

When the federal government announced earlier this month that Chinese hackers had stolen sensitive personnel records of 4.2 million current and former government employees (myself included), the biggest surprise was that it had taken so long for this kind of breach to occur. The truth is that it was less an indicator of the Chinese government's technical prowess than it was proof of the U.S. federal government's lackadaisical approach to securing its computer systems.

Many of the security vulnerabilities that likely contributed to the data breach had already been uncovered by government auditors. Obviously, this was to no avail. But rather than pointing fingers merely to score political points, policymakers should use this unprecedented breach to catalyze substantive change to the federal government's approach to information security by creating a zero-tolerance policy that drives real change.

The most frustrating part of this whole affair is that it might have been prevented if the target of the breach, the Office of Personnel Management (OPM), had followed the federal rules for information security. The Federal Information Security Management Act outlines steps an agency must take to secure its systems. In 2014, the inspector general for OPM found many areas where it did not follow these baseline security practices. For example, it failed to routinely scan its servers for vulnerabilities, implement multi-factor authentication for remote access or maintain a comprehensive inventory of systems. Findings this substantial should have sent shockwaves through the government, but they instead elicited a collective shrug from officials who have grown accustomed to subpar security practices.

While OPM's problems were more severe than other agencies, it is certainly not alone. For example, not counting the Department of Defense, **only 41 percent of federal agencies have implemented the minimum authentication requirements for accessing federal networks**. Federal agencies are routinely targets for cyberattacks, so ignoring these vulnerabilities comes at great risk. The long-term solution to this problem is to build a culture in federal agencies that does not tolerate such poor performance.

Achieving this will require strong leadership from within agencies and vigorous oversight from Congress. When agencies fall short in meeting baseline standards, agency leaders should be held responsible. Agencies that fail to address these problems should face budget cuts and agency heads should be replaced. The purpose of these accountability measures is not to assign blame, but to drive structural change by creating a sense of urgency for improving federal information security practices.

In the short-term, President Obama should issue an executive order to address one of the primary reasons this most recent attack was possible: improperly secured data. The president should require agencies to submit to Congress within 90 days a confidential, comprehensive and

prioritized inventory of every system that stores sensitive information in an unencrypted format. In addition, federal chief information officers (CIOs) should be required to submit plans to secure these systems, including any additional funding they might need. Congress can then decide if these agencies are deficient due to a lack of resources or their own inadequacies, and if the former, they should provide immediate funding to address the shortcomings. CIOs should provide Congress with an update every six months until the job is accomplished.

Given the scope and sensitivity of the personal information that the U.S. government collects, doing a job that is "good enough for government" is no longer acceptable when it comes to information security. Attacks on the government's information systems are not going to stop. The question is whether or not we will be prepared.

2nc – personnel alt cause

Alt cause - lack of cybersecurity professionals is undermining US cyberdefenses

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Within the last five years there has been a widespread drumbeat of concern about the perceived difficulty of finding qualified people to defend the nation's networks, currently under assault by terrorists, spies, and criminals.

According to a 2010 story on NPR, "There may be no country on the planet more vulnerable to a massive cyberattack than the United States, where financial, transportation, telecommunications and even military operations are now deeply dependent on data networking. U.S. industry, government and military operations are all at risk of an attack on complex computer systems, analysts warn. What's worse: U.S. security officials say the country's cyberdefenses are not up to the challenge. In part, **it's due to having too few computer security specialists and engineers with the skills and knowledge necessary to do battle against would-be adversaries.** The protection of U.S. computer systems essentially requires an army of cyberwarriors, but the recruitment of that force is suffering" (Gjelten, 2010).

As bad as matters are for well-heeled employers, the problem may be more severe for the federal government, said to lack the people to defend the networks that help defend the nation. In 2009, Washington Post reported, "The federal government is struggling to fill a growing demand for skilled computer-security workers, from technicians to policymakers, at a time when network

attacks are rising in frequency and sophistication. Demand is so intense that it has sparked a bidding war among agencies and contractors for a small pool of 'special' talent: skilled technicians with security clearances. Their scarcity is driving up salaries, depriving agencies of skills, and in some cases affecting project quality, industry officials said." It further cited an employee who won a 45 percent raise by jumping from the NSA to a major contractor, and a further raise by jumping to a small employer who observed, "The pay difference is so dramatic now, you can't ignore it." Another Post source, a military officer with 20 years' cybersecurity experience and a coveted security clearance, was overwhelmed: "It's mind-roasting. . . . I've had people call my house, recruiters for defense contractors . . . probably 20 calls" (Nakashima and Krebs, 2009).

Last May, Bloomberg News quoted Diane Miller, Northrop's program director for the CyberPatriot contest, who said "We just have a shortage of people applying" for 700 currently open positions. This observation was echoed by Ryan Walters, who founded mobile data security company TerraWi Inc. in 2009: "I cannot hire enough cybersecurity professionals, I can't find them, they're not qualified." His 12-person firm was planning to expand to 20; the article went on to note, "Listings for cybersecurity positions rose 73 percent in the five years through 2012, 3.5 times faster than postings for computer jobs as a whole, according to Boston-based Burning Glass, a labor market analytics firm that collects data from more than 22,000 online jobs sites." Alan Paller, CEO of SANS, a cybersecurity-education organization, told Bloomberg "We have a huge number of frequent flyers and a tiny number of fighter pilots." Finally, the story cited a letter written by JPMorgan Chase's CEO saying that the bank "spends approximately $200 million to protect ourselves from cyberwarfare and to make sure our data are safe and secure [with 600 people dedicated to the task]. . . . This number will grow dramatically over the next three years" (Rastello and Smialek 2013).

Those who are qualified are spoiled for choices: "Pretty much everyone here at the conference could quit their jobs and have another job by the end of the day," said Gunter Ollmann, vice president of research at Damballa, an Atlanta-based security firm focused on cyberthreats and other remotely controlled criminal threats. "The number of security companies is growing" (Brannigan, 2012).

In mid-2012, Jeff Moss, a prominent hacking expert who sits on the Department of Homeland Security Advisory Council, told a Reuters conference, "**None of the projections look positive. . . . The numbers I've seen look like shortages in the 20,000s to 40,000s for years to come**." A study earlier this year by the industry group (ISC)2 found that 83 percent of federal hiring managers surveyed said it was extremely difficult to find and hire qualified candidates for cybersecurity jobs (Lord and Stokes, 2012).

These are serious statements of concern. But is what is commonly referred to as a shortage of cybersecurity professionals a long-term crisis or a short-term problem? Is it pervasive throughout the sector or in certain segments within the sector? What potential policy options exist for addressing these concerns? Our report addresses these questions.

AT: outsourcing solves worker shortages

Outsourcing doesn't solve worker shortages

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Over the last 20 or more years, the government has finessed the problem of recruiting really skilled individuals by outsourcing the work they would have done to private contractors. The outsourcers can then pay market prices to deliver from qualified individuals services otherwise unavailable from direct employees.

But **outsourcing does not solve all problems.** First, many military and some civilian tasks cannot be performed by private contractors. Some of the reasons involve the hazards of being deployed in war zones or on warfare platforms (although these have loosened considerably over the last quarter century). More dominant are the legal issues associated with who can do what, many associated with the chain of military command. Second, it takes federal employees to oversee the contracting process—at very least to establish requirements, evaluate proposals, and select contractors. Oversight is important. It takes talent to write a good specification for contracted work, particularly if rapid changes in the environment suggest a corresponding requirement for rapid changes in what contractors are asked to do. If federal employees lack the skills to write such specifications (and particularly if the contractors understand as much), they are likely to be spending federal money inefficiently; hence, they cannot be supplanted. Third, outsourcing creates a vicious circle. If the "cool jobs" are given to contractors (Homeland Security Advisory Council, 2012), then extant and even prospective federal employees will have that much less motivation to stay or to join the federal government to work on cyber problems. This then reduces the quality of the federal labor pool, which then reinforces the initial tendency to assign the "cool jobs" to contractors.

Solvency

FAA exclusivity

1nc – FAA exclusivity

Plan doesn't restore trust – too small, NSA hacking, and metadata exemptions

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https://www.emptywheel.net/2014/11/24/a-radical-proposal-of-following-the-law/

Mieke Eoyang, the Director of Third Way's National Security Program, has what Ben Wittes bills as a "disruptive" idea: to make US law the exclusive means to conduct all surveillance involving US companies.

> But reforming these programs doesn't address another range of problems—those that relate to allegations of overseas collection from US companies without their cooperation.
>
> Beyond 215 and FAA, media reports have suggested that there have been collection programs that occur outside of the companies' knowledge. American technology companies have been outraged about media stories of US government intrusions onto their networks overseas, and the spoofing of their web pages or products, all unbeknownst to the companies. These stories suggest that the government is creating and sneaking through a back door to take the data. As one tech employee said to me, "the back door makes a mockery of the front door."
>
> As a result of these allegations, companies are moving to encrypt their data against their own government; they are limiting their cooperation with NSA; and they are pushing for reform. Negative international reactions to media reports of certain kinds of intelligence collection abroad have resulted in a backlash against American technology companies, spurring data localization requirements, rejection or cancellation of American contracts, and raising the specter of major losses in the cloud computing industry. These allegations could dim one of the few bright spots in the American economic recovery: tech.
>
> [snip]
>
> How about making the FAA the exclusive means for conducting electronic surveillance when the information being collected is in the custody of an American company? This could clarify that the executive branch could not play authority shell-games and claim that Executive Order 12333 allows it to obtain information on overseas non-US person targets that is in the custody of American companies, unbeknownst to those companies.
>
> As a policy matter, it seems to me that if the information to be acquired is in the custody of an American company, the intelligence community should ask for it, rather than take it

> without asking. American companies should be entitled to a higher degree of forthrightness from their government than foreign companies, even when they are acting overseas.

Now, I have nothing against this proposal. It seems necessary but **wholly inadequate to restoring trust** between the government and (some) Internet companies. Indeed, it represents what should have been the practice in any case.

Let me first take a detour and mention a few difficulties with this. First, while I suspect this might be workable for content collection, remember that the government was not just collecting content from Google and Yahoo overseas — they were also using their software to hack people. NSA is going to still want the authority to hack people using weaknesses in such software, such as it exists (and other software companies probably still are amenable to sharing those weaknesses). That points to the necessity to start talking about a legal regime for hacking as much as anything else — one that parallels what is going on with the FBI domestically.

Also, this idea would not cover the metadata collection from telecoms which are domestically covered by Section 215, which will surely increasingly involve cloud data that more closely parallels the data provided by FAA providers but that would be treated as EO 12333 overseas (because thus far metadata is still treated under the Third Party doctrine here). This extends to the Google and Yahoo metadata taken off switches overseas. So, such a solution would be either limited or (if and when courts domestically embrace a mosaic theory approach to data, including for national security applications) temporary, because some of the most revealing data is being **handed over willingly** by telecoms overseas.

And before we institute this, we ought to know why the government was stealing overseas anyway. Was it to get around already broadly defined FISA Amendments Act certifications, including a Foreign Government one that can and apparently has been used for other purposes? Was it to collect on Americans who otherwise couldn't be picked up via a legitimate target? I've been told the government was stealing algorithms, as much as content. That raises real questions about whether it is proper for the government to demand that kind of proprietary analysis done by Internet companies, one that would also need to be resolved in any such law.

Finally, one other problem with this is the criminal counterpart, the fact that DOJ is demanding Microsoft respond to domestic warrants for content stored in Ireland. What will restore other countries' trust — and therefore the international viability of these companies — is sovereignty, which is something the government has been assiduously chipping away at even in the criminal context. Thus, while a lot of intelligence people poo poo the notion of sovereignty in spying, until you solve that on the overt stuff, you're still going to be killing your tech base. So again, this only solves part of the problem, and even since the Snowden leaks started, DOJ seems intent only to double down.

Moreover, I don't think this is the sphere in which the response to NSA's theft overseas will play out, it will be the technological sphere, at least in the near term. What no one within the National Security establishment wants to admit is how badly NSA already shat the bed by stealing Google's data overseas. Google is a worthy technical adversary to NSA (which is not to say it's not a voracious spy in its own right, serving its own needs). And it will take a lot — far more than simply agreeing to what should have been the practice in any case — to get Google to not treat the government as an technical adversary, at least insofar as protecting its own networks

generally. That's as it should be, frankly. If NSA can steal from Google, so can, in the medium term, China.

Google, Apple, and Facebook have the heft and resources that a lot of the countries reacting to the NSA disclosures don't have. They also have an urgent market need to respond, or at least create a credible illusion of responding. Few in DC seem to get that yet. That the proposed solutions to the damage NSA did to Google are so modest (effectively throwing table scraps to a wounded lion) is, in my mind, evidence that the NatSec world doesn't yet grasp how badly NSA's hubris has already hurt the Agency.

The perception of illegality under international law prevents solvency

Rubinstein and Hoboken 14 – *Senior Fellow at the Information Law Institute (ILI) and NYU School of Law, AND **Microsoft Research Fellow in the Information Law Institute at New York University, PhD from the University of Amsterdam (Ira and Joris Van, PRIVACY AND SECURITY IN THE CLOUD: SOME REALISM ABOUT TECHNICAL SOLUTIONS TO TRANSNATIONAL SURVEILLANCE IN THE POST- SNOWDEN ERA, 66 Maine L. Rev. 488, September 2014, http://ssrn.com/abstract=2443604)//JJ

If anything, the Snowden leaks clearly illustrate that global cloud service providers are facing a new class of threats from intelligence agencies across the world. The revelations are many and diverse in nature. This Article proposes that, from the perspective of the cloud industry, the threats can be generally distinguished in terms of front-door versus backdoor access to data and communications handled by cloud providers. Revelations of front-door access in the U.S. context include PRISM and the widely discussed telephone metadata program.13 The PRISM program is conducted on the basis of Section 702 of the FISA Amendments Act 2008 (FAA), under which the U.S. intelligence community has successfully gained access to data from U.S. cloud services related to non-U.S. persons reasonably believed to be outside the U.S.14 Under this program, the NSA gains access by demanding cloud and communication service providers hand over customer information and content, requiring annual certification, and with targeting and minimization procedures reviewed by the Foreign Intelligence Surveillance Court.15 What is most striking about these programs is the structural basis and scale on which access takes place. In addition, many have **raised doubts** about the statutory and constitutional basis of these programs under **U.S., international, as well as foreign law.**16 Observers and stakeholders from outside of the United States are especially troubled by the fact that Section 702 would clearly violate the Fourth Amendment if it were designed to intercept the communications of U.S. persons.17

2nc – 702 fails

702 won't solve perception – the problem is the programs 702 authorized

Donohue 15 – Professor of Law, Georgetown Law and Director, Center on National Security and the Law, Georgetown Law (Lauren, HIGH TECHNOLOGY, CONSUMER PRIVACY, AND U.S. NATIONAL

SECURITY, Symposium Articles, 4 Am. U. Bus. L. Rev. 11 p.37, 2015, Hein Online)//JJ

As a matter of Section 702 and the interception of international content, PRISM and Upstream collection present global concerns. Neither program has yet to be addressed through any legislative change. The **existence of these programs, while perhaps statutorily consistent with the FISA Amendments Act**, as well as constitutionally sufficient with regard to the interception of non-U.S. persons communications, where the individual is reasonably believed to be located outside the United States, goes some way towards undermining international confidence in U.S. companies.

Section 702 limit doesn't resolve perception problems – the primary fear is what 702 authorizes

Granick, 13 – civil liberties director for the Center for Internet and Society at Stanford Law School (Jennifer, "REFORMING FISA: A CRITICAL LOOK AT THE WYDEN/UDALL PROPOSAL AND FOREIGN SURVEILLANCE" 9/30, http://cyberlaw.stanford.edu/publications/reforming-fisa-critical-look-wydenudall-proposal-and-foreign-surveillance

Rather than focus on section 215, I want to focus in this post on the bill's proposed reforms to section 702 of the FISA Amendments Act, or FAA. This is the provision underlying the PRISM program—and its use to obtain the content of phone calls and Internet messages, which Glenn Greenwald revealed based on Edward Snowden's documentation. There's been less discussion of the problems with section 702 than of those with section 215, even as we've learned some worrisome things about the way the NSA uses this legal authority. The new bill would address some, but by no means all, of these problems. In my opinion, it needs to be broader.

I. Bacgkround

First, some legal and technological background is in order. Traditional FISA required the government to show probable cause that the target of the underlying foreign intelligence surveillance was an agent of a foreign power and would use the facilities at which the government planned to direct surveillance before conducting electronic surveillance. This probable cause requirement had the practical effect of limiting surveillance to communications to or from individuals who are reasonably believed to be working for another government or a terrorist group.

In addition to the expansions created in 2001 by the USA PATRIOT Act (including section 215), section 702 of the FAA created a new source of authority for conducting warrantless electronic surveillance. If the Attorney General and the Director of National Intelligence certify that the purpose of the monitoring is to collect foreign intelligence information about any non-American individual or entity not known to be in the United States, the Foreign Intelligence Surveillance Court (FISC) can require companies to provide access to Americans' international communications. The court does not approve the target or the facilities to be monitored, nor does it assess whether the government is doing enough to minimize the intrusion, correct for collection mistakes, and protect privacy. Once the court approves the certification, the government can issue top-secret directives to Internet companies like Google and Facebook to turn over calls, e-mails,

video and voice chats, photos, voice-over IP calls (like Skype), and social networking information.

Enter, PRISM. PRISM surveillance is technologically complicated, involving both the aforementioned directives demanding that companies turn over the contents of user Internet messages, as well as upstream surveillance conducted directly on the fiber optic cables carrying telecommunications and Internet traffic. Pulling the right stuff off the cables as it travels is a technological challenge. Reports suggest that one way the NSA has accomplished this surveillance is via the XKeyScore tool, which appears to copy and temporarily store almost everything that flows over the network, filter that traffic based on various selection criteria, and store the subset in different databases for longer periods of time. No one has yet identified the legal authority under which the NSA justifies XKeyScore. It cannot be the FAA because that law does not authorize copying everything, even for a short period of time.

Leaving that question aside for now, I want to highlight several pernicious results of the FISA Amendments Act or FAA.

Americans' communications with targets overseas are subject to warrantless interception. Once those communications are collected, current rules allow the NSA to search the trove for U.S. person identifiers, which Wyden has referred to as the "back door searches loophole".

The non-U.S. targets include regular people, not just those who are agents of foreign powers. While analysts provide their foreign intelligence purpose when selecting the target, the rationale is just one short sentence.

By untethering surveillance from facilities that the target uses, the FAA greatly increased the opportunity for the NSA to collect information about rather than just to or from the target. As an example, if I monitor a network for "Jennifer Granick" and Jennifer Granick uses that network, I'll get her communications, and maybe some messages about her. If I can monitor any facility for "Jennifer Granick", I'm going to pull only messages about, but not to or from her.

II. The Wyden/Udall Proposal

Enter the new bill. The fact sheet says the Intelligence Oversight and Surveillance Reform Act would reform section 702 to:

Close the "back door searches" loophole;

Prohibit the government from collecting communications that are "about the target", in non-terrorism contexts;

Strengthen the prohibition against "reverse targeting," or targeting a foreigner in order to warrantlessly acquire the communications of an American who is known to be communicating with that foreigner; and

Place stronger statutory limits on the use of unlawfully collected information.

These are critical reforms. I would like to see the bill further include a higher standard of care with regards to ensuring that people inside the U.S. are not targeted. As Professor Christopher Sprigman and I argued in the New York Times, PRISM is designed to produce at least 51 percent confidence in a target's "foreignness" — as John Oliver of "The Daily Show" put it, "a coin flip

plus 1 percent." In other words, 49 percent of the time the NSA may be acquiring information it is not allowed to have, even under the terrifyingly broad auspices of the FAA.

More fundamentally, though, the Wyden/Udall bill does not fully address a fundamental problem with the FAA, which is that it authorizes surveillance of average citizens of other countries for reasons that are not necessarily related to the security of the United States. Senator Udall acknowledged in the press conference announcing the bill (at 30:17) that the NSA's unfettered spying has had and will continue to have an adverse economic effect on U.S.-based businesses, and that this is one of the motivations behind the bill.

Prohibiting "about the target" collection is one giant step forward. That would mean that non-targets outside the U.S. could not be subject to surveillance under this law just because they talk about a target, unless their conversation is related to terrorism. Depending on the details of the targeting and minimization procedures, if my British friend in London and I email about our dismay over the Kenya attacks, that would be fair game, but our conversation about the policies of Brazilian President Dilma Roussef would be off limits.

However, targets still need not be agents of foreign powers so long as a significant purpose of the collection is foreign intelligence. Foreign intelligence is broad, and includes any information that "relates to" the conduct of U.S. foreign affairs. For example, DNI James Clapper affirmed that the U.S. collects information about economic and financial matters to "provide the United States and our allies early warning of international financial crises which could negatively impact the global economy … or to provide insight into other countries' economic policy or behavior which could affect global markets."

Monitoring economic and financial matters is in the United States' national interest. However, routine eavesdropping upon common foreigners to discover information about these matters is a bad idea. First, foreigners have privacy rights, too. Freedom from arbitrary interference with one's privacy is part of the Universal Declaration of Human Rights.

Next, this monitoring is detrimental to U.S. companies and to the United States' long-term interests in promoting democratic ideals. As Sprigman and I argue, although it may be legal, unfettered U.S. spying on foreigners will cause serious collateral damage to America's technology companies, to our Internet-fueled economy, and to human rights and democracy the world over. Since our Atlantic article on June 28th, and the disclosure that the NSA targeted both Petrobras and President Dilma Roussef, Brazil has announced that it will look into requiring Internet companies to store its citizens' data locally, and take other steps that threaten to balkanize the global Internet. When Brazil takes these steps, it gives comfort and cover to authoritarian countries who will do the same, so that they can better censor, spy on, and control Internet access within their own borders.

Front-door access also hurts cloud computing

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TO TRANSNATIONAL SURVEILLANCE IN THE POST- SNOWDEN ERA, 66 Maine L. Rev. 488, September 2014, http://ssrn.com/abstract=2443604)//JJ

3. **Front-Door Access and Its Limitations**

If the measures described in the preceding Section are effective, they may help to push the intelligence community to seek access through the front door. In the next Section, we will analyze to what extent the U.S. government may compel web services to assist law enforcement and intelligence agencies in gaining access to secure communications and what this implies about the efficacy of technical countermeasures such as encryption. More generally, it is important to note that there are multiple ways to gain lawful access to information in the cloud and no clear legal rules with respect to which entity should be targeted (the clouds service, the cloud customer, or the communications infrastructure that is used to connect users and servers). In the absence of such rules, cloud services may rely on technical and organizational measures to dissuade government agencies from targeting the communications infrastructure in favor of a more direct approach to the cloud service or the cloud customer. There are two clear reasons for industry to have a strong preference against access through infrastructure not under its control. First, it negatively affects the relationship with their customers if third parties can gain access to data without the service provider's knowledge and makes it hard to give guarantees about potential access to data by third parties. Second, it would mean that sensitive or valuable business data is accessible to others in the value chain, who could try to use such access for competitive reasons.

But while backdoor access is problematic from the industry's perspective, even front-door access is not wholly satisfactory in terms of addressing the **concerns of foreign customers of U.S. cloud services**. Most importantly, **Section 702 of the FAA** authorizes front-door access to cloud computing services under rules that offer reduced privacy protections to non-U.S. persons. Once a so-called selector for the acquisition of foreign intelligence information has been internally approved within NSA, "service providers are legally compelled to assist the government by providing the relevant communications."163 The differences in the safeguards applicable to U.S. persons and non-U.S. persons under the Section 702 program have been well-documented.164 Crucially, the Fourth Amendment does not apply to non-U.S. persons outside the U.S., which is clearly reflected in the language of Section 702 itself.165

It follows that foreign cloud customers, even after being reassured about enhanced security against backdoor access to data, may **still not find the shift to cloud computing very attractive,** given that they **do not have access to optimal protection** due to current market conditions and offerings. It seems likely that as a result of the transition to cloud computing, the storage and processing of digital information will end up being handled by a relatively small number of players. Eventually, it is this market concentration that could make cloud providers a particularly attractive avenue for government surveillance. But when data of a U.S. or non-U.S. cloud customer is sought from a cloud provider **under Section 702** or similar programs, it raises the possibility that foreign intelligence agencies may **gain access to the data of foreigners** without their knowledge. This represents a significant change in the status quo that organizational customers of cloud services may be unwilling to accept. As mentioned, Microsoft recently asserted itself in this debate. Specifically, it has stated the principle that lawful access should not take place through the targeting of cloud providers but through the targeting of the organizations themselves. According to Microsoft, government agencies should "go directly to business customers or government customers for information or data about one of their employees—just as

they did before these customers moved to the cloud—without undermining their investigation or national security."166

Eoyang concedes 702 is a weak limit

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Of course, FAA Exclusivity wouldn't solve every problem. It would not prevent foreign governments from collecting information themselves and then providing it to U.S. intelligence agencies, as U.S. law cannot bind a foreign government. And some may argue that FAA provides inadequate civil liberties protections for Americans. This proposal says nothing about the adequacy of that statute in this respect. What it says is that for data held by an American company about a target that is not a U.S. person, the checks within FAA are stronger than those solely under E.O. 12333.

Empirically – NSA over-collection is because of the FISC

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http://www.americanbar.org/publications/litigation_journal/2013-14/spring/fisa_authority_and_blanket_surveillance_gatekeeper_without_opposition.html

The window left open in Keith seems to be closed. Similarly, the FISC has approved of the NSA's "collect now, restrict searching later" approach to minimization. See In re Application of the F.B.I. for an Order Requiring the Production of Tangible Things from [Redacted], No. BR 13-109, LEXIS 134786 (FISA Ct. Sept. 13, 2013). In other words, the FISC has found no constitutional or statutory impediment to the government "over collecting" data—so long as it does not intentionally collect wholly domestic communications and it has minimization procedures to restrict access. There is no indication that the government has used its surveillance powers improperly (except in a limited number of circumstances attributable to NSA employee misconduct), but the FISC has not taken a robust view of the Fourth Amendment.

PPD-28

1nc – PPD-28 fails

PPD-28 privacy protections aren't credible internationally

Rainey 15 *director of the activism team at the Electronic Frontier Foundation, Chief Operating Officer and co-founder of the Freedom of the Press Foundation (Rainey,"Obama Announces New Privacy Rules for the World. World Not Impressed.", Electronic Frontier Foundation, 02/10/15, https://www.eff.org/deeplinks/2015/02/obama-announces-new-privacy-rules-world-world-not-impressed)//GK

President Obama recently announced slight changes to NSA data collection practices. The recent tweaks mean two new privacy protections for those that U.S. law considers foreigners (in this case, people who are outside of the United States borders who are neither U.S. citizens nor legal U.S. residents). Perhaps you're thinking Obama is using his executive authority to stop the mass surveillance of all Internet traffic of people worldwide? Nope, not quite. The new protections are: If the U.S. government collects information about a foreigner, it will consider the privacy ramifications before disseminating that information, such as to other governments;1 and If the U.S. government collects information on innocent foreigners not connected to any crime or investigation and the information has no national security value, it will dispose of that information after five years.2 That's right, the world's personal information will only be retained for five short years. And that's if the U.S. government decides you're not under suspicion. David Medine, the chairman of the Privacy and Civil Liberties Oversight Board, has said that "There's no country on the planet that has gone this far to improve the treatment of non-citizens in government surveillance." That's certainly laudable. However, a critic might also note that there's no country on earth extending such enormous resources into surveilling all the people on the planet, so the United States has more room for "improvement" than most countries. (That's certainly what President Obama implied when he spoke of his country's "unique" capabilities in his speech defending the new rules.) We wondered if people worldwide would be excited about these new privacy protections, and so we reached out to a few of our global partners to solicit their feedback. Here's what they thought of Obama's protections for the privacy rights on non-US citizens: "This decision is not only a confirmation of the disregard the United States has for its international human rights obligations, but given the fact that the US is treating our privacy worse than our own governments, it sends a terrible message for human rights defenders fighting against unchecked surveillance in our own country," said Luis Fernando García, a lawyer at Network for Digital Rights in Mexico. "Deleting is no comfort at all because it can never be confirmed," said Professor K.S. Park of Korea University Law School, "Korea also allows warrantless wiretapping of overseas people for national security purposes. The United States should not set a bad precedent for the whole world to follow." And Carolina Botero, a Colombian researcher and blogger with Fundacion Karisma, said, "Mass surveillance is unacceptable in democratic societies because of the threat it poses to human rights. Obama's reforms to NSA practices fail to address this situation for his citizens and continue the obnoxious violation of the privacy rights of foreigners. A data retention period of 5 years is a clear example of an illegal measure that can be seen abroad as justification for similar laws in other countries."

PPD – 28 doesn't solve for the breadth of Executive Order 12333 circumvention

Schlanger 15* Henry M. Butzel Professor of Law at the University of Michigan (Margo, "Guest Post: US Intelligence Reforms Still Allow Plenty of Suspicionless Spying on Americans", Just Security, 02/13/15, http://justsecurity.org/20033/guest-post-intelligence-reforms-plenty-suspicionless-surveillance-americans/)//GK

Last week, the Obama Administration released a report and documents cataloging progress toward signals intelligence (SIGINT) reform goals set a year ago by the President in a document known as PPD-28. PPD-28 promises foreigners some of the same privacy protections given to US citizens and residents. But it turns out that those protections, even for citizens, are fairly meager, in ways that have not yet fully entered the public conversation about surveillance. US citizens and residents have been — and remain — exposed to suspicionless electronic surveillance. Implementation of PPD-28 will do little to change that. To my mind, the surveillance I'm about to describe, which proceeds under Executive Order 12333, rather than FISA, is far more worrisome than the programs

under Section 215 of the Patriot Act and Section 702 of the FISA Amendments Act that have received so much recent attention. (For example, here and here for Section 215, here and here for Section 702, and here and here for more general info.) This is content surveillance that applies to both wholly and partially domestic communications of US citizens and residents. The access and analysis rules are very, very loose. There is no judicial supervision of any kind, and Congress does almost no 12333 oversight. (See here for more on how FISA and 12333 differ). Let's start with what we know, and then dive into how we know it. What do we know? Non-selective "vacuum cleaner" SIGINT collection — mass collection of communications unlimited by particular communicants or subjects — is outside FISA's ambit, so long as the collection is either done abroad (for wire communications like those carried on landlines or cables) or involves at least one foreign communicant (for wireless communications). This kind of collection can and does include wholly and partially domestic communications of US citizens and residents. Once collected, analysis of these communications is also outside FISA's ambit. Instead, the use of SIGINT that was collected vacuum-cleaner-style is limited by PPD-28 to six topics: detecting and countering espionage, terrorism, weapons of mass destruction, cybersecurity threats, threats to the armed services, and transnational crime. This kind of entirely unlimited SIGINT collection is not favored, however: According to its new policies implementing PPD-28, when "practicable," the NSA searches for communications containing specific terms that narrow its collection to topics like "nuclear proliferation, oil sales, [and] economics." Economics! Again, so long as the collection is either done abroad (for wire communications) or involves at least one foreign communicant (for wireless communications), FISA does not regulate term searching based on subject matter, rather than the identity of a communicant. And because this approach uses a "discriminant," it is not deemed "bulk" collection for purposes of PPD-28. It may thereafter be searched by the NSA for any and all foreign intelligence purposes, not just the six topics identified above. When the NSA uses subject matter searching — whether to acquire data or to search raw SIGINT acquired in bulk or otherwise — there is a mild tailoring requirement. Specifically, policy requires use of only selection terms that are reasonably likely to flag communications that include foreign intelligence topics (like oil sales). Policy also requires the NSA to try to develop selection techniques that "defeat, to the greatest extent practicable under the circumstances" interception of non-foreign intelligence communications. While we don't know what "practicable" means in this context, term searching is very familiar; just think of using Google or Westlaw. It seems inevitable that this approach exposes an extraordinary amount of innocent Americans' communications to the eyes of intelligence analysts. So, when the President says that foreigners will get the same protections against surveillance as US citizens and residents, keep in mind that those protections leave a lot out.

2nc – PPD-28 fails

PPD-28 doesn't cover collection that uses term searching – it creates an enormous loophole

Schlanger 15* Henry M. Butzel Professor of Law at the University of Michigan (Margo, "Guest Post: US Intelligence Reforms Still Allow Plenty of Suspicionless Spying on Americans", Just Security, 02/13/15, http://justsecurity.org/20033/guest-post-intelligence-reforms-plenty-suspicionless-surveillance-americans/)//GK

PPD-28 adds **the smallest bit** of extra protection. It limits what it describes as "bulk" collection to six specified purposes (detecting and countering espionage, terrorism, weapons of mass destruction, cybersecurity threats, threats to the armed services, and transnational crime). These are considerably narrower than "foreign intelligence. But the narrower purpose rules of PPD-28 don't cover collection that uses term searching, no matter how wide-open these terms are, or how much data is acquired under them. Quite the contrary; such collection is excluded by definition. PPD-28 states: "References to signals intelligence collected in 'bulk' mean the authorized collection of large quantities of signals intelligence data which, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.)." (Emphasis added). Moreover, the Directive specifically states that its limits on "bulk" collection "do not apply to signals intelligence data that is temporarily acquired to facilitate targeted collection." This carve-out is revealing: there would be no reason for it unless the NSA does, in fact, "temporarily acquire" data and then subject it to various searches that facilitate "targeted"

collection for purposes not authorized for bulk collection. (Note that PPD-28 does not define "targeted;" I infer that "targeted" here covers use of topical selection terms as well as communicant targeting, but I may be incorrect in this inference.) And finally, the NSA procedures released last week, which now govern SIGINT procedures for non-US persons, constrain the agency the tiniest bit more, stating a preference for collecting data on specific subjects instead of collecting everything: Whenever practicable, collection will occur through the use of one or more SELECTION TERMS in order to focus the collection on specific foreign intelligence targets (e.g., a specific, known international terrorist or terrorist group) or specific foreign intelligence topics (e.g., the proliferation of weapons of mass destruction by a foreign power or its agents). Note, though, that notwithstanding the parenthetical examples, subject matter searching can be for any foreign intelligence topic (oil sales, economics, etc.), not just counterterrorism or counterproliferation. to your domestic communications. Lots of unanswered questions remain: what about FBI and CIA? How much unfiltered content communication data does the IC actually collect? How much does it retain? And so on. We'd need much more transparency to answer those questions and dozens more that deserve answers.

PPD-28 can't solve – too limited

Nojeim 14 – Senior Counsel and Director of the Freedom, Security, and Technology Project at the Center for Democracy & Technology, B.A. University of Rochester, J.D. University of Virginia (Gregory, WRITTEN STATEMENT REGARDING SHORT AND LONG TERM AGENDA OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, Center for Democracy and Technology, 8/29/14,
https://d1ovv0c9tw0h0c.cloudfront.net/files/2014/09/pclob-written-statement-82914.pdf)//JJ

Rights of Non-U.S. Persons

PCLOB's agenda should also include a searching examination of the impact of U.S. surveillance activities under all intelligence authorities, including Executive Order 12333 and FISA Section 702, on the rights of non-U.S. persons to privacy, free expression and redress for violation of rights. PCLOB has already committed to examining the rights of non-U.S. persons in the context of the input it plans to offer on implementation of PPD-28. This is insufficient because PPD-28 is so limited. In particular, while PPD-28 does call for subjecting information about non- U.S. persons to the same retention and dissemination restrictions that pertain to information collected about U.S. persons, it does not subject collection activities to such restrictions. When assessing the impact of surveillance on the rights of non-U.S. persons, we urge you to assess collection activities as well.

PCLOB's assessment of the rights of non-U.S. persons ought to start with internationally accepted human rights. Indeed, PPD-28 states that non-U.S. persons have such rights, but does little to spell them out. Last year, CDT released a report that includes a normative framework based on human rights standards that can be used for assessing surveillance This year, the

United Nations High Commissioner for Human Rights issued a report 8 activities. that also provides an excellent framework for analyzing U.S. surveillance activities under international law. CDT, have endorsed the "Necessary and Proportionate Principles,10 which could also serve as a starting point for PCLOB's assessment. In making its assessment, we urge the PCLOB to focus in particular on the internationally recognized rights to privacy, free, expression, and the right to a remedy for violations of these rights.

PPD-28 fails --- too many loopholes

Rotenberg, EPIC President and Executive Director, 6-16-15 [Electronic privacy information center, non-profit research and educational organization established in 1994 to focus

public attention on emerging privacy and civil liberties issues.12 We work with a distinguished panel of advisors in the fields of law, technology and public policy., COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER, file:///C:/Users/Jonah/Downloads/EPIC-12333-PCLOB-Comments-FINAL.pdf] Schloss2

The updated signals intelligence principles stated in Presidential Policy Directive 28 ("PPD-28") are not sufficient to promote transparency about collection practices. PPD-28 requires the intelligence community to "safeguard[] personal information collected from signals intelligence activities."90 The focus of PPD-28 was to protect information already collected (i.e. through dissemination and retention procedures) rather than to minimize the amount of information collected in the first place. The ongoing collection of innocent and irrelevant USP information and communications is a violation of the basic principles underlying the Privacy Act and EO 12333 itself, regardless of how the data is subsequently used. The Director of National Intelligence should require agencies to update and publicly release their data collection policies, especially as it applies to incidental collection of USP information.

In response to the PPD-28, the intelligence community members prepared reports that did not sufficiently inform the public about their data collection policies. Some agencies did not disclose collection policies at all. The FBI and Coast Guard wrote that it would "collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence."91 This phrase is vague and does not reveal whether collection includes, for example, the use of specific identifiers or terms to narrow collection. Other agency reports imply that some collection guidelines are still hidden. The NSA wrote that "collection will be handled in accordance with these procedures and USSID SP0018, including its Annexes."92 However, the Annexes are not released, though they may provide more detail as to how the NSA handles collection. A DoD document stated that the CSA, DIA, NGA, NRO, and NSA must update "their existing policies and procedures" to comply with PPD-28, but very little of these internal policies and procedures have been published.93 The documents should be published, or more details given, to provide for more transparency and oversight about collection.

Some agency reports are also inconsistent in their definitions of collection, which detracts from transparency and oversight. It is unclear whether each agency simply has a different definition of "collection" or whether the uniform definition of collection simply is not public. Some agencies

use selectors in the definition of collection while others do not. The CIA reported that "SIGINT collected in bulk - means the authorized collection of large quantities of signals intelligence data . . . acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.)."94 On the other hand, the NSA stated that "[w]henever practicable, collection will occur through the use of one or more selection terms."95 It is still unclear whether the definition of collection includes the use of selectors. In addition, the Coast Guard defines collection as not including processing, through the rule of surplusage (i.e. "collection" and "processing" in a list means that their definitions are not redundant and repetitive).96 However, the DHS states that "[c]ollection means the gathering or receipt of information . . . coupled with an affirmative act

demonstrating intent to use or retain that information for intelligence purposes."97 The DHS definition of collection appears to require an additional step beyond the NSA definition of collection. These policies should be made public and updated to provide for clarity and better oversight.

No modeling

1nc – no modeling

Modeling is empirically false

Edgar, 4/13/15 - visiting fellow at the Institute and adjunct professor of law at the Georgetown University Law Center (Timothy, "The Good News About Spying"

https://www.foreignaffairs.com/articles/united-states/2015-04-13/good-news-about-spying

Despite high hopes for a fresh start on civil liberties, during his first term in office, Obama ratified and even expanded the surveillance programs that began under former President George W. Bush. After NSA contractor Edward Snowden began revealing the agency's spying programs to The Guardian in 2013, however, Obama responded with a clear change of direction. Without great fanfare, his administration has made changes that open up the practices of the United States intelligence community and protect privacy in the United States and beyond. The last year and a half has been the **most significant period of reform** for national security surveillance since Senator Frank Church led the charge against domestic spying in the late 1970s.

In 2013, at Obama's direction, the Office of the Director of National Intelligence (ODNI) established a website for the intelligence community, IC on the Record, where previously secret documents are posted for all to see. These are not decades-old files about Cold War spying, but recent slides used at recent NSA training sessions, accounts of illegal wiretapping after the 9/11 attacks, and what had been highly classified opinions issued by the Foreign Intelligence Surveillance Court about ongoing surveillance programs.

Although many assume that all public knowledge of NSA spying programs came from Snowden's leaks, many of the revelations in fact came from IC on the Record, including mistakes that led to the unconstitutional collection of U.S. citizens' emails. Documents released though this portal total more than 4,500 pages—surpassing even the 3,710 pages collected and leaked by

Snowden. The Obama administration has instituted other mechanisms, such as an annual surveillance transparency report, that will continue to provide fodder for journalists, privacy activists, and researchers.

The transparency reforms may seem trivial to some. From the perspective of an intelligence community steeped in the need to protect sources and methods, however, they are deeply unsettling. At a Brown University forum, ODNI Civil Liberties Protection Officer Alexander Joel said, "The intelligence community is not designed and built for transparency. Our culture is around finding our adversaries' secrets and keeping our own secrets secret." Accordingly, until only a few years ago, the intelligence community resisted making even the most basic information public. The number of FISA court opinions released to the public between 1978 and 2013 can be counted on one hand.

Beyond more transparency, Obama has also changed the rules for surveillance of foreigners. Until last year, privacy rules applied only to "U.S. persons." But in January 2014, Obama issued Presidential Policy Directive 28 (PPD-28), ordering intelligence agencies to write detailed rules assuring that privacy protections would apply regardless of nationality. These rules, which came out in January 2015, mark the first set of guidelines for intelligence agencies ordered by a U.S. president—or **any world leader**—that explicitly protect foreign citizens' personal information in the course of intelligence operations. Under the directive, the NSA can keep personal information in its databases for no more than five years. It must delete personal information from the intelligence reports it provides its customers unless that person's identity is necessary to understand foreign intelligence—a basic rule once reserved only for Americans.

The new rules also include restrictions on bulk collection of signals intelligence worldwide—the practice critics call "mass surveillance." The NSA's bulk collection programs may no longer be used for uncovering all types of diplomatic secrets, but will now be limited to six specific categories of serious national security threats. Finally, agencies are no longer allowed simply to "collect it all." Under PPD-28, the NSA and other agencies may collect signals intelligence only after weighing the benefits against the risks to privacy or civil liberties, and they must now consider the privacy of everyone, not just U.S. citizens. This is the first time any U.S. government official will be able to cite a written presidential directive to object to an intelligence program on the basis that the intelligence it produces is not worth the costs to privacy of innocent foreign citizens.

THOSE IN GLASS HOUSES

Obama's reforms make great strides toward transparency and protecting civil liberties, but they have been **neither celebrated nor matched abroad**. When Chancellor Angela Merkel of Germany found out she had been the target of American eavesdropping, her reaction was swift. "This is not done," she said, as if scolding a naughty child. Many Germans cheered. They and other Europeans believe that their laws protect privacy better than U.S. laws. But that is only partly true: Although Europe has stronger regulations limiting what private companies (such as Google and Facebook) can do with personal data, citizens are granted comparatively little protection against surveillance by government agencies. European human rights law requires no court approval for intelligence surveillance of domestic targets, as U.S. law has since 1978. Similarly, European governments do not observe limits on electronic surveillance of non-citizens outside of their own territories, as the United States now does under Obama's presidential policy directive.

By blaming only the NSA for mass surveillance, the public and foreign leaders let other intelligence services off the hook. No wonder that some human rights organizations, including Privacy International and Big Brother Watch UK, have filed legal challenges against mass surveillance by the NSA's British counterpart, the Government Communications Headquarters (GCHQ). But foreign leaders have taken few steps to limit government surveillance, and none have done **anything remotely comparable** to what Obama did in last year's directive.

2nc – no modeling

No modeling over legal rules – enabling tech makes international surveillance inevitable

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 12)//AK

Much of the current surveillance debate in the US is over the NSA's authority, and whether limiting the NSA somehow empowers others. That's the wrong debate. We don't get to choose a world in which the Chinese, Russians, and Israelis will stop spying if the NSA does. What we have to decide is whether we want to develop an information infrastructure that is vulnerable to all attackers, or one that is secure for all users. Since its formation in 1952, the NSA has been entrusted with dual missions. First, signals intelligence, or SIGINT, involved intercepting the communications of America's enemies. Second, communications security, or COMSEC, involved protecting American military—and some government—communications from interception. It made sense to combine these two missions, because knowledge about how to eavesdrop is necessary to protect yourself from eavesdropping, and vice versa.

The two missions were complementary because different countries used different communications systems, and military personnel and civilians used different ones as well. But as I described in Chapter 5, that world is gone. Today, the NSA's two missions are in conflict.

Laws might determine what methods of surveillance are legal, but technologies determine which are possible. When we consider what security technologies we should implement, we can't just look at our own countries. We have to look at the world. We cannot simultaneously weaken the enemy's networks while still protecting our own. The same vulnerabilities used by intelligence agencies to spy on each other are used by criminals to steal your financial passwords. Because we all use the same products, technologies, protocols, and standards, we either make it easier for everyone to spy on everyone, or harder for anyone to spy on anyone. It's liberty versus control, and we all rise and fall together. Jack Goldsmith, a Harvard law professor and former assistant attorney general under George W. Bush, wrote, "every offensive weapon is a (potential) chink in our defense—and vice versa."

For example, the US CALEA law requires telephone switches to enable eavesdropping. We might be okay with giving police in the US that capability, because we generally trust the judicial warrant process and assume that the police won't abuse their authority. But those telephone

switches are sold worldwide—remember the story about cell phone wiretapping in Greece in Chapter 11—with that same technical eavesdropping capability. It's our choice: either everyone gets that capability, or no one does.

It's the same with IMSI-catchers that intercept cell phone calls and metadata. StingRay might have been the FBI's secret, but the technology isn't secret anymore. There are dozens of these devices scattered around Washington, DC, and the rest of the country run by who-knows-what government or organization. Criminal uses are next. By ensuring that the cell phone network is vulnerable to these devices so we can use them to solve crimes, we necessarily allow foreign governments and criminals to use them against us. I gave more examples in Chapter 11. In general, we get to decide how we're going to build our communications infrastructure: for security or not, for surveillance or not, for privacy or not, for resilience or not. And then everyone gets to use that infrastructure.

Existing US restrictions prove no modeling occurs

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We know much less about government surveillance in other countries; but don't assume that they aren't doing these same things just because whistleblowers there haven't brought those stories to light. Other governments are doing much the same thing to as much of the Internet as they can get their hands on, often with fewer legal restrictions on their activities.

Russia collects, stores, and analyzes data from phone calls, e-mail, Internet use, social networking, credit card transactions, and more. Russia's System for Operative Investigative Measures, or SORM, is built right into its Internet. We saw a glimpse of how extensive this system is during the 2014 Sochi Olympics, where the Russian authorities monitored pretty much everything that happened online. Crime and terrorism provide justifications for surveillance, but this data is also used against Russian journalists, human rights activists, and political opponents.

China, too, attempts to monitor everything its citizens do on—and, increasingly, off— the Internet. China also uses location information from mobile phones to track people en masse. It turns mobile phones on remotely to eavesdrop on people, and it monitors physical spaces with its 20 to 30 million surveillance cameras. As in Russia, crime is the ostensible excuse for all this snooping, but dissent is a major reason as well. TOM-Skype is a Chinese video and texting service, a joint venture between Microsoft and the Chinese company TOM Online. Messages containing words like "Tiananmen," "Amnesty International," and "Human Rights Watch," as well as references to drugs and pornography, are copied and saved. More than 30,000 Internet police conduct the monitoring.

We got additional glimpses of global Internet monitoring a few years ago, when India, Russia, Saudi Arabia, the UAE, and Indonesia all threatened to ban BlackBerry if the company didn't allow them access to user communications. BlackBerry data is generally encrypted, which

prevents eavesdropping. BlackBerry cut a deal with India whereby corporate users were allowed to keep their data secure, but the government would be able to track individual users' e-mails, chats, and website visits. We don't know about the deals it may have struck with the other countries, but we can assume that they're similar. Smaller countries often turn to larger ones to help them with their surveillance infrastructure. China helped Iran build surveillance into its own Internet infrastructure. I'll say more in Chapter 6 about Western companies helping repressive governments build surveillance systems.

The actions of these and other countries—I could fill a whole book with examples— are often **far more oppressive and totalitarian than anything the US or any of its allies do.** And the US has **far more legal controls and restrictions** on government collection than any other country on the planet, including European countries. In countries like Thailand, India, and Malaysia, arresting people on the basis of their Internet conversations and activities is the norm. I'll talk about risks and harms in Chapter 7; right now, I want to stick to capabilities.

Circumvention

1nc - NSA circumvention

Redundant capabilities from other agencies circumvent

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The NSA might get the headlines, but the US intelligence community is actually composed of 17 different agencies. There's the CIA, of course. You might have heard of the NRO—the National Reconnaissance Office—it's in charge of the country's spy satellites. Then there are the intelligence agencies associated with all four branches of the military. The Departments of Justice (both FBI and DEA), State, Energy, the Treasury, and Homeland Security all conduct surveillance, as do a few other agencies. And there may be a still-secret 18th agency. (It's unlikely, but possible. The details of the NSA's mission remained largely secret until the 1970s, over 20 years after its formation.)

After the NSA, the FBI appears to be the most prolific government surveillance agency. It is tightly connected with the NSA, and the two share data, technologies, and legislative authorities. It's easy to forget that the first Snowden document published by the Guardian—the order requiring Verizon to turn over the calling metadata for all of its customers—was an order by the FBI to turn the data over to the NSA. We know there is considerable sharing amongst the NSA, CIA, DEA, DIA, and DHS. An NSA program code-named ICREACH provides surveillance information to over 23 government agencies, including information about Americans.

Domestic constraints cause a foreign shift – turns the case

Chandler and Le, 15 - * Director, California International Law Center, Professor of Law and Martin Luther King, Jr. Hall Research Scholar, University of California, Davis; A.B., Harvard College; J.D., Yale Law School AND **Free Speech and Technology Fellow, California International Law Center; A.B., Yale College; J.D., University of California, Davis School of Law (Anupam and Uyen, "DATA NATIONALISM" 64 Emory L.J. 677, lexis)

First, the United States, like many countries, **concentrates much of its surveillance efforts abroad.** Indeed, the Foreign Intelligence Surveillance Act is focused on gathering information overseas, limiting data gathering largely only when it implicates U.S. persons. n174 The recent NSA surveillance disclosures have revealed extensive foreign operations. n175 Indeed, **constraints on domestic operations** may well have **spurred the NSA to expand operations abroad**. As the Washington Post reports, "Intercepting communications overseas has clear advantages for the NSA, with looser restrictions and less oversight." n176 Deterred by a 2011 ruling by the Foreign Intelligence Surveillance Court barring certain broad **domestic surveillance** of Internet and telephone traffic, n177 the NSA may have increasingly turned its attention overseas.

Allied cooperation circumvents domestic restrictions

Brenner, 15 - Senior Fellow, the Center for Transatlantic Relations; Professor of International Affairs, University of Pittsburgh (Michael, Huffington Post, "The NSA's Second Coming" 6/8,

http://www.huffingtonpost.com/michael-brenner/the-nsas-second-coming_b_7535058.html

7. The NSA coordinates its spying closely with Intelligence agencies of the four other English-speaking countries that participate in "Five Finger" alliance: the UK, Canada, Australia and New Zealand. Their data sharing does not stop at that acquired by legal means. They do each other favors by **relying on a partner to circumvent domestic restrictions** in any one of them. There are credible reports that NSA has assisted Britain's GCHQ in this respect. Both have assisted the German NBD in spying on German targets- as has been revealed within the past few weeks. Therefore, the significance of last week legislation is undercut by this close collaboration.

Creative lawyering guarantees circumvention

Redmond, 14 – J.D. Candidate, 2015, Fordham University School of Law (Valerie, "I Spy with My Not So Little Eye: A Comparison of Surveillance Law in the United States and New Zealand" FORDHAM INTERNATIONAL LAW JOURNAL [Vol. 37:733

In the United States, the current state of surveillance law is a product of FISA, its amendments, and its strictures. An evaluation of US surveillance law proves that inherent loopholes undercut FISA's protections, which allows the US Government to circumvent privacy protections.182 The main problems are the **insufficient definition of surveillance**, the ability to spy on agents of

foreign powers, the lack of protection against third party surveillance, and the ability to collect incidental information.183

First, a significant loophole arises in the interpretation of the term "surveillance."184 In order for information collection to be regulated by FISA, it must fall under FISA's definition of surveillance.185 This definition does not apply to certain **National Security Letters**, which are secret authorizations for the Federal Bureau of Investigation ("FBI") to obtain records from telephone companies, credit agencies, and other organizations if they merely certify that the information is relevant to an international terrorism investigation.186 National Security Letters are regularly used to circumvent FISA's warrant procedures.187

Additionally, FISA's definition of surveillance is antiquated because it distinguishes between data acquired inside of the United States and outside of the United States.188 This distinction allows the NSA to process surveillance that is received from other countries irrespective of whether the target is a US citizen.189 Therefore, the NSA is unrestrained when a communication is not physically intercepted within the United States.190

Second, an issue arises when US citizens are construed to be agents of foreign powers under FISA because a warrant can be issued to engage in surveillance against them.191 According to FISA's procedures, the only way to spy on a US citizen is when they can be considered to be an agent of a foreign power, or engaged in information gathering, aiding, or abetting a foreign power.192 However, this limitation does not result in total privacy protection because it only requires probable cause that a person is an agent of a foreign power, not that a crime is being committed.193 The effect of this ability is that the US Government can conduct surveillance on a US citizen with no ties to terrorism such as a suburban mother telling her friend that her son "bombed" a school play.194

2nc – top level NSA circumvention

Err neg - the NSA has broken the law thousands of times

Barnhizer 13 - Professor Emeritus, Cleveland-Marshall College of Law (David, "Through a PRISM Darkly: Surveillance and Speech Suppression in the "Post-Democracy Electronic State"", working paper, September 2013, p.25-26//DM)

The momentum of technology is irresistible. The problem is that technology creates its own imperatives and will come to be used in whatever ways possible. The same can be said for the creation of government regulatory policies impacting in virtually any sphere of activity. After all, who can quarrel with the idea that governmental actors—legislators, bureaucrats, executive branch leaders, judges, police, security personnel, military leaders etc.—should possess the most accurate, comprehensive and detailed data possible related to their areas of activity? This is only logical, right? The problem is that the logic of obtaining perfect or near perfect data for decision and action has no internal limits.60It will expand into the universe of possibility unless there are strong and clearly understood principles by which limits are set and consequences imposed if those limits are exceeded.

At the moment we are attempting to deal with what appears to be a prime example of a secretive part of government operating according to the imperative of gaining total knowledge through

technological innovations while doing so under the driving force of national security and detecting terroristic activities. Over the past few months we have been witness to the profoundly intrusive behavior of the NSA, the revelations of Edward Snowden, the apparent "rubber stamping" of any surveillance request put to it by the judges of the clandestine FISA Court, the NSA's ultimate **admission that it violated the rules on thousands of occasions** including following the activities of NSA employees' "love interests", and admitted **lying to Congress** by James Clapper the head of the US national intelligence system.61Yet the NSA's all-encompassing PRISM program is simply the latest manifestation of the inevitable use of surveillance technology and the absolute inability of government to "Just Say No" to its own **inevitable abuse** of whatever power it possesses. 62

2nc – redundant capabilities

Redundant means and justifications make circumvention easy

Brenner, 15 - Senior Fellow, the Center for Transatlantic Relations; Professor of International Affairs, University of Pittsburgh (Michael, Huffington Post, "The NSA's Second Coming" 6/8,

http://www.huffingtonpost.com/michael-brenner/the-nsas-second-coming_b_7535058.html

11. United States Intelligence agencies have multiple, **redundant** methods for acquiring bulk data or specific data. They also have multiple legal justifications**, however contrived** they might be; those justifications are extremely difficult to challenge in the federal courts who have pretty much neutered themselves on these types of security issues. Where top officials, including the President, feel it necessary, **they have few qualms about skirting the law**.

State and local governments will give data to the federal government – circumvents more restrictive federal rules

Schneier, 15 - fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Introduction)//AK

Outside of the federal government, a lot more surveillance and analysis of surveillance data is going on. Since 9/11, the US has set up "fusion centers" around the country. These institutions are generally run by state and local law enforcement, and are meant to serve as an information bridge between those groups and national agencies like the FBI and DHS.

They give local police access to previously unavailable surveillance capabilities and data. They were initially supposed to focus on terrorism, but increasingly they're used in broader law enforcement. And because they're run locally, different fusion centers have different rules—and different levels of adherence to those rules. There's minimal oversight, probably illegal military involvement, and excessive secrecy. For example, fusion centers are known to have spied on political protesters.

Joint Terrorism Task Forces are also locally run, nebulously defined, and shrouded in extreme secrecy. They've been caught investigating political activists, spreading anti- Islamic propaganda, and harassing innocent civilians.

They'll just use National Security Letters

Schneier, 15 - fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Introduction)//AK

That said, unlike NSA surveillance, FBI surveillance is traditionally conducted with judicial oversight, through the warrant process. Under the Fourth Amendment to the US Constitution, the government must demonstrate to a judge that a search might reasonably reveal evidence of a crime. However, the FBI has the authority to collect, without a warrant, all sorts of personal information, either targeted or in bulk through the use of National Security Letters (NSLs). These are basically administrative subpoenas, issued by the FBI with no judicial oversight. They were greatly expanded in scope in 2001 under the USA PATRIOT Act (Section 505), although the initial legal basis for these letters originated in 1978. Today, NSLs are generally used to obtain data from third parties: email from Google, banking records from financial institutions, files from Dropbox.

2nc – domestic only limit

The domestic-only limit prevents solvency

Kehl, 14 – Policy Analyst at New America's Open Technology Institute (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity" July, https://www.newamerica.org/oti/surveillance-costs-the-nsas-impact-on-the-economy-internet-freedom-cybersecurity/

It appears that little consideration was given over the past decade to the potential economic repercussions if the NSA's secret programs were revealed.38 This failure was acutely demonstrated by the Obama Administration's initial focus on reassuring the public that its programs primarily affect non-Americans, even though non-Americans are also heavy users of

American companies' products. Facebook CEO Mark Zuckerberg put a fine point on the issue, saying that the government "blew it" in its response to the scandal. He noted sarcastically: "The government response was, 'Oh don't worry, we're not spying on any Americans.' Oh, wonderful: that's really helpful to companies [like Facebook] trying to serve people around the world, and that's really going to inspire confidence in American internet companies."39 As Zuckerberg's comments reflect, certain parts of the American technology industry are particularly vulnerable to international backlash since growth is **heavily dependent on foreign markets**. For example, the U.S. cloud computing industry has grown from an estimated $46 billion in 2008 to $150 billion in 2014, with nearly 50 percent of worldwide cloud-computing revenues coming from the U.S.40 R Street Institute's January 2014 policy study concluded that in the next few years, new products and services that rely on cloud computing will become increasingly pervasive. "Cloud computing is also the root of development for the emerging generation of Web-based applications—home security, outpatient care, mobile payment, distance learning, efficient energy use and driverless cars," writes R Street's Steven Titch in the study. "And it is a research area where the United States is an undisputed leader."41 This trajectory may be dramatically altered, however, as a consequence of the NSA's surveillance programs.

The domestic-only limit wrecks solvency

Kehl, 14 – Policy Analyst at New America's Open Technology Institute (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity" July, https://www.newamerica.org/oti/surveillance-costs-the-nsas-impact-on-the-economy-internet-freedom-cybersecurity/

The U.S. government has already taken some limited steps to mitigate this damage and begin the slow, difficult process of rebuilding trust in the United States as a responsible steward of the Internet. But the reform efforts to date have been relatively narrow, focusing primarily on the surveillance programs' impact on the rights of **U.S. citizens**. Based on our findings, we recommend that the U.S. government take the following steps to address the broader concern that the NSA's programs are impacting our economy, our foreign relations, and our cybersecurity:

1. Strengthen privacy protections for both Americans **and non-Americans**, within the United States **and extraterritorially**.

2. Provide for increased transparency around government surveillance, both from the government and companies.

3. Recommit to the Internet Freedom agenda in a way that directly addresses issues raised by NSA surveillance, including moving toward **international human-rights based standards on surveillance**.

4. Begin the process of restoring trust in cryptography standards through the National Institute of Standards and Technology.

5. Ensure that the U.S. government does not undermine cybersecurity by inserting surveillance backdoors into hardware or software products.

6. Help to eliminate security vulnerabilities in software, rather than stockpile them.

7. Develop clear policies about whether, when, and under what legal standards it is permissible for the government to secretly install malware on a computer or in a network.

8. Separate the offensive and defensive functions of the NSA in order to minimize conflicts of interest.

The NSA doesn't comply with foreignness designation requirements

Gellman, 14 – staff writer for the Washington Post; won 3 Pullitzer Prizes (Barton, Washington Post, "In NSA-intercepted data, those not targeted far outnumber the foreigners who are" 7/5, http://www.washingtonpost.com/world/national-security/in-nsa-intercepted-data-those-not-targeted-far-outnumber-the-foreigners-who-are/2014/07/05/8139adf8-045a-11e4-8572-4b1b969b6322_story.html

When NSA and allied analysts really want to target an account, their concern for U.S. privacy diminishes. The rationales they use to judge foreignness sometimes stretch legal rules or well-known technical facts to the breaking point.

In their classified internal communications, colleagues and supervisors often remind the analysts that PRISM and Upstream collection have a "lower threshold for foreignness 'standard of proof' " than a traditional surveillance warrant from a FISA judge, requiring only a "reasonable belief" and not probable cause.

One analyst rests her claim that a target is foreign on the fact that his e-mails are written in a foreign language, a quality shared by tens of millions of Americans. Others are allowed to presume that anyone on the chat "buddy list" of a known foreign national is also foreign.

In many other cases, analysts seek and obtain approval to treat an account as "foreign" if someone connects to it from a computer address that seems to be overseas. "The best foreignness explanations have the selector being accessed via a foreign IP address," an NSA supervisor instructs an allied analyst in Australia.

Apart from the fact that tens of millions of Americans live and travel overseas, additional millions use simple tools called proxies to redirect their data traffic around the world, for business or pleasure. World Cup fans this month have been using a browser extension called Hola to watch live-streamed games that are unavailable from their own countries. The same trick is routinely used by Americans who want to watch BBC video. The NSA also relies routinely on locations embedded in Yahoo tracking cookies, which are widely regarded by online advertisers as unreliable.

2nc – allied intel sharing

Allied info sharing makes circumvention inevitable

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

With GCHQ in mind, it is worth noting an additional exception to both FISA and Executive Order 12,333: to the extent that it is not the United States engaged in the collection of information, but, rather, one of our allies, **rules that otherwise limit the U.S. intelligence community may not apply.** From the language of the order, it appears that the United States may receive or benefit from other countries' collection of information on U.S. citizens, where it does not actively participate in the collection or specifically request other countries to carry out the collection at its behest. n142 In turn, the United States can provide information about foreign citizens to their governments that their intelligence agencies, under their domestic laws, might otherwise be unable to collect. To the extent that the programs underway are extended to the closely allied "Five Eyes" (Australia, Canada, the United Kingdom, the United States, and New Zealand), structural demarcations **offer a way around the legal restrictions** otherwise enacted to protect citizen rights in each region.

Information sharing is a loophole they can't fiat out of – it doesn't constitute 'its' surveillance but the government will get the info anyway

Redmond, 14 – J.D. Candidate, 2015, Fordham University School of Law (Valerie, "I Spy with My Not So Little Eye: A Comparison of Surveillance Law in the United States and New Zealand" FORDHAM INTERNATIONAL LAW JOURNAL [Vol. 37:733

Furthermore, FISA is limited to protecting against surveillance by the US Government; it does not create a reasonable expectation of privacy for individuals from surveillance by a third party.195 This rule is exploited by the United States' participation in Echelon.196 Because US law generally does not regulate information sharing, the United States essentially violates the privacy rights of US citizens by accepting information from foreign intelligence agencies about potential threats involving US citizens.197 Thus, the lack of privacy rights when US citizens are spied on by agencies outside of the United States creates a loophole for spying on US citizens without the government restrictions created by existing law.198

Lastly, US law allows for the collection of incidental information.199 It is predicted that Echelon collects nearly all communications, many of which can be considered incidental.200 Therefore, the fact that FISA allows for the collection of incidental information suggests that privacy rights can be violated by its involvement in Echelon.201

Allied surveillance inevitable and information sharing is routine

Chandler and Le, 15 - * Director, California International Law Center, Professor of Law and Martin Luther King, Jr. Hall Research Scholar, University of California, Davis; A.B., Harvard College; J.D., Yale Law School AND **Free Speech and Technology Fellow, California

International Law Center; A.B., Yale College; J.D., University of California, Davis School of Law (Anupam and Uyen, “DATA NATIONALISM” 64 Emory L.J. 677, lexis)

Third, while governments denounce foreign surveillance on behalf of their citizens, governments **routinely share** clandestinely intercepted information with each other. n182 The Guardian reports that Australia's intelligence agency collects and shares bulk data of Australian nationals with its partners - the United States, Britain, Canada, and New Zealand (collectively known as the "5-Eyes"). n183 Even while the German government has been a forceful critic of NSA surveillance, the German intelligence service has been described as a "prolific partner" of the NSA. n184 Der Spiegel reports that the German foreign intelligence agency Bundesnachrichtendienst (BND) has been collaborating with the NSA, passing about 500 million pieces of metadata in the month of December 2012 alone. n185 The NSA has collaborated with the effort led by the British intelligence agency Government Communications Headquarters (GCHQ) to hack into Yahoo!'s webchat service to access unencrypted webcam images of millions of users. n186 A German computer expert observes, "We know now that data was intercepted here on a large scale. So limiting traffic to Germany and Europe doesn't look as promising as the government and [Deutsche Telekom] would like you to believe." n187

2nc – circumvention turns the case

Circumvention turns their perception arguments

Seamon 8 – Professor, University of Idaho College of Law (Richard, “Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits”, Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

Conversely, allowing the President to ignore statutory restrictions on surveillance encourages executive lawlessness. Courts should discourage such behavior by preferring Fourth Amendment interpretations that encourage the executive branch to collaborate with the legislature to frame such rules, rather than defy them. After all, how is the public to feel when an Act of Congress supposedly provides the "exclusive" authority for a specified type of surveillance, yet it learns that a program exists **"outside" that authority** and has been going on for years? 20 8 Such a situation is likely to **undermine public confidence** that the nation's leaders obey the rule of law. It undermines faith in the legislative branch's willingness and ability to check executive abuse, and in the President's willingness to abide by legislative restrictions.20 9

Circumvention – US servers

Limiting the plan to US-based servers means the NSA will shift to foreign-based servers

Arnbak and Goldberg 14- cybersecurity and information law research at the Institute for Information Law, LL.M degree from Leiden University, A Competitive Strategy and Game Theory degree from London School of Economics University of Amsterdam; Associate professor

in the Computer Science Department at Boston University, phD from Princeton University, B.A.S.c from University of Toronto (Axel and Sharon, "Loopholes for Circumventing the Constitution: Warrantless Bulk Surveillance on Americans by Collecting the Network Traffic Abroad", Working Paper, June 27, 2014)//TT

Technical Loopholes. At first blush, one might suppose that a surveillance operation conducted abroad should have no impact on the privacy of Americans. However, in Section 3 we discuss why the technical realities of the Internet mean that American's network traffic can easily be routed or stored abroad, where it can then be collected under the permissive legal regime of EO 12333. Indeed, we already know of surveillance programs that **have exploited this legal loophole**. The revealed MUSCULAR/TURMOIL program, for example, illustrates how the N.S.A. presumed authority under EO 12333 to acquire traffic between Google and Yahoo! servers located on foreign territory; this program allegedly collected up to 180 million user records per month abroad, including those of Americans [17].

We also discuss other technical means an intelligence agency can exploit the legal loopholes under EO 12333. Instead of eavesdropping on intradomain traffic (i.e., data sent within a network belonging to a single organization, as in the MUSCULAR/TURMOIL program), these loopholes can be exploited in the interdomain setting, where traffic traverses networks belonging to different organizations. We explain why interdomain routing with BGP can naturally cause traffic originating in a U.S. network to be routed abroad, even when it is destined for an endpoint located on U.S. soil. We also discuss why core Internet protocols – BGP and DNS – **can be deliberately manipulated to force traffic originating in American networks to be routed abroad**. We discuss why these deliberate manipulations fall within the permissive EO 12333 regime, and how they can be used to collect, in bulk, all Internet traffic (including metadata and content) sent between a pair of networks; **even if both networks are located on U.S. soil** (e.g., from Harvard University to Boston University).

Circumvention – FBI specific

The FBI will empirically circumvent the plan

Schneier, 15 - fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Introduction)//AK

Technology has greatly enhanced the FBI's ability to conduct surveillance without a warrant. For example, the FBI (and also local police) uses a tool called an IMSI-catcher, which is basically a fake cell phone tower. If you've heard about it, you've heard the code name StingRay, which is actually a particular type of IMSI-catcher sold by Harris Corporation. By putting up the tower, it tricks nearby cell phones into connecting to it. Once that happens, IMSI-catchers can collect

identification and location information of the phones and, in some cases, eavesdrop on phone conversations, text messages, and web browsing. The FBI is so scared of explaining this capability in public that the agency makes local police sign nondisclosure agreements before using the technique, and **instructs them to lie about their use of it in court**. When it seemed possible that local police in Sarasota, Florida, might release documents about StingRay cell phone interception equipment to plaintiffs in civil rights litigation against them, federal marshals seized the documents.

Circumvention – XO12333 loophole

The NSA double dips – they'll just get the same info under XO 12333 and call it foreign intelligence

Wheeler, 14 - PhD, independent journalist specializing in national security and civil liberties; former senior policy analyst at The Intercept (Marcy, "The Single Branch Theory of Oversight" 6/23,

http://www.cato-unbound.org/2014/06/23/marcy-wheeler/single-branch-theory-oversight

Carrie Cordero made a fairly astonishing claim in her response to my focus on the SA's theft from Google and Yahoo fiber overseas. She claims that that and other documents showing how the NSA double dips from PRISM producers, collecting content domestically under Section 702 and collecting it internationally under Executive Order 12333, shows "the [FISA Amendments Act] has been implemented consistently with how it was described in the public record of legislative text and Congressional hearings that took place up to its passage in 2008." Cordero would have you believe that the Administration made it clear it intended to continue to steal data from American providers even after having been given Congressionally authorized access to it.

She is right on one count, though she doesn't spell out how in her reply. From the very first debates over amendments to FISA in 2007, members of Congress – especially Senator Dianne Feinstein and then Senator Russ Feingold – raised concerns that the Executive Branch would **simply bypass the law** if it wanted to. And while then Director of National Intelligence (and now Booz Allen Hamilton Vice Chairman) Mike McConnell assured the Senators "the effort to modernize would prevent an operational necessity to do it a different way" (seemingly providing assurances the Intelligence Community would not bypass the FISA process as they have), McConnell and others, including Keith Alexander, kept repeating that "Article II is Article II."

That is, throughout the FISA amendment process, the intelligence community was quite honest that it **did not believe itself to be bound by the laws passed by Congress**; they explicitly reserved the authority to simply **go overseas to bypass limits** and oversight imposed by Congress.

That's why the 800 words Cordero used to describe the oversight exercised by the FISA Court and Congress as part of the FISA process really describe something that is – as Julian Sanchez argued – **decorative**. So long as the intelligence community does bypass those authorities to carry out the same collection overseas (they definitely do that with content, and appear to do that with

metadata), the oversight of other branches is a mere indulgence from the Executive, made all the weaker because both branches are aware that the Executive will bypass their oversight if the oversight is deemed overly strict.

XO 12333 abuses are the worst thing the NSA does – the plan's a band-aid

Vladeck 15 - professor of law at American University Washington College of Law (Steven "Forget the Patriot Act – Here Are the Privacy Violations You Should Be Worried About", Foreign Policy, 06/01/15, http://foreignpolicy.com/2015/06/01/section-215-patriot-act-expires-surveillance-continues-fisa-court-metadata/)//GK

More alarmingly, with regard to collection under Executive Order 12333, there isn't any similar judicial review (or meaningful congressional oversight), which means that it has entirely been up to the government to police itself. As State Department whistleblower John Napier Tye explained last summer, there is every reason to doubt that such internal accountability has provided a sufficient check. In his words, "Executive Order 12333 contains nothing to prevent the NSA from collecting and storing all … communications … provided that such collection occurs outside the United States in the course of a lawful foreign intelligence investigation." To put the matter bluntly, whereas the Section 215 debate has addressed whether the government can collect our phone records, Executive Order 12333 and the 2008 FISA Amendments Act allow the government to collect a lot of what we're actually saying, whether on the phone, in our emails, or even to our search engines. There is no question that, from a privacy perspective, these programs are far more pernicious than what's been pegged to Section 215. There is also no question that such collection raises even graver constitutional questions than the phone records program. Whereas there is an open debate over our expectation of privacy in the metadata we voluntarily provide to our phone companies, there's no doubt that we have an expectation of privacy in the content of our private communications. Why, then, has all the fuss been around Section 215 and the phone records program, while the far more troubling surveillance authorities provided by Executive Order 12333 and the 2008 FISA Amendments Act have flown under the radar? Part of it may be because of the complexities described above. After all, it's easy for people on the street to understand what it means when the government is collecting our phone records; it's not nearly as obvious why we should be bothered by violations of minimization requirements. Part of it may also have to do with the government's perceived intent. Maybe it seems more troubling when the government is intentionally collecting our phone records, as opposed to "incidentally" (albeit knowingly) collecting the contents of our communications. And technology may play a role, too; how many senders of emails know where the server is located on which the message is ultimately stored? If we don't realize how easily our communications might get bundled with those of non-citizens outside the United States, we might not be worried about surveillance targeted at them. But whatever the reason for our myopic focus on Section 215, it has not only obscured the larger privacy concerns raised by these other authorities, but also the deeper lessons we should have taken away from Snowden's revelations. However much we might tolerate, or even embrace, the need for secret government surveillance programs, it is all-but-inevitable that those programs will be stretched to — and beyond — their legal limits. That's why it's important not only to place substantive limits upon the government's surveillance authorities, but also to ensure that they are subject to meaningful external oversight and accountability as well. And that's why the denouement of Section 215 debate has been so disappointing. This should have been a conversation not just about the full range of government surveillance powers, including Executive Order 12333 and the 2008 FISA Amendments Act, but also about the role of the FISA Court and of congressional oversight in supervising those authorities. Instead, it devolved into an over-heated debate over an over-emphasized program. Congress has tended to a paper cut, while it **ignored the internal bleeding**. Not only does the expiration of Section 215 have no effect on the substance of other surveillance authorities, it also has no effect on their oversight and accountability. Reaching some degree of closure with regard to the phone records program may leave many with the impression that America has concluded a meaningful and productive national debate over surveillance reform. We haven't. And although the 2008 FISA Amendments Act is also set to expire — on December 31, 2017 — the debate over Section 215 leaves little reason to believe that we'll have it then, either.

Curtailment of Executive Order 12333 is critical to effective NSA reform

Edgar 15*scholar at the Brown University's Watson Institute for International Studies (Timothy, "Surveillance Reform: Privacy Board Turns to E.O. 12,333", Lawfare, 3/13/15, http://www.lawfareblog.com/surveillance-reform-privacy-board-turns-eo-12333)//GK

The job of lawyers and privacy officials is the intelligence community is to administer the two basic systems of oversight first established by the Church Committee reforms of the 1970s: the Foreign Intelligence Surveillance Act and E.O. 12,333. In my experience, E.O. 12,333 is the more important of the two, although it receives much less attention. E.O. 12,333 governs activities that are not regulated by statute and do not require a court order. As a result, those activities are less well documented, as a practical matter less transparent – even by the standards of classified programs, and are therefore subject to less rigorous oversight. They involve at most two branches of government – the Executive and Congress. Realistically, they usually involve only the Executive. As a lawyer inside the Executive Branch providing advice on intelligence activities, I found myself turning to E.O. 12,333, and the AG guidelines for each agency required by that order, far more often than I did to FISA or other statutes. For us, E.O. 12,333 and the AG guidelines provided the only real source of legal guidance for most of what intelligence agencies do. Since the Snowden revelations began in 2013, there has been debate here and abroad about surveillance reform. While much of the debate in this country about surveillance reform has focused on bulk collection of telephone records and other FISA activities, in the rest of the world the attention has been on continuing revelations of a variety of NSA activities conducted overseas under E.O. 12,333. These include reports of very intrusive activities, like collection of massive quantities of communications – the practice the government calls bulk collection, and critics call mass surveillance – and alleged activities that undermine encryption or security of communications systems. President Obama has addressed some of these concerns in Presidential Policy Directive 28 (PPD-28), issued last year and implemented this year. PPD-28 limits bulk collection to six specified national security threats, including international terrorism, and for the first time requires intelligence agencies to have guidelines that protect the privacy of foreign citizens. I discuss PPD-28, and make recommendations for further reforms, in my recent Foreign Affairs article, "The Good News About Spying."

Significant 702 reform and curtailing XO1233 are critical to the fight for privacy

Esguerra 15 – EFF activist (Richard, "Fighting for Privacy, Two Years After Snowden", The Electronic Frontier Foundation, 06/08/15, http://www.juancole.com/2015/06/fighting-privacy-snowden.html)//GK

With the passage of USA Freedom law behind us, we're setting our sights on Section 702 of the FISA Amendments Act, a deeply troubling authority used by the NSA to justify mass collection of phone calls and emails by collecting huge quantities of data directly from the physical infrastructure of communications providers. Here too, we are pulling at ominous threads of the government's surveillance apparatus first identified by whistleblowers like Mark Klein, Thomas Drake, William Binney, J. Kirk Wiebe, and Edward Snowden. Mr. Snowden's disclosures helped us understand that Section 702 was what the government was using to justify its tapping into fiber optic cables: something we've been suing over since 2006 and which we are currently presenting to the Ninth Circuit in Jewel v. NSA. It was a hard-fought loss in 2008 when the FISA Amendments Act passed, unconstitutionally granting retroactive immunity to telecommunications companies that participated in warrantless mass surveillance and ultimately killing our first case, Hepting v. AT&T. But the passage of USA Freedom—even as a first step—demonstrates the strengthening of resources, communities, networks, and strategies that can now be brought to bear in the fight for reform in Congress and in the courts. Another objective: address Executive Order 12333, which the NSA relies on for most of its digital surveillance of people worldwide. On the roster of legal authorities underpinning the government's mass surveillance activities, EO 12333 is the **most thickly shrouded** while also appearing to be one of the most powerful: the Washington Post revealed in 2014 that the order alone—without any court oversight—was used to justify the recording of "**100 percent** of a foreign country's telephone calls." There are many objectives to achieve around 12333: greater public awareness; meaningful transparency from those with the power and responsibility to investigate and disclose details being hidden from the public; and direct pressure on President Obama, who can issue a new executive order to better protect people around the world before he leaves office.

Circumvention – section 702

Section 702 fails to limit domestic surveillance—legal loopholes and circumventions

Arnbak and Goldberg 14- cybersecurity and information law research at the Institute for Information Law, LL.M degree from Leiden University, A Competitive Strategy and Game Theory degree from London School of Economics University of Amsterdam; Associate professor in the Computer Science Department at Boston University, phD from Princeton University, B.A.S.c from University of Toronto (Axel and Sharon, "Loopholes for Circumventing the Constitution: Warrantless Bulk Surveillance on Americans by Collecting the Network Traffic Abroad", Working Paper, June 27, 2014)//TT

For years, FISA and especially its s. 702 have been criticized for providing legal loopholes for warrantless political and economic surveillance on U.S. lawyers, NGOs, journalists and corporations communicating internationally through U.S. Internet companies [33]; the media reports in December 2005, around warrant-less wiretapping in bulk from the Internet backbone at an AT&T switch [28],have highlighted some of this tension. Nonetheless, U.S. Congress passed FAA after the AT&T revelations and extended the validity of the FAA for another five years on 31 December 2012, one day before the sunset deadline. Two months later, on 26 February 2013 in the case `Clapper v. Amnesty International', the U.S. Supreme Court denied several U.S. organizations a right to claim that the privacy of their international communications was violated by s. 702 on procedural grounds. In what appeared to be the final ruling on the constitutionality of s. 702 for the foreseeable future, a 5-4 majority argued that these organizations were merely `speculating', and could not prove that their communications had actually been intercepted [6]. Justice Breyer, on behalf of the minority, noted in his dissent that s. 702 prohibits the same applicants to actually gain knowledge of the surveillance itself because of national security secrecy, and that the broad authorities probably existed for a reason.

The political debate and the issue of legal standing have shifted considerably since June 2013, when it became clear that s. 702 indeed serves as the legal basis for many operations, among them 'UPSTREAM' and 'PRISM' [13]. Moreover, several of the classified targeting and minimization procedures under s. 702 have been leaked or declassified [2, 3]. Both revelations have spurred the N.S.A. to confirm that a principle use of s. 702 is compelling assistance from U.S. Internet companies for warrantless surveillance [5, p. 4].

This new dynamic enables a unique insight into classified and generous interpretations of the legal provisions in FISA made by the intelligence community and the FISA Court [13]. Before we dive into the details of FISA, we mention that FISA also contains s. 703 and s. 704, that regulate surveillance intentionally targeting U.S. persons located abroad. These sections are outside the scope of this paper, since our focus is on surveillance operations on Americans located in the U.S., with surveillance conducted on foreign soil. As an aside, Donohue has observed that the warrant requirements in these sections have been circumvented by applying s. 702 criteria to the collection phase, and then seeing whether collected data is of use for further processing after the fact [13, p.26].

2.2.2 Scope of the Second Regulatory Regime under FISA: The 1978 'Electronic Surveillance' Definition

All communications surveillance operations that constitute 'electronic surveillance', as defined s. 1801(f) of FISA, fall within the scope of FISA (cf. 18 U.S.C. s.2511(2)(f); 50 U.S.C. s.1812(a)). The definition has largely remained intact since 1978. To acquire the content of 'wired communications', surveillance only falls within the FISA definition when authorities 'intentionally target a U.S. person' (s. 1801(f)(1)), or when the acquisition is conducted on U.S. soil (s. 1801(f)(2)). Importantly, when authorities conduct targeted surveillance from abroad,

even if they know that both 'sender and all intended recipients are located in the U.S.', then only 'radio' (i.e., wireless) communications fall within the FISA definition of 'electronic surveillance' (s. 1801(f)(3)). The FISA defi- nition only mentions communications 'content', but not 'metadata' (location, time, duration, identity of communicants, etc.), which in itself gives rise to privacy concerns that we will not further discuss here. Relevant for our purposes, is the observation that operations on 'wired communications', when conducted abroad, only fall within the scope of FISA if they 'intentionally target a U.S. person'.

Intentionally Targeting U.S. Persons. 'Intentionally targeting a U.S. person' constitutes 'electronic surveillance' under FISA (s. 1801(f)(1)). However, 'intention' and 'targeting' are not defined in FISA, leaving the concepts open to generous interpretation by authorities in classified 'targeting' and 'minimization' procedures. Apart from providing clarity that bulk surveillance is not regarded as intentional targeting (we discuss this further when we look at legal protections from U.S. persons under FISA), the disclosure of these procedures has revealed two important new facts related to surveillance operations conducted abroad. Firstly, conducting the surveillance abroad creates the presumption that the surveillance targets a non-U.S. person [2, p. 3-4]. Secondly, the 'targeting procedures' do not provide any due diligence requirement or duty of care to establish the identity of parties on either side of a communication [2, p.3-4] [3]. This implies that unless a communicant is known to be a U.S. person, the procedures consider the communicant to be a non-U.S. person. In other words, authorities have a strong incentive to conduct surveillance abroad: legal protections offered to U.S. persons under FISA can be circumvented, and a more generous legal regime applies to the data collection itself.

702 fails—serious loopholes exist to circumvent protections

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Applicability of FISA to a surveillance operation is relevant for Americans, be- cause the statue contains some important legal protections for U.S. persons intentionally targeted. For instance, the statute explicitly states that the 4th Amendment applies to surveillance operations under FISA (cf. s.1881(b)(5)) and a narrow set of four surveillance operations is explicitly prohibited. As discussed, surveillance under s. 702 may not intentionally target a U.S. person; for those operations s. 703 exists. Another example is the 'reverse-targeting' prohibition of s.1881(b)(2), which holds that authorities may not intentionally target a non-U.S. person under a s. 702 if the actual purpose of the operation is to target a U.S. person. By contrast, the third legal regime under EO 12333 explicitly allows for intentional targeting of U.S. persons, when certain conditions discussed in the next section are met.

Nonetheless, **serious loopholes** exist for surveillance conducted within the bounds of FISA. One of the most-discussed loopholes is when U.S. persons have not been 'intentionally targeted' but instead affected by a surveillance operation, e.g., a bulk intercepts on the Internet backbone on

U.S. soil under the 'UPSTREAM' program. Instead of promptly destroying such data, **generous ex- emptions exist** to nonetheless use the 'incidentally' or 'inadvertantly' collected information of the affected U.S. person, including when a 'foreign intelligence' interest is created in the data sometime after its collection, or when the information could be relevant for cybersecurity (incl. cyber-offense) purposes [3].

More generally, the targeting and minimization procedures seem to have introduced a new category of surveillance specifically aimed acquiring information about persons. (For example, two communicants that chat *about* a subject, like Angela Merkel, which is part of an N.S.A. 'selector'.) Such surveillance is not considered to intentionally target specific communicating parties, and hardly enjoys protection even if it affects U.S persons. The information collected through such operations may be further analyzed and disseminated to other agencies as long as the identity of U.S. persons implicated are redacted in a way 'that the information cannot be reasonably connected with an identifiable U.S. person' [3, s.6]).3 A more complete analysis of the targeting and minimization procedures can be found in [13], along with a critical assessment of the role of the FISA Court.

Circumvention – bulk collection

The government will restart other bulk collection programs in response to the plan

Toomey 15 [Patrick, Patrick Toomey is a Staff Attorney in the ACLU's National Security Project, where he works on issues related to electronic surveillance, national security prosecutions, whistle-blowing, and racial profiling. Mr. Toomey is a graduate of Harvard College and Yale Law School. , Has the CIA Asked the FISC to Restart Its Bulk Collection Program?, http://justsecurity.org/24216/cia-asked-fisc-restart-bulk-collection-program/] Schloss BR 15-76 is a proposal to renew interception and storage of data in regards to businesses

And now it appears, the government may be seeking to restart another one of the very bulk collection programs that many people understood the USA Freedom Act was meant to prohibit.

There are a few reasons to think the missing application relates to one of these still-secret bulk collection programs and is not just another targeted request. First, in issuing the opinion related to BR 15-77 and BR 15-78, the FISC made a deliberate decision to split off the questions it considered no-brainers from the more difficult statutory and constitutional questions raised by the government's application to renew its bulk call records program in BR 15-75. The legal authority for that program has been deeply undermined by the Second Circuit's decision in ACLU v. Clapper, and at least based on the public record today, the FISC still has not resolved those questions. But in the meantime, as Judge Saylor's opinion makes clear, the FISC chose to skip ahead to several subsequent applications that presented only "relatively simple" questions. The FISC's decision to leave BR 15-76 out of Judge Saylor's opinion suggests that it involves more complicated questions on par with the bulk call records application — i.e., that it involves a different bulk collection program, one the government wants to restart but the FISC must now analyze more closely.

Second, it's very unlikely that BR 15-76 is a targeted application that the FISC simply went ahead and silently granted. That's because the FISC would have had to address the same questions raised by BR 15-77 and BR 15-78 in order to grant virtually any application under Section 215 — namely, which version of Section 215 is currently in effect. The temporary expiration of Section 215 on June 1 left it unclear, at least as a technical matter, what remained of the law when Congress decided to amend it. If the missing application were also a targeted one, why didn't the FISC resolve this question and announce its decision in the context of that earlier application? The better conclusion is that BR 15-76 isn't a targeted application at all, but concerns a bulk collection program the government continues to hide from the public.

They'll reinstate CIA bulk collection in response to the plan

Toomey 15 [Patrick, Patrick Toomey is a Staff Attorney in the ACLU's National Security Project, where he works on issues related to electronic surveillance, national security prosecutions, whistle-blowing, and racial profiling. Mr. Toomey is a graduate of Harvard College and Yale Law School. , Has the CIA Asked the FISC to Restart Its Bulk Collection Program?, http://justsecurity.org/24216/cia-asked-fisc-restart-bulk-collection-program/] Schloss

The more likely scenario is that the government has asked the FISC to reinstate the CIA's bulk collection program or one of its still-secret brethren. If that's right, the public should know about this program. The government's application goes directly to one of the key questions in the USA Freedom Act debate: whether the legislation would prove effective in halting the bulk collection of Americans' sensitive information. Perhaps the government is simply seeking to "transition" this program over the coming 180 days, as it has said of its effort to restart the NSA call records program — but of course we don't know. So long as the government continues to keep the public in the dark about its efforts to collect their data en masse, we can't judge whether the USA Freedom Act really put an end to bulk collection under Section 215.

AT: Fiat solves

Fiat is a form of intelligence legalism – they can fiat compliance with the LETTER of the plan – but that's a token gesture that legitimizes surveillance abuses

Schlanger 15 [Margo, Professor of Law at the University of Michigan Law School, and the founder and director of the Civil Rights Litigation Clearinghouse., Intelligence Legalism and the National Security Agency's Civil Liberties Gap, file:///C:/Users/Jonah/Downloads/Intelligence%20Legalism%20and%20the%20National%20Security%20Agency-s%20Civil%20Li%20(2).pdf] Schloss3

And as I pointed out in this article's introduction, the "no's" Comey praises may make remarkably little difference, in the end. The hospital-bed confrontation leading to the brief shut-down of part of the "President's Surveillance Program"—the modern ur-episode of intelligence legalism—is a perfect case in point. Lawyers, it seems to me, are far more likely to move an

organization towards this kind of **nearly symbolic compliance** than to effect any more significant constraint on executive activity, particularly with respect to a program important to the President. Indeed, lawyers are attractive to intelligence organizations because they are simultaneously able to give agency operations an **imprimatur of lawfulness** and to maintain their agency affiliation/loyalty.316 Their occasional "no's," which like as not have formal rather than major substantive effects, are a price worth paying for those traits.

C. The Costs of Intelligence Legalism

Theorists and observers in a variety of fields have developed the broad critique that law and its concomitant rights orientation may have the counterintuitive impact of decreasing the welfare of the purported rights holders—or, in a more modest version of the point, may ameliorate some prevalent set of harms but undermine more ambitious efforts. Focusing particularly on litigation, they argue that it is inherently a timid enterprise, and yet it crowds out other more muscular approaches.317 Even with respect to out-of-court rights orientation, or "legalization," scholars have offered the insight that formalizing/legalistic approaches can come with real costs to their intended beneficiaries, depending on the context. 318 The issue is whether, in a particular institutional setting, these possibilities have materialized. In this Section, I examine two pathways by which intelligence legalism tends to impair the prospects of a softer civil-liberties protective policy.

1. Intelligence Legalism Crowds Out Interest Balancing

This Article demonstrates the high salience of rights in this realm. Several related mechanisms convert that high salience into a devaluation of interests:

First, rights occupy the "liberty" field because of the practical issue of attention bandwidth, which potentially applies both to agencies and advocates. After all, even large organizations have limited capacity.319 NSA compliance is such an enormous task that little room remains for more conceptual weighing of interests and options. Recall that of the dozen-plus offices I described in Part II, just two—the Civil Liberties and Privacy Office at the NSA, and the Privacy and Civil Liberties Oversight Board—are currently playing a policy rather than strictly a compliance role. They are also, not coincidentally, the two newest and two smallest of the offices listed.

I think, though, that this bandwidth issue is driven by a more conceptual, less practical, factor: that rights talk hides the necessity of policy judgments and, by its purity, diverts attention from that messier field. Morton Horwitz explains the point:

A . . . troubling aspect of rights discourse is that its focus on fundamental, inherent, inalienable or natural rights is a way of obscuring or distorting the reality of the social construction of rights and duties. It shifts discussion away from the always disputable issue of what is or is not socially desirable. Rights discourse . . . wishes us to believe instead that the recognition of rights is not a question of social choice at all, as if in the normative and constitutional realm rights have the same force as the law of gravity.320

Mary Dudziak makes a similar claim in her recent discussion of law and drone warfare, "In this context, law . . . does not aid judgment, but diverts our attention from morality, diplomacy, humanity, and responsibility in the use of force, and especially from the bloody mess left on the ground."321

Even in Fourth Amendment jurisprudence, an area of constitutional doctrine explicitly imbued with policy considerations, we talk about rights as if they are somehow scientific, to be deduced rather than debated. The discussion that must accompany policy claims pales in prestige and importance by comparison. And from the perspective of their beneficiaries, judicially enforceable rights, with their promise of supremacy over competing interests, are shiny and magnetic. This is why the assertion of rights can be such a powerful organizing tool322—**even if those rights don't turn out to change much on the ground**. As Rich Ford has written, "Rights are a secular religion for many Americans."323 Or to quote Alan Freeman's classic article about civil rights, "Rights consciousness can offer sustenance to a political movement, however alienated, indeterminate or reified rights may be."324

It is the purity, the apparent apolitical nature, of rights that makes them nearly the only coin available. By comparison with judicially enforceable rights, other methods of advancing individual liberty look feeble, contingent, jury-rigged. An accusation of illegality becomes the required first bid for any policy discussion, and a **refutation of that accusation ends play**. This dynamic is very much in evidence in the response to the PCLOB's 702 report, described above. Rights discourse stunts needed policy discourse.325

2. Intelligence Legalism and Legitimation

In addition**, judicial review legitimates the American surveillance system**; that is why reference to court supervision is surveillance proponents' first recourse when they want to **suggest that everything is fine**. It is, for example, a rare speech by a government official that fails to make reference to the FISA Court and its ratification of the government's surveillance programs. Below are passages, chosen essentially at random, from a speech by President Obama on the topic of signals intelligence reform326:

• "I ordered that our programs be reviewed by my national security team and our lawyers . . . . We increased oversight and auditing, including new structures aimed at compliance. Improved rules were proposed by the government and approved by the Foreign Intelligence Surveillance Court."

• "[T]he Foreign Intelligence Surveillance Court . . . provides judicial review of some of our most sensitive intelligence activities."

In language like the above, court involvement is offered as evidence of both legality and appropriateness; indeed, the two are conceptually merged.

My point is not that FISA Court legitimation is phony. In fact, judicial review has real effects on the system—we know from the recently declassified documents that FISA Court review disciplines the surveillance system, holding it at least to the government's own representations.327 Yet the oversight gain carries with it a legitimation cost; the existence of judicial review makes political change more difficult. Scholars, particularly critical legal studies scholars, have made this point in a large number of other contexts. For example, Alan Freeman argued that civil rights law—and law more generally—exists "largely to legitimize the existing social structure."328 The polity at large is soothed, and the effect is felt even by rights beneficiaries, who frame and tame their aspirations to suit the inherently limited scope of potential judicial interventions. Freeman described his view that American civil rights litigation has amounted to a "process of containing and stabilizing the aspirations of the oppressed through **tokenism and formal gestures** which actually enhance the material lives of few."329 He wrote:

Rights are granted to, or bestowed upon, the powerless by the powerful. They are ultimately within the control of those with authority to interpret or rewrite the sacred texts from which they derive. To enjoy them, one must respect the forms and norms laid down by those in power. One must especially avoid excesses in behavior or demands.330

The point is not, for Freeman (and the plentiful literature he adduced), that law accomplishes nothing for its purported beneficiaries. If that were true, it could not legitimate: "[I]f law is to serve its legitimation function, [the] ultimate constraints [that come from politics] must yield up just enough autonomy to the legal system to make its operations credible for those whose allegiance it seeks as well as those whose self-interest it rationalizes."331 But gains from rights may—and in the surveillance situation clearly do—make gains from politics less available.

To sum up this Part, neither the Constitution nor FISA aims to optimally balance security and liberty—and frequently analyzed difficulties in congressional intelligence oversight mean that new statutes are unlikely to fill that gap. Likewise the existing foundational Executive Order, 12,333, is at the very least out-of-date. Accordingly intelligence legalism, and its compliance mindset, cannot achieve optimal policy. Its concomitant empowerment of lawyers is real and important, but does not deputize a procivil liberties force. Indeed, legalism actually both **crowds out** the consideration of policy and interests (as opposed to law and rights), and **legitimates the surveillance state**, making it less susceptible to policy reform. Are there, then, non-legalistic reforms that could play a productive part? I turn next to this issue.

NSA lawyering will meet the letter of the plan but they'll still find loopholes

Schlanger 15 [Margo, Professor of Law at the University of Michigan Law School, and the founder and director of the Civil Rights Litigation Clearinghouse., Intelligence Legalism and the National Security Agency's Civil Liberties Gap, file:///C:/Users/Jonah/Downloads/Intelligence%20Legalism%20and%20the%20National%20Security%20Agency-s%20Civil%20Li%20(2).pdf] Schloss3

One key question about all this legal advice is whether it is ever constraining—whether the lawyers ever tell their clients no. NSA's lawyers do sometimes advise their clients/colleagues not to do specific things. One released training document, for example, advises analysts not to use certain search techniques, cautioning: "Do Not: Wildcard domains. Wildcard user names. Wildcard across domains."149 One would expect agency counsel to say no with relative ease where the rules are clear and when those rules govern how and not whether a particular activity can occur. It is crucial to remember, however, that agency lawyer advice-giving is not adjudication and agency lawyers are not judges. The judicial ideal of even-handedness is not, even theoretically, applicable. Rather, the goal of legal advice for lawyers within the Intelligence Community, as with any organization's lawyers, is to assist the client. To quote the same senior IC lawyer, "you're hoping to get done what your client wants to get done, so there's a tendency to try to find the most room to get that done."150 Or, in the less careful words of a former NSA chief analyst, "Look, NSA has **platoons of lawyers** and their entire job is figuring out how to **stay within the law** and maximize collection by **exploiting every loophole**." 151 Unsurprisingly, then, some training slides that say no also include work-arounds—methods for achieving various searching or analytic goals that are not covered by the stricter FISA rules.152

Fiating compliance makes it more difficult to reign in the NSA in every other area

Schlanger 15 [Margo, Professor of Law at the University of Michigan Law School, and the founder and director of the Civil Rights Litigation Clearinghouse., Intelligence Legalism and the National Security Agency's Civil Liberties Gap, file:///C:/Users/Jonah/Downloads/Intelligence%20Legalism%20and%20the%20National%20Security%20Agency-s%20Civil%20Li%20(2).pdf] Schloss3

I suggest in Section A, below, that the law alone is not enough; it is implausible that constitutional, statutory, and binding executive rules will be sufficiently robust to produce the best policy outcomes. There will always be liberty gaps—and these will increase with the passage of time from the last public outcry and resulting intervention. In Section B, I examine and reject a different argument that intelligence legalism sufficiently furthers liberty: that lawyers, empowered by legalism, turn out to be excellent good civil liberties guardians. Finally, in Section C, I argue that the compliance focus, and the prevalence of rights and law talk, actually dampens the prospects of civil liberties policymaking, both by crowding it out and by rendering surveillance more politically acceptable and therefore making political or policy-based claims for reform less likely to succeed, whether inside the Intelligence Community or in the polity as a whole. In sum, intelligence legalism may further individual liberty to some extent, but compliance matters are apt to receive so much attention and even prestige that law functions as a ceiling rather than a floor. To add policy considerations on top of law thus requires focused intervention, discussed in Part IV.

AT: FISC checks

The FISC allows the NSA to make the reasonable suspicion determination – means the NSA circumvents

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To the contrary, FISC's primary order authorizing the collection of telephony metadata required that designated **NSA officials** make a finding that there is "reasonable, articulable suspicion" (RAS) that a seed identifier proposed for query is associated with a particular foreign terrorist organization prior to its use. It is thus left to the executive branch to determine whether the executive branch has sufficient evidence to place individuals or entities under surveillance.

The dangers associated with the court removing itself from the process are clear. Documents recently released under court orders in a related FOIA case establish that for nearly three years, the NSA did not follow these procedures 223 —even though numerous NSA officials were aware of the violation.224 Noncompliance incidents have continued. Collectively, these incidents raise serious question as to whether FISC is performing the functions for which it was designed.

Legitimacy of FISC undermined by continuous noncompliance

Donohue '14 – Professor of Law at Georgetown University (Laura K. Donohue, "Bulk Metadata Collection: Statutory and Constitutional Considerations", Georgetown University Law Center, 2014, http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2360&context=facpub)//MBB

In at least three important ways, FISC no longer serves the purpose for which it was designed. First, Congress created the court to determine whether the executive branch had met its burden of demonstrating that there was sufficient evidence to target individuals within the United States, prior to collection of such information. The telephony metadata program demonstrates that FISC has abdicated this responsibility to the executive branch generally, and to the NSA in particular. **Continued noncompliance** underscores concern about relying on the intelligence community to protect the Fourth Amendment rights of U.S. persons.

Second, Congress did not envision a lawmaking role for FISC. Its decisions were not to serve as precedent, and FISC was not to offer lengthy legal analyses, crafting in the process, for instance, exceptions to the Fourth Amendment warrant requirement or defenses of wholesale surveillance programs.

Third, questions have recently been raised about the extent to which FISC can fulfill the role of being a neutral, disinterested magistrate. Congress went to great lengths, for instance, to try to ensure diversity on the court. To the extent that the appointments process implies an ideological predilection, at a minimum, it is worth noting that almost all of the judges who serve on FISC and FISCR are Republican appointees. The rate of applications being granted, in conjunction with the in cam-era and ex parte nature of the proceedings, also raises questions about the extent to which FISC serves as an effective check on the executive branch. The lack of technical expertise of those on the court further introduces questions about the judges' ability to understand how the authorities they are extending to the NSA are being used.

Close to no FISC applications ever get denied

Donohue '14 – Professor of Law at Georgetown University (Laura K. Donohue, "Bulk Metadata Collection: Statutory and Constitutional Considerations", Georgetown University Law Center, 2014, http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2360&context=facpub)//MBB

Augmenting concerns prompted by the lack of diversity in terms of appointments to FISC and FISCR is the rather notable success rate the government enjoys in its applications to the court. Scholars have noted that the success rate is "unparalleled in any other American court."308 Over the first two and a half decades, for instance, FISC approved nearly every single appli- cation without any modification.309 Between 1979 and 2003, FISC denied only three out of 16,450 applications.310

Since 2003, FISC has ruled on 18,473 applications for electronic surveillance and physical search (2003–2008), and electronic sur- veillance (2009–2012).311 Court supporters note that a

significant number of these applications are either modified or withdrawn by the government prior to FISC ruling. But even here, the num- bers are quite low: 493 modifications still only comes to 2.6% of the total number of applications. Simultaneously, the govern- ment has only withdrawn twenty-six applications prior to FISC ruling.312 These numbers speak to the presence of informal pro- cesses, whereby FISC appears to be influencing the contours of applications. Without more information about the types of mod- ifications that are being required, however, it is impossible to gauge either the level of oversight or the extent to which FISC is altering the applications.

Critics also point to the risk of capture presented by in camera, ex parte proceedings, and note that out of 18,473 rulings, FISC has only denied eight in whole and three in part. Whatever the substantive effect might be, the presentational impact is of note.

Setting modifications aside for the moment, the deference that appears to exist regarding outright denials or granting of orders seems to extend to FISC rulings with regard to business records. Almost no attention, however, has been paid to this area. It appears that FISC has never denied an application for an order under this section. That is, of 751 applications since 2005, all 751 have been granted, as the following figure shows.

FISA allows incidental collection of data from US persons

Rinehart, 14 – Editor in Chief of the Maryland Law Review (Liz Clark Rinehart, "Clapper v. Amnesty International USA: Allowing the FISA Amendments Act of 2008 to Turn "Incidentally" into "Certainly"", Maryland Law Review, 5/1/2014, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3638&context=mlr)//MBB

The Court found it notable that the plaintiffs were not in a class of people targeted by the statute,196 but the text of Section 1881a indicates Congress considered the statute would possibly affect U.S. persons.197 If, as it seems likely, the plaintiffs are individuals who are directly affected by the statute, they should have been permitted to assert standing without showing that the "choices [of independent third parties] have been or will be made in such manner as to produce causation and permit redressability of injury."198

The text of Section 1881a undoubtedly indicates that the overall focus of the statute is surveillance of "certain persons outside the United States,"199 but there is also language that implies, if not directly states, that U.S. persons like the plaintiffs were thought to be affected, although not targeted, by the law. The limitations provision of Section 1881a specifies that authorizations may not "intentionally target" U.S. persons living in the United States or abroad.200 Based on the term "intentionally," this provision appears to permit the acquisition of such communications if the acquisition occurs incidentally or accidentally. The targeting provision also requires that the government "prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States."201 This language does not mean, however, that the targeting must prevent the intentional acquisition of communications between individuals located outside the United States and individuals located in the United States. This was the exact scenario facing the plaintiffs in Amnesty International.202

AT: Relevance standard

Relevance standard will be construed expansively to allow all circumvention

Donohue '14 – Professor of Law at Georgetown University (Laura K. Donohue, "Bulk Metadata Collection: Statutory and Constitutional Considerations", Georgetown University Law Center, 2014, http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2360&context=facpub)//MBB

Four legal arguments undermine the government's claim that there are "reasonable grounds" to believe that hundreds of millions of daily telephone records are "relevant" to an author- ized investigation. First, the NSA's interpretation of "relevant" collapses the statutory distinction between relevant and irrele- vant records, thus obviating the government's obligation to discriminate between the two. Second, this reading renders meaningless the qualifying phrases in the statute, such as "rea- sonable grounds." Third, the government's interpretation es- tablishes a concerning legal precedent. Fourth, the broad read- ing of "relevant" contravenes congressional intent.

First, in ordinary usage, something is understood as relevant to another thing when a demonstrably close connection be- tween the two objects can be established.351 This is also the way in which courts have consistently applied the term to the col- lection of information—as with grand-jury subpoenas, where the information collected must bear some actual connection to a particular investigation.352

In contrast, almost none of the information the government obtained under the bulk metadata collection program is de- monstrably linked to an authorized investigation. The govern- ment itself has admitted this. Writing to Representative James Sensenbrenner, Peter Kadzik, the Principal Deputy Assistant Attorney General, acknowledged, "most of the records in the dataset are not associated with terrorist activity."353 FISC Judge Reggie Walton drew the point more strongly:

The government's applications have all acknowledged that, of the [REDACTED] of call detail records NSA receives per day (currently over [REDACTED] per day), the vast majority of individual records that are being sought pertain neither to [REDACTED] . . . In other words, nearly all of the call detail records collected pertain to communications of non-U.S. persons who are not the subject of an FBI investigation to ob- tain foreign intelligence information, [and] are communica- tions of U.S. persons who are not the subject of an FBI inves- tigation to protect against international terrorism or clandestine intelligence activities.354

In other words, most of the information being collected does not relate to any individuals suspected of any wrongdoing.

In defense of its broad interpretation, the government argues that it must collect irrelevant information to ascertain what is relevant. This means that the NSA, in direct contravention of the statutory language, is collapsing the distinction between relevant and irrelevant records—a distinction that Congress required be made before collection. Because of this collapse, the NSA is

gaining an extraordinary amount of information. The records the government sought under the telephony metadata program detail the daily interactions of millions of Americans who are not themselves connected in any way to foreign pow-ers or agents thereof. They include private and public interac- tions between senators, between members of the House of Rep- resentatives, and between judges and their chambers, as well as information about state and local officials. They include par- ents communicating with their children's teachers, and zookeepers arranging for the care of animals. Metadata infor- mation from calls to rape hotlines, abortion clinics, and political party headquarters are likewise not exempt from collection— the NSA is collecting all telephony metadata.

Second, in addition to collapsing the distinction between rel- evant and irrelevant records, reading FISA to allow this type of collection would neuter the qualifying phrases contained in 50 U.S.C. § 1861(b)(2)(A). The statute requires, for instance, that there be "reasonable grounds" to believe that the records being sought are relevant.355 Although FISA does not define "reason- able grounds," the Supreme Court has treated this phrase as the equivalent of "reasonable suspicion."356 This standard re- quires a showing of "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" an intrusion on an individual's right to privacy.357

The FISC order requires that Verizon disclose all domestic tel- ephone records—including those of a purely local nature.358 Ac- cording to Verizon Communications News Center, as of last year the company had 107.7 million wireless customers, connect- ing an average of 1 billion calls per day.359 It is impossible that the government provided specific and articulable facts showing reasonable grounds for the relevance of each one of those cus-tomers or calls. Interpreting all records as relevant effectively renders the "reasonable grounds" requirement obsolete.

The statute does not explain precisely what makes a tangible item relevant to an authorized investigation. Nevertheless, the act suggests that tangible things are "presumptively relevant" when they:

[P]ertain to—(i) a foreign power or an agent of a foreign power; (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or (iii) an individual in contact with, or known to, a suspect- ed agent of a foreign power who is the subject of such au-thorized investigation.360

This section appears not to apply to the telephony metadata program. It would be impossible to establish that all customer and subscriber records pertain to a foreign power or an agent thereof, or to a particular, suspected agent of the same, who is the subject of an authorized investigation. Perhaps five or ten customers may fall into this category, but to include millions simply pushes the bounds of common sense. Accordingly, the telephony metadata are neither relevant nor presumptively relevant.

Third, the breadth of the government's interpretation estab- lishes a troubling precedent. If all telephony metadata are rele- vant to foreign intelligence investigations, then so are all e-mail metadata, all GPS metadata, all financial information, all bank- ing records, all social network participation, and all Internet use. Both the DOJ and FISC have suggested that there may be other programs in existence that operate in a similar fashion.361 Some media reports appear to support this. On September 28, 2013, for instance, the New York Times reported that the NSA "began allowing the analysis of phone call and email logs in November 2010 to begin examining Americans' networks of associations."362 If all telephony metadata are relevant, then so are all

other data—which means that very little would, in fact, be irrelevant to such investigations. If this is the case, then such an interpretation radically undermines not just the limiting language in the statute, but the very purpose for which Con- gress introduced FISA in the first place.

Fourth, the government's interpretation directly contradicts Congress's intent in adopting Section 215. At the introduction of the measure, Senator Arlen Specter explained that the lan- guage was meant to create an incentive for the government to use the authority only when it could demonstrate a connection to a particular suspected terrorist or spy.363 During a House Ju- diciary Committee meeting on July 17, 2013, Representative James Sensenbrenner (R-WI) reiterated that Congress inserted "relevant" into the statute to ensure that only information di- rectly related to national security probes would be included— not to authorize the ongoing collection of all phone calls placed and received by millions of Americans not suspected of any wrongdoing.364 Soon afterwards, he wrote:

This expansive characterization of relevance makes a mock- ery of the legal standard. According to the administration, everything is relevant provided something is relevant. Con- gress intended the standard to mean what it says: The rec- ords requested must be reasonably believed to be associated with international terrorism or spying. To argue otherwise renders the standard meaningless.365

Other members of Congress have made similar claims.366

Counterplans

Replace section 702

1nc – replace section 702

The United States federal government should repeal section 702 of the FISA Amendments Act and replace it with a requirement requiring an individualized court order for the interception of communications involving United States persons, allowing an exception solely if the primary purpose of federal surveillance is foreign intelligence gathering. This requirement should govern all federal surveillance.

It competes – the plan makes section 702 exclusive – the CP makes an individualized court order the exclusive precondition of surveillance

Patel and Goitein, 15 – *co-director of the Liberty and National Security Program at the Brennan Center for Justice AND ** co-directs the Brennan Center for Justice's Liberty and National Security Program (Faiza and Liza, "Fixing the FISA Court by Fixing FISA: A Response to Carrie Cordero" 4/8, Lawfare,

http://www.lawfareblog.com/fixing-fisa-court-fixing-fisa-response-carrie-cordero

That's why our report states that, "[w]ith the exception of e-mails stored in the United States, the new law had no impact on the government's ability to collect the communications of foreigners with other foreigners." Carrie is, of course, correct that Section 702 allows the government to obtain other types of foreign-to-foreign communications without a court order… but so did 1978 FISA, so Section 702 made no change there. The most significant change Section 702 made was to permit the acquisition of communications between foreign targets and U.S. persons without a court order. Carrie does not explain why this was necessary to allow the government to collect the communications of Terrorist A in Afghanistan with Terrorist B in Iraq.

Carrie also appears to interpret our recommendations as requiring a probable cause order whenever the government seeks to collect on a foreigner overseas. This isn't what we're proposing. Our recommendation is to **repeal Section 702** "and replace it with a regime requiring an individualized court order for the interception of communications involving U.S. persons."

We're aware that differentiating between U.S. persons and foreigners is currently more difficult for stored e-mails than for communications obtained in transit, where relevant information may be gleaned from packet headers. That may support a more nuanced and creative solution for that category of surveillance. But there's no conceivable reason why the solution should be programmatic acquisition of any type of communication sent by a foreign target.

That's the only viable mechanism to solve the case – they don't solve perception, the CP does

Nojeim, 14 - Director, Project on Freedom, Security & Technology at the Center for Democracy & Technology (Greg, "COMMENTS TO THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD REGARDING REFORMS TO SURVEILLANCE CONDUCTED PURSUANT TO SECTION 702 OF FISA" 4/11)

The FISA provisions that govern intelligence surveillance of targets in the U.S. permit the government to engage in electronic surveillance to collect "foreign intelligence information." For purposes of surveillance that targets a non-U.S. person, it is defined broadly as: (1) information that relates to the ability of the U.S. to protect against a hostile attack, espionage, sabotage or international terrorism or proliferation of weapons of mass destruction; or (2) information with respect to a foreign territory or foreign power (a foreign government, political party, or entity controlled by a foreign government, or a foreign terrorist organization) that relates to the security of the U.S. or to the conduct of U.S. foreign affairs.4 When the government applies to the Foreign Intelligence Surveillance Court (FISC) for permission to conduct surveillance of targets in the U.S., it must certify that a significant purpose of the surveillance it will conduct is to collect foreign intelligence information.5

Because "foreign intelligence information" is defined so broadly, and because the FISC never actually rules on whether the significant purpose test is met, the purpose limitation that governs FISA surveillance of targets in the U.S. is easily met. FISA surveillance in the U.S. is instead effectively constrained by an additional requirement: the requirement that the government prove to the FISC that there is probable cause to believe the target of surveillance is a terrorist, spy, or other agent of a foreign power. Thus, Congress effectively constrained FISA surveillance of targets in the U.S. by permitting that surveillance to target only a narrow class of persons and entities.

For surveillance of people reasonably believed to be outside the U.S., Section 702 adopts the broad purpose requirement, but couples it with a broad class of surveillance targets. Section 702 is not constrained by the requirement that the target be an agent of a foreign power. Instead, the target need only be a non-U.S. person reasonably believed to be abroad. Effectively, Congress borrowed the broad purpose for FISA intelligence surveillance (collect "foreign intelligence information") and applied it to surveillance abroad without limiting the class of potential targets to "agents of a foreign power."

This has prompted concern globally that surveillance under Section 702 is broadly directed at individuals not suspected of wrongdoing, and could include targeting based at least in part on political activities. A peaceful protest at a U.S. base in Germany or a demonstration against rising food prices in India "relate to" U.S. foreign policy; non-U.S. persons involved in those protests could be monitored under Section 702. A 2012 cloud computing report to the European Parliament included a finding that under Section 702, it is lawful in the U.S. to conduct purely political surveillance on non-U.S. persons' data stored by U.S. cloud companies.6 Such actions raise serious human rights concerns. Further, **fear of the mere possibly** that this **overbroad surveillance** is occurring has **significantly damaged the U.S. tech industry abroad**.

The CP's a hard limit on the NSA – anything short of it creates easily exploitable loopholes

Goitein and Patel 15 - Elizabeth (Liza) Goitein co-directs the Brennan Center for Justice's Liberty and National Security Program. Served as counsel to Sen. Russell Feingold with a particular focus on government secrecy and privacy rights. Was a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. Graduated from the Yale Law School and clerked for the Honorable Michael Daly Hawkins on the U.S. Court of Appeals for the Ninth Circuit. Faiza Patel serves as co-director of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015 //DM)

A. End Programmatic Surveillance

The most effective reform would be for Congress to **end programmatic surveillance**. This would entail expressly prohibiting bulk collection under Section 215 and similar provisions, as well as repealing Section 702 and replacing it with a regime **requiring an individualized court order for the interception of communications involving U.S. persons**, regardless of whether they are the identified target of the surveillance.

Ending programmatic surveillance would return the FISA Court to its traditional role of applying the law to the facts of a particular case.271 This would mitigate many of the Article III concerns relating to the absence of a case or controversy. If the standard for issuing a surveillance order were sufficiently strict (discussed below), ending programmatic surveillance could address Fourth Amendment objections as well.

But these changes would not fully cement the constitutional status of the FISA Court's activities. FISA orders will never look entirely like criminal warrants because they rarely culminate in criminal prosecutions, thus removing the primary vehicle for challenging their legitimacy. Concerns about the lack of adversarial process thus would remain even if programmatic surveillance were replaced with an individualized regime. To address them, the reforms listed in the next section would be needed.

B. Enact Additional Article III-Related Reforms

1. Introduce Adversarial Processes

Several existing reform proposals would address the lack of a party opposing the government in FISA Court proceedings by establishing a permanent public interest advocate (or slate of advocates) to represent the interests of people affected by government surveillance.272 President Obama and two former judges of the court publicly support the appointment of such an attorney, commonly referred to as the "Special Advocate."273 An alternative approach would allow the FISA Court to hear from certain individuals or interest groups as amici curiae.274 The court could call upon these outside representatives to weigh in on potential privacy and civil liberties concerns raised by a government application.275

The latter approach would not resolve the Article III problem, particularly if participation were left to the court to decide. The FISA Court already has discretion to solicit or permit amicus participation, and with few exceptions, has preferred to rely on the government's submissions alone.276 Article III would be best served by strengthening the special advocate concept to the greatest extent possible, including by ensuring that special advocates are notified of cases pending

before the court, have the right to intervene in cases of their choosing, and are given access to all materials relevant to the controversy in which they are intervening.

In addition, there must be a mechanism for appeal in cases where the court rules against the special advocate. Legitimate questions arise as to whether a special advocate would have standing to bring an appeal, given the advocate's lack of a personal stake in the outcome.277 Various solutions to this problem have been proposed: for example, the special advocate could serve as a guardian ad litem for third parties affected by the surveillance (such as those incidentally in communication with the target), or the court could be required to certify particular types of decisions to the FISA Appeals Court for review.278 The standing problem, while real, is not insurmountable.

2. Increase Transparency and Facilitate Collateral Challenges

A defining feature of the FISA Court is that nearly all of its decisions are classified. This hampers democratic self-government and sound policymaking. It also has Article III implications: secret decisions cannot be challenged, and the opportunity to challenge a FISA Court order in collateral proceedings is critical to the legitimacy of the process. A number of existing proposals would introduce some transparency by requiring the executive branch to release full copies, redacted versions, or summaries of FISA Court opinions containing significant legal opinions.279 For both constitutional and policy reasons, Congress should establish a non-waiveable requirement that the government issue public versions of FISA Court opinions or summaries containing certain minimum information — including the legal questions addressed, as well as the construction or interpretation given to any legal authority on which the decision relies.

Transparency alone cannot address the Article III defects in the FISA Court. Congress also must facilitate collateral challenges. One key step would be to prohibit the practice of "parallel construction," in which the government builds a criminal case based on FISA-derived evidence but then reconstructs the evidence using other means. This allows the government to avoid notifying defendants of the FISA surveillance and thus makes it impossible for them to challenge it. Any time the government uses the tools of FISA as part of an investigation, the subject of any resulting legal proceedings should be notified, and should be entitled to challenge any evidence that resulted either directly or indirectly from that surveillance.

The special procedures governing a defendant's access to FISA application materials, under which a defendant is almost never given any hint of their contents, should be jettisoned. Instead, the process under the Classified Information Procedures Act (CIPA)280 — which has been used successfully in the most sensitive national security and espionage cases, and which allows the government to use summaries or admissions of fact in place of classified information — should apply.281

Finally, the government's attempt to shut down every civil lawsuit that has been brought to challenge the constitutionality of foreign intelligence surveillance must end. Even where plaintiffs have had reasonable grounds to fear that they were being surveilled282 — indeed, even where they have had irrefutable proof283 — the government has tried to have the lawsuit dismissed, arguing that the plaintiffs lacked evidence or that the evidence contained state secrets. Today, after Snowden's disclosures, many secret programs are public knowledge and dismissing plaintiffs' fears of surveillance as "speculative" is increasingly disingenuous. Moreover, warrantless surveillance is no longer a secret, it is the law — and, given the broad scope of collection, acknowledging that a plaintiff has standing to challenge FISA surveillance does not

reveal the identity of any investigation's target. If ever the government's jurisdictional and national security defenses had merit, they no longer do.

C. Enact Additional Fourth Amendment-Related Reforms

Restoring the requirement that the government obtain individualized court orders before conducting surveillance does not end the Fourth Amendment analysis. The question of what standards the court should apply in issuing these orders remains. Even if the Supreme Court were to hold that acquiring foreign intelligence is a special need and that the government need not demonstrate probable cause of criminal activity, longstanding precedent suggests that the collection of foreign intelligence must adhere to the following standards and procedures.

1. Restore the "Foreign Power/Agent of a Foreign Power" Requirement

The government should be permitted to conduct surveillance in the United States only when it can show probable cause that the target is a foreign power or its agent. This would reinstate the standard contained in original FISA. It also would track the holding of Truong and other courts that sought to limit the universe of individuals whose communications may be captured under the foreign intelligence exception. The terms "foreign power" and "agent of a foreign power" are quite broadly defined, including terrorist groups and other non-state actors. They are thus expansive enough to accommodate the government's legitimate security interests, while enhancing protection for U.S. persons (and the foreigners with whom they communicate).

2. Narrow the Definition of "Foreign Intelligence Information"

The definition of "foreign intelligence information" in FISA should be narrowed. The courts of appeal have admonished that the foreign intelligence exception must be narrowly construed and reserved for matters in which the executive branch's interests are of the most compelling nature. Yet, in addition to information necessary to protect against foreign attack, terrorism, or espionage, the current definition includes information relevant to (or, in the case of a U.S. person, necessary to) "the security of the United States" and "the conduct of the foreign affairs of the United States." A general interest in obtaining any information that "relates to" these vague areas cannot justify the massive intrusion on privacy and First Amendment rights implicated by the warrantless acquisition of Americans' international communications. The definition of "foreign intelligence information" could usefully be narrowed to information relating to external threats — including "actual or potential attacks or other grave hostile acts," "sabotage," "international terrorism," "the international proliferation of weapons of mass destruction," and "clandestine intelligence activities." 284 These are the specific threats currently listed in FISA's statutory definition, minus the overbroad catch-all language regarding security and foreign affairs.

Another option is to rely on the restrictions that President Obama recently placed on the permissible uses of signals intelligence information collected abroad in bulk. Presidential Policy Directive 28, issued on January 17, 2014, states that such information shall be used

only for the purposes of detecting and countering: (1) espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests; (2) threats to the United States and its interests from terrorism; (3) threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction; (4) cybersecurity threats; (5) threats to U.S. or allied Armed Forces or other U.S or

allied personnel; and (6) transnational criminal threats, including illicit finance and sanctions evasion related to the other purposes named in this section.285

The surveillance activities governed by this Directive are subject to fewer domestic legal constraints than any other type of communications surveillance. The fact that the above restrictions are considered appropriate in a context where the president has maximum discretion strongly suggests that imposing the same limits in the context of Section 702 collection would not unduly restrict the government's intelligence gathering. More fundamentally, defining "foreign intelligence information" as information relating to the above-listed threats would honor the principle that any foreign intelligence exception should be limited to instances in which the government's interests are paramount.286

3. Restore the "Primary Purpose" Test

Congress should amend FISA to require that obtaining foreign intelligence information be the primary purpose of surveillance. Other than the FISA Appeals Court, the courts that have recognized a foreign intelligence exception have generally imposed such a "primary purpose" requirement. As these courts have recognized, surveillance that is primarily for law enforcement purposes must take place pursuant to a regular criminal warrant, lest the foreign intelligence exception drive a massive hole through the protections of the Fourth Amendment.

The FISA Court also must be empowered to review whether there are truly foreign intelligence considerations at stake, and whether acquiring foreign intelligence is the primary purpose of surveillance. Courts of appeal have emphasized the need for close scrutiny on this point, noting that "judges must microscopically examine the wiretaps in order to determine whether they had their origin in foreign intelligence," and that warrantless wiretaps should be upheld only when "the foreign and sensitive nature of the government surveillance is crystal clear."287

Congress should accordingly strengthen the certification requirement. It should direct the executive branch to certify, not merely that its primary purpose is to acquire foreign intelligence information, but that the requested surveillance is reasonably likely to produce such information. It also should authorize the court to review this certification not only for proper form (as is currently the case), but for its substance as well. And it should prohibit the practice of "back door searches," which gives the government an easy end-run around the foreign intelligence purpose requirement as well as the requirement of targeting foreigners overseas.

Section 702 is overbroad – can't solve reputational costs without curtailing surveillance

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Section 702 permits the government to compel communications service providers to assist with intelligence surveillance that targets non-U.S. persons (persons other than U.S. citizens and lawful permanent residents) reasonably believed to be abroad. Though it is defended as a necessary counterterrorism and national security power, Section 702 broadly authorizes collection, retention, and use of communications content unnecessary for national security and

unrelated to counterterrorism. The overbroad use of Section 702 infringes upon the privacy rights of both U.S. persons, and of non-U.S. persons abroad, has already caused some damage to the American tech industry globally, and could cause much more.3

There's no functional difference between the FAA and XO12333 – both allow bulk collection and sweep up volumes of US person data

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But whatever the merits of the competing sides in this debate, the larger problem is that this conversation has missed the forest for a very small — and largely irrelevant — tree. In fact, from the perspective of individual privacy rights, the phone records program is much less problematic than the government's other authorities to conduct mass surveillance under Executive Order 12333 and the 2008 FISA Amendments Act. And so, in focusing on how to "fix" Section 215, we've given short shrift to the far more significant problems raised by these other authorities — and, just as importantly, the broader lessons we should be taking away from the surveillance reform conversation that Snowden started. To understand the significance of these other authorities, it'll help to describe their aims: Executive Order 12333, issued in 1981, is directed at the overseas interception of communications — both metadata and content — of non-citizens outside the United States, who, under a 1990 Supreme Court decision, categorically lack Fourth Amendment rights. The 2008 FISA Amendments Act was enacted to close a loophole that new technology had helped to create, where non-citizens outside the United States were nevertheless communicating through servers or other telecommunications infrastructure located stateside, which the government could not surveil under the executive order. Ordinarily, the government needs a warrant before collecting the content of domestic communications, one based upon a judge's determination that there's good reason to believe a particular individual either is engaged in the commission of a crime or is an agent of a foreign power. But Executive Order 12333 and the 2008 FISA statute, by focusing on individuals who fall outside the Fourth Amendment, capitalize on the lack of constitutionally required individualized assessments and instead allow the government to engage in bulk collection of such information — as if it were using an industrial vacuum cleaner to pick up individual particles of dirt.

The lack of an adversarial process means FISC is an echo chamber reflecting government surveillance priorities

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Today, under Section 702 of the FAA, the court is no longer tasked with assessing the sufficiency of the government's factual showing in individual cases that arise within a limited pool. Instead, it reviews broad targeting and minimization procedures that the government will apply to tens of thousands of cases involving hundreds of millions of communications, if not more, each year.178 The court then approves or rejects the procedures based on a facial analysis of whether they comport with the statute and the Fourth Amendment. Similarly, under Section 215, the FISA Court has endorsed a form of "programmatic surveillance" in which it may approve procedures for obtaining and searching telephone records without reviewing individual searches (although it currently reviews these searches pursuant to the administration's request).179

These developments, compounded by the secrecy and lack of adversarial process that mark the court's proceedings, have critical implications for the constitutional legitimacy of the court. Lack of adversary process in a proceeding that bears no relationship to a traditional warrant application is inconsistent with Article III. Moreover, the court's facial review of agency procedures cannot shed light on their constitutionality in specific cases.

1. Lack of Adversarial Process

Article III of the Constitution generally requires the presence in court of opposing parties, because its "case or controversy" requirement "confines the business of federal courts to questions presented in an adversary context."180 Warrant proceedings are an exception to this rule. The FISA Court's shift from issuing individualized, warrant-like orders to approving programmatic surveillance renders the lack of an opposing party in its proceedings, which was a "difficult question" for the Department of Justice even under the original 1978 FISA procedure,181 impossible to defend — and highly problematic. As discussed, at the time FISA was passed, the Justice Department sought to address concerns about the lack of an opposing party in FISA Court proceedings. Even though the procedure for obtaining a surveillance order did not involve adverse parties, the Justice Department argued that there was "adversity in fact" because "the interests of the United States and the target will inevitably be adverse to each other. The United States' interest is to institute electronic surveillance of a particular target. The interest of the target would, presumably, be that the surveillance not be conducted."182 The Department emphasized the similarity of these features to traditional warrant proceedings, and concluded: "It is obvious . . . that we rely heavily on the analogy to warrant proceedings to uphold the validity of the [FISA] proceeding."183

Under Section 702, that analogy disappears. There is no such thing as a criminal warrant proceeding in which a law enforcement agency seeks blanket authorization to conduct an unlimited number of searches over the coming year, on the basis of written procedures setting forth generic rules for how such searches will be conducted. While ex parte proceedings are a standard feature in warrant applications, they are not standard when courts review rules and procedures that affect millions of people. As stated by Judge James Robertson, who served on the FISA Court from 2002 to 2005, the FISA Court's role in programmatic surveillance "is not adjudication, it is approval."184 The approval process, he noted, "works just fine when [the court] deals with individual applications for surveillance warrants," but when courts are asked to review policy determinations for compliance with the law, "they do so in the context . . . of adversary process."185 By requiring the FISA Court to review and approve entire surveillance programs ex parte, the FAA "turned the FISA Court into something like an administrative agency which makes and approves rules for others to follow."186

Section 215, at first blush, appears much closer to the kind of warrant proceeding that has traditionally taken place with only one party present because it seems to preserve individualized review in which particular opposing interests are identifiable. But this apparent similarity is negated by the FISA Court's decision that the government may collect essentially all phone records to search for relevant records buried within them.187 This program, too, now involves judicial approval, without any adversarial process, of the broad contours of a program affecting much of the American population — a situation that cannot be squared with the requirements of Article III.188

In addition to being constitutionally suspect, secret, non-adversarial proceedings are a bad way to make law. The shortcomings are starkly illustrated by the FISA Court's approval of bulk collection. The question the court considered in 2006 — whether collecting the phone records of millions of admittedly innocent Americans comports with the Constitution and the Patriot Act — was one of first impression and overriding legal importance. Yet all of the evidence and all of the briefs were submitted by one party: the government. Despite the gravity of the issue, the FISA Court did not exercise its authority to solicit participation by amici curiae — knowledgeable outside parties who serve as "friends of the court." Instead, it granted the government's request without even a written opinion (although one was produced after Edward Snowden's disclosures in 2013).189

The adversarial system does more than assure the due process rights of the parties. It ensures that all relevant facts and legal arguments are aired, which in turn enables the tribunal to reach an accurate decision. FISA Court judges are more likely to misinterpret the law if they hear only one side of the case. As the Supreme Court stated in a different context:

[T]he need for adversary inquiry is increased by the complexity of the issues presented for adjudication. . . . Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands.190

Of course, it is well understood that judges make mistakes; that is why the federal judicial system has two levels of appeal. Indeed, the Supreme Court often waits for multiple lower courts to address an issue before taking it up. This process of assessing, comparing, and honing decisions across jurisdictions and levels of review make it more likely that the judicial system as a whole will get to the "right" result. In the FISA context, however, there is no opportunity to appeal an erroneous grant of an application, because the government is generally the only party.

Operating in their own **echo chamber**, and hearing from only one party, the chances that FISA Court judges will misinterpret the law — and perpetuate that misinterpretation in subsequent decisions — is high. When such misinterpretations involve fundamental questions of constitutional law that affect all Americans, the error is anything but harmless.

The FAA's primary purpose was to facilitate the capture of communications about Americans

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of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015, //DM)

The FAA, which is still in place today, eliminated the requirement of an individual court order for acquisition, within the United States, of communications to which U.S. persons are a party. Instead, under a new section of FISA (Section 702) created by the FAA, the government may conduct a program to collect any communications "targeting" a person or entity reasonably believed to be a non-U.S. person overseas — including that person or entity's communications with Americans in the United States.162 In other words, the government no longer needs an individualized court order to acquire Americans' international calls and e-mails, as long as the American is not the "target" of the surveillance.

There are three primary limitations on this authority. First, the government must certify that obtaining foreign intelligence information is a "significant purpose" of the collection. It need not be the only purpose or even the main purpose, as discussed above;163 moreover, the certification of purpose applies to the program as a whole, not to each target of surveillance under the program. Second, the government must have in place targeting and minimization procedures that are approved by the FISA Court. The targeting procedures must ensure that the program's targets are indeed "reasonably believed" to be foreigners overseas, while the minimization procedures must be "reasonably designed" to minimize the collection and retention — and prohibit the sharing — of Americans' information, "consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information."164 Third, the law prohibits the government from engaging in "reverse targeting" — i.e., collecting the international communications of a foreigner abroad when the government's true motive is to target "a particular, known person reasonably believed to be in the United States."165

The existence of targeting and minimization requirements, as well as a reverse targeting prohibition, has enabled the government to portray Section 702 as a program designed to capture the communications of non-U.S. persons abroad. Any collection of calls to or from Americans is described as "incidental."166 This characterization is highly questionable. With the exception of e-mails stored in the United States, the new law had no impact on the government's ability to collect the communications of foreigners with other foreigners. The sea change that the statute brought about was the elimination of a court order requirement for the domestic capture of foreigners' communications with Americans. The legislative history makes clear that facilitating the capture of communications **to, from, or about U.S. persons** was a primary purpose, if not the **primary purpose, of the FAA**.167

Moreover, the new law dramatically widened the pool of foreigners the government can target. Instead of being limited to targeting foreign powers or agents of a foreign power, the government is permitted to target any non-U.S. person overseas, as long as one of its goals is the acquisition of foreign intelligence. As noted above, the statute's definition of "foreign intelligence information" is exceedingly broad when a foreign person is the target, encompassing any information that "relates to" the conduct of foreign affairs or the country's security.173 Programmatic surveillance under the FAA thus could include the international communications (including communications with Americans) of almost any non-U.S. person overseas. Of course, the greater the number of foreigners who can be targeted, the greater the number of Americans whose international communications are likely to be caught up in surveillance operations.

The court's own role in approving government surveillance changed even more fundamentally. Previously, the court determined, on a case-by-case basis, whether the government had probable cause to believe that (1) the proposed target of surveillance was a foreign power or agent of a foreign power, and (2) each of the specified facilities or places for surveillance were being used, or were about to be used, by a foreign power or an agent of a foreign power. The court also approved minimization requirements based on their sufficiency in the particular case before it. If the target was a U.S. person, the court reviewed the government's certifications — including the certification of a significant foreign intelligence purpose — to ensure that they were not "clearly erroneous."

Under Section 702, by contrast, the court has no role in approving individual intrusions at all. Rather, its substantive role is limited to determining whether generic sets of targeting and minimization procedures comply with the statute (which gives little direction as to what is required) and with the Fourth Amendment.174 The court is not even informed of the specific targets of surveillance or the facilities to be surveilled, let alone asked to approve them. And the court may not review the substance of the government's certifications, including its certification of a significant foreign intelligence purpose, even for "clear error."175

Lack of notice, standing requirements and parallel construction prevent challenging FISA rulings

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In theory, there are three ways in which surveillance of particular targets may be challenged in an adversary setting: targets may file civil claims; they may contest the surveillance in the course of legal proceedings; and communications service providers who receive FISA orders may petition the FISA Court to set them aside. In practice, however, none of these options provides a meaningful opportunity to challenge surveillance.

The lack of notice to targets of FISA surveillance effectively negates any civil remedies, including FISA's provision allowing "aggrieved person[s] . . . who [have] been subjected to an electronic surveillance" to sue for damages if the law has been violated.202 Plaintiffs who have attempted to file civil suits have been rebuffed by courts on the ground that they cannot establish standing without proving that they were targets of surveillance.203

If FISA-derived evidence is used in a criminal prosecution or other legal proceeding against a subject of surveillance, the law requires the government to notify that person of this fact and allows him to file a motion to suppress the evidence.204 However, the vast majority of foreign intelligence collected under FISA will never find its way into a legal proceeding.205 Moreover, in recent years the government has honored the notification requirement in the breach,206 sometimes using "parallel construction" — that is, developing the same evidence through different means to avoid notification.207

Even when notification is provided, the subject of surveillance has never been permitted to view the materials comprising the surveillance application, which renders any challenge an exercise in

shadow-boxing.208 Without the informed participation of counsel, judicial review in these proceedings is in many ways a mere repetition of the ex parte review conducted by the FISA Court when it issued the surveillance order — even though the initiation of legal proceedings often means the consequences of error have become far greater, particularly in criminal cases where the defendant's liberty is at stake.

In 2006 and 2008, Congress amended FISA to allow telecommunications companies that are the recipients of certain FISA orders to challenge them.209 But these companies have no obligation to act in the interest of those directly affected by the surveillance, namely, the targets. The insufficiency of this mechanism is underscored by the fact that no company has ever challenged a court order to produce phone records under the NSA's bulk collection program,210 and only one company challenged programmatic surveillance under the predecessor to the FAA.211

702 shoehorns in billions of domestic communications for surveillance

Goitein and Patel 15 - Elizabeth (Liza) Goitein co-directs the Brennan Center for Justice's Liberty and National Security Program. Served as counsel to Sen. Russell Feingold with a particular focus on government secrecy and privacy rights. Was a trial attorney in the Federal Programs Branch of the Civil Division of the Department of Justice. Graduated from the Yale Law School and clerked for the Honorable Michael Daly Hawkins on the U.S. Court of Appeals for the Ninth Circuit. Faiza Patel serves as co-director of the Brennan Center for Justice's Liberty and National Security Program. Clerked for Judge Sidhwa at the International Criminal Tribunal for the former Yugoslavia. Ms. Patel is a graduate of Harvard College and the NYU School of Law. (Elizabeth and Faiza, "What went wrong with the FISA court", Brennan Center for Justice at New York University School of Law, 2015, p.41-42//DM)

As enacted in 1978, FISA required the government to show probable cause that the target of surveillance was a foreign power or an agent of a foreign power. The FAA eliminated this requirement for programmatic surveillance. The target of surveillance may be any non-U.S. person or entity located overseas, and the FISA Court has interpreted the law to allow the government to obtain any communications to, from, or about the target.258 The only limitation is a requirement that the government certify that a significant purpose is the collection of "foreign intelligence."

Consider how these changes could operate in practice. As noted in Part II.C.2, "foreign intelligence information," where non-U.S. persons are concerned, is broadly defined to include information "that relates to . . . (A) the national defense or the security of the United States; or (B) the conduct of the foreign affairs of the United States."259 This elastic concept is unlikely to impose any meaningful restraint — particularly since the FISA Court is not allowed to probe the government's foreign intelligence certification.260 The only real limitation on surveillance, then, is the target's nationality and location.

Given the prevalence of international communication today, the government could **shoehorn** literally **billions** of communications (including communications with Americans) into a warrantless foreign intelligence collection framework, as long as there is a chance that the net will pull in some information relating to security or foreign affairs. This is plainly inconsistent with the admonition of most courts that warrantless foreign intelligence surveillance must be "carefully limited" to "those situations in which the interests of the executive are paramount."261

In a 2008 opinion approving Section 702 targeting and minimization procedures, the FISA Court held that limiting the foreign intelligence exception to foreign powers or their agents is unnecessary when the target is a non-citizen overseas.262 This ruling ignores the fact that Section

702 is **designed** to capture communications involving U.S. persons, and **expressly contemplates that U.S. person information may be kept and shared** where minimization would be inconsistent with "the need of the United States to obtain, produce, and disseminate foreign intelligence information."263 **Regardless of who is labeled the "target,"** Section 702 involves the acquisition and use of Americans' information for foreign intelligence purposes, in volumes that likely far exceed the collection in Truong and similar cases. The need to construe the exception narrowly is thus at least as important in the Section 702 context.

702 is the justification for widespread squo domestic surveillance

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It is no exaggeration to say that the world of electronic surveillance looks entirely different today than it did in 1978 when the FISA Court was established to oversee foreign intelligence surveillance. Communications technology and the legal framework have fundamentally changed, vastly increasing the nature and quantity of information the government may collect — and decreasing the court's role in supervising these operations.

Although the Supreme Court in Keith attempted to distinguish between surveillance of domestic organizations and surveillance of foreign powers, the demarcation was never clean and has become ever more strained. Advances in technology mean that the exercise of authorities aimed at foreigners abroad inevitably picks up swaths of information about Americans who should enjoy constitutional protections. But rather than develop additional safeguards for this information, the law has developed in the opposite direction: the government's authority to collect communications pursuant to its foreign intelligence-gathering authorities has expanded significantly. At the same time, the safeguard of judicial review — already limited when FISA was first enacted in 1978 — **has eroded to near-nothingness**. Indeed, in some cases, the role played by the FISA Court is so different from the normal function of a court that it likely violates the Constitution's separation of powers among the legislative, executive, and judicial branches.

A. A Revolution in Communications Technology

The impact of advances in communications technology over the last decades cannot be overstated. In 1978, most domestic telephone calls were carried over copper wires,102 while most international calls took place via satellite.103 To listen to a domestic call, the government had to identify the wire that geographically connected the two ends of a communication and manually tap into it.104 Capturing a satellite communication to or from a particular source required sophisticated equipment; resulting databases were subject to practical limitations on storage and analytical capability.105 Cellular phones were not commercially available,106 and the Internet existed only as a Department of Defense prototype.107 Surveillance generally had to occur in real time, as electronic communications were ephemeral and unlike later forms of communication (like e-mail) were not usually stored.

Today, a large proportion of communications — including e-mails and international phone calls — are transmitted by breaking down information into digital packets and sending them via a worldwide network of fiber-optic cables and interconnected computers.108 The government can access these communications by tapping directly into the cables or into the stations where packets of data are sorted.109 Digital information often is stored for long periods of time on servers that are owned by private third parties, giving the government another way to obtain information, as well as access to a trove of historical data. Most cell phone calls, along with other forms of wireless communication, travel by radio signals that are easily intercepted.

These changes have weakened the relationship between the place where communications are intercepted and the location (and nationality) of the communicants. For communications that travel wholly or in part via packets, each packet may follow a different route, and the route may be unrelated to the locations of the sender or recipient. An e-mail from a mother located in San Diego to her daughter in New York could travel through Paris, and the contents might be stored by an online service provider in Japan. But FISA, as enacted in 1978, is keyed to the location and nationality of the target and the location of acquisition. As discussed further in Part II.B.3.a, the globalization of the communications infrastructure has changed the way the law plays out in practice.110

Technological changes also have expanded the amount of information about Americans the government can acquire under FISA. For one thing, globalization and advances in communications technology have vastly increased the volume — and changed the nature — of international communications. The cost and technological difficulties associated with placing international calls during the era of FISA's passage meant that such calls were relatively rare. In 1980, the average American spent less than 13 minutes a year on international calls.111 Today, the number is closer to four and a half hours per person — a thirty-fold increase.112 That number does not include the many hours of Skype, FaceTime, and other Internet-based voice and video communications logged by Americans communicating with family, friends, or business associates overseas. And, of course, the advent of e-mail has removed any barriers to international communication that may have remained in the telephone context, such as multi-hour time differences. Worldwide e-mail traffic has reached staggering levels: in 2013, more than 182.9 billion e-mails were sent or received daily.113 As international communication has become easier and less costly, the content of communications is much more likely to encompass — and, in combination, to create a wide-ranging picture of — the intimate details of communicants' day-to-day lives.

Technology and globalization also have led to much greater mobility, which in turn has generated a greater need to communicate internationally. Foreign-born individuals comprised around 6 percent of the U.S. population when FISA was enacted but account for more than 13 percent today.114 Immigrants often have family members and friends in their countries of origin with whom they continue to communicate. Similarly, there has been a sharp increase in Americans living, working, or traveling abroad, creating professional or personal ties that generate ongoing communication with non-citizens overseas. The number of Americans who live abroad is nearly four times higher than it was in 1978 and the number of Americans who travel abroad annually is nearly three times higher.115 The number of American students who study abroad each year has more than tripled in the past two decades alone.116 These trends show no signs of abating, suggesting that the volume of international communications will only continue to expand.

In addition, technological changes have made it likely that government attempts to acquire international communications will pull in significant numbers of wholly domestic communications for which Congress intended the government to obtain a regular warrant rather than proceeding under FISA. For instance, a recently declassified FISA Court decision shows that when the NSA taps into fiberoptic cables, it pulls in some bundles of data that include multiple communications — including communications that may not involve the target of surveillance. The NSA claims that it is "generally incapable" of identifying and filtering out such data bundles.117 The result is that the agency routinely collects large numbers of communications — including "tens of thousands of **wholly domestic communications**" between U.S. persons — that are neither to, from, or about the actual "target."118

For all of these reasons, the collection of foreign intelligence surveillance today involves Americans' communications at a volume and sensitivity level Congress never imagined when it enacted FISA. If the government wished to acquire the communications of a non-citizen overseas in 1978, any collection of exchanges involving Americans could plausibly be described as "incidental." Today, with international communication being a daily fact of life for large numbers of Americans, the collection of their calls and e-mails in vast numbers is an inevitable consequence of surveillance directed at a non-citizen overseas. The volume of information collected on U.S. persons makes it difficult to characterize existing foreign intelligence programs as focused solely on foreigners and thus exempt from ordinary Fourth Amendment constraints.

Section 702 violates the 4th amendment – causes systematic domestic surveillance and creates a back door around the warrant requirement

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Even if the collection of foreign intelligence is recognized as a "special need" that justifies surveillance without a traditional warrant, the government still must meet the second prong of the Fourth Amendment: the particular surveillance scheme must be "reasonable."

In Camara, the Supreme Court recognized fire safety as a special need, but it did not simply give the government free rein to search buildings at will. Instead, it required inspectors to obtain court orders based on factors relevant to fire safety, such as the age and nature of the building and the condition of the general area. Individualized orders still had to be obtained before the search, but the standards were altered to match the special need.235 A similar arrangement may be required for foreign intelligence. As Fourth Amendment expert Professor Orin Kerr has noted: "[T]here is a plausible case to be made that foreign intelligence is a special need, but that [individualized] FISA warrants are still required to conduct foreign intelligence surveillance."236

Limits on the discretion vested in government officials are key to establishing the reasonableness of a special needs scheme. For example, even though the Court on several occasions has authorized checkpoints to assess motorists' sobriety or examine their license and car registration, it has refused to allow roving stops because they allow too much discretion on the part of

government officials.237 The Court has emphasized that meeting the reasonableness standard of the Fourth Amendment requires "at a minimum, that the facts upon which an intrusion is based be capable of measurement against 'an objective standard,' whether this be probable cause or a less stringent test."238 This focus stems from the Court's concern about the potential for abuse of discretion; limiting this potential is a fundamental purpose of requiring a warrant under the Fourth Amendment.

As explored in the text box on page 33, the Section 702 program contains few limits on the discretion of analysts in deciding whether an individual is a non-U.S. person located overseas and therefore a valid target for programmatic surveillance. The NSA's targeting procedures set forth several considerations that officials may consider, but ultimately allow the NSA to reach a conclusion based on "the totality of the circumstances." The government has even more discretion in deciding what information is fair game: the statutory definition of foreign intelligence information is open-ended, and, under Section 702, the court cannot review the substance of the government's certification of a foreign intelligence purpose. It is difficult to square these features of programmatic surveillance with the type of "objective standards" that the Supreme Court has insisted on in the special needs context.

Moreover, even if the NSA's targeting and collection met the reasonableness test, the entire program cannot be deemed reasonable unless the government adequately "minimizes" the retention and use of information about U.S. persons that gets pulled in along with information about the foreign target. The FISA Court explicitly recognized this point when it found that the NSA violated the Fourth Amendment by failing to mark and delete wholly domestic e-mails acquired incidentally.239 Although the NSA remedied this violation to the court's satisfaction, its minimization regime remains notably lax. U.S. person information may be retained for 5 years, and there are multiple loopholes allowing for longerterm retention — including a provision for the indefinite retention of encrypted communications.240 As weak as the minimization rules are, reports suggest that they nonetheless are honored in the breach, with analysts claiming that they must retain seemingly irrelevant information about U.S. persons because the information may prove relevant in the future.241

A particularly stark affront to the principle of minimization is the practice known as "back-door searches." To obtain an order from the FISA Court authorizing programmatic collection, the government must certify that its interest lies in foreigners overseas and not any U.S. persons with whom they may be in contact. The law prohibits "reverse targeting," in which the government targets a foreigner as a pretext to gain information about a particular, known U.S. person.242 Consistent with these directives, the minimization procedures governing programmatic surveillance originally barred the government from using U.S. person identifiers to search the pool of communications obtained under Section 702.243 In 2011, the FISA Court granted the government's request to lift this bar.244 Today, officials routinely search through Section 702 data for information about the very U.S. persons the government certified it was not targeting.245

This practice allows the government to dispense with the much stricter substantive and procedural requirements that Congress put in place for obtaining foreign intelligence on an American target.246 It also allows the FBI to shrug off the Fourth Amendment when conducting domestic criminal investigations. The FBI performs searches of databases containing Section 702 data whenever it opens an investigation or an "assessment"247 — a type of investigation in which agents do not have a factual predicate to suspect criminal activity, let alone probable cause.248 Although the FISA Court has blessed back-door searches, it is difficult to see how a program that

allows domestic law enforcement officers to listen to Americans' calls and read their e-mails without any fact-based suspicion of wrongdoing can be squared with the constitutional test of "reasonableness."

AT: Minimization requirements solve

702 minimization requirements still allow the government to conduct unwarranted surveillance of U.S. persons

Rotenberg, EPIC President and Executive Director, 6-16-15 [Electronic privacy information center, non-profit research and educational organization established in 1994 to focus

public attention on emerging privacy and civil liberties issues.12 We work with a distinguished panel of advisors in the fields of law, technology and public policy., COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER, file:///C:/Users/Jonah/Downloads/EPIC-12333-PCLOB-Comments-FINAL.pdf] Schloss2

Use of USP data inadvertently collected under EO 12333 in criminal matters and without a warrant violates American's constitutional rights. EPIC Advisory Board member and national security law expert Laura Donohue analogously describes how under Section 702, "NSA's minimization procedures place a duty on the NSA to turn over any information regarding the commission of a crime to law enforcement agencies," and "used against them in a court of law, without law enforcement ever satisfying Title III requirements."161 Professor Donohue cautions that, "query of databases using U.S. person identifiers may further implicate U.S. persons in criminal activity—even acts unrelated to national security. But no individualized judicial process is required."162 The broad dissemination procedure under EO 12333 similarly "falls outside of constitutional boundaries."163

As the Chief Justice recently explained, "the Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search of evidence of criminal activity."164 Broad dissemination procedures that fail to follow strict rules violates American's constitutional rights, and broad goals set out by Congress in the Privacy Act.

AT: CP links to terrorism – top level

702 not key to terror – other claims lack data

Bergen et al, 14 – a Professor of Practice at Arizona State University and a fellow at Fordham University's Center on National Security (Peter Bergen, David Sterman, Emily Schneider, and Bailey Cahall, "Do NSA's Bulk Surveillance Programs Stop Terrorists?", New America Foundation, 1/13/2014, https://static.newamerica.org/attachments/1311-do-nsas-bulk-surveillance-programs-stop-terrorists/IS_NSA_surveillance.pdf)//MBB

It is difficult to determine the precise importance to counterterrorism of the NSA's surveillance programs under Section 702 in cases such as those above, because the NSA also conducts or has

conducted surveillance under a range of other authorities. Not only are there the traditional, targeted FISA authorities and Section 702 of 2008's FISA Amendments Act, there is also Executive Order 12333, which primarily governs surveillance undertaken outside of the United States that is not targeted at U.S. persons, as well as the authorities that were used prior to 2008 to justify the Bush administration's warrantless wiretapping program, those being the temporary Protect America Act of 2007 and President Bush's own claims of inherent executive authority. The attempt to divine how useful Section 702 has been is also complicated by the fact that unlike the Section 215-based telephone metadata collection program, the exact scope and methods of the 702-based programs are still unclear.

However, according to the White House review panel's report, surveillance conducted under Section 702 authorities "has produced significant information in many, perhaps most, of the 54 situations in which signals intelligence has contributed to the prevention of terrorist attacks since 2007."82 But the wording of the report also raises doubts about the importance of those contributions from Section 702, because the report concludes that it would be "difficult to assess precisely how many of these investigations would have turned out differently without the information learned through section 702."83

Warrant requirements don't undermine terrorism investigations – history, exigent circumstances

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First, the government argued that security leaks from a warrant hearing could threaten national security or impede surveillance. The Supreme Court had rejected this contention in the context of domestic intelligence operations (the Keith case).226 The D.C. Circuit found it equally unconvincing in the foreign intelligence context.227 Indeed, the 35-year history of the FISA Court shows that judges and their staff are well able to maintain the requisite secrecy.

Second, the government argued that obtaining a warrant in foreign intelligence cases would cause unacceptable delay.228 It is evident, however, that not every instance of foreign intelligence surveillance involves an urgent matter. Given the enormous scope of the NSA's collection and its repeated assertion that intelligence gathering often entails gathering innocuous pieces of a mosaic to reveal a potential threat, it can hardly be argued that each piece of information involves a time sensitive operation. And in truly urgent cases, the government may rely on a separate "exigent circumstances" exception to the warrant requirement.229

Finally, the government argued that evaluating foreign intelligence surveillance is beyond the scope of judicial expertise, citing the risk of harm to national security if a judge does not properly understand the government's foreign intelligence interest. The Zweibon court described this as relegating Fourth and First Amendment interests "to the level of second-class rights," and "naively equat[ing] all foreign threats with such dangers as another Pearl Harbor."230 The court believed it was self-evident that a judge faced with a warrant application would take into account

the magnitude of the threat identified by the government so that "the probability that a judge would erroneously deny the Executive the requested warrant approaches the infinitesimal."231

Today, the government might well add a fourth argument: the sheer extent of foreign intelligence surveillance necessary in the post-9/11 world makes the warrant requirement unworkable. Indeed, significant additional resources would be required for the government to obtain individualized warrants for all instances in which it currently captures communications between Americans and foreign targets. On the other hand, this factor presumably would cause the government to be more judicious in selecting targets. In any event, the need for significant additional resources cannot justify dispensing with a warrant requirement. As the Supreme Court has observed, "The argument that a warrant requirement would oblige the Government to obtain warrants in a large number of cases is hardly a compelling argument against the requirement."232

AT: CP links to terrorism – intelligence wall

A primary purpose test doesn't erect a wall between the FBI and NSA

Patel and Goitein, 15 – *co-director of the Liberty and National Security Program at the Brennan Center for Justice AND ** co-directs the Brennan Center for Justice's Liberty and National Security Program (Faiza and Liza, "Fixing the FISA Court by Fixing FISA: A Response to Carrie Cordero" 4/8, Lawfare,

http://www.lawfareblog.com/fixing-fisa-court-fixing-fisa-response-carrie-cordero

Carrie particularly disagrees with our recommendation that FISA surveillance should be available only if obtaining foreign intelligence is the primary purpose of collection. She equates this recommendation with a proposal to "rebuild 'the wall.'" She suggests that "the wall" had catastrophic effects, citing a statement by prosecutor Patrick Fitzgerald to the effect that he was not allowed even to speak with intelligence investigators at the FBI while he was building a criminal case against Osama bin Laden.

Carrie ignores the legal issue at the center of this recommendation. Although the FISCR takes a different view, the circuit courts that have addressed this issue have held that the "primary purpose" test is necessary to trigger the foreign intelligence exception to the warrant requirement. Without such a requirement, these courts observed, it would be far too easy for the government to avoid the warrant requirement in ordinary criminal cases. Their concerns have come to pass, as the PCLOB reports that the FBI "with some frequency" searches databases containing Section 702 data when opening criminal investigations or assessments "unrelated to national security efforts."

Critics of reform posit dire consequences to reinstating this vital Fourth Amendment protection. Our report identified three flaws in the logic chain that purports to lead from the "primary purpose" test to disaster, and Carrie's argument tracks two of them precisely. First, our report notes that nothing in the "primary purpose" test necessitated the particular limits that the Justice Department imposed on itself. Carrie doesn't dispute this point; instead, she states, "the reality is

that the rules and restrictions were put in place." That's a truism; it doesn't suggest that the Justice Department would follow exactly the same course today if a "primary purpose" test were reinstated. We strongly suspect the Department would take a different approach in operationalizing this requirement.

Second, the problems that followed from the limits the Justice Department imposed on itself do not appear to have resulted from the rules themselves – the FISA Court described these rules as permitting "broad information sharing" and "substantial consultation and coordination" – but from a widespread misunderstanding of what they required. Indeed, the 9/11 Commission described the term "the wall" as "misleading," and notes that the rules in question "were almost immediately misunderstood and misapplied."

Fitzgerald's quote illustrates this point nicely. He says,

But there was one group of people we were not permitted to talk to. Who? The FBI agents across the street from us in lower Manhattan assigned to a parallel intelligence investigation of Usama Bin Laden and al Qaeda. We could not learn what information they had gathered.

That isn't a remotely accurate description of what the rules required. Intelligence investigators and prosecutors were not only allowed but required to talk to each other. While prosecutors could not direct intelligence investigations, they could provide "guidance," and investigators were required to inform prosecutors if their investigations turned up information about serious crimes (and to provide them with monthly briefings in any event). Investigators had to get higher-level approval to share certain other kinds of information, but that's hardly the same thing as prohibiting any communication.

The third flaw in the logic chain is the notion that "the wall" – or, more accurately, officials' perception of a wall – led to 9/11. Carrie doesn't make this claim; in fact, she doesn't mention any specific national security damage that resulted from the wall. In any event, the 9/11 Commission Report makes pretty clear that the failures to communicate critical information in advance of the attack had little to do with the Justice Department's rules and everything to do with bureaucratic incompetence.

The primary purpose test didn't create an intelligence sharing wall – bad decisions pre 9/11 did

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The hypothesis that the "primary purpose" test required the establishment of a "wall" which then led to 9/11 is flawed in a number of respects. Most fundamentally, the 9/11 Commission's report showed that the "wall" did not cause the lack of coordination that contributed to intelligence failures before 9/11. It documented that CIA investigators, as well as FBI officials detailed to the CIA, had information months before the attack that two of the hijackers were potential terrorists already in the United States. There were many opportunities to share this information more

broadly, and most of these opportunities were squandered because of poor judgment calls by individual analysts.145 Moreover, the hypothesis oversimplifies the relationship between the "primary purpose" test and "the wall." While courts signaled that they would look askance if criminal prosecutors were directing foreign intelligence surveillance, no court held that the "primary purpose" test necessitated the particular limitations that the Justice Department imposed on itself.146 Nor is it clear that chilling coordination was the direct and inevitable result of implementing those limitations. According to the Attorney General's Review Team, the voluntary restraints that were in place between 1984 and 1993 "appear[] to have worked quite satisfactorily . . . both from the perspective of the Criminal Division and that of the FBI."147 At least some of the impediments to coordination that subsequently emerged appear to have been a result of officials' conservative interpretation of the rules, rather than the rules themselves.148

AT: Perms

The permutation severs the text and meaning of the plan – FAA exclusivity bans the individualized court order requirement – the CP makes it the exclusive requirement for surveillance.

Patel and Goitein, 15 – *co-director of the Liberty and National Security Program at the Brennan Center for Justice AND ** co-directs the Brennan Center for Justice's Liberty and National Security Program (Faiza and Liza, "Fixing the FISA Court by Fixing FISA: A Response to Carrie Cordero" 4/8, Lawfare,

http://www.lawfareblog.com/fixing-fisa-court-fixing-fisa-response-carrie-cordero

Our report notes that Section 702 had a **limited effect** on the government's ability to collect communications between foreigners without obtaining a FISA order; instead, its primary purpose and effect was to **remove the requirement of an individualized order** for the acquisition of communications between foreign targets and U.S. persons. Carrie responds that Section 702 was necessary because, under FISA, "the pre-2008 definitions in FISA technically required that the government obtain a probable-cause order from the Court in order to collect the communications of Terrorist A in Afghanistan with Terrorist B in Iraq." But, as we explain in our report, this was true only for one category of foreign-to-foreign communications: e-mails stored on U.S. servers.

That's because of the statute's complicated definition of "electronic surveillance," which is the activity that FISA regulates. The definition is broken down into three types of surveillance: acquisition of wire communications (which includes phone calls or Internet communications in transit over cables), acquisition of radio communications (which includes calls or Internet communications in transit through wireless means), and "monitoring" (which previously meant planting a bug, but today includes acquiring stored e-mails). For the first two categories, acquisition is defined as "electronic surveillance" only if one or more of the communicants is a U.S. person. In other words, for wire or radio communications between foreigners, 1978 FISA simply had nothing to say; "monitoring" is the only category of foreign-to-foreign communication that 1978 FISA regulated.

That's why our report states that, "[w]ith the exception of e-mails stored in the United States, the new law had no impact on the government's ability to collect the communications of foreigners with other foreigners." Carrie is, of course, correct that Section 702 allows the government to obtain other types of foreign-to-foreign communications without a court order… but so did 1978 FISA, so Section 702 made no change there. The most significant change Section 702 made was to permit the acquisition of communications between foreign targets and U.S. persons without a court order. Carrie does not explain why this was necessary to allow the government to collect the communications of Terrorist A in Afghanistan with Terrorist B in Iraq.

Reasonable suspicion CP

1nc Reasonable suspicion CP

Text – (rewrite the plan but replace 'probable cause' with 'reasonable suspicion'. Obviously only read this against an aff based on probable cause)

Reasonable suspicion with oversight solves the case but avoids terrorism

Sievert 14 * Professor, Bush School of Government and U.T. Law School, author of three editions of Cases and Materials on US Law and National Security (Ronald, "Time to Rewrite the Ill-Conceived and Dangerous Foreign Intelligence Surveillance Act of 1978", National Security Law Journal Vol. 3, Issue 1 – Fall 2014)//GK

Although the author believes this reasonable suspicion standard should apply to all FISA interceptions, the most urgent need, and the one that may be most favorably considered by Congress, relates to the monitoring of Al Qaeda, ISIS (the Islamic State of Iraq and Syria, also known as "ISIL") and those who are attempting an attack with a WMD. Therefore, FISA should be changed to allow interception where there is reasonable suspicion to believe the target is a person subject to an AUMF or engaged in an effort to employ a WMD in the United States or against U.S. facilities. Harvard Law professor Jack Goldsmith argued when he was head of the Office of Legal Counsel in 2003 that both the AUMF as well as the concept of special needs should permit the President to monitor Al Qaeda without going through the traditional requirements of the FISA statute. 272 His argument was later supported by the wording of Hamdi v. Rumsfeld, stating that the AUMF allowed the President to utilize all necessary elements of military force against Al Qaeda and the Taliban. 273 Surely, monitoring the enemy is one such element of military force. Goldsmith's position is strongly opposed by those who state that FISA requires the President to follow the procedures established by Congress and not act without FISA court approval.274 But assuming Congress can intrude on the President's authority in this area, there is nothing preventing Congress from amending the FISA statute to provide for more efficient interception when the target is the subject of an AUMF or planning a WMD attack. Abandoning probable cause would certainly raise legal concerns similar to those expressed in United States v. Truong275 and by the petitioners in In Re Sealed Case,276 if the intent and direct result was ordinary criminal prosecution as opposed to intelligence collection. At the same time, an interception intended to obtain intelligence is likely to pick up evidence of national security crimes (sabotage, terrorism, espionage). The government should be able to use this evidence under the doctrine that the government can use anything it finds while it is legally present.277 The solution in part would be to draw upon the 2001 FISA Court's practice and prohibit criminal division direction and control of intelligence wiretaps. In addition, as Judge Posner has suggested, "the use of intercepted information for any other purpose other than investigating (or prosecuting) threats to national security would be forbidden. Information could not be used as evidence or leads in the prosecution of ordinary crime."278 Finally, if the government thought it was likely to uncover criminal acts other than national security crimes, it would be wise in those few cases to go the extra step and seek to demonstrate probable cause instead of reasonable suspicion before obtaining a judicial warrant. Any public fears regarding the

creation of a new FISA could be assuaged by establishing an independent body to look after the concerns of the civilian community. We have seen such entities in Germany's G-10 committee, the U.K.'s Interception of Communications Commission, and Italy's Data Protection Authority. These organizations perform a variety of roles, from reviewing all surveillance after the fact to issuing reports to the legislature, or, in some cases, examining individual allegations of excessive surveillance. An American version of this independent body would exist alongside the judiciary, which would grant the initial interception warrant based on a finding of reasonable suspicion. Any objective individual who steps back and reviews the series of attempted attacks on the United States in the last fifteen years understands our population is in great danger, and this is especially so if our adversaries obtain some type of WMD. It is folly to hamstring our intelligence services by imposing a criminal law search standard that is neither constitutionally required nor mandated by the recognized human rights principles of the international community. It is imperative, therefore, that we correct the mistakes of the past and enact a new, more effective Foreign Intelligence Surveillance Act.

2nc – reasonable suspicion solves

A reasonable suspicion standard solves better than probable cause – protects privacy and avoids terrorism

Sievert 14 * Professor, Bush School of Government and U.T. Law School, author of three editions of Cases and Materials on US Law and National Security (Ronald, "Time to Rewrite the Ill-Conceived and Dangerous Foreign Intelligence Surveillance Act of 1978", National Security Law Journal Vol. 3, Issue 1 – Fall 2014)//GK

The analysis above, however, strongly suggests that a statute authorizing intelligence surveillance warrants based on reasonable suspicion alone would and should pass constitutional muster. Time and again the Supreme Court has recognized that detailed searches can be conducted without establishing probable cause, even when the results of those searches could, as with intelligence surveillance, potentially result in criminal prosecution. Such a statute would insure that the government's overwhelming interest in safeguarding our population would be met far better than it is now with the obstacles created by the burdensome FISA standard of probable cause. Privacy would be protected by a warrant process guaranteeing judicial control and guidance so that surveillance could not be initiated for political, partisan, or personal reasons, and by the need to demonstrate there was reasonable suspicion, or specific articulable facts to suspect a specific target. Congress overreacted when it imposed the highest criminal law search standard on foreign intelligence surveillance and the result of their decision has proven hazardous to the American people. Meanwhile, our European allies have demonstrated a civilized respect for individual privacy but, as will be discussed in the next section, many recognize that imposing such hurdles is far too dangerous when it comes to protecting a nation's security.

No constitutional requirement for probable cause exists

Sievert 14 * Professor, Bush School of Government and U.T. Law School, author of three editions of Cases and Materials on US Law and National Security (Ronald, "Time to Rewrite the Ill-Conceived and Dangerous Foreign Intelligence Surveillance Act of 1978", National Security Law Journal Vol. 3, Issue 1 – Fall 2014)//GK

In the words of Chief Justice Roberts, "As the text makes clear, 'the ultimate touchstone of the Fourth Amendment is reasonableness.'" 159 In other words, although the Fourth Amendment states that warrants should be supported by probable cause, the ultimate test of the constitutionality of a search is whether it is reasonable, not whether the government has established probable cause. Noted constitutional law scholar Akhil Amar has written that those who seek to impose a "global probable cause requirement have yet to identify even a single early case, treatise, or state constitution that explicitly proclaims 'probable cause' as the prerequisite for all 'searches and seizures.'"160 In National Treasury Employees Union v. Von Raab, the Court stated that "neither a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness in every circumstance."161 Rather, the reasonableness of a search is determined essentially by balancing the government's interest against the intrusion and expectation of privacy in the particular context of the case.162 An analysis of the Supreme Court's opinions demonstrates that there really is no inherent constitutional requirement that the government show probable cause before conducting a search for foreign intelligence purposes. In the past fifty years, the Court has repeatedly sanctioned searches conducted without probable cause where significant safety and security concerns were present. The Court has not deviated from these holdings even where such searches may very well uncover criminal activity and eventually result in prosecution.

Whistleblower protection

1nc – Whistleblower protection CP

CP Text:

The United States Federal Government should offer protection to whistleblowers who leak classified data, if and only if such leaks provide evidence of wrongdoing.

Expanding whistleblower protection makes existing oversight effective

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 13)//AK

PROTECT WHISTLEBLOWERS

Columbia law professor David Pozen contends that democracies need to be leaky— leaks and whistleblowing are themselves security mechanisms against an overreaching government. In his view, leaks serve as a counterpoint to the trend of overclassification and, ultimately, as a way for governments to win back the **trust** lost through excessive secrecy.

Ethnographer danah boyd has called whistleblowing the civil disobedience of the information age; it enables individuals to fight back against abuse by the powerful. The NGO Human Rights Watch wrote that "those who disclose official wrongdoing … perform an important service in a democratic society… ."

In this way of thinking, whistleblowers provide another oversight mechanism. You can think of them as a random surprise inspection. Just as we have laws to protect corporate whistleblowers, we need laws to protect government whistleblowers. Once they are in place, we could create a framework and rules for whistleblowing legally.

This would not mean that anyone is free to leak government secrets by claiming that he's a whistleblower. It just means that conscience-driven disclosure of official wrongdoing would be a valid defense that a leaker could use in court—juries would have to decide whether it was justified—and that reporters would legally be able to keep their sources secret. The clever thing about this is that it sidesteps the difficult problem of defining "whistleblower," and allows the courts to decide on a case-by-case basis whether someone's actions qualify as such or not. Someone like Snowden would be allowed to return to the US and make his case in court, which—as I explained in Chapter 7— currently he cannot.

Additionally, we need laws that protect journalists who gain access to classified information. Public disclosure in itself is not espionage, and treating journalism as a crime is extraordinarily harmful to democracy.

2nc – whistleblower protection

Existing whistleblower laws fail only because of the classified information exemption

Pozen 13, Yale Law School, J.D., 2007 Oxford University, M.Sc., Comparative Social Policy (distinction), 2003 Yale College, B.A., Economics (summa cum laude), 2002, Columbia Law Professor, expert surveillance legal analyst, (David, THE LEAKY LEVIATHAN: WHY THE GOVERNMENT CONDEMNS AND CONDONES UNLAWFUL DISCLOSURES OF INFORMATION , SSRN**)//AK**

The federal whistleblower statutes might be expected to comprise the last major piece of the legal framework, except that in the national security context they play a marginal role. Several laws protect executive branch employees who disclose information regarding alleged abuses to designated agency officials or congressional committees under specified procedures.63 But these laws offer significantly less succor when it comes to classified information, are widely seen as confusing and user-unfriendly, and under no circumstances permit disclosures directly to the press.64 These laws also do not ensure against revocation of one's security clearance,65 which in the national security and foreign policy fields generally means loss of one's job. And though the point is contestable, the laws are fairly read to provide "absolutely zero protection" for those who publicly reveal classified information, even as a last resort, and even when the information reveals illegal government conduct.66 The vast majority of leakers have no interest in reporting

wrongdoing in any event.67 Consequently, the whistleblower statutes tend to be ignored in the debate over classified information leaking, apart from occasional calls to revise them. It is telling that in Jack Goldsmith's recent book-length study of mechanisms that publicize and constrain the executive's national security activities, these laws are never once mentioned.

Whistleblower protections from the CP solve transparency through intentional leaks- the key internal link to all the aff's impacts

Pozen 13, Yale Law School, J.D., 2007 Oxford University, M.Sc., Comparative Social Policy (distinction), 2003 Yale College, B.A., Economics (summa cum laude), 2002, Columbia Law Professor, expert surveillance legal analyst, (David, THE LEAKY LEVIATHAN: WHY THE GOVERNMENT CONDEMNS AND CONDONES UNLAWFUL DISCLOSURES OF INFORMATION , SSRN**)//AK**

The federal whistleblower statutes might be expected to comprise Congress's longstanding failure to confront the executive secrecy system must be understood in light of these institutional and memberlevel interests in leakiness. With some notable exceptions such as the bill vetoed by President Clinton that would have strengthened the Espionage Act,333 Congress has done little to address national security leaks or the classification system that underlies them. A variety of committees have held hearings on high-profile incidents, and the intelligence committees have recently mooted measures to curb certain forms of planting and pleaking. But in general legislative action has been minimal for decades. Of particular note, members have declined to make use of the protection afforded by the Constitution's Speech or Debate Clause334 to reveal, or threaten to reveal, executive branch information without fear of criminal or civil liability.335 One might expect that a responsible legislature would try to steer classified information leaks its way, so as to preserve legitimate secrecy while providing an outside check on the executive.336 Congress has largely bypassed this approach, which would force it to take greater responsibility over the revelations that emerge, and has instead countenanced minimal enforcement against media leakers while directing all prospective whistleblowers to their agency inspectors general in the first instance.337 Many members of Congress seem quite content to be regular readers (and perhaps occasional purveyors) rather than recipients of leaks. Systematic recourse to leaking emerges, once again, as the more efficient and politically palatable alternative to systematic legal reform.

Congress's role in the ecosystem of national security leaks is a large and complex subject. Certain congressional entities receive a steady flow of classified information through official channels, supplemented by a side traffic in direct and indirect unofficial disclosures. Agencies typically incur political risk if they try to limit this traffic by clamping down on staffers' communications with their oversight committees. Partisan motivations and sincere good-governance sentiments sustain a perpetual interest on the Hill in leaks, along with a ready-made rhetoric of crisis about their prevalence. The recent rise of a "commuter Congress," in which many members spend as little time as possible in Washington, may have helped strengthen relationships between elite reporters and less peripatetic executive officials, shifting power to the latter in the intragovernmental game of leaks.

Transparency CP

1nc transparency CP

CP text: The United States Federal Government should

-increase transparency about US surveillance activities, adopt data minimization, and promote global transparency standards

-eliminate any government efforts to introduce backdoors in software or weaken encryption

-establish international legal standards for government access to data

-strengthen U.S. mutual legal assistance treaties and pass the Law Enforcement Access to Data Stored Abroad Act

-complete the Trans Pacific Partnership trade agreement to ban digital protectionism

The CP solves US tech leadership, US jobs, and the economy

Castro and McQuinn 15, Daniel Castro works at the Center for Data Innovation, Government Technology, The Information Technology & Innovation Foundation, worked at the U.S. Government Accountability Office, went to Carnegie Mellon. Alan McQuinn works at the Federal Communications Commission, previously had the Bill Archer Fellowship at the University of Texas, (June 2015, "Beyond the USA Freedom Act: How U.S. Surveillance Still Subverts U.S. Competitiveness",
file:///C:/Users/Mark/Downloads/2015-beyond-usa-freedom-act.pdf)//AK

In the short term, U.S. companies lose out on contracts, and over the long term, other countries create protectionist policies that lock U.S. businesses out of foreign markets**. This** not only hurts U.S. technology companies, but costs American jobs and weakens the U.S. trade balance**.** To reverse this trend, ITIF recommends that policymakers:

 Increase transparency about U.S. surveillance activities both at home and abroad.

 Strengthen information security by opposing any government efforts to introduce backdoors in software or weaken encryption.

Strengthen U.S. mutual legal assistance treaties (MLATs).

 Work to establish international legal standards for government access to data.

 Complete trade agreements like the Trans Pacific Partnership that ban digital protectionism, and pressure nations that seek to erect protectionist barriers to abandon those efforts**.**

2nc CP solvency top level

The combination of planks resolves all of the case – transparency, international harmonization and trade solve every aff internal link

Castro and McQuinn 15, Daniel Castro works at the Center for Data Innovation, Government Technology, The Information Technology & Innovation Foundation, worked at the U.S. Government Accountability Office, went to Carnegie Mellon. Alan McQuinn works at the Federal Communications Commission, previously had the Bill Archer Fellowship at the University of Texas, (June 2015, "Beyond the USA Freedom Act: How U.S. Surveillance Still Subverts U.S. Competitiveness", file:///C:/Users/Mark/Downloads/2015-beyond-usa-freedom-act.pdf)//AK

The free and open Internet that powers the globally networked economy is dependent on the ability of individuals and companies to engage in commerce without geographic restrictions. To turn back the tide of technology protectionism, U.S. trade negotiators will need a stronger hand to play. They cannot go to other nations and tell them to not discriminate against U.S. tech firms if the U.S. intelligence system continues to follow policies that threaten their citizens and businesses. As a result, it is incumbent on the Congress and the Obama administration to take the lead in showing the world the best standards for transparency, cooperation, and accountability.

First, the U.S. government should be forthcoming and transparent about its surveillance practices and clearly inform the public about the data it collects domestically and abroad. The U.S. government should **set the gold standard for international transparency requirements**, so that it is clear what information both U.S. and non-U.S. companies are disclosing to governments at home and abroad. The U.S. government should then work with its allies to create an international transparency requirement that illuminates when countries conduct surveillance that accesses foreign companies' information.

Second, the U.S. government should draw a clear line in the sand and declare that the policy of the U.S. government is to strengthen not weaken information security. The U.S. Congress should pass legislation, such as the Secure Data Act introduced by Sen. Wyden (D-OR), banning any government efforts to introduce backdoors in software or weaken encryption.43 In the short term, President Obama, or his successor, should sign an executive order formalizing this policy as well. In addition, when U.S. government agencies discover vulnerabilities in software or hardware products, they should responsibly notify these companies in a timely manner so that the

companies can fix these flaws. The best way to protect U.S. citizens from digital threats is to promote strong cybersecurity practices in the private sector.

Third, the U.S. government should strengthen its mutual legal assistance treaties (MLATs), which allow law enforcement agencies to receive assistance from and provide assistance to their counterparts in other countries. These treaties work through cooperation between both governments, which agree to share information during lawful investigations. Some governments—such as China and the United States—have begun to circumvent the MLAT process to access data stored in other countries because they perceive the process to be too slow. 44 If this becomes the norm for the U.S. government, the end game is clear: significantly fewer foreign businesses, governments, and citizens will do business with U.S. companies. Rather than abandon the MLAT process, the U.S. government should work to improve it and make these requests more transparent. While the U.S. government cannot force other governments to improve their own MLAT process, it can set an example by streamlining its own and asserting that other countries should do the same. The Law Enforcement Access to Data Stored Abroad (LEADS) Act, recently introduced in the Senate by Sens. Orrin Hatch (R-Utah), Chris Coons (D-Del.) and Dean Heller (R-Nev.) and in the House by Reps. Tom Marino (R-Pa.) and Suzan DelBene (D-Wash.), would do just that.45

Fourth, the U.S. government should work with its trade partners to establish international legal standards for government access to data. The United States should engage with its trade partners to develop a "Geneva Convention on the Status of Data."46 This would create a multi-lateral agreement that would establish international rules for transparency, settle questions of jurisdiction, engender cooperation for better coordination of international law enforcement requests, and limit unnecessary access by governments to citizens of other countries. Only by working to establish a global pact on these issues can countries that have previously engaged in mass cyberespionage assure the international community that countries can hold each other accountable in the future.

Finally, while many countries will continue to use U.S. surveillance practices as a pretext to pursue tech-mercantilist measures, the United States should not let these practices go unchallenged. The U.S. government should push back against these barriers by completing trade agreements that eliminate protectionism. The Trans-Pacific Partnership (TPP) may be the first U.S. trade agreement to enshrine such strong free trade provisions for cross- border data flows. U.S. negotiators should ensure that other agreements, including the Trans-Atlantic Trade and Investment Partnership (T-TIP), and the Trade in Services Agreement (TISA), are equally strong. 47 The United States should build an alliance against bad actors, forcing protectionist countries to the sidelines of the global trade arena if they continue to enact these anti-competitive rules. Furthermore, as the U.S. Congress weighs future trade promotion authority, it should direct U.S. negotiators to include prohibitions against protectionist barriers in all future U.S. trade agreements.

For other nations, especially China, U.S. messages and actions need to be much tougher. If a country resorts to protectionism on the pretext of guarding against U.S. surveillance, but its true end game is to systemically exclude U.S. companies and distort its market for competitive advantage, then the U.S. government should push back aggressively with trade measures that impose significant economic penalties.

The LEADS Act alone would restore confidence in cloud computing

Maines 3/30/15 – contributor to the Hill and president of the Media Institute (Patrick, The LEADS Act and cloud computing, The Hill,
http://thehill.com/blogs/pundits-blog/technology/237328-the-leads-act-and-cloud-computing)//JJ

Bipartisan legislation, introduced last month in the House and Senate, promises to reform and update the antiquated Electronic Communications Privacy Act (ECPA) and in the process push back against the practice by agencies of government to gain access to personal data stored on U.S. corporation servers abroad.

The legislation, **called the LEADS Act**, is co-sponsored in the Senate by Sens. Orrin Hatch (R-Utah), Chris Coons (D-Del.) and Dean Heller (R-Nev.), and in the House by Reps. Tom Marino (R-Pa.) and Suzan DelBene (D-Wash.).

Short for "Law Enforcement Access to Data Stored Abroad," the LEADS Act's principal improvements on ECPA are in recognizing that U.S. law enforcement may not use warrants to compel the disclosure of customer content stored outside the United States unless the account holder is a U.S. person, and by **strengthening the process** — called MLATs (mutual legal assistance treaties) — through which governments of one country allow the government of another to obtain evidence in criminal proceedings.

One of the better examples of the need for updating ECPA centers on a government warrant served on Microsoft for the contents of the email of an Irish citizen stored on a Microsoft server in Dublin. The government's interest in this individual is reported to be in connection with drug trafficking. Microsoft denied the request and is currently embroiled in litigation, now before a federal appeals court.

At the mention of drug trafficking one imagines that many people might, at first glance, side with the government in this. But consider the same scenario, only with the countries reversed. Imagine the outrage if the Irish government demanded that a server located in the U.S. turn over to it the contents of the personal email of a U.S. citizen!

The larger issue in the Microsoft case, and as **addressed by** the LEADS legislation, is the fear, especially since the Edward Snowden revelations, that **foreigners will lose confidence** that the content of their email on U.S. servers will be open to government inspection, and go elsewhere for the purpose.

Organizations like Forrester Research and the Information Technology and Innovation Foundation have attempted to put a price tag on the cost to the U.S. cloud computing industry of what is called the PRISM project, an outgrowth of the Protect America Act which authorizes the NSA to conduct metadata searches of email. Those estimates are uneven, and evolving, but all the figures reported are in the billions of dollars. And while PRISM operates on a different legal foundation than the one, ECPA, that is the subject of the LEADS Act, there can be no question that if Microsoft were to lose its case, and in the **absence of the passage of the LEADS Act**, **U.S. cloud providers will suffer**.

Nor is the suffering to be endured just by cloud computing companies. As published in a paper by the Media Institute, media and privacy lawyer Kurt Wimmer makes a compelling case that media

companies may be especially sensitive to issues like those addressed by the Microsoft case and the LEADS Act legislation:

In an era of tight budgets for newsrooms and infrastructure, cloud computing has helped many media companies reduce costs and make their newsgathering operations more efficient and effective. It can be much more efficient for a newsgathering and publishing operation to purchase a package of cloud-based services (e.g., word processing, photography, publishing, storage) rather than maintain its own IT department, servers, and software.

Although there are substantial advantages for media companies in adopting cloud-based technologies, there are also risks. Newsgathering operations routinely handle highly sensitive information, and they rely on a foundation of trust between reporters and their confidential sources. If a media organization concludes that entrusting its data with a cloud service provider will result in that data being less private or secure, then the organization is less likely to embrace cloud technologies. ...

This concern has been accentuated by the controversy surrounding Edward Snowden's disclosures in 2013 regarding government surveillance. Particularly for media organizations with headquarters or operations outside the United States, the Snowden disclosures increased concern that if the companies entrusted their data to a U.S. cloud provider, that would make it easier for U.S. law enforcement to obtain their data.

For media companies, these are not abstract questions. As the Department of Justice (DOJ) recognized in updating its rules regarding subpoenas to reporters, maintaining the confidentiality of the newsgathering process is essential to both a free press and a working democracy. The DOJ now has strong guidelines governing the considerations that will be considered before subpoenas will be directed to reporters, but these are only internal guidelines and they only apply to the DOJ. The **bipartisan LEADS Act** provides a path forward to update the law to permit the cloud to be more meaningful and useful to media companies — and to others concerned about the privacy and security of their data. And by doing so, Congress can **bolster the competitiveness** of an emerging and important area of our information economy.

2nc – solves data localization

The CP solves global data localization

Hill 14 - technology and international affairs consultant, formerly worked in the Office of the Cybersecurity Coordinator on the National Security Staff at the White House (Jonah, "The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Business Leaders", Conference on the Future of Cyber Governance, 5/1/14)//DBI

2. Create (or refocus) a senior U.S. government position to serve as the primary contact person and advocate for U.S. industry global data issues

At present, there is no single point-person in the U.S. government coordinating data flow issues, or advocating on behalf of the U.S. for freedom of data flows. The head of the Federal Trade Commission, the U.S. Trade Representative, the Privacy and Civil Liberties Oversight Board, the

Department of Commerce (importantly, the Deputy Assistant Secretary for Services), the Chief Privacy Officer of the NSA, several individuals within the Department of State (importantly the U.S. Coordinator for International Communications and Information Policy) as well as many, many others, are all working on the problem, but largely separately, with **inevitably separate institutional viewpoints and objectives.**

While multiple individuals and agencies should be addressing the issue simultaneously, there is a need for a single coordinating office to track and manage this vital economic issue. Perhaps an office of Chief Privacy Officer in the U.S. State Department and/or U.S. Trade Representative could be developed, or the newly-created White House Chief Privacy Officer position could take on this broader international responsibility. President Obama has suggested, in a speech delivered at the U.S. Department of Justice on January 17, 2014, that his administration plans to create a new position at the U.S. State Department "to coordinate [American] diplomacy on issues related to technology and signals intelligence."121 This new role – which has only been vaguely described – could also potentially fill the leadership vacuum within the U.S. government on these issues. However the reorganization happens, is clear that the current bureaucratic arrangement needs to be restructured to ensure that the anti- localization outreach strategy is **effectively coordinated and harmonized** across the entire U.S. government and among U.S. industry leaders.

3. Reform and streamline the Mutual Legal Assistance Treaty process

The cumbersome MLAT process has proven to be **one of the leading motivations behind many localization proposals**. In order to expedite the MLAT process, the Department of Justice's should develop an online MLAT submission form, and devote the resources necessary to respond in a timely fashion, recognizing the urgency of many law enforcement requirements. In addition, the Department of Justice should (consistent with the reasonable confidentiality requirements of sound law enforcement) also publish regular government transparency reports, including breakdowns of number of requests received from different countries, the response provided, the crimes to which the requests relate, and the time each request required, and should provide clear, public guidance on what information can be obtained through an MLAT. These reports would not only result in an anticipated speed-up of response time (no one wants publicly to be shown to be dilatory), but would also demonstrate to foreign law enforcement personnel that their queries are receiving treatment not meaningfully less prompt than are other nations' requests of a similar nature.122

Transparency solves – XO12333

The CP creates transparency and minimization standards for XO12333

Rotenberg, EPIC President and Executive Director, 6-16-15 [Electronic privacy information center, non-profit research and educational organization established in 1994 to focus

public attention on emerging privacy and civil liberties issues.12 We work with a distinguished panel of advisors in the fields of law, technology and public policy., COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER, file:///C:/Users/Jonah/Downloads/EPIC-12333-PCLOB-Comments-FINAL.pdf] Schloss2

The basic pillars of data privacy impose comparable transparency obligations. For example, the Privacy Guidelines of the Organization for Economic Co-operation and Development call on data controllers—government or otherwise—to adopt a "general policy of openness about developments, practices and policies with respect to personal data." Similarly, the Fair Information Practices set forth by the Secretary's Advisory Committee on Automated Personal Data Systems prescribe (1) that "there must be a way for an individual to find out" how information collected about her is used, and (2) that there must be a way for an individual to prevent information "obtained for one purpose from being used or made available for other purposes" without her consent.121 The data collected under EO 12333 should be held to the sesame standards.

In view of the above, the Board should ensure that the NSA, the CIA, and any other entity collecting data pursuant to EO 12333 publicly disclose detailed polices and procedures for retaining, minimizing, using, and disseminating that data. Though both the NSA and CIA have released bare-bones descriptions of their data handling policies and procedures,122 these documents are much too brief and superficial to assess the strength of the agencies' privacysafeguards.123 Greater transparency is required so that the public may "evaluate the degree to which its privacy is currently protected . . . ."124

That solves the perception of abuse

Rotenberg, EPIC President and Executive Director, 6-16-15 [Electronic privacy information center, non-profit research and educational organization established in 1994 to focus

public attention on emerging privacy and civil liberties issues.12 We work with a distinguished panel of advisors in the fields of law, technology and public policy., COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER, file:///C:/Users/Jonah/Downloads/EPIC-12333-PCLOB-Comments-FINAL.pdf] Schloss2

There is a broad consensus on the need to minimize data collected under EO 12333, particularly when that data concerns USPs. Congress, legislating through the Privacy Act, has mandated that any agency that collects identifying records about USPs maintain "only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President."125

President Obama has specifically highlighted the importance of data minimization in an intelligence-gathering context. PPD 28 requires that agencies in the IC "establish policies and procedures reasonably designed to minimize the dissemination and retention of personal information," noting that "long-term storage of personal information unnecessary to protect our national security is inefficient, unnecessary, and raises legitimate privacy concerns."126 The

President's Review Group on Intelligence and Communications Technologies has similarly advised that if an intercepted communication "includes a United States person as a participant or reveals information about a United States person . . . any information about that United Statesperson should be purged upon detection unless it either has foreign intelligence value or is necessary to prevent serious harm to others."127

Even the NSA has acknowledged the risks of failing to use minimization procedures. Overbroad retention of data means that the agency "may possibly fail to completely remove data[it] was not authorized to acquire" and "may potentially lose data because of 'spillage,' improper intentional disclosure, or malicious exfiltration."128 The subsequent dissemination of improperly retained data means that the agency "could inappropriately share information that does not have a foreign intelligence purpose,

or is based on data that is required to be removed" and "may possibly disseminate more information than is relevant to foreign intelligence."129

These concerns have long been reflected in the basic tenets of data privacy. In 1977, the Privacy Protection Study Commission—drawing on the Code of Fair Information Practices—urged that there be limits "on the internal uses of information about an individual within a record-keeping organization" and "on the external disclosures of information about an individual. . . ."130 The National Strategy for Trusted Identities in Cyberspace echoed this in a 2011 report, announcing a "Data Minimization" principle: "Organizations should only collect PII that is directly relevant and necessary to accomplish the specified purpose(s) and only retain PII for as long as is necessary to fulfill the specified purpose(s).

In view of the above, the Board should ensure that the NSA, the CIA, and any other entity collecting data pursuant to EO 12333 minimize the retention of PII by using robust privacy enhancing techniques. Such measures are necessary "to ensure that information belonging to both U.S. and non-U.S. persons is used, retained and disseminated only when necessary for the protection of specifically articulated U.S. national security interests and in a manner that produces the least intrusion on rights necessary to secure those interests."132

Transparency solves backlash

Surveillance transparency is key to a free society and dampening societal backlash over surveillance

Schneier, 15, fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 12)//AK

Transparency is vital to any open and free society. Open government laws and freedom of information laws let citizens know what the government is doing, and enable them to carry out their democratic duty to oversee its activities. Corporate disclosure laws perform similar functions in the private sphere. Of course, both corporations and governments have some need for secrecy, but the more they can be open, the more we can knowledgeably decide whether to trust them. Right now in the US, we have strong open government and freedom of information laws, but far too much information is exempted from them. For personal data, transparency is pretty straightforward: people should be entitled to know what data is being collected about them, what data is being archived about them, and how data about them is being used—and by whom. And in a world that combines an international Internet with country-specific laws about surveillance and control, we need to know where data about us is being stored. We are much more likely to be comfortable with surveillance at any level if we know these things. Privacy policies should provide this information, instead of being so long and deliberately obfuscating that they shed little light.

We also need transparency in the algorithms that judge us on the basis of our data, either by publishing the code or by explaining how they work. Right now, we cannot judge the fairness of TSA algorithms that select some of us for "special screening." Nor can we judge the IRS's

algorithms that select some of us for auditing. It's the same with search engine algorithms that determine what Internet pages we see, predictive policing algorithms that decide whom to bring in for questioning and what neighborhoods to patrol, or credit score algorithms that determine who gets a mortgage. Some of this secrecy is necessary so people don't figure out how to game the system, but much of it is not. The EU Data Protection Directive already requires disclosure of much of this information. It may seem as if I am contradicting myself. On one hand, I am advocating for individual privacy over forced surveillance. On the other, I am advocating for government and corporate transparency over institutional secrecy. The reason I say yes to both lies in the existing power imbalance between people and institutions. Institutions naturally wield more power than people. Institutional secrecy increases institutional power, and that power differential grows. That's inherently bad for personal liberty. Individual privacy increases individual power, thereby reducing that power differential. That's good for liberty. It's exactly the same with transparency and surveillance. Institutional transparency reduces the power imbalance, and that's good. Institutional surveillance of individuals increases the power imbalance, and that's bad.

AT: Leaks bad

Leaks are inevitable- the CP gets out in front of them

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Transparency doesn't come easily. The powerful do not like to be watched. For example, the police are increasingly averse to being monitored. All over the US, police harass and prosecute people who videotape them, and some jurisdictions have ruled it illegal. Cops in Chicago have deliberately obscured cameras, apparently attempting to conceal their own behavior. The San Diego Police Department denies all requests for police videos, claiming that they're part of ongoing investigations. During the 2014 protests in Ferguson, Missouri, after the police killed an unarmed black man, police routinely prevented protesters from recording them, and several reporters were arrested for documenting events. Los Angeles police even went so far as to sabotage court-mandated voice recorders in their patrol cars.

Governments and corporations routinely resist transparency laws of all kinds. But the world of secrecy is changing. Privacy-law scholar Peter Swire writes about a declining half-life of secrets. What he observed is that, in general, secrets get exposed sooner than they used to. Technology is making secrets harder to keep, and the nature of the Internet makes secrets much harder to keep long-term. The push of a "send" button can deliver gigabytes across the Internet in a trice. A single thumb drive can hold more data every year. Both governments and organizations need to assume that their secrets are more likely to be exposed, and sooner, than ever before.

One of the effects of a shrinking half-life for secrets is that their disclosure is more damaging. One of Snowden's documents indicated that the NSA spied on the cell phone of German chancellor Angela Merkel. The document is undated, but it's obviously from the last few years. If that document had become public 20 years from now, the reaction in Germany would have been very different from the public uproar that occurred in 2013, when Merkel was still in office and the incident was current events rather than historical.

Cultural changes are also making secrets harder to keep. In the old days, guarding institutional secrets was part of a lifelong culture. The intelligence community would recruit people early in their careers and give them jobs for life. It was a private men's club, one filled with code words and secret knowledge. The corporate world, too, was filled with lifers. Those days are gone. Many jobs in intelligence are now outsourced, and there is no job-for-life culture in the corporate world anymore. Workforces are flexible, jobs are outsourced, and people are expendable. Moving from employer to employer is now the norm. This means that secrets are shared with more people, and those people care less about them. Recall that five million people in the US have a security clearance, and that a majority of them are contractors rather than government employees.

There is also a greater belief in the value of openness, especially among younger people. Younger people are much more comfortable with sharing personal information than their elders. They believe that information wants to be free, and that security comes from public knowledge and debate. They have said very personal things online, and have had embarrassing photographs of themselves posted on social networking sites. They have been dumped by lovers in public online forums. They have overshared in the most compromising ways—and they survived intact. It is a tougher sell convincing this crowd that government secrecy trumps the public's right to know.

These technological and social trends are a good thing. Whenever possible, we should strive for transparency.

NSA exaggerates the impact of leaks – New York Times incident proves

Currier 6/26 - journalist with a focus on national security, foreign affairs, and human rights (Cora Currier, "HOW THE NSA STARTED INVESTIGATING THE NEW YORK TIMES' WARRANTLESS WIRETAPPING STORY", The Intercept, 6/26/2015, https://firstlook.org/theintercept/2015/06/26/nsa-started-investigating-new-york-times-original-warrantless-wiretapping-story/)//MBB

Three days after the New York Times revealed that the U.S. government was secretly monitoring the calls and emails of people inside the United States without court-approved warrants, the National Security Agency issued a top-secret assessment of the damage done to intelligence efforts by the story. The conclusion: the information could lead terrorists to try to evade detection. Yet the agency gave no specific examples of investigations that had been jeopardized.

The December 2005 bombshell story, by James Risen and Eric Lichtblau, set off a debate about the George W. Bush administration's expansion of spying powers after the 9/11 attacks, and also about the Times editors' decision to delay its publication for a year. White House officials had

warned the Times that revealing the program would have grave consequences for national security.

The NSA's damage assessment on the article — referred to as a "cryptologic insecurity" — is among the files provided by former NSA contractor Edward Snowden. The memo recounts meetings in 2004 and 2005 in which administration officials disclosed "certain details of the special program to select individuals from the New York Times to dissuade them from publishing a story on the program at that time."

The memo gives a general explanation of what terrorists might do in reaction to the information revealed. It was "likely" that terrorists would stop using phones in favor of mail or courier, and use encryption and code words. They could also plant false information, knowing the U.S. government was listening. But the leaked program had not "been noted in adversary communications," according to the memo. It gave no specific examples of investigations or targets that had or might be impacted by the revelations.

"To this day we've never seen any evidence — despite all the claims they made to keep us from publishing — that it did any tangible damage to national security. This is further confirmation of that," Lichtblau told The Intercept.

"The reality was that the story told Americans what they didn't know about how the system was being stretched; it didn't tell terrorists anything that they didn't know, that the U.S. was aggressively trying to gather their communications," he said.

Oversight CP

Oversight CP – 1nc

CP text: The United States federal government should

-establish an external auditor to manage NSA oversight

-establish a public advocate to oversee surveillance applications

-establish a committee mirroring the Church Committee from the 1980s to extensively research the NSA, CIA, and FBI

-make the FISA court judge a senate-appointed position

CP solves NSA perception and transparency and has a stronger internal link than the aff to US credibility overall

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the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc (Bruce, Data and Goliath: the Hidden Battles to Collect Your Data and Control Your World, Ch. 13)//AK

More members of Congress must commit to meaningful NSA reform. We need comprehensive strategic oversight by independent government agencies, based on full transparency. We need meaningful rules for minimizing data gathered and stored about Americans, rules that require the NSA to delete data to which it should not have access. In the 1970s, the Church Committee investigated intelligence gathering by the NSA, CIA, and FBI. It was able to reform these agencies only after extensive research and discovery. We need a similar committee now. We need to convince President Obama to adopt the recommendations of his own NSA review group. And we need to give the Privacy and Civil Liberties Oversight Board real investigative powers.

Those recommendations all pertain to strategic oversight of mass surveillance. Next, let's consider tactical oversight. One primary mechanism for tactical oversight of government surveillance is the warrant process. Contrary to what many government officials argue, warrants do not harm security. They are a security mechanism, designed to protect us from government overreach.

Secret warrants don't work nearly as well. The judges who oversee NSA actions are from the secret FISA Court. Compared with a traditional court, the FISA Court has a much lower standard of evidence before it issues a warrant. Its cases are secret, its rulings are secret, and no one from the other side ever presents in front of it. Given how unbalanced the process it is, it's amazing that the FISA Court has shown as much backbone as it has in standing up to the NSA (despite almost never rejecting a warrant request).

Some surveillance orders bypass this process entirely. We know, for example, that US Cellular received only two judicially approved wiretap orders in 2012—and another 10,801 subpoenas for the same types of information without any judicial oversight whatsoever. All of this needs to be fixed.

Start with the FISA Court. It should be much more public. The FISA Court's chief judge should become a position that requires Senate confirmation. The court should publish its opinions to the extent possible. An official public interest advocate should be assigned the task of arguing against surveillance applications. Congress should enact a process for appealing FISA rulings, either to some appellate court or to the Supreme Court.

But more steps are needed to put the NSA under credible tactical oversight. Its internal procedures are better suited to detecting activities such as inadvertent and incorrect surveillance targeting than they are to detecting people who deliberately circumvent surveillance controls, either individually or for the organization as a whole. To rectify this, an external auditor is essential. Making government officials personally responsible for overreaching and illegal behavior is also important. Not a single one of those NSA LOVEINT snoops was fired, let alone prosecuted. And Snowden was rebuffed repeatedly when he tried to express his concern internally about the extent of the NSA's surveillance on Americans.

Other law enforcement agencies, like the FBI, have their own internal oversight mechanisms. Here, too, the more transparency, the better. We have always given the police extraordinary

powers to investigate crime. We do this knowingly, and we are safer as a society because of it, because we regulate these actions and have some recourse to ensure that the police aren't abusing them. We can argue about how well these are working in the US and other countries, but the general idea is a sound one.

Cybersecurity CP

1nc – nearly all PIC

The United States federal government should appoint an independent oversight commission that reviews zero day vulnerabilities, under a mandate to patch nearly all possible vulnerabilities and disclose nearly all cyber bugs it fixes.

The CP solves for US credibility, transparency, and enhances cybersecurity, but prevents unilateral disarmament

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As I discussed in Chapter 11, a debate is going on about whether the US government — specifically, the NSA and US Cyber Command—should stockpile Internet vulnerabilities or disclose and fix them. It's a complicated problem, and one that starkly illustrates the difficulty of separating attack and defense in cyberspace.

An arms race is raging in cyberspace right now. The Chinese, the Russians, and many other countries are also hoarding vulnerabilities. If we leave a vulnerability unpatched, we run the risk that another country will independently discover it and use it in a cyberweapon against us and our allies. But if we patch all the vulnerabilities we find, there goes our armory.

Some people believe the NSA should disclose and fix every bug it finds. Others claim that this would amount to unilateral disarmament. President Obama's NSA review group recommended **something in the middle**: that vulnerabilities should only be **hoarded in rare instances** and for short periods of time. I have made this point myself. This is what the NSA, and by extension US Cyber Command, claims it is doing: balancing several factors, such as whether anyone else is likely to discover the vulnerability—remember NOBUS from Chapter 11—and how strategic it is for the US. The evidence, though, indicates that it hoards far more than it discloses.

This is backwards. We have to err on the side of disclosure. It will especially benefit countries that depend heavily on the Internet's infrastructure, like the US. It will **restore trust** by demonstrating that we're putting security ahead of surveillance. While stockpiled vulnerabilities need to be kept secret, the more we can open the process of deciding what kind of vulnerabilities

to stockpile, the better. To do this properly, we **require an independent government organization** with appropriate technical expertise making the decisions.

In today's cyberwar arms race, the world's militaries are investing more money in finding and purchasing vulnerabilities than the commercial world is investing in fixing them. Their stockpiles affect the security of us all. No matter what cybercriminals do, no matter what other countries do, we in the US need to err on the side of security by fixing **almost all** the vulnerabilities we find and making the process for disclosure more public. This will keep us safer, while engendering trust both in US policy and in the technical underpinnings of the Internet.

1nc – NIST CP

The United States should remove the requirement that the NSA be consulted on encryption standards and prohibit the NSA from using appropriated funds to interfere with National Institute of Standards and Technology's encryption standards

Solves cybersecurity – sets better international standards for data encryption

Kehl 14 - Danielle Kehl is a Policy Analyst at New America's Open Technology Institute (OTI) (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity", New America's Open Technology Institute, https://www.newamerica.org/downloads/Surveilance_Costs_Final.pdf//DM)

Because of United States' critical role in the development of the Internet, U.S.-based organizations and government agencies have historically been central to standards setting and oversight of key Internet functions, particularly through the National Institute of Standards and Technology (NIST). NIST is the Commerce Department agency responsible for setting scientific and technical standards that both the government and the private sector rely upon.239 As outlined in the 2002 Federal Information Security Management Act (FISMA), NIST has a statutory obligation to consult with the NSA on certain standards and guidelines "to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems."240 The Snowden leaks revealed that the NSA took advantage of that position to influence the standards-setting process to weaken encryption standards to the agency's benefit. According to documents released by The Guardian, The New York Times, and ProPublica in September 2013, the NSA "worked covertly to get its own version of a draft security standard issued by the US National Institute of Standards and Technology approved for worldwide use in 2006."241 This standard was later adopted by the International Organization for Standardization, a body with membership from countries all over the world. A number of experts suspected that the NSA had engineered a weakness in the standard that two Microsoft cryptographers discovered in 2007, and the classified memos released last year apparently confirm that this was the case. According to The New York Times, "The N.S.A. wrote the standard and aggressively pushed it on the international group, privately calling the effort 'a challenge in finesse.'"242

A few days after details about the compromised standard were revealed by the press, RSA Security—an American network security company that publicly fought against the Clipper Chip

in the 1990s243—privately alerted its customers that they should stop using an encryption algorithm that had been influenced by the NSA. Officials advised customers that one of the cryptography components in the BSAFE toolkit and Data Protection Manager by default used a specification known as Dual_EC_DRBG when generating keys.244 Although NIST approved Dual_EC_DRBG in 2006, the Snowden documents revealed that the random number generator contained a vulnerability engineered by the NSA. According to the Wall Street Journal, the announcement marked one of the first times that a security company had acknowledged the U.S. government's involvement in direct tampering with a product in order to facilitate access.245 The BSAFE library has been used in a number of products, including some versions of the McAfee Firewall Enterprise Control Center, and, according to Ars Technica, the backdoor "means that an untold number of third-party products may be bypassed not only by advanced intelligence agencies, but possibly by other adversaries who have the resources to carry out attacks that use specially designed hardware to quickly cycle through possible keys until the correct one is guessed."246 Documents released a few months later, in December 2013, revealed that RSA had a secret $10 million contract with the NSA wherein the security company agreed to set the compromised standard as the default in a number of its BSAFE products.247

Many cryptographers and security researchers have been skeptical of the NIST process for years, although they are heavily reliant upon the organization for everything from random number generators to more complex functions.248 While NIST has said it would never "deliberately weaken a cryptographic standard," it is unclear whether the agency was aware that the NSA was aggressively pushing for it to adopt a compromised standard.249 Both NIST and the NSA issued statements after the stories broke in September 2013 defending the standard, although NIST's statement indicated that the agency would also evaluate its processes to ensure that they were open, transparent, and held to high professional standards.250 Yet, it is clear that, at least in part as a result of the NSA's effort to exert its pervasive influence and perceived security expertise, NIST issued a compromised algorithm that was included for almost a decade in the cryptographic libraries of major tech companies, including Microsoft, Cisco, Symantec and RSA, because it was required for eligibility for government contracts.251 "The impact of weakening a standard may be even greater than a weakening a specific product or service because that one standard may be used in so many different products and services," notes a recent report from the Institute of Electrical and Electronics Engineers in the U.S.252 Although some have argued that the compromised algorithm was not widely-used, its presence in a number of products nonetheless diminishes America's reputation as a standards-setter, which is viewed as increasingly critical as foreign competition for products and software intensifies. Meddling with standards can undermine American industry, adding economic costs on top of security concerns.253

Weakening cryptographic standards demonstrably harms Internet security. It also hurts the credibility of NIST, which has been directed by President Obama to draft cybersecurity guidelines for critical infrastructure including telephone systems and power plants. "Suspicions of NSA intervention in NIST standards in support of the NSA intelligence mission have a negative effect on NIST's reputation and the credibility of the standards NIST develops… [T]hey also have a negative effect on the credibility of US industry that implements those standards and thus on international competitiveness," observed Microsoft's Steven B. Lipner.254 Put simply, "NIST is operating with a trust deficit right now," said Chris Soghoian of the American Civil Liberties Union to the National Journal. 255 As part of an effort to begin rebuilding that trust, NIST announced in May 2014 that it would begin a review of its cryptographic standards and guidelines program with the help of a panel of outside experts known as the Visiting Committee

on Advanced Technology (VCAT).256 In July 2014, the VCAT issued a report that examined the agency's processes and relationship with the NSA, outlining a series of recommendations to rebuild its credibility.257 These recommendations included improving transparency and openness around NIST processes, increasing the technical staff at NIST, and clarifying NIST's relationship with the NSA.258 As Ellen Richey, an Executive Vice President at Visa, Inc. and member of the VCAT, noted in her assessment, "The allegation that NSA has, or had, a program designed to insert weaknesses into global cryptographic standards… calls into question the integrity… of all the cryptographic standards developed by NIST," adding that, "Participants in the development process should understand that the risk from conflicts of interest arises from the appearance of impropriety, even in the absence of actual misconduct."259

With regard to redefining or clarifying NIST's statutory relationship to the NSA, parallel efforts are underway in Congress as well. In May 2014, the House Science and Technology Committee voted to adopt an amendment to the Frontiers in Innovation, Research, Science, and Technology (FIRST) Act offered by Representative Alan Grayson (D-FL) which would remove the requirement that the NSA be consulted on encryption standards, allowing NIST to request NSA assistance on an as-needed basis instead.260 A similar amendment proposed by Representative Grayson that would prohibit the NSA from using appropriations funds to interfere with NIST's security standards was approved by the House in June 2014 as part of a defense appropriations bill.261 However, it remains to be seen if such a measure will ultimately be passed into law.

2nc – solves encryption

Increased support, usage, and standards of encryption solves cybersecurity

Rubinstein and Hoboken 14 – *Senior Fellow at the Information Law Institute (ILI) and NYU School of Law, AND **Microsoft Research Fellow in the Information Law Institute at New York University, PhD from the University of Amsterdam (Ira and Joris Van, PRIVACY AND SECURITY IN THE CLOUD: SOME REALISM ABOUT TECHNICAL SOLUTIONS TO TRANSNATIONAL SURVEILLANCE IN THE POST- SNOWDEN ERA, 66 Maine L. Rev. 488, September 2014, http://ssrn.com/abstract=2443604)//JJ

B. The Industry Response: Taking Care of Old Business

In a recent article, reporter Steven Levy nicely captures the general response of Internet firms to the Snowden revelations by providing a look "inside their year from hell."133 Levy documents industry's struggle to craft a proper response to the uproar about direct government access to their servers (as alleged in the early reports of PRISM) and reassure overseas customers in light of the unhelpful U.S. government statements that NSA snooping was only directed at "non-American citizens."134 Industry had little success in quelling suspicion and regaining trust, especially from foreign customers and governments. "Every time we spoke it seemed to make matters worse . . . [w]e just were not believed," explained one tech executive to Levy.135

Quite apart from overcoming this atmosphere of general distrust, industry players had enough on their hands in deciding on a practical response to the Snowden troubles. Of the many possible technical measures aimed at restricting undue access to online information and communication,

the most obvious one for them to consider was **more extensive use of encryption**. When properly implemented by cloud providers, encryption measures can help secure communications and stored data against third party intrusions, including those of government intelligence agencies.136 At the very least, service providers could deploy encryption protocols like TLS/SSL to secure client-server communications between users and their own services.137 The MUSCULAR revelations suggest that service providers could also encrypt data more comprehensively once it arrives at their servers for processing or storage.138 Indeed, many of the measures discussed in this Section are but old wine in new bottles: that is, prudent responses to longstanding security risks that have been given greater urgency by the Snowden revelations. If the cloud industry had taken information security more seriously years ago, their services would have been less vulnerable in the first place.

Before turning to the specifics of the industry responses, it is worth briefly observing that despite the value of encryption measures in hindering surveillance, it has some limitations. In particular, as long as a service provider holds or has access to its users' encryption keys, it maintains the ability to access a user's data in unencrypted form, notwithstanding the fact that data travels between a client and a server securely. Moreover, for encryption measures to be effective in preventing backdoor access, industry must rely on cryptographic standards and implementations that have not been corrupted and must keep encryption keys out of the hands of government agencies. This may seem obvious, but achieving it is less so. Recent revelations related to NSA efforts to undermine cryptographic standards themselves are particularly worrying in this regard.139

In its discussion of what should be done to promote security and trust in encryption technologies, the President's Review Group implicitly rejected NSA activities undermining encryption standards by recommending that **the U.S. Government should**: "(1) fully support and not undermine efforts to **create encryption standards**; (2) not in any way subvert, undermine, weaken, or make vulnerable generally available commercial software; and (3) increase the use of encryption and **urge US companies to do so**, in order to better protect data in transit, at rest, in the cloud, and in other storage." While specific implementations of encryption technologies may suffer from security weaknesses, the use of encryption generally helps **protect cloud data against interception by third parties**, including **government agencies**. In contrast, no encryption or weak encryption enables government agencies to access cloud data without having to rely on legal process directed at cloud providers or the targeted interception of key material.

Ex post CP

1nc – ex post CP

Text:

The United States federal government should:

--require ex post review by the Foreign Intelligence Surveillance Court of NSA surveillance targeting criteria

--establish a public advocate at the FISC

--establish a cabinet-level privacy agency

The CP restores domestic and international confidence in US surveillance without restricting the scope of NSA activities – instead it conducts post-surveillance minimization

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

While I have concluded that U.S. surveillance policy does not violate the ICCPR, further reforms could highlight this point and silence persistent doubts here and abroad. These reforms could also remove any barriers to cooperation between the United States and foreign states, such as those in Europe, which are subject to the European Convention on Human Rights. This section identifies reforms that would add a public advocate to FISC proceedings, enhance FISC review of the criteria used for overseas surveillance, establish a U.S. privacy agency that would handle complaints from individuals here and overseas, and require greater minimization of non-U.S. person communications. These reforms would signal U.S. support of evolving global norms of digital privacy.

Although President Obama's speech in January 2014 proposed a panel of independent lawyers who could participate in important FISC cases, n161 further institutionalization of this role would be useful. A public advocate would scrutinize and, when necessary, challenge the NSA's targeting criteria on a regular basis. n162 Challenges would be brought in the FISC, after the NSA's implementation of criteria. The NSA would be able to adapt the criteria on an exigent basis, **subject to ex post review** by the FISC at the public advocate's behest. A public advocate and enhanced FISC review would serve three valuable functions: (1) ensure that the FISC received the best arguments on both sides; (2) serve as a valuable ex ante check on the government, encouraging the government to adopt those criteria that could withstand subsequent scrutiny; and (3) **promote domestic and global confidence in the legitimacy of processes governing NSA surveillance**.

A U.S. cabinet level privacy agency would also **bolster the legitimacy of surveillance**. The agency could provide more regular recourse to subjects of surveillance, as the ECHR requires. That change would ease the barriers to continued U.S.-Europe cooperation on counterterrorism. A national agency would also work hand in hand with privacy officers in executive departments. It would increase the leverage of those officials, who could advocate vigorously in internal debates, knowing that their views would also have a champion in a free-standing executive department independent [*2166] of the national security bureaucracy. There are downsides to this proposal,

of course. A new agency would add expense, and create some redundancy in government functions. Moreover, current models that provide recourse, such as the approach currently taken by the Department of Homeland Security, n163 have been criticized as unduly burdensome. n164 However, preserving cooperation with Europe and enhancing the overall legitimacy of U.S. surveillance provides a compelling justification.

Each of these instrumentalities - a public advocate at the FISC and a new privacy agency - could also work to strengthen minimization requirements for foreign communications. The NSA says that it disposes of all irrelevant communications within five years. There may be ways to shorten this time and require even more rigorous controls on sharing of information that lacks a clear link to terrorism or other foreign intelligence matters. More exacting minimization would also promote U.S.-European information sharing and **enhance global legitimacy**.

The net benefit is terrorism – the CP solves but avoids the chilling effect of ex ante restrictions that prevents the NSA reacting in exigent circumstances

Margulies 14 [Peter, Professor of Law, Dynamic Surveillance: Evolving Procedures in Metadata and Foreign Content Collection After Snowden, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400809&download=yes] Schloss

The better course for Congress would be to offer an itemized, but not exhaustive list of permissible uses of U.S. person identifiers. Congress could permit U.S. person queries in cases involving pre-existing FISA orders, threats to life, efforts to join international terrorist groups (the ISIS example), and other transnational illegal activity. This list would not categorically bar other uses of U.S. person identifiers, allowing some room for those uses when compelling circumstances arose. However, it would frame the substantive discussion in a useful way, and send a signal to the FISC and the executive branch that deliberation on the scope of U.S. person queries was vital.

A set of guidelines like those suggested would also compensate for the broader latitude that the NSA has for incidental collection under § 702. In cases that comprise the basis for the incidental collection doctrine, a federal judge had already issued a warrant based on probable cause to believe that wrongdoing had occurred.383 That is not the case with § 702, where the FISC merely reviews government targeting procedures.384 The latitude permitted under § 702 gives the government more room to frame initial searches to ensnare Americans. Critics have surely exaggerated the government's ability to engage in reverse targeting. Evidence that the NSA has engaged in such practices is slim to nonexistent. However, a dynamic approach that adjusts to the post-Snowden climate should not treat the absence of reported abuse as a recipe for complacency. Instead, this is the appropriate time to put in place safeguards that will avoid abuse in the future.

External constraints should be optimal for providing flexibility while ensuring checks on potential abuse. As in other situations, a public advocate should receive notice of the NSA's use of U.S. person identifiers to query § 702 data. Once a statutory standard is in place, the advocate should be able to seek FISC review of any identifier when a reasonable possibility exists that the use of the identifier does not comply with Congress's formulation. This review would be **ex post**, to **avoid chilling the agency's discretion in exigent situations**. Ex post review would still be meaningful, given the NSA's status as a repeat player dependent on the FISC's continued good will. External constraints of this kind would assure critics that substantive standards were being

followed. This external check is essential in the post-Snowden climate, in which internal "protocols" have – perhaps to a fault – become objects of corrosive cynicism.

NSA confidence to act in exigent circumstances are key to fighting terrorism

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http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2330&context=bclr

The NSA is perhaps the most important force protecting the United States from foreign terrorism and other threats to national security. The information provided by the agency informs national security and foreign policy decisionmakers, thereby also playing a vital role in ensuring international peace and security. While the incredible value of this agency cannot be overstated, neither can the risks posed by its vast capabilities. The broad scope of the agency's vigilant efforts has the potential to threaten the legitimate rights of American citizens, and appropriate checks must be in place.234

FISA provides a well-established legal framework that has protected the rights of American citizens from unwarranted government surveillance since 1978. 235 Although it appears that this framework recently may have been circumvented through a secret executive order,236 warrantless surveillance of Americans is nothing new. 237 Gaps in our legal protections have existed since FISA's enactment. 236

The NSA's minimization procedures provide strong protection for the rights of U.S. citizens under most circumstances, but they **allow breaches to occur in situations that are** arguably **the most crucial.** Although the NSA is required to destroy information inadvertently obtained about U.S. citizens in most cases, the current minimization procedures allow the agency effectively to initiate criminal investigations by turning over such information to law enforcement if criminal conduct is revealed. This places Americans at risk of criminal prosecution resulting from warrantless eavesdropping on their private telecommunications. This should not be permitted. Although it may not be practicable for the NSA to obtain a warrant in every case where information about U.S. citizens may be inadvertently acquired, the heightened expectation of privacy provided by encrypted Internet telephony should require additional limitations on what may be done with such information after it is acquired.

USSID 18 must be redrafted to forbid the use of inadvertently obtained information for the purpose of initiating criminal investigations against U.S. citizens **unless exigent circumstances are presented**. By disallowing the use of such information for these purposes, the government would be ensuring that the NSA stays focused on its primary mission—**protecting the United States from terrorism** and foreign intelligence operations—and not engaging in general criminal investigations domestically. Under the current directive, the NSA has an incentive to collect as much "inadvertently acquired" information as possible. If the possibility of using such

information to initiate unrelated criminal investigations were removed, the agency would cease to have an incentive to collect information unrelated to its national security mission. This would provide the agency with an incentive to maintain its focus on foreign terrorism and counterintelligence, and it would curb the temptation to stray into unrelated matters more appropriately left to those charged with domestic law enforcement.

This solution would allow the NSA to protect U.S. national security, while also enabling American citizens to communicate with foreign acquaintances without fear. It would also have the benefit of **restoring public confidence in the NSA**, effectively **combating the perception** that the agency engages in frequent violations of the very rights it was created to defend.

2nc – ex post solves

The CP's ex post review process deters executive abuse and restores legitimacy to US surveillance
Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

As for the structural considerations, one of the most important is what might be called an anti-unilateralism principle. A system of programmatic surveillance should not be put into effect on the say-so of the executive branch, but rather should be a collaborative effort that involves Congress (in the form of authorizing legislation) or the judiciary (in the form of FISA court review of the initiatives). n42 An example of the former is FISA itself, which Congress enacted in 1978. At the time, the NSA was engaged in bulk collection, without judicial approval, of certain international communications into and out of the United States--namely, by tapping into offshore telecommunications cables and by eavesdropping on satellite based radio signals. FISA's [*533] famously convoluted definition of "electronic surveillance" n43 preserved these preexisting practices even as Congress was imposing a new requirement of judicial approval for other kinds of monitoring. n44 An example of the latter concerns the warrantless Terrorist Surveillance Program, under which the NSA was intercepting, outside the FISA framework, certain communications between suspected al-Qaeda figures overseas and people located in the United States. After that program's existence was revealed in late 2005, the executive branch persuaded the FISA court to issue orders allowing it to proceed subject to various limits. n45 (That accommodation eventually proved unworkable, and the executive then worked with Congress to put the program on a more solid legislative footing through the temporary Protect America Act of 2007 n46 and the permanent FISA Amendments Act of 2008.) n47

Anti-unilateralism is important for several reasons. To take the most obvious, Congress and the courts can help prevent executive overreach. n48 The risk of abuse is lessened if the executive branch must enlist its partners before commencing a new surveillance initiative. Congress might decline to permit bulk collection in circumstances where it concludes that ordinary, individualized monitoring would suffice, or it might **authorize programmatic surveillance** subject to various privacy protections. In addition, inviting many voices to the decision-making

table increases the probability of sound outcomes. More participants with diverse perspectives can also help mitigate the groupthink tendencies to which the executive branch is sometimes [*534] subject. n49 If we're going to engage in programmatic surveillance, it should be the result of give and take among all three branches of the federal government, or at least between its two political branches, not the result of executive edict.

A second principle follows from the first: Programmatic surveillance should, wherever possible, have explicit statutory authorization. Congress does not "hide elephants in mouseholes," n50 the saying goes, and we should not presume that Congress meant to conceal its approval of a potentially controversial programmatic surveillance system in the penumbrae and interstices of obscure federal statutes. Instead, Congress normally should use express and specific legislation when it wants to okay bulk data collection. Clear laws will help remove any doubt about the authorized scope of the approved surveillance, thereby **promoting legal certainty**. Express congressional backing also helps give the monitoring an **air of legitimacy**. And, a requirement that programmatic surveillance usually should be approved by clear legislation helps promote accountability by minimizing the risk of congressional shirking. n51 If the political winds shift, and a legislatively approved program becomes unpopular, Congress will not be able to hide behind an ambiguous statutory grant of power and deflect responsibility to the President.

Ex post oversight is key to effective programmatic surveillance – the CP allows the government to collect all available data – it just puts ex post restrictions on the data analysis stage that deters executive data abuses

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

As for the operational considerations, among the most important is the need for external checks on programmatic surveillance. In particular, bulk data collection should have to undergo some form of judicial review, such as by the FISA court, in which the government demonstrates that it meets the applicable constitutional and statutory standards. Ideally, the judiciary would give its approval before collection begins. But this will not always be possible, in which case timely post-collection judicial review will have to suffice. (FISA has a comparable mechanism for temporary warrantless surveillance in emergency situations.) n60 Programmatic surveillance also should be subject to robust congressional oversight. This could take a variety of forms, including informal consultations with members of Congress when designing the surveillance regime (including, at a minimum, congressional leadership and members of the applicable committees), [*537] as well as regular briefings to appropriate personnel on the operation of the system and periodic oversight hearings.

Of course, judicial review in the context of bulk collection won't necessarily look the same as it does in the familiar setting of individualized monitoring of specific targets. If investigators want to examine the telephony metadata associated with a particular terrorism suspect, they can apply to the FISA court for a pen register or trap and trace order upon a showing that the information sought is relevant to an ongoing national security investigation. n61 But, as explained above, that kind of particularized showing often won't be possible where authorities are dealing with

unknown threats, and where the very purpose of the surveillance is to identify those threats. In these situations, reviewing courts may find it necessary to allow the government to collect large amounts of data without individualized suspicion. This doesn't mean that privacy safeguards must be abandoned and the executive given free rein. Instead, courts could be tasked with scrutinizing the initiative's overall structure and operation to determine its compatibility with constitutional and statutory requirements. And courts further could require authorities to demonstrate some level of individualized suspicion before accessing the data that has been collected. Protections for privacy and civil liberties thus can migrate from the collection phase of the intelligence cycle to earlier and later stages, such as the systems design and analysis stages. n62

In more general terms, because programmatic surveillance involves the collection of large troves of data, it likely means some dilution of the familiar ex ante restrictions that protect privacy by constraining the government from acquiring information in the first place. It therefore becomes critically important to devise **meaningful ex post safeguards** that can achieve similar forms of privacy protection. In short, restrictions on the government's ability to access and use data that it has gathered must substitute for restrictions on the government's ability to gather that data at all; what I have elsewhere called **use limits must stand in for collection limits**. n63

This sort of oversight by the courts and Congress provides an obvious, first-order level of protection for privacy and civil liberties--an external veto serves as a direct check on possible executive [*538] misconduct. Judicial and legislative checks also offer an important second-order form of protection. The **mere possibility** of an outsider's veto can have a chilling effect on executive misconduct, discouraging officials from questionable activities that would have to undergo, and might not survive, external review. n64 Moreover, external checks can channel the executive's scarce resources into truly important surveillance and away from relatively unimportant monitoring. This is so because oversight increases the administrative costs of collecting bulk data--e.g., preparing a surveillance application, persuading the judiciary to approve it, briefing the courts and Congress about how the program has been implemented, and so on. These increased costs encourage the executive to prioritize collection that is expected to yield truly valuable intelligence and, conversely, to forego collection that is expected to produce information of lesser value.

Ex ante requirements amount to a rubber stamp

Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

The FISC approves virtually every application for an order with which it is presented. According to Electronic Privacy Information Center (EPIC) statistics, the court denied only five applications from its inception through 2006.40 In that time, it has approved thousands of others, including a new high of 2176 in 2006.41 Of course, "[i]t is possible to draw divergent conclusions from this data. One could infer that the extensive FISA safeguards have forced the Executive to self-censor its requests. One could also argue, however, that the **courts act merely as a 'rubber stamp'** whenever the Executive invokes national security."42 Upon analyzing FISA's structure and track record, the nature of electronic surveillance in service of national security, and more general

separation of powers and national security lessons, it seems that something more like the latter is the ultimate result of FISA.

Limitations inherent in the project of judicial pre-approval of national security surveillance render the system unable to perform the function for which it was created; each of the problems described below mutually reinforces the others, leading to **systemic ineffectiveness**. In the absence of the notice requirements that attach in domestic surveillance, 43 and in light of the ex parte nature of FISC proceedings, no opportunity for meaningful review may ever present itself.44 "The potential for abuse is substantial, since all applications remain sealed and unavailable to the public, and since targets are never notified that they have been under surveillance."45

The lack of adversariality, reliance on executive representations and national security framing mean it's a rubber stamp

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1. Non-adversariality. — One of the most striking elements of the FISA system is the total absence of adversariality. Because the collection of intelligence in this context requires by its very nature that the surveilled party not receive notice in advance, the ex ante approval system is almost by definition also ex parte. This puts the FISC in an "anomalous position,"46 in the words of the current Attorney General, similar to that of a court reviewing FISA materials for admission in a criminal case. In such situations, "[t]he judge is forced not only to act as an arm of the prosecution in weighing the prosecution's arguments about whether disclosure would or would not compromise national security, but also to act as a defense lawyer in determining whether the information is useful to the defendant."47 Similarly, in reviewing a FISA application, the FISC must attempt the difficult, if not impossible, task of simultaneously occupying the roles of advocate and neutral arbiter — all without the authority or ability to investigate facts or the time to conduct legal research.48 The judge lacks a skeptical advocate to vet the government's legal arguments, which is of crucial significance when the government is always able to claim the weight of national security expertise for its position. It is questionable whether courts can play this role effectively, and, more importantly, whether they should.49

2. Reliance on Executive Representations. — One frequently overlooked element of the FISA system is its almost complete reliance upon the Executive's representations and willingness to abide by the statutory terms.50 This would be all the more true if Congress lowers the degree of factual specificity necessary for issuance of a FISC order, a change that is included in both the Senate and House bills.51 Even under the current standard, however, the FISC cannot inquire behind the representations made by the applicant; so long as the applicant presents a "statement of facts showing that there are reasonable grounds"52 for the order to issue, "the judge shall enter an ex parte order as requested."53

There is a strong connection between the difficulties of relying on executive branch representations and the ex parte nature of the FISC inquiry: the FISC lacks the presence of an adversarial voice drawing into focus any concerns with an application. In this sense, the two

problems are mutually reinforcing. Indeed, the FISC on one occasion detailed "misstatements and omissions of material facts" that the government confessed "in some 75 FISA applications,"54 problems that did not come to light at the time the orders were issued. In this context it is also worth noting that the Executive has never actually accepted that it is bound by FISA, citing inherent presidential authority over national security under Article II of the Constitution.55 The current administration acted in part on this basis in operating the TSP.56 Lacking the ability to initiate an inquiry beyond what the Executive brings to its attention, the FISC's oversight of the process is substantially controlled by the very entity it is designed to oversee.

3. Institutional Limitations of the Judiciary. — Even if the above problems could be overcome, institutional factors that are inherent in the national security arena will always function to limit the ability of the judiciary to serve as an effective check. First, the surveillance that FISA deals with necessarily involves secrecy, inherently requires policy judgments, and takes place in the context of the increased powers of the Executive in the national security arena. As a result, policymakers are rightly fearful of giving too much review power to courts and face inevitable pressure to scale back the amount of decisionmaking authority left to the judiciary.

Second, the courts are, and have always been, extremely passive in exercising jurisdiction over cases touching upon national security, both because of the reasons just noted (political judgment and executive power) and because of resultant concerns for institutional legitimacy and judicial restraint.57 Courts tend to be highly deferential because of "concern for the efficiency and expertise of the nation's foreign intelligence process and the deleterious effects that might result from judicial interference."58 Judges are most certainly aware of the limits of their own policy expertise. This effect is greatly enhanced when judges must weigh the national security necessity ex ante, rather than being asked to review it after the fact.

Indeed, it is interesting to note that the scope of review exercised by the FISC has steadily narrowed over time. To be sure, it was narrow to begin with,59 but both legislative action and limiting constructions applied by the courts themselves have narrowed the FISC's authority even further. For example, when Congress amended FISA to require only that national security be a "significant purpose," rather than the "primary purpose," of the surveillance for which authorization is sought,60 the FISCR read the statutory shift quite broadly. It held that when surveillance of a foreign agent is undertaken for purposes of both national security and law enforcement, the government need only "entertain[] a realistic option of dealing with the agent other than through criminal prosecution" in order to satisfy the test.61 The court reasoned that the new provisions "eliminated any justification for the FISA court to balance the relative weight the government places on criminal prosecution as compared to other counterintelligence responses." 62 Yet this seems a far less robust limit than the plain language or legislative history indicated: importantly, the legislature considered and rejected requiring only "a" rather than "a significant" purpose.63 Given a hint of statutory ambiguity, then, the court effectively read the requirement of "significant purpose" out of the statute, resulting in a regime of even less exacting scrutiny. Ultimately, "[t]hrough a combination of government tactics, the mandate of the FISA court, and federal court interpretations of the FISA law, the FISA safeguards which were intended to balance individual rights against the government's claims of national security have been essentially eviscerated."64

As a result, "[c]harging a panel of federal judges with insufficient background information on specific cases, and little intelligence experience, with approving foreign intelligence surveillance applications has resulted in an essentially rubber stamp process where applications are practically

never denied."65 Primary reliance on judicial oversight will virtually always tend toward deference, both in exercising jurisdiction and in determining individual cases.

Ex ante review undermines effective restrictions on domestic surveillance and shuts down an engaged citizenry

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Ex ante judicial review is not only of limited effectiveness, but it is also affirmatively harmful in several respects. Ex ante judicial approval imparts a broader imprimatur of validity than is warranted given the limited effectiveness of the review. Further, it clouds accountability and can be a cumbersome and intrusive process harmful to national security interests. In fact, "the creation of FISA courts may actually have resulted in fewer restrictions on the domestic surveillance activities of intelligence agencies"69 because "[t]he secrecy that attends FISC proceedings, and the limitations imposed on judicial review of FISA surveillance, may insulate unconstitutional surveillance from any effective sanction."70

1. The Judicial Imprimatur. — The issuance of an order by the FISC confers a stamp of approval from the widely respected Article III courts. A FISC order makes a strong statement that a neutral arbiter has looked closely at the situation and found the surveillance warranted. Yet, as the set of limitations just discussed indicates, the protective force of a FISC order may not align with the actual vigor of the inquiry.

This disparity may give rise to several problems. First, changed circumstances following the issuance of the order may undermine the validity of the surveillance. Minimization procedures are largely unhelpful in solving this problem: "[T]he Act provides for the same kind of incoherent and largely unenforceable 'minimization' requirements that plague criminal wiretap statutes."71 Much more importantly, the judicial order may mask and indeed later provide cover for improper governmental motives and improper intrusions on liberty.72 In these situations, ex ante review may **sanitize the improper surveillance**. The presence of the judicial order may function to dissuade legislative or executive oversight entities from inquiry. Worse, judicial orders offer the potential for the government to hide behind the nominally objective, even if only minimally rigorous, scrutiny that they represent.

Surveillance conducted for political reasons, for example, might escape detection, condemnation, and consequences — political, if not legal — if that surveillance is given judicial protection.73 Indeed, this sanitization could occur on an even broader level: ex ante judicial approval interferes with the healthy public skepticism that attends political actors and that may help keep the citizenry engaged in considering the difficult tradeoffs between liberty and security necessary in this context. This is not to say that the judiciary should decline to play a constitutionally permissible role; rather, the point is that system designers concerned with protecting civil liberties should keep in mind the drawbacks of ex ante approval. In total, the capacity of ex ante approval to enable some of the most dangerous sorts of abuses far outweighs its middling ability to provide a useful check.

Ex ante review undermines political accountability – key to checking abuses and fostering public engagement

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2. Clouded Accountability. — Although several of FISA's provisions recognize the need for clear lines of accountability, the statute's broad structure fails to account for this crucial element. A simple comparison is useful: The Attorney General would be far more politically exposed if he or she signed off on an improper emergency order, which permits an exception to the ex ante approval requirement, rather than a regular FISA order approved by the FISC. In fact, the emergency authorization procedures under 50 U.S.C. § 1805(f) recognize the need for accountability by requiring notice if the application is turned down after the Attorney General has authorized it on an emergency basis.74 Similarly, the personal review provisions of § 1804(e) establish clear lines of authority for approval. But the presence of a judicial order authorizing surveillance permits a culpable official to escape the political consequences of his or her improprieties by using the court's approval as evidence of reasonableness, claiming reasonable reliance, or **foisting blame upon the court.**

Exposing the Attorney General — and through him or her the President — to the political consequences of these decisions is crucial for two reasons: First, it minimizes the possibility of politically motivated surveillance that would pass minimal judicial review, because such invasions of privacy would be seen as wholly illegitimate.75 Second, it would both enable and force the American public to confront the fact that, ultimately, it is responsible for determining the proper balance between liberty and security. The public will be much more comfortable with allowing invasions of fellow citizens' privacy when judges authorize them. In the end, "if a government is intent on engaging in interrogation to protect national security there is little the judges can do about it anyway."76 Forcing citizens to think hard about their values is of particular importance in the context of a vague "war on terror" devoid of identifiable boundaries.

Ex post review creates the best overall balance between liberty and national security

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C. The Role of the Courts

While the limitations and dangers associated with ex ante judicial approval of national security surveillance counsel in favor of developing a new core means of protecting civil liberties in this arena, they in no way mandate a complete elimination of the judicial role. To the contrary, an appropriately modified role for the judiciary is of fundamental importance to address some of the limitations of the system of political checks. Ultimately, a return of the judiciary to its pre-FISA

role of ex post reasonableness review would permit the federal courts to complement the proposed broader oversight system and to meet Fourth Amendment requirements by restoring judicial focus to individual constitutional rights and relaxing national security pressures on the courts.101

1. Fourth Amendment Strictures. — It is worth noting initially that FISA has always contemplated situations in which full-on ex ante judicial oversight is not necessary to permit domestic electronic surveillance. At present, FISA conceives of three situations in which a court order is not necessary. These are all situations in which the balance in favor of the government is most compelling because the risk to privacy interests is low, the need for dispatch is great, or a drastic change of circumstances takes place. First, 50 U.S.C. § 1802 gives the Attorney General power, upon written certification under oath, to authorize up to one year of electronic surveillance directed at communications "exclusively between or among foreign powers" or "technical intelligence . . . from property or premises under the open and exclusive control of a foreign power" so long as "there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party" and minimization procedures are complied with. Second, under § 1805(f), the Attorney General may authorize emergency surveillance without court interference for seventy-two hours if he or she determines that a standard FISA order could not be acquired in time and that there is a sufficient "factual basis for issuance of an order." Finally, for fifteen days following a declaration of war, § 1811 permits non-court-ordered, Attorney General–authorized surveillance.

Foreign intelligence surveillance occupies a unique spot in the Court's Fourth Amendment jurisprudence.102 In Katz v. United States,103 the Court issued perhaps its sternest statement on the obligation of obtaining a warrant prior to exercising a search,104 while also extending Fourth Amendment protection to include electronic surveillance. 105 Importantly, however, the Court expressly reserved the issue of electronic surveillance in the national security context.106 In United States v. U.S. District Court107 (the Keith case), the Court again focused on the need for "prior judicial scrutiny" in rejecting the government's claim for an exception to the warrant requirement in the domestic national security context.108 Yet once again, the Court made a crucial reservation: "[T]his case involves only the domestic aspects of national security. We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents."109 It is thus an open constitutional question whether foreign intelligence surveillance falls within an exception to the Fourth Amendment's warrant requirement.

While full argumentation for the proposition that the Fourth Amendment embodies such an exception is beyond the scope of this Note,110 the case law is clear that the true "touchstone of the Fourth Amendment is reasonableness,"111 such that the Fourth Amendment only "[s]ometimes . . . require[s] warrants."112 Especially in light of the increasing number of exceptions to the warrant requirement,113 it seems likely that an exception is appropriate in the context of foreign intelligence surveillance for purposes of national security, not only in terms of meeting a more formalist reading of the Fourth Amendment, but even more forcefully meeting a functionalist reading, under which the improved protections of civil liberties could render the decreased reliance on ex ante judicial review preferable under the Fourth Amendment.

2. Policy Benefits. — A proponent of a national security exception notes that "[t]he repeal of FISA . . . would simply effectuate the nation's return to its previous tradition."114 Yet the obvious retort is that the very abuses detailed in the Church Committee report were a major

product of that tradition. Still, the old tradition did have some benefits that can be obtained by coupling the ex post reasonableness role of reviewing courts with the political checks described above. For one, rather than shielding meaningful inquiry, as ex ante review can, ex post review may produce "a renewed focus on Fourth Amendment principles"115 by both the judicial and political branches. Indeed, the more developed factual setting available in ex post review would help with the effort to define reasonableness.

Further, it could be argued that since only a small number of people are likely to be affected by surveillance, and especially given that those affected are likely to be disfavored or underrepresented groups such as members of minority religions or immigrants, the political process cannot be trusted to perform oversight. Yet ex post judicial review would remain a powerful check if the government seeks to use FISA-gathered information in other legal settings, such as criminal trials, habeas corpus proceedings, or motions for prospective relief. Ex post reasonableness review thus provides an important backstop to the oversight process.

IV. CONCLUSION

The current FISA system is illogical. Its purported benefits are at best questionable, and it features serious drawbacks in terms of the efficient functioning of national security surveillance and the numerous ways it undermines protections of liberty. While the Senate bill falls short of instituting the sort of robust political checks buttressed by ex post judicial review necessary to provide adequate protections, it offers an important paradigm shift in the way that FISA is conceived. This reconceptualization should be embraced and bettered by incorporating some of the terms of the House bill, rather than rejected as insufficiently protective of the role of the judiciary. Those concerned with protecting civil liberties should view an end to reliance on ex ante judicial review as a chance to develop real political checks that can vigorously protect both national security and liberty interests.

AT: Courts will defer

Ex post review creates executive self-restraint despite deference

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290 Advocates for greater oversight might argue that a clear error review — on a matter in which the judiciary already is inclined to be deferential to the executive's judgments — would accomplish little. In fact, however, the requirement would serve an important checking function. By forcing the government to articulate the factual basis for choosing selectors, it would create an incentive for self-restraint at the front end of the process. While it is unlikely that the FISA Court would reject any of the selectors that the government submitted to it, it is quite likely that the list of selectors presented to the court would be smaller and better justified than would otherwise be the case. On the flip side, the government would no doubt argue that this proposal represents an

unworkable burden on the executive branch and the FISA Court. If the government's scope of collection remained as broad as it is now, that argument might hold some weight. However, the burden stemming from this proposal should be greatly diminished by the reinstatement of the "agent of a foreign power" and "primary purpose" criteria, as well as the narrowing of the definition of "foreign intelligence information." Following these changes, the number of targets for whom selection terms must be presented to the court — while no doubt large — should be nowhere near the reported 89,000 targets today. 2013 Transparency Report, supra note 178 (estimating that 89,138 targets were affected by Section 702 in 2013).

AT: FISC oversight weak

The public advocate part of the CP and the strengthening of PCLOB to make it a cabinet level agency remedies existing weaknesses of the FISC

Setty, 15 - Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law (Sudha, "Surveillance, Secrecy, and the Search for Meaningful Accountability" 51 Stan. J Int'l L. 69, Winter, lexis)

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

For example, on prospective matters, it is likely that intelligence agencies would consult the PCLOB only if the agency itself considers the issue being faced new or novel, as the NSA metadata program was labeled prior to its inception. In such cases, decision makers within an agency generally ask whether the contemplated program is useful or necessary, technologically feasible, and legal. If all three questions are answered affirmatively, the program can be implemented. Now that the PCLOB is fully operational, it seems likely that if a contemplated program is considered new or novel, an intelligence agency would consult the PCLOB at some stage of this process for its guidance on implementing the program. This nonpartisan external input may improve self-policing within the [*102] intelligence community and help intelligence

agencies avoid implementing controversial programs or, even if implemented, set better parameters around new programs. n189

If the PCLOB is able to exert some degree of soft power in influencing national security decision-making, then the judiciary represents hard power that could be used to force the protection of civil liberties where it might not otherwise occur. The FISC should be reformed to **include a public advocate** lobbying on behalf of privacy concerns, making the process genuinely adversarial and strengthening the FISC against charges that it merely rubber stamps applications from the intelligence community. n190 Article III courts need to follow the lead of Judge Leon in Klayman in conceptualizing privacy as broad and defensible, even in a world where electronics-based communication is dominant and relatively easy for the government to collect. If the judicial defense of privacy were combined with the possibility of liability for violations of that privacy, it is likely that this would incentivize increased self-policing among the members of the intelligence community. The creation of an active PCLOB and a more adversarial process before the FISC will not provide a perfect solution to the dilemmas posed by the government's legitimate need for secrecy and the protection of the public against potential abuse. Yet because these changes are institutional and structural, they are well-placed to improve the dynamic between the intelligence community, oversight mechanisms, and the public.

Conclusion

Genuine accountability should not depend on the chance that an unauthorized and illegal leak will occur. In the comparative example of the United Kingdom, engagement with a European Union energized with a commitment to increase privacy protections, along with domestic parliamentary oversight, provide two potential avenues for increased constraint on surveillance. In India, the parliament and the courts historically enabled, not constrained, the intelligence community. Whether that stance will continue as the government's technological capabilities increase is yet to be seen.

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

2nc – FISC special advocate solves

A public advocate would check FISC rubber stamping

Cetina 14– John Marshall Law School (Daniel, “Balancing Security and Privacy in 21st century America: A Framework for FISA Court Reform”, John Marshall Law Review, Summer 2014, http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jmlr47&type=Text&id=1540)//DBI

The first remedy involves **appointing a privacy advocate** whose sole duty would be to argue against the government's warrant requests, in essence acting as a quasi-public defender or guardian of privacy rights.' 0 ' Such an idea is already percolating in the House of Representatives.102 Retired Judge James Robertson, who formerly presided over the FISA Court, claims this is a necessary step 0 3 because the Court has frequently been merely a **proverbial rubber stamp** for surveillance requests.104 Indeed, available literature suggests that the FISA Court grants over 90% of the government's requests. 105

Introducing a privacy advocate would effectively force the FISA Court to consider individual requests from both perspectives: on the one hand, the government would present important security arguments, while the privacy advocate would focus on potential or actual dangers to cognizable privacy interests. This system would thereby **promote equity** in FISA Court proceedings and enable the public at large to have a representative promote privacy.

A public advocate would be easy to implement and would reform much of the single-mindedness of the past FISC decisions

Schlanger 15 [Margo, Professor of Law at the University of Michigan Law School, and the founder and director of the Civil Rights Litigation Clearinghouse., Intelligence Legalism and the National Security Agency's Civil Liberties Gap, file:///C:/Users/Jonah/Downloads/Intelligence%20Legalism%20and%20the%20National%20Security%20Agency-s%20Civil%20Li%20(2).pdf] Schloss3

Finally, it seems highly likely that in the near future, the FISA Court will gain a new process for occasional appearance of a public or special advocate. This proposal has been endorsed in varying forms by the Director of National Intelligence,393 the President's Review Group,394 the PCLOB,3 and the President.396 It was included in the recently-defeated Senate's USA FREEDOM Act bill, which will be one source for the next Congress's work on the issue. 397 Even former FISA presiding Judge John Bates, now the Director of the Administrative Office of the U.S. Courts, agrees in part.398 There is, however, substantial disagreement about details—and the details matter.

The argument for such an advocate is straightforward: even if the government exhibits exemplary candor as to facts, it cannot be relied upon to brief against its own authority. Because the issues are complex and important, they deserve full adversarial development in support of better judicial decision-making. The arguments against are likewise easily summarized: There's not enough for a special advocate to do, since most issues before the FISA Court are not legally complex, and the facts will not be available to the advocate. Adversarial process will be slower and more cumbersome without leading to better decision-making. Indeed, it might lead to worse decision-making, because "adversarial process in run-of-the-mill, fact-driven cases may erode" the government's compliance with a "heightened duty of candor to the Court."399 Indeed, "intelligence agencies may become reluctant to voluntarily provide to the Court highly sensitive information, or information detrimental to a case, because doing so would also disclose that information to a permanent bureaucratic adversary."400

The consensus for some form of public advocate does not encompass key details. The largest open question is about access. Under the House version of the USA Freedom Act, FISA court public advocates could have been excluded from factual or even legal presentations by the government to FISA judges and their legal advisors.401 The Senate version of the bill, by contrast, specified that public advocates would receive "access to all relevant legal precedent, and any application, certification, petition, motion, or such other materials as are relevant to the duties of the special advocate."402 Judge Bates, who served for six years as a FISA Court judge, has written several letters to Congress,403 purportedly on behalf of the judiciary,404 opposing a full-time, autonomous special advocate in the FISA Court. Those letters pointed out, as a disadvantage, that inclusion of adversarial process would make the FISA Court more court-like. Judge Bates explained that "FISC judges currently have substantial flexibility in deciding how best to receive from the government information they consider relevant to a particular case." That flexibility, he suggested, could not survive inter partes procedural requirements:

In order for the FISC to abide by the procedural and ethical requirements that apply in adversarial proceedings, and for the advocate to appear on equal footing with the applicant, the FISC would have to ensure that the advocate was involved in all such interactions in any case in which the advocate may participate. . . .We expect that the logistical challenges of administering such a three-way process for more than a handful of cases would be considerable.405

The Obama Administration, unfortunately, seems to be favoring limiting access, as well: In a letter to Senator Pat Leahy about the Senate bill, Attorney General Eric Holder and Director of National Intelligence James Clapper opined that "the appointment of an amicus in selected cases…need not interfere with…the process of ex parte [that is, one-party] consultation between the Court and the government."406

In fact, the FISA court and the public would be best served by a more empowered public advocate—one who is authorized to appear even without invitation from the government or the court, and, still more important, who is entitled to full access to information relevant to her duties. This would no doubt alter the current one-party procedures before the FISA court. But that's a feature, not a bug. The FISA Court's current procedures allow meetings quite unlike ordinary judicial hearings, even ex parte ones. In advance advice from court staff to the government and iterative drafting are common. The 2009 PowerPoint slide deck already described is similarly odd for a judicial forum."407 Other practices such as an annual lunch bringing together FISA Court judges and legal advisors (and the Chief Justice) with the heads of the CIA, NSA, and FBI likewise encourage the judges to see their own role as co-workers in the administration of the intelligence community's surveillance programs, supervising, for sure, but almost from within. If a public advocate's procedural rights disrupted this cozy relationship, that would be all to the good. The salutary effect might be to reinforce the FISA judges' role as arbiters of surveillance legality, not coworkers in the administration of the IC's surveillance programs.

If designed properly, this variation of an Office of Goodness could be essentially free from the ordinary threats to that kind of organization's influence and commitment. After all, the role of government-paid court opponent is utterly familiar from the criminal justice system. Unlike agencies, where staff must negotiate for a seat at decision-making tables, most courts have firm inter partes norms requiring access for all parties.408 If Congress applies these norms to the FISA court, as it should, implementation will be very familiar. As for capture, the analogous public defenders certainly sometimes allow organizational or situational imperatives to subvert their assigned courtroom role, 409 but there seems far less reason to worry about capture in this

litigation setting than inside of agencies, at least if the public advocates are not otherwise beholden to the agencies. If anything, the problem here might be too much single-minded commitment, a strict preference for civil liberties over security—but of course the court, which would remain the decider, is unlikely to become unduly single-minded. I therefore see a FISA Court public advocate as a variant on an Office of Goodness whose institutional setting would—if it is well designed—shield it from many of the landmines that usually threaten such an office's influence or commitment.

A FISC special advocate solves overreach

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http://www.americanbar.org/publications/litigation_journal/2013-14/spring/fisa_authority_and_blanket_surveillance_gatekeeper_without_opposition.html

One of the pending bills, Senator Blumenthal's FISA Court Reform Act of 2013, Senate Bill 1460 and Senate Bill 1467, provides an answer that, having had the experience of litigating before the FISC myself, I believe could provide much needed improvements. That bill provides for a new Office of the Special Advocate, which introduces an adversary to the court. (This is similar to the public privacy advocate that President Obama recently proposed.) The act attempts to solve a basic problem with the current oversight procedures: There is no true adversarial process for most of the legal issues that arise. The newly declassified opinions the director of national intelligence has released make this abundantly clear. Setting aside the legal arguments, the procedural history of the opinions indicates delays on the government's part, a lack of supervision after the court issues its orders, and a preference for secrecy over public disclosure at any cost. Appointing a special advocate ad litem for the public would ensure that novel legal arguments in the FISA court would face a consistent, steady challenge no matter who the provider is, thereby strengthening the FISA process by subjecting results to checks and balances.

Without such a process, the court and the Department of Justice must work through difficult legal issues with no balancing input. An advocate could participate in all cases involving a new statute or authority or a new interpretation or application of an existing authority. The special advocate could choose the cases in which to be involved, or the court or a provider that receives process could request its involvement where an opposition would be useful to test and evaluate the government's legal arguments. The special advocate's office could be established with proper security safeguards to draft, store, and access classified records more efficiently. It could also be required to report to the public and Congress the number of cases it has argued and how often it has limited or pared back the government's requests. It would provide a vital counterpoint for legislators exercising their oversight duties.

The special advocate would be especially useful in cases in which the government demands access to communications in a way that may have a profound effect on people other than the target, such as when decryption may be involved or when a provider is asked to provide assistance in ways that are unlike traditional wiretaps.

The FISC court advocate would be effective in reducing privacy concerns over NSA surveillance

Vladeck, Professor of law, 14 [Stephen I., Standing and Secret Surveillance , http://moritzlaw.osu.edu/students/groups/is/files/2014/08/13-Vladeck.pdf] Schloss

This shortcoming may help to explain the growing support for proposals to have some kind of "special advocate" participate in at least some cases before the FISA Court.103 Although the details vary, the basic gist is that Congress would create an independent office staffed by (or a rotating panel of court-designated private) lawyers empowered to appear in at least some cases before the FISA Court, specifically tasked with arguing against the government's interpretation of the relevant statutory and constitutional authorities. Such lawyers would have appropriate security clearances—allowing the FISA Court to entertain such arguments in secret—and, under most of the proposals, would not formally represent a "client."104 Instead, their statutory obligation would be to play the devil's advocate—to assist the FISA Court by providing alternative possible readings of the same procedural, evidentiary, statutory, and constitutional language on which the government has rested its application.105

At least with regard to proceedings before the FISA Court, the creation of a "special advocate," however conceived, should not raise any new Article III concerns (if anything, it should mitigate existing constitutional objections with respect to the absence of adverseness before that court).106 Assuming arguendo that these disputes already comport with Article III's justiciability requirements, it is difficult to see how adding a new party in suits initiated by the government as plaintiff would raise any new concerns. Although reasonable people will certainly disagree about the wisdom of competing "special advocate" proposals as a matter of policy, it is difficult to dispute their validity as a matter of law—at least in proceedings before the FISA Court.107

A public advocate is critical to reforming the internal FISC system

Margulies 14 [Peter, Professor of Law, Dynamic Surveillance: Evolving Procedures in Metadata and Foreign Content Collection After Snowden, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400809&download=yes] Schloss

A more institutionalized public voice at the FISC would be even more valuable than reliance on amici curiae as a policy matter, for two reasons.289 First, a public advocate would enhance the reasoning in FISC decisions. Although the FISC was correct in extending a measure of deference to the Executive on the contours of the § 215 relevance standard in place at the time of Snowden's disclosures, the FISC's reasoning left much to be desired. The 2006 FISC opinion, in particular, is truncated and conclusory, offering virtually no analysis. The absence of analysis is problematic. The deliberation that Hamilton extolled in Federalist No. 78 as judicial review's hallmark requires statements of reasons.290 The statement of reasons sends a useful signal to audiences for the judge's decision, conveying the judge's seriousness and ongoing vigilance. In contrast, especially in the secret loop of the pre-Snowden metadata program, a conclusory approval may send a signal to those who have sought judicial authorization that they have more license than the court actually intends. This dynamic may have played a role in the compliance issues that the FISC was forced to deal with in 2009.

The presence of a public advocate would prod the FISC to provide reasons for its decisions. The advocate would receive all government requests. It would be empowered to intervene when it believed that a matter raised novel legal issues, or when it certified to the FISC that there was a reasonable possibility (10% or greater) that the government's request failed to meet the statutory standard. The public advocate would present the best legal and factual arguments against the government. The court would then have to weigh the arguments, and explain why it selected one side. The entire process also signals to the government that compliance is a serious matter.

Second, the seriousness imposed by a public advocate would compensate for an even bigger blind spot in the current process: the barely adequate disclosure that the government has provided to Congress. The "rogue robot" explanation for noncompliance furnished by the Justice Department in its December 2009 letter did not supply the comprehensive self-appraisal that Congress has a right to expect. While the Leahy bill provides for more transparency, the cabined deliberation characteristic of Title 50 oversight may not prove sufficiently robust over the long haul. The work of the Privacy and Civil Liberties Oversight Board (PCLOB), while exceptionally valuable, may also fail to completely close the gap. An institutional advocate at the FISC would supplement legislative oversight, hedging against future deficits in disclosure to Congress

AT: Special advocate links to terrorism

The special advocate functions ex post – ex ante advocacy compromises terrorism investigations

Vladeck 15 – Professor of Law at American University Washington College of Law (Stephen, THE CASE FOR A FISA "SPECIAL ADVOCATE," 2 Texas A&M L. Rev. 2)//JJ

To be sure, Judge Bates is certainly correct that the participation of the special advocate should not unduly interfere with the government's ability to conduct lawful foreign intelligence surveillance activities, **especially ex ante.** To that end, the special advocate might only be notified of a government application under the relevant authorities **once that application has been granted** by FISC, at which time the appointed advocate would have a fixed period of time within which to seek reconsideration of the underlying ruling. Among other things, this approach would allow the government to act expeditiously when circumstances warrant (lest an expressly legislated emergency exception otherwise swallow the rule), and would preserve the status quo (in which authorization has been provided by the FISC) until and unless the special advocate convinces the FISC judge, the FISCR, or the Supreme Court to vacate such authorization. And, of course, if the special advocate prevails before either the FISC or FISCR, the government retains the option of seeking a stay of the ruling in question to continue the underlying surveillance pending appeal.

A FISA court advocate still operates within a covert regime – the target of surveillance is never alerted

Patel and Goitein, 15 – *co-director of the Liberty and National Security Program at the Brennan Center for Justice AND ** co-directs the Brennan Center for Justice's Liberty and National Security Program (Faiza and Liza, "Fixing the FISA Court by Fixing FISA: A Response to Carrie Cordero" 4/8, Lawfare,

http://www.lawfareblog.com/fixing-fisa-court-fixing-fisa-response-carrie-cordero

We would be providing greater ability to challenge surveillance to foreign intelligence targets, than to subjects of criminal investigation domestically, for whom wiretap applications are approved in camera ex parteby district court judges and magistrates.

In fact, foreign intelligence targets would have no ability to challenge surveillance under our Special Advocate proposal. They would not be able to choose and hire an attorney to present their case, and to communicate to this attorney the facts only they could know. Instead, they would remain ignorant of the surveillance, and a Special Advocate would do his/her best to present a case without their help or involvement. By contrast, subjects of searches in criminal cases are informed of the search. At a minimum, then, they can bring a civil suit, and they often have the opportunity to challenge the search as part of a criminal trial (an opportunity that's rare in foreign intelligence cases). They can do so with full knowledge of their own actions and with an attorney of their choosing who works only for them. When it comes to the ability to challenge surveillance, the advantage clearly belongs to the subject of the criminal search, even under our proposal.

2nc terrorism link wall – FAA restrictions

FISA's authority alone is insufficient to prevent terrorism – the government needs the widest possible net, including domestic surveillance

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 94-96

According to the administration, these are just interceptions of communications to and from the United States in which one of the parties is suspected of terrorist connections, though the suspicion does not rise to the probable-cause level that would be required for obtaining a warrant. There may be more to the program, however. Most likely the next terrorist attack on the United States will, like the last one, be mounted from within the country but be orchestrated by leaders safely ensconced somewhere abroad. If a phone number in the United States is discovered to have been called by a known or suspected terrorist abroad, or if the number is found in the possession of a suspected terrorist or in a terrorist hideout, it would be prudent to intercept all calls, domestic as well as international, to or from that U.S. phone number and scrutinize them for suspicious

content. But the mere fact that a suspected or even known terrorist has had a phone conversation with someone in the United States or has someone's U.S. phone number in his possession doesn't create probable cause to believe that the other person is also a terrorist; probably most phone conversations of terrorists are with people who are not themselves terrorists. The government can't get a FISA warrant just to find out whether someone is a terrorist; it has to already have a reason to believe he's one. Nor can it conduct surveillance of terrorist suspects who are not believed to have any foreign connections, because such surveillance would not yield *foreign* intelligence information.

FISA has yet another gap. A terrorist who wants to send a message can type it in his laptop and place it, unsent, in an e-mail account, which the intended recipient of the message can access by knowing the account name. The message itself is not communicated. Rather, it's as if the recipient had visited the sender and searched his laptop. The government, if it intercepted the e-mail from the intended recipient to the account of the "sender," could not get a FISA warrant to intercept (by e-mailing the same account) the "communication" consisting of the message residing in the sender's computer, because that message had never left the computer.

These examples suggest that **surveillance outside the narrow bounds of FISA might significantly enhance national security**. At a minimum, such surveillance might cause our foreign terrorist enemies to abandon or greatly curtail their use of telephone, e-mail, and other means of communicating electronically with people in the United States who may be members of terrorist sleeper cells. Civil libertarians believe that this is bound to be the effect of electronic surveillance, and argue that therefore such surveillance is futile. There is no "therefore." If the effect of electronic surveillance is to close down the enemy's electronic communications, that is a boon to us because it is far more difficult for terrorist leaders to orchestrate an attack on the United States by sending messages into the country by means of couriers. But what is far more likely is that some terrorists will continue communicating electronically, either through carelessness— the Madrid and London bombers were prolific users of electronic communications, and think of all the drug gangsters who are nailed by wiretaps—or in the mistaken belief that by using code words or electronic encryption they can thwart the NSA. (If they can, the program is a flop and will be abandoned.) There are careless people in every organization. If al-Qaeda is the exception, civil libertarians clearly are underestimating the terrorist menace! In all our previous wars, beginning with the Civil War, when telegraphic communications were intercepted, our enemies have known that we might intercept their communications, yet they have gone on communicating and we have gone on intercepting. As for surveillance of purely domestic communications, it would either isolate members of terrorist cells (which might, as I said, have no foreign links at all) from each other or yield potentially valuable information about the cells.

FISA's limitations are borrowed from law enforcement. When a crime is committed, the authorities usually have a lot of information right off the bat—time, place, victims, maybe suspects—and this permits a focused investigation that has a high probability of eventuating in an arrest. Not so with national security intelligence, where the investigator has no time, place, or victim and may have scant idea of the enemy's identity and location; **hence the need for the wider, finer-meshed investigative net**. It is no surprise that there have been leaks from inside the FBI expressing skepticism about the NSA program. This skepticism reflects the Bureau's emphasis on criminal investigations, which are narrowly focused and usually fruitful, whereas intelligence is a search for the needle in the haystack. FBI agents don't like being asked to chase

down clues gleaned from the NSA's interceptions; 999 out of 1,000 turn out to lead nowhere. They don't realize that often the most that counterterrorist intelligence can hope to achieve is to impose costs on enemies of the nation (as by catching and "turning" some, or forcing them to use less efficient means of communication) in the hope of disrupting their plans. It is mistaken to think electronic surveillance a failure if it doesn't intercept a message giving the time and place of the next attack.

Bureaucratization of ex ante review undermines counter-terrorism investigations

Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

3. The Demands of National Security. — Finally, while the focus of this Note is on the protection of civil liberties, the current system may also do a poor job of promoting security. From an institutional competence perspective, it seems questionable that judges should occupy a gatekeeping role. Indeed, all the reasons discussed above that judges have invoked in reducing their own authority over such issues apply with equal force here.77

The inefficiencies of the current system are even more problematic. Given the permissiveness of the statutory standards and the FISA courts, inefficiency is the primary motivating force behind attempts to reduce judicial oversight. As DOJ has noted, "[n]umerous Congressional and Executive Branch reviews of the FISA process have recommended that the FISA process be made more efficient."78 Others are more forthright, describing the FISC order procedures as "hopelessly slow and bureaucratic."79 On the whole, "if we are seeking a model of judicial review that advances security, there is little reason to think that the FISA Court, at least as currently set up, advances that goal."80

FISA can't identify unknown terrorists – advance surveillance is necessary to generate enough information

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

Programmatic surveillance thus can help remedy some of the difficulties that arise when monitoring covert adversaries like international terrorists. FISA and other particularized surveillance tools are useful when authorities want to monitor targets whose identities are already known. But they are less useful when authorities are trying to identify unknown targets. The problem arises because, in order to obtain a wiretap order from the FISA court, the government usually must demonstrate probable cause to believe that the target is a foreign power or agent of a foreign power. n39 This is a fairly straightforward task when the target's identity is already known--e.g., a diplomat at the Soviet embassy in Washington, DC. But the task is considerably

more difficult when the government's reason for surveillance is to detect targets who are presently unknown--e.g., al-Qaeda members who operate in the shadows. How can you convince the FISA court that Smith is an agent of a foreign power when you know nothing about Smith--his name, nationality, date of birth, location, or even whether he is a single person or several dozen? The government typically won't know those things unless it has collected some information about Smith--such as by surveilling him. And there's the rub. Programmatic monitoring helps avoid the crippling Catch-22 that can arise under particularized surveillance regimes like FISA: officials can't surveil unless they show that the target is a spy or terrorist, but sometimes they can't show that an unknown target is a spy or terrorist unless they have surveilled him.

Ex post restrictions can protect information being used against people for anything other than preventing terrorism

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 98-101)

Concerns with privacy could be alleviated, moreover, by adopting a rule forbidding the intelligence services to turn over any intercepted communications to the Justice Department for prosecution for any offense other than a violation of a criminal law intended for the protection of national security. Then people would not worry that unguarded statements in private conversations would get them into trouble. Such a rule would be a modification, urged in a parallel setting by Orin Kerr, of the "plain view" doctrine of search and seizure. That doctrine, another of the exceptions to the requirement of a warrant to search or seize, allows the seizure of evidence that the police discover in plain view in the course of an unrelated lawful search—even though the discovery is accidental and a warrant could not have been obtained to search for the evidence discovered. But what if an intelligence officer, reading the transcript of a phone conversation that had been intercepted and then referred to him because the search engine had flagged it as a communication possibly possessing intelligence value, discovers that one of the parties to the communication seems to be planning a murder, though a murder having nothing to do with any terrorist plot? Must the officer ignore the discovery and refrain from notifying the authorities? Though the obvious answer is no, my answer is yes.

There is much wild talk in private conversations. Suppose the communication that has been intercepted and read for valid national security reasons contains the statement "I'll kill the son of a bitch." The probability will be very high that the statement is hyperbole, that there is no serious intent to kill anyone. But suppose intelligence officers have been told that if a communication they read contains evidence of crime, they should turn it over to the FBI. The officer in my hypothetical case does that, and the Bureau, since the matter has been referred to it by a government agency, takes the threat seriously and investigates (or turns the matter over to local police for investigation, if no federal crime is suspected). As word of such investigations got around, people would learn that careless talk in seemingly private conversations can buy them a visit from the FBI or the police. At this point the risk that national security surveillance would significantly deter candor in conversation would skyrocket. It is more important that the public tolerate extensive national security surveillance of communications than that an occasional run-of-the-mill crime go unpunished because intelligence officers were not permitted to share

evidence of such a crime with law enforcement authorities. But if the evidence is of a crime related to national security, then sharing it with law enforcement authorities is appropriate and should be (and is) required. Other exceptions may be needed. Suppose that what is overheard is a conversation that identifies one of the parties as a serial killer. Serial killing is not terrorism, but it is such a serious crime that clues to it picked up in national security surveillance should be communicated to law enforcement authorities.

If such a rule (with its exceptions) were in place, I believe that the government could, in the present emergency, intercept *all* electronic communications inside or outside the United States, of citizens as well as of foreigners, without being deemed to violate the Fourth Amendment, provided that computers were used to winnow the gathered data, blocking human inspection of intercepted communications that contained no clues to terrorist activity. We know that citizens (and permanent residents) can be terrorists operating against their country, even without any foreign links. The United States has had its share of U.S. citizen terrorists, such as the Unabomber and Timothy McVeigh and presumably whoever launched the anthrax attack on the East Coast in October 2001. The terrorist bombings of the London subway system in July 2005 were carried out by British citizens. And U.S. persons who are not terrorists or even terrorist sympathizers might have information of intelligence value—information they might be quite willing to share with the government if only they knew they had it. The information that enables an impending terrorist attack to be detected may be scattered in tiny bits that must be collected, combined, and sifted before their significance is apparent. Many of the bits may reside in the e-mails or phone conversations of innocent people, such as unwitting neighbors of terrorists, who may without knowing it have valuable counterterrorist information—one consequence of the jigsaw puzzle character of national security intelligence.

A further question, however, is whether the Fourth Amendment should be deemed to require warrants for such surveillance. The Keith case that I mentioned earlier held that warrants are required for conducting purely domestic surveillance even when the purpose is to protect national security, though the Court suggested that perhaps the probable-cause requirement could be attenuated. It would have to be. If the goal of surveillance is not to generate evidence of criminal activity but to detect terrorist threats, including those too incipient to be prosecutable as threats, and even threats of which the persons under surveillance may be unaware because the significance of the clues they possess eludes them, then to insist that the investigators establish probable cause to believe criminal activity is afoot will be to ask too much. The amendment's requirement of particularity of description of what is to be searched or seized would also have to be relaxed for surveillance warrants adequate to national security to be feasible, because intelligence officers will often not have a good idea of what they are looking for.

Requiring a particular demonstration of threat wrecks terrorism investigations

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 138-141)

Civil libertarians argue that the government ought to be required to demonstrate that it has a reasonable basis for believing that the person to whom the records pertain is involved in terrorist

activity. But as should be clear by now, **that would be too restrictive a requirement**. To impose it would be either to misunderstand the needs of intelligence or to underestimate the value of intelligence in the struggle against terrorism (or perhaps to underestimate the terrorist threat). Information about an individual who is not part of a terrorist ring may nevertheless be highly germane to an investigation of the ring or, what may be as important, to an investigation aimed at discovering the existence of such rings. The information might concern an imam who, though not himself involved in terrorism, was preaching holy war. It might concern family members of a terrorist, who might have information about his whereabouts. It might consist of sales invoices for materials that could be used to create weapons of mass destruction, or of books and articles that expressed admiration for suicide bombers.

The impact of section 215 on civil liberties is quite limited— only a few dozen section 215 demands have been served on libraries. Most records custodians will, as I said, voluntarily hand over nonprivileged records to the government when told the records may contain information relevant to national security. A custodian's refusal to disclose the records might generate enough suspicion to enable the government to obtain a subpoena even under a much narrower version of section 215.

One understands, though, why civil libertarians have labeled section 215 the "libraries provision" despite its being used so rarely against libraries. To discover what people have been reading, as distinct from discovering their financial or health status, is to gain insight into what they are thinking—and what they are planning. This is why the government might want to obtain a record of a person's library borrowings (not to mention his bookstore purchases, records of which also fall within the scope of section 215). And when the quest for knowledge of what a person is thinking is driven by concern with terrorism, which is almost always politically motivated, success in the quest is likely to include the acquisition of a comprehensive picture of the subject's political beliefs. Knowing that the government is seeking to compile such pictures, people of unorthodox views may hesitate to buy or borrow books that express such views. This is the same issue that is raised by the government's conducting surveillance of mosques. Whether such surveillance presents Fourth Amendment problems depends on the method used to conduct it; surveillance as such, as we saw in Chapter 4, does not violate the First Amendment despite its undoubted effect on the exercise of free speech.

The Miller line of decisions, in holding that a voluntary disclosure of information manifests a willingness to waive or forfeit any right of privacy, seems unrealistic about the meaning not only of "voluntary" but also of "privacy" itself. Informational privacy does not mean refusing to share information with everyone. Obviously a telephone conversation is not private in that sense, nor a letter, nor a conversation between spouses or friends. Every conversation is at least twosided. The fact that I disclose symptoms of illness to my doctor does not make my health a public fact, especially if he promises (or the rules of the medical profession require him) not to disclose my medical history to anyone without my permission.

One must not confuse solitude with secrecy; they are distinct forms of privacy. Solitude fosters individualistic attitudes; conversely, the constant presence of other people or the sense of being under constant surveillance enforces conformity. But one also needs freedom to communicate in private. The planning of organized activity obviously is impossible without communication; less obviously, productive independent thinking almost always requires bouncing ideas off other people. And few of us are sufficiently independent-minded to persist in an unorthodox idea if we don't discover that others share it.

If "liberty" in the Fifth Amendment's due process clause can connote sexual freedom, and "due process" can be understood to require that any restriction on liberty be no greater than is necessary, why can't there be a due process right to control information about oneself that is not already public knowledge, unless one is trying to use that control for unlawful ends or the government has a pressing need for the information? Maybe there can be—provided, however, that the "pressing need" qualification is taken seriously. Constitutional rights, as we have seen throughout this book, are not absolutes whose scope is fixed without regard to competing interests. How much information about oneself one should be permitted to withhold from the government depends critically on how valuable the information is to the government. In an era of global terrorism and proliferation of weapons of mass destruction, the government has a compelling need to gather, pool, sift, and search vast quantities of information, much of it personal.

Restrictions on collection of data aid terrorism – protections against misuse of data solve better

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 143-144)

Privacy is the **terrorist's best friend**, and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents: anonymity combined with the secure encryption of digitized data makes the Internet a powerful tool of conspiracy. The government has a compelling need to exploit digitization in defense of national security. But if this is permitted, intelligence officers are going to be scrutinizing a mass of personal information about U.S. citizens. And we know that people don't like even complete strangers poring over the details of their private lives. But the fewer of these strangers who have access to those details and the more professional their interest in them, the less the affront to privacy. One reason people don't much mind having their bodies examined by doctors is that they know that doctors' interest in bodies is professional rather than prurient; we can hope that the same is true of intelligence professionals.

The primary danger of such data mining is leaks by intelligence personnel to persons inside or outside the government who might use the leaked data for improper purposes. Information collected by a national security data-mining program would have to be sharable within the national security community, which would include in appropriate cases foreign intelligence services, but not beyond. Severe sanctions and other security measures (encryption, restricted access, etc.) could and should be imposed in order to prevent—realistically, to minimize—the leakage of such information outside the community. My suggestion in the last chapter that the principle of the Pentagon Papers case be relaxed to permit measures to prevent the media from publishing properly classified information would reinforce protection of the privacy of information obtained by national security data mining.

I have said both that people value their informational privacy and that they surrender it at the drop of a hat. The paradox is resolved by noting that as long as people don't expect that the details of their health, love life, or finances will be used to harm them in their interactions with other

people, they are content to reveal those details to strangers when they derive benefits from the revelation. As long as intelligence personnel can be trusted to use their knowledge of such details only for the defense of the nation, the public will be compensated for the costs of diminished privacy in increased security from terrorist attacks.

Distinguishing between domestic and foreign targets in advance is frequently impossible
Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

4. The Nature of Terrorism. — Institutional limitations are especially pressing given the vagaries of "terrorism."66 Substantial gray areas exist in distinguishing domestic from foreign and criminal from intelligence interests. Courts, fearful of treading too heavily in the national security arena, will be loath to tell the government that someone it has determined to be connected to terrorism is in fact being targeted unfairly for his or her religion or national origin.

Indeed, recent statutory developments have greatly clouded the already difficult task of making such distinctions. For example, the legislative move from "primary" to "significant" purpose discussed above, and the related tearing down of the "wall" that prevented information sharing between intelligence and law enforcement entities,67 means that a court must accuse the government of not reasonably suspecting a target's involvement with terrorism if it is to deny an application. Similarly, the standard for pen/trap orders68 was lowered from a showing that the device was used to communicate with an agent of a foreign power under the old 50 U.S.C. § 1842(c)(3) to a much lower showing of "relevant to an ongoing investigation" under the new 50 U.S.C. § 1842(c)(2). Whereas before the FISC may at least have been able to point to the relatively objective question of whether an individual was in fact an agent of a foreign power, the current loose standard would force the court to tell the government that the desired target bore no relevance to a terrorism investigation.

AT: Privacy agency now

The CP's mandate is different – squo privacy agencies aren't coordinated, the CP elevates it to cabinet level status
Hill 14* Technology policy consultant at Monitor 360, fellow of the Global Governance Futures 2025 program at the Brookings Institution (Jonah, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS" p.31)//GK

At present, there is no single point-person in the U.S. government coordinating data flow issues, or advocating on behalf of the U.S. for freedom of data flows. The head of the Federal Trade Commission, the U.S. Trade Representative, the Privacy and Civil Liberties Oversight Board, the Department of Commerce (importantly, the Deputy Assistant Secretary for Services), the Chief Privacy Officer of the NSA, several individuals within the Department of State (importantly the U.S. Coordinator for International Communications and Information Policy) as well as

many, many others, are all working on the problem, but largely separately, with inevitably separate institutional viewpoints and objectives. While multiple individuals and agencies should be addressing the issue simultaneously, there is a need for a single coordinating office to track and manage this vital economic issue. Perhaps an office of Chief Privacy Officer in the U.S. State Department and/or U.S. Trade Representative could be developed, or the newly-created White House Chief Privacy Officer position could take on this broader international responsibility. President Obama has suggested, in a speech delivered at the U.S. Department of Justice on January 17, 2014, that his administration plans to create a new position at the U.S. State Department "to coordinate [American] diplomacy on issues related to technology and signals intelligence."121 This new role – which has only been vaguely described – could also potentially fill the leadership vacuum within the U.S. government on these issues. However the reorganization happens, is clear that the current bureaucratic arrangement needs to be restructured to ensure that the anti- localization outreach strategy is effectively coordinated and harmonized across the entire U.S. government and among U.S. industry leaders.

AT: Judge ignores advocate

The CP makes a special advocate mandatory – FISC judges can't decline them

Vladeck 15 – Professor of Law at American University Washington College of Law (Stephen, THE CASE FOR A FISA "SPECIAL ADVOCATE," 2 Texas A&M L. Rev. 2)//JJ

As the metadata program illustrates, many of the applications that would otherwise trigger such review are nothing more than requests to re-authorize programs already approved by the FISC under the same rationale. Thus, after a transitional period during which preexisting rulings could all be revisited at least once, the special advocate's participation could further be limited to cases in which the government is either (1) seeking an initial authorization for a new program and/or recipient; (2) seeking a reauthorization under materially different facts / technological capabilities; or (3) seeking a reauthorization under a materially different legal theory. Because of the modest number of cases in which the special advocates would thereby participate, it should follow, as provided in the Schiff bill, their participation in such cases should be **mandatory**, and not up to the discretion of FISC judges. But a protocol where FISC is separately empowered to invite the participation of a (again, randomly selected) special advocate in any other case in which her participation is not already provided for would also make sense.

AT: Executive branch capture

Designating a pool of security-cleared lawyers solves the perception of executive branch capture

Vladeck 15 – Professor of Law at American University Washington College of Law (Stephen, THE CASE FOR A FISA "SPECIAL ADVOCATE," 2 Texas A&M L. Rev. 2)//JJ

III. THE WAY FORWARD FOR CREATING A SPECIAL ADVOCATE

a. Policy Issue #1: Where and How Should the Position be Constituted and Overseen?

As detailed above, there are three principal approaches to how and where a special advocate should be constituted and overseen. Two of the more common variants favor the creation of a new government entity, located in either the Executive or Judicial Branch, with appointments controlled by a combination of the PCLOB, FISCR, National Security Division of the Department of Justice, and/or Chief Justice of the United States. A third iteration, seen for example in the Schiff bill, endorses a model more analogous to the "CJA panel" in federal criminal cases, 60 pursuant to which a rotating roster of specially selected and security-cleared private lawyers would be empowered to participate on similar terms, but would remain structurally independent from any branch of the government.

There are several reasons that commend the latter approach over the former: First , no matter how much independence Congress seeks to invest in the office, there will always be the **perception** that a special advocate who works in and for the government will not be as well situated to take positions adverse to the Executive Branch as these proposals appear to contemplate. To similar effect, concerns might also arise that, so long as the special advocate is only litigating a hyperspecific set of statutory and constitutional issues in a hyperspecific set of cases, she may be less able to capitalize upon developments in other areas of the law and/or become more subject to "capture" by the very entities she is seeking to serve as a check against. Whereas criminal lawyers would be especially privy to developments in, among other things, Fourth Amendment jurisprudence, one could worry that a uniquely tasked "special advocate" would develop such a niche practice as to become insulated from such doctrinal shifts. And as the Schiff bill suggests, it would not be that difficult as a matter of drafting or policy to create a panel of specially designated , security-cleared lawyers who would rotate through relevant cases while maintaining their regular practice. Indeed, a variation on this theme already exists in criminal prosecutions involving classified information.61

Nor is there anything to the argument that security-cleared private lawyers cannot be trusted to handle such sensitive information. 62 Indeed, there is no evidence to date that a security-cleared counsel has ever been responsible for an unauthorized disclosure of classified information.

Instead, the principal objection such an approach is likely to provoke stems from the potential diffusion of responsibility (and, as such, of knowledge and experience) among a panel of private lawyers, as opposed to a hierarchical government office with a specific head. It might then become harder for the individual lawyers to keep abreast of developments in other FISC cases, and, as such, to appreciate developments in the law from case to case. This concern can largely be mitigated, though, by the relatively small number of cases in which the participation of special advocates should be required. Because I agree with Judge Bates that special advocates won't be necessary in the vast majority of FISC applications, the ultimate pool of special advocates will be relatively modest in size—and it will therefore not be particularly difficult for the members of that pool to share knowledge and otherwise collaborate across the spectrum of cases in which they would be authorized to participate.

AT: Perm do both

The perm links to terrorism – the existing FAA structure is carefully balanced to allow ex post review. Increasing the ex ante nature of the FAA could wreck terrorism investigations
Blum, 9 (Stephanie, "WHAT REALLY IS AT STAKE WITH THE FISA AMENDMENTS ACT OF 2008 AND IDEAS FOR FUTURE SURVEILLANCE REFORM" 18 B.U. Pub. Int. L.J. 269, Spring, lexis)

In sum, under traditional FISA, certain kinds of international communications have always been completely outside of FISA review. Under the FAA, there is now FISC reviews of targeting and minimization procedures as well as the ex post oversight mechanisms. Additionally, it is not even clear that a warrant would be required to gather foreign intelligence within the country. While per Keith, a warrant is required if the threat is solely domestic, it is unsettled whether a warrant is required when there is a connection to a foreign power. Significantly, in August 2008, the FISCR upheld the constitutionality of the PAA (that had expired) explicitly finding that there was a foreign intelligence exception to the Fourth Amendment warrant requirement. n241 Although the petitioners (telecommunication companies who did not want to comply with an order under the PAA) argued that the PAA would result in incidental communications of innocent Americans being retained due to warrantless surveillance of people reasonably believed to be overseas, the FISCR rejected that argument. It stated, "The petitioner's concern of incidental collections is overblown. It is settled beyond peradventure that incidental collections occurring as a result of constitutionally permissible acquisitions do not render those acquisitions unlawful." n242

The FISCR's holding that the PAA was constitutional means that it would likely find the FAA - which has more judicial review and reporting requirements than the PAA - to be similarly lawful. Hence, it seems a legal stretch to maintain that the government needs a warrant when it targets foreign nationals overseas who may incidentally communicate with U.S. persons in the United States. While the FAA, as applied to U.S. persons, must still be reasonable under the Fourth Amendment, given the FISC-monitored minimization procedures and ex post oversight mechanisms, it seems that the FAA has struck a [*306] **nuanced compromise** between the need to expeditiously gather foreign intelligence, and the protection of civil liberties.

Furthermore, compared to traditional FISA, the FAA relies more heavily on ex post oversight mechanisms than on ex ante warrants based on individualized suspicion - and this may be a benefit. Several scholars have questioned the effectiveness of FISA's ex ante warrants issued by a secret court based on only one-sided information provided by the government. n243 Critics of FISA argue that because the FISC approves virtually all requests for warrants, it merely serves as a rubber stamp and does not provide any genuine judicial review. The FISC has, indeed, approved almost all warrant requests - as of 2006, the FISC had approved all but five out of over 17,000 requests. n244 According to a Note written by the Harvard Law Review, ex ante judicial review to conduct foreign surveillance may be **counterproductive** and unworkable:

The [FISC] judge lacks a skeptical advocate to vet the government's legal arguments, which is of crucial significance when the government is always able to claim the weight of national security expertise for its position. It is questionable whether courts can play this role effectively, and, more importantly, whether they should. n245

Because the FISC has no way to evaluate the facts presented by the government, it has to assume that the government-provided facts are correct. Problematically, the FISC identified evidence of governmental misstatements and omissions of material facts in seventy-five FISA applications. n246 This evidence did not come to light until after the FISC issued the warrants. n247

Judges are also extremely deferential to claims of national security, especially when they "must weigh the national security necessity ex ante, rather than being asked to review it after the fact." n248 The Harvard Note argues that "ex ante judicial review is not only of limited effectiveness, but it is also **affirmatively harmful**" in that it "imparts a broader imprimatur of validity than is warranted given the limited effectiveness of judicial review." n249 Hence, as the Note observes, ex ante judicial review may **impede security** without providing any real privacy interest protection. n250 Therefore, the Note argues that "Congress is better situated constitutionally and better equipped institutionally to make the sort of value judgments and political determinations that are necessary [*307] to fulfill FISA's purposes." n251 The Note concludes that "those concerned with protecting civil liberties should view an end to reliance on ex ante judicial review as a chance to develop real political checks that can vigorously protect both national security and liberty interests." n252

The permutation increases the burden on the government and inhibits investigations

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

At the same time, all of the ex ante restrictions will necessarily be poor proxies for an ex post review of reasonableness. Instead of substituting for ex post review of reasonableness, ex ante restrictions supplement those restrictions. Ex ante limitations force the government to follow two sources of law: the reasonableness of executing the warrant imposed by reviewing courts ex post, and the restrictions imposed by the magistrate judge ex ante. If the ex ante restrictions happen to be modest, or are drafted in a way that ensures that they are always less than or equal to the restrictions of reasonableness ex post, then such restrictions will merely replicate the ex post reasonableness determinations. But every time an ex ante restriction goes beyond ex post reasonableness, the restrictions will end up prohibiting the government from doing that which is constitutionally reasonable. The limitations will be unreasonable limitations caused by judicial error.

Ex ante restrictions are highly error prone

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

Ex ante restrictions tend to introduce constitutional errors in this environment. To be sure, such restrictions stem from the best of intentions: they reflect a good-faith effort to identify what will be constitutionally reasonable.201 However, ex ante predictions of reasonableness will be more error prone than ex post assessments for two major reasons. First, ex ante restrictions require courts to "slosh [their] way through the factbound morass of reasonableness" 202 without actual facts. Second, ex ante restrictions are imposed in ex parte hearings without legal briefing or a hearing. Both reasons suggest that ex ante restrictions often will inaccurately gauge the reasonableness of how warrants are executed. The major difficulty with ex ante restrictions is that the reasonableness of executing a warrant is highly factbound, and judges trying to impose ex ante restrictions generally will not know the facts needed to make an accurate judgment of reasonableness. Granted, magistrate judges might have a ballpark sense of the facts, from which they might derive a sense of what practices are ideal. For example, they might think that it is unreasonable to seize all of a suspect's home computers if on-site review is possible. Alternatively, they might think it is unreasonable to conduct a search for image files if the warrant only seeks data not likely to be stored as an image. They might think it is unreasonable to keep a suspect's computer for a very long period of time without searching it. All of these senses will be based on a rough concept of how the competing interests of law enforcement and privacy play out in typical computer searches and seizures.

At the same time, these ballpark senses of reasonableness can never improve past very rough approximation. A magistrate judge cannot get a sense of the exigencies that will unfold at each stage of the search process. The reasonableness of searching on-site will not be known until the agents arrive and determine how many computers are present, what operating systems they use, and how much memory they store. The needed time window before the government searches the seized computer depends on how much the government can prioritize that case over other cases, given existing forensic expertise and resources, as well as which agency happens to be working that case.203 The reasonableness of different search protocols depends on the operating systems, an analyst's expertise in forensics, which forensics programs the government has in its possession, what kind of evidence the government is searching for, and whether the suspect has taken any steps to hide it.204 Finally, the reasonableness of retaining seized computers that have already been searched depends on whether the government might need the original computer as evidence or whether it ends up containing contraband that should not be returned and is subject to civil forfeiture. 205

The magistrate presented with an application for a warrant simply cannot know these things. Judges are smart people, but they do not have crystal balls that let them predict the number and type of computers a suspect may have, the law enforcement priority of that particular case, the forensic expertise and toolkit of the examiner who will work on that case, whether the suspect has tried to hide evidence, and if so, how well, and what evidence or contraband the seized computers may contain. Magistrate judges can make ballpark guesses about these questions based on vague senses of what happens in typical cases. But even assuming they take the time to learn about the latest in law enforcement resources and the computer forensics process—enough to know about

typical cases—they cannot do more than come up with general rules that they think are useful for those typical cases.

The errors of ex ante restrictions are particularly likely to occur because warrant applications are ex parte. The investigators go to the judge with an affidavit and a proposed warrant.206 The judge reads over the materials submitted. The judge can modify the warrant, but his primary decision is whether to sign or reject it. The entire process takes a matter of minutes from start to finish. No hearing occurs. There is no testimony beyond the affidavit in most cases, and the affidavit usually contains only standard language about computer searches.207 A prosecutor may be present, but need not be. Obviously, no representative of the suspect is present to offer witnesses or argument.

In that setting, judges are particularly poorly equipped to assess reasonableness. The most they can develop is a standard set of ex ante restrictions that they use in all computer warrants, perhaps one shared with other magistrate judges in their district. More careful scrutiny is both impractical and unlikely. The ability of a magistrate judge to assess reasonableness in that setting is a far cry from her ability to rule on reasonableness in an ex post hearing, in which agents and experts can take the stand and counsel for the defendant can cross-examine the agent, offer his own witnesses, submit written briefs, and present oral argument.

Ex post review significantly decreases the risk of judicial errors

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

The proper answer is "no." Ex ante restrictions are unworkable and unwise for two core reasons. First, the combination of error-prone ex ante judicial review and more accurate ex post judicial review will result in systematic constitutional error. Instead of requiring reasonableness, ex ante review will result in reasonable steps being prohibited by judicial error. The likelihood of error will be a function of constitutional uncertainty. The more unclear the relevant legal rules, the more uncertain will be the restrictions needed to ensure reasonableness. However, as the law of reasonableness becomes clear, ex ante restrictions also become useless: the police will follow the rules because they know they will be imposed ex post, without a need for ex ante restrictions. From this perspective, the perceived need for ex ante restrictions is merely a response to present legal uncertainty.

Of course, it is better to prohibit unreasonable searches ex ante than invalidate them ex post while the law remains uncertain. Perhaps this carves out a role for ex ante restrictions, just as a placeholder until the law becomes settled? Again, the answer is "no." The difficulty is that ex ante restrictions impair the ability of appellate courts and the Supreme Court to develop the law of unreasonable searches and seizures in the usual case-by-case fashion. Assuming ex ante restrictions are not null and void, they transform Fourth Amendment litigation away from an inquiry into reasonableness and towards an inquiry into compliance with the magistrate's commands. Search and seizure law cannot develop in this environment. For that reason, ex ante restrictions cannot be temporary measures used until the law becomes settled. Ironically, those measures will actually prevent the law from being settled.

AT: Perm do the CP

The perm severs – it requires prior authorization before surveillance may proceed – that's ex ante. The CP establishes robust FISC review of surveillance after it has occurred – that's ex post

Morgan, 8 - Law Clerk to the Honorable Samuel H. Mays, Jr., United States District Court for the Western District of Tennessee. J.D., 2007, New York University School of Law (Alexander, "A BROADENED VIEW OF PRIVACY AS A CHECK AGAINST GOVERNMENT ACCESS TO E-MAIL IN THE UNITED STATES AND THE UNITED KINGDOM" 40 N.Y.U. J. Int'l L. & Pol. 803, Spring, lexis)

In this Note, I use "oversight" to refer to any form of review, be it internal or external, judicial or nonjudicial, that accompanies e-mail surveillance either before (ex ante) or after (ex post) its use. The American regime includes both ex ante and ex post oversight of e-mail surveillance. Ex ante oversight includes departmental protocols, as well as the judicial authorization requirements under the ECPA and **FISA**. Departmental protocols that require senior agency officials to approve applications to courts provide an administrative hurdle that informally limits the number of surveillance applications and ensures a good-faith basis for their submission. n61 Though these protocols provide initial limits on e-mail surveillance, the judiciary remains the most important, as judges provide an extrinsic check that agency officials cannot. Judges are less likely than prosecutors or executive agents to have a vested interest in an investigation's success and are therefore better suited to oversee compliance with surveillance requirements. n62

[*815] Courts are the only forum for ex post oversight in the United States. Where the government conducts surveillance in violation of statute, courts may impose penalties on the persons guilty of unauthorized surveillance and, in some cases, they may exclude the evidence from trial. n63 Suppression of evidence obtained in violation of the ECPA is available for wire or oral communications, but is inexplicably absent for e-mail. n64 Legal commentators denounce this distinction as "baseless" n65 and further argue that, without a statutory hook, criminal defendants have a lesser "incentive to raise challenges to the government's internet surveillance practices." n66

When government surveillance abridges constitutional rights, there are two avenues of redress. n67 At trial, criminal defendants may seek to suppress evidence obtained through unconstitutional means, as well as evidence derived therefrom (deemed "fruit of the poisonous tree"). n68 Victims of unconstitutional searches may also bring civil actions seeking damages for deprivation of rights under color of law. n69

Ex post oversight is qualitatively different from the plan – it allows all surveillance to occur, but establishes protections against the misuse of surveillance data. The plan severs because it has to curtail surveillance from the start

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

In addition to oversight by outsiders, a programmatic surveillance regime also should feature a system of internal checks within the executive branch, to review collection before it occurs, after the fact, or both. As for the ex ante checks, internal watchdogs should be charged with scrutinizing proposed bulk collection to verify that it complies with the applicable constitutional and statutory rules, and also to ensure that appropriate protections are in place for privacy and civil liberties. The Justice Department's Office of Intelligence is a well known example. The unit, which presents the government's surveillance applications to the FISA court, subjects these requests to exacting scrutiny with the goal of increasing the likelihood of surviving judicial review. n65 Indeed, the office has a strong incentive to ensure that the applications it presents are airtight, so as to preserve its credibility with the FISA court. n66 Ex post checks include such commonplace mechanisms as agency-level inspectors general, who can audit bulk collection programs, assess their legality, and make policy recommendations to improve their operation, as well as entities like the Privacy and Civil Liberties Oversight Board, which perform similar functions across the executive branch as a whole. Another important ex post check is to offer meaningful whistleblower protections to officials who know about programs that violate constitutional or statutory requirements. Allowing officials to bring their concerns to ombudsmen within the executive branch (and then eventually to Congress) can help root out lawlessness and also relieve [*539] the felt necessity of leaking information about highly classified programs to the media.

The CP doesn't curtail surveillance – it curtails what authorities may DO with the data after it's collected – it's a form of harm minimization only

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

A third operational consideration is the need for strong minimization requirements. Virtually all surveillance raises the risk that officials will intercept innocuous data in the course of gathering evidence of illicit activity. Inevitably, some chaff will be swept up with the wheat. The risk is especially acute with programmatic surveillance, in which the government assembles large amounts of data in the search for clues about a small handful of terrorists, spies, and other national security threats. n71 Minimization is one way to deal with the problem. Minimization rules limit what the government may do with data that does not appear pertinent to a national security investigation--e.g., how long it may be retained, the conditions under which it will be stored, the rules for accessing it, the purposes for which it may be used, the entities with which it may be shared, and so on. Congress appropriately has required intelligence officials to adopt minimization procedures, both under FISA's longstanding particularized surveillance regime n72 and under the more recent authorities permitting bulk collection. n73 But the rules need not be identical. Because programmatic surveillance often involves the acquisition of a much larger trove of non-pertinent information, the minimization rules for bulk collection ideally would contain stricter limits on the use of inadvertently collected information for purposes unrelated to national security. In other words, the minimization procedures should reflect the anti-mission-creep principle described above.

Defamation CP

1nc – defamation CP

The United States federal government should:

-designate the four main Congressional leaders with powers to appoint FISC judges

-require a simple majority in Congress to uphold all FISC decisions

-implement an adversarial process in FISC cases

-subject all FISC cases to the same standards as defamation cases

The CP successfully reforms the FISC

Cetina 14– John Marshall Law School (Daniel, "Balancing Security and Privacy in 21st century America: A Framework for FISA Court Reform", John Marshall Law Review, Summer 2014, http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jmlr47&type=Text&id=1540)//DBI

A. Structural Prong

Despite suggested structural proposals' substantial limitations, 124 much of what has been suggested thus far could be effective if modestly modified. Requiring the Senate to reconfirm non-Article III FISA Court judges is a patently inadequate option because of the considerable constitutional problems it raises.125 However, designating the four main congressional leaders with some **appointment powers**, instead of vesting this enormous responsibility exclusively in the chief justice, 126 is an intriguing approach. Furthermore, Congress should review FISA Court decisions, but only require a **simple majority** to approve them. 127 This would avoid the infeasible supermajority threshold.128 It would also give Congress a stake in these decisions, thereby making them politically accountable to the people, that sovereign body for whom Congress is directly responsible and to whom Congress is directly beholden, unlike the sequestered, electorally unaccountable federal judiciary.129 In other words, the system would become more **transparent** - a virtue missing from the current security apparatus.130 Finally, FISA Court proceedings must incontrovertibly become **adversarial** in accord with the great American tradition.

Additionally, courts - namely, the FISA Court - require a distinct framework for addressing challenges to governmental surveillance. Thus, in addition to applying these structural changes, introducing a judicial interpretive remedy is critical.

B. Interpretive Prong

Relying on the state secrets doctrine or routinely acquiescing to the government's demands cannot replace reasoned determinations of surveillance's practical effects on legitimate privacy interests or its potential overbreadth. Thus, courts should adopt a new approach that addresses both security interests and privacy interests.

Considering the relative dearth of effective judicial tests and precedent in surveillance cases,1 3 1 which again are generally decided pursuant to the state secrets privilege - and therefore in favor of the governmentl 32 - a good approach is to analogize to an existing test. The best doctrinal underpinning for a new test is First Amendment law, more specifically, the various tests for defamation. 133

Defamation cases, 134 such as libel and slander, present a dichotomy between two critical interests somewhat akin to surveillance cases: free speech and reputation.135 In New York Times Co. v. Sullivan, the Supreme Court extended First Amendment protection to libel for the first time in our nation's history.136 However, recognizing that personal reputation is as important to citizens as free speech rights, the Court subsequently carved out numerous exceptions when confronted with novel scenarios.137 The specific test created for libel against public officials or public figures requires the plaintiff to show with convincing clarity that the defendant propagated made the defamatory statement with actual malice or with knowledge or reckless disregard of its falsehood. 138

This test provides a good general framework that the judiciary should appropriate for surveillance cases. The government, bringing a surveillance request before the FISA Court, would have the same burden as public officials in defamation situations: convincing clarity.13 9 Currently, the standard is probable cause140 - far too loose when it comes to citizens' privacy. With this in mind, the government would be required to satisfy a threshold evidentiary standard by showing a **substantial need** for limited surveillance (the knowing or reckless falsehood prong) that is causally connected to preventing **definite threats** (the actual malice prong).

Of course, like any judicial test, these subjective phrases require specificity. To satisfy the "substantial need" requirement, the government would have to articulate what it intends to do with information gathered from limited surveillance.141 As a corollary, this substantial need would have to outweigh the competing need for privacy, and it would necessarily be contingent on the government to overcome this barrier with convincing clarity.

To satisfy the "definite threat" requirement, the government would be compelled to demonstrate how desired information would help prevent an articulable threat to American interests.142 In considering this element, the court would examine the threat on a sliding scale that considers both magnitude and probability. At one extreme would be a putative ticking time bomb scenario, where the government shows surveillance is necessary to counter an identified threat that is actually at risk of transpiring; in such a situation judicial deference slides towards the government. The other extreme is a mere hypothetical threat,143 for which surveillance is only required in the abstract; in this situation judicial deference slides towards privacy. Between these extremes are numerous situations of varying severity, and the balance may tip either way depending on the strength of the government's case.

Ideally, the FISA Court would apply the security-privacy test in an adversarial proceeding. Thus, as the government attempts to fulfill these stringent requirements, the privacy advocate would counter with evidence of the requested surveillance's effect or effects on privacy.144 **The burden, however, would always remain with the government** as the entity seeking to

circumvent privacy rights. And, assuming all of the structural remedies are adopted, Congress would then have to approve the surveillance decision via majority vote. These changes, however, would inevitably inspire multiple critiques.

2nc – solves state secrets privilege

The CP resolves inefficiency and the state secrets privilege

Cetina 14– John Marshall Law School (Daniel, "Balancing Security and Privacy in 21st century America: A Framework for FISA Court Reform", John Marshall Law Review, Summer 2014, http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/jmlr47&type=Text&id=1540)//DBI

There are numerous counterarguments to the two-pronged proposal. First, government proponents would argue that introducing additional oversight procedures could hamper federal objectives, especially as they relate to identifying threats and apprehending suspected terrorists, 145 and create unwanted burdens. This argument is not without some import. The 2013 Boston Marathon bombing 46 is a persuasive indicatorl 4 7 that not only is the War on Terrorism an enduring conflict but also that enemies can emerge internally, necessitating continued monitoring of both foreign and domestic threats.

Second, there is no guarantee that a bright-line judicial test can withstand additional successful applications of the **state secrets privilege**.148 Indeed, the interpretive component does not contemplate eradicating the state secrets privilege from the government's repertoire, and it may effectively become a failsafe for borderline cases, particularly at lower federal courts considering privacy claims.

However, the two-pronged proposal should quiet such criticisms. Governmental efficiency may be affected, but the system was designed not for unrestricted freedom to perpetuate controversial programs but rather for debate and contemplation, 149 those hallmarks of democracy. Furthermore, the new judicial test's substantial need and definite threat requirements should, absent the most extraordinary circumstances, overshadow the state secrets privilege.

V. CONCLUSION

Anthony Lewis wrote that the "accommodation of conflicting interests is always complicated. It requires judges to draw nice lines, it requires lawyers to argue, it requires academics to reflect."' 5 0 Though he was speaking about libel law, Lewis's reflections apply with equal force to the security/privacy dynamic at the nucleus of surveillance law. Justice Souter clearly agrees that many legal controversies involve the "tension of competing values, each constitutionally respectable, but none open to realization to the logical limit."'51

The government's interest in protecting the country is praiseworthy, but the right to privacy 52 is also respectable and constitutionally protected. Neither of these crucial values should be marginalized or abandoned;- indeed, a strong democracy is capable of accommodating both. The proposed structural and interpretive remedies to United States surveillance tactics are important steps to realizing a more effective security apparatus that, far from dangerously impinging on cherished liberty, thoughtfully balances security and privacy in 21st century America.

Standing CP

1nc

The United States federal government should change its definition of "protected information" in the FISA Amendments Act of 2008 so plaintiffs can satisfy standing in court.

Changing the definition of "protected information" receives broad support and allows the people to challenge intrusive surveillance

Greene 14 - John Marshall Law School, B.S. in Political Science (Michael, "Where Has Privacy Gone? How Surveillance Programs Threaten Expectations Of Privacy", The John Marshall Journal of Information Technology & Privacy Law, Summer 2014, http://heinonline.org/HOL/Page?handle=hein.journals/jmjcila30&div=36&g_sent=1&collection=journals)//DBI

There is a clearer way of redefining the actions of the NSA under the FAA of 2008, which would be to give plaintiffs a greater chance of challenging the constitutionality of FAA of 2008. Currently under Clapper, plaintiffs have yet to establish an injury in fact that would supersede the Supreme Court majority's apprehension of giving extenuating circumstances enough merit to justify standing.167 If a congressional amendment to the current FAA of 2008 inserted a new definition for protected information, then standing to challenge the acquisition of communications can be satisfied and there would be a **significant increase in surveillance oversight**. This bill would avoid the messiness of trying to restructure the currently secretive FISC court operations. Rather than attempting to create a new form of judicial review168 or the creation of a new authority for Congressional oversight board,169 a more constructive attempt at addressing the need for a clearer balance would be to **give the constitutional challenge back to the people**. Rather than trying to legislate it into firmly rooted governmental bodies, let the private section, the plaintiffs of the United States, fight this battle as they are the ones who are "injured in fact."

This proposed legislation combines the pragmatic approach of the SOR and STA Acts by avoiding any drastic rewrite of the FAA of 2008 **while still achieving the goals of affecting significant change to NSA surveillance programs** found in ISOR. Since this legislation only requires creating a new section of protected information, it does not require significant alterations to the FAA of 2008 that could block bipartisan support. Creating a new definition for protected information will likely receive **broad support** and lobbying from the technology industry, because it would restrict what information they would be required to relinquish.

The aforementioned legislation does not address the entirety of FISA programs nor does it attempt to solve every issue in FISA. The goal of this proposed legislation is instead to create an avenue for plaintiffs to get into court by **satisfying standing**. Unlike proposed legislation like ISOR or SOR/STA, this proposed solution will give plaintiffs a method to actually challenge the constitutionality of FISA. Creating a clear method for plaintiffs to assert challenges to FISA is the

most practical solution to these convoluted problems. So far, the U.S. Supreme Court has been able to avoid ruling on FISA. This legislation will **alleviate the burdens upon the legislature** to address FISA on its own and will **compel all branches of the federal government to work towards a solution**.

2nc – xt: solves intrusive surveillance

Amending the FAA allows FISA to be successfully challenged in court—it solves the issues with the Clapper case

Greene 14 - John Marshall Law School, B.S. in Political Science (Michael, "Where Has Privacy Gone? How Surveillance Programs Threaten Expectations Of Privacy", The John Marshall Journal of Information Technology & Privacy Law, Summer 2014, http://heinonline.org/HOL/Page?handle=hein.journals/jmjcila30&div=36&g_sent=1&collection=journals)//DBI

Although this solution is a roundabout way of addressing the plaintiff's shortcomings in Clapper, it satisfies the issues that Justice Alito had presented in his majority holding.170 Justice Alito's opinion established that plaintiffs must be able to show an injury in fact and more than a speculation that the government used Section 1881a authorized surveillance to target their clients.171 Furthermore, giving plaintiffs the opportunity to satisfy standing will allow the Supreme Court to adjudicate the constitutionality of the FAA of 2008. There **does not need to be a drastic Congressional bill** that will **likely not pass both houses of Congress** for there to be a significant change to the legal rights of plaintiffs to challenge the constitutionality of FAA of 2008.

Although attacking the present issues in a very different way than ISOR or SOR/STA Acts, this proposed solution could actually be successful in asserting a change to the current dilemma both Congress and the American public face. First, a new amendment to the FAA of 2008 should **insert limitations on the acquisition of metadata**. Currently under Section 703, any intentional targeting of a known or reasonably believed target that is a U.S. person is restricted.172 The collection of U.S. persons' metadata information is an intentional targeting of U.S. persons that was limited directly by Section 703. Although this collection targets U.S. persons, courts have yet to find that metadata is the type of information or communication that is protected under the Fourth Amendment.173 **Metadata should be presented as a new point** under Section 703 limitations. This will give plaintiffs the ability to point directly at a statutory limitation that they can base their injury in fact off of. This will likely be sufficient to establish that plaintiffs have standing to challenge the constitutionality of the FAA of 2008. Justice Alito determined that the simple fear of having information collected was not enough for plaintiffs to achieve Article III standing. Contrary to Justice Alito's apprehension of plaintiff's fear, leaked documents show that **U.S. persons have been intentionally targeted** through the dragnet collection of all Verizon communications.174

Secondly, although these challenges may not be able to satisfy the second crux of Justice Alito's opinion, they provide a basis for this to be achieved in the future. Justice Alito found that if there was some other possible way for the government to have conducted the surveillance, there should not be a rush to judgment or finding that the government had certainly conducted warrantless

surveillance.175 While the proposed legislation cannot achieve this on its own, the importance of allowing the potential success of it, is that it at least plaintiffs can establish that they have been targeted in dragnet surveillance programs. Establishing direct evidence of dragnet surveillance programs will limit the need to address other possible ways surveillance could have been conducted and set a firm basis for a constitutional challenge of FISA program legality.

The goal of this new legislation is not to take on the bear of a problem that is the FAA of 2008, but merely to **establish the framework** for this Act to at least be challenged on a constitutional basis. So far, the legislation that has been proposed has only looked at creating a new subset of judicial control in the FISC court or has catered only to the dissemination side of producing user information. The larger goal, of any congressional act that wishes to address the issue of guaranteeing U.S. persons' privacy rights are secured, is to allow a plaintiff into federal court to challenge the constitutionality of the FAA of 2008.

2nc – at: legislation key

Forcing courts to respect FISA spurs legislative reforms that facilitate more effective judicial enforcement

Seamon 8 – Professor, University of Idaho College of Law (Richard, "Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits", Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

Third, courts should respect legislation, such as FISA, that generally falls within Congress's powers and is carefully designed to protect Fourth Amendment rights against executive surveillance.' 95 By respecting such legislation, courts **encourage legislative enforcement efforts**. Those efforts deserve judicial support because they can **produce legislative rules that facilitate judicial enforcement.** 196 FISA does this, for example, by generally requiring advance judicial approval for FISA surveillance. 97 Some statutes deserve judicial skepticism because they expand executive power with little attention to individual rights. 198 FISA does not fall within that description; it restricts executive power to enforce Fourth Amendment safeguards. 199

2nc – at: cp can't solve fisc

Forcing FISA to reveal court orders is a necessary first step to reform the FISC

Greene 14 - John Marshall Law School, B.S. in Political Science (Michael, "Where Has Privacy Gone? How Surveillance Programs Threaten Expectations Of Privacy", The John Marshall Journal of Information Technology & Privacy Law, Summer 2014, http://heinonline.org/HOL/Page?handle=hein.journals/jmjcila30&div=36&g_sent=1&collection=journals)//DBI

Forcing FISC court orders into the public domain, by allowing plaintiffs to petition them directly for the evidence of being monitored by government agencies, will be the first step in securing that trust in the government will be reformed. Although legislation can establish new parameters and set out more stringent guidelines for how communications are collected and stored, without the ability to challenge the constitutionality of the program in the legal system, these **problems will persist**. Although there may seem to be easier ways of achieving a constitutional challenge to the FAA of 2008, these paths are all likely **dead ends**. Legislation that does not try to give plaintiffs a

larger platform or a more defined Article III standing will **fail at achieving any real end result**. The likelihood of another change to the actual legislation will be too low.

2nc – xt: no link ptx

The CP avoids politics

Greene 14 - John Marshall Law School, B.S. in Political Science (Michael, "Where Has Privacy Gone? How Surveillance Programs Threaten Expectations Of Privacy", The John Marshall Journal of Information Technology & Privacy Law, Summer 2014, http://heinonline.org/HOL/Page?handle=hein.journals/jmjcila30&div=36&g_sent=1&collection=journals)//DBI

This current petition is a clear example of why there needs to be additions made to the FAA of 2008 that allow for plaintiffs to satisfy the standing requirements to be heard in front of the Supreme Court. It is highly unlikely that legislation will be passed that restricts the activities of the FISC court, or that will give plaintiffs enough authority to challenge the FISC court decisions. Currently under the FAA of 2008, FISC court decisions are not challengeable by U.S. persons. Without creating a way for U.S. persons to establish standing, there will be no legal remedy available to protect civil liberties. Absent a new found commonality among the differing parties in Congress, there is little to no chance that a substantial bill will be passed that drastically changes how the FISC court is structured or how FISA surveillance programs are implemented. The most successful challenge to these rigid ideas will come from the most unlikely source, and that is why there needs to be a reliance on plaintiffs getting into the Supreme Court to challenge the constitutionality of FAA of 2008.

Disadvantage links

Presidential powers links

1nc – exigent circumstances link

A limited emergency exception to the plan is vital to presidential powers

Seamon 8 – Professor, University of Idaho College of Law (Richard, "Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits", Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

Of course, the President's "genuine emergency" power has limits. The Japanese attack on Pearl Harbor created a "genuine emergency," but that emergency did not last for the entire war.'34 Nor did the attack on Pearl Harbor necessarily justify every measure that the President deemed reasonable, including the mass internment of Japanese Americans.135 The existence of genuine emergency powers in the President-and the relaxation of Bill of Rights limits on those powers-must be limited in time and scope.136 **Otherwise, the separation of powers system cannot work effectively** and Bill of Rights freedoms become fair weather friends. I propose two limits on the President's "genuine emergency" powers.

First, the President's power depends on the legislative framework within which it is exercised. The President can defy an Act of Congress in a national security emergency **only if defiance of the legislation is necessary** to respond to the emergency. If the President can effectively respond to the emergency while obeying the statute, the President lacks power to defy it. 137 Thus, Congress can regulate the President's power to respond to national security emergencies by enacting legislation that gives the President adequate leeway in such emergencies. By the same token, it is the inadequacy of legislation that justifies presidential defiance of the legislation in cases of genuine emergency. 38

Second, the President's emergency powers are residual when Congress has enacted generally valid legislation in the same area. Congress and the President share power in many areas, including the waging of war.139 In matters of shared governance, the separation of powers doctrine gives Congress the power to make rules and the President power-**not to unmake Congress's rules-but to break them when reasonably necessary** in a genuine emergency. 40 For example, in late 2005 Congress enacted a law prohibiting members of the armed forces from torturing people detained in the war on terrorism. 14 1 Assume for the sake of argument that it is possible to conceive of a "genuine emergency" in which the President could reasonably decide it was necessary to defy this prohibition. 42 It is one thing to recognize presidential power to break Congress' rule in a particularly exigent situation, after making an individualized determination that it was necessary to violate the prohibition. It is quite a different matter to recognize presidential power to unmake Congress's rule by promulgating a "program" authorizing torture in broadly defined categories of situations.1 43 One way to express the difference is by saying that, in the second situation, the President is impermissibly exercising legislative power, whereas in

the first situation he is exercising irreducible executive power.144 Another way to express the difference is to say that the executive power to act in "emergencies" is limited in scope and duration to that necessary when there is "no time for deliberation., 145 Those limits flow from our system of separated powers.

2nc – exigent circumstances link

External surveillance restrictions undermine presidential powers and the ability to speak with one voice

Seamon 8 – Professor, University of Idaho College of Law (Richard, "Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits", Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

Recognizing a congressionally irreducible "genuine emergency" power in the President is supported by the Constitution's creation of a "unitary executive."' 14 The Constitution provided for only one president so that, on appropriate occasions, one person can act for the nation without consulting others. 1 5 The Framers thought a unitary executive was particularly important for conducting foreign affairs. A unitary executive not only enables the country to speak to other countries with one voice, 116 it also ensures quick action when necessary to protect national security. 17 Too, it helps ensure the secrecy of sensitive foreign intelligence. 1 8 Thus, the Court has often referred to the President as the "sole organ" of foreign affairs." 9 The "sole organ" concept cannot, however, be stretched so far that it puts the President indefinitely above the law. Rather, it makes sense to let the President act as the "sole organ" if-but only so long as-it is necessary in a genuine national security emergency for him or her to function. 120 The unitary executive concept rests on the need for prompt, univocal action that will often be informed by information that cannot be broadly shared. As that need subsides, so does the legitimacy of conduct justified by reference to the unitary executive concept.

This reliance on the unitary executive concept is deliberately narrow. It does not embrace broader claims that have been asserted under the unitary executive theory. Unitary executive extremists assert Presidential power to ignore congressional restrictions on removal of executive branch officials and congressional enactments vesting exclusive power to administer statutory programs in officials other than the President. 121 In particular, recognition of congressionally irreducible presidential power in national security emergencies does not imply that the President has a greater role than Congress in the prosecution of war. 122 The position staked out here does, however, reject the view that "there is no constitutional impediment to Congress restricting the President's ability to conduct electronic surveillance within the United States and targeted at United States persons."'123 That view would apparently preclude the President's violation of statutory surveillance restrictions even if the President reasonably concluded that violation of those restrictions was necessary to respond to a national security emergency.

This analysis leaves many questions unanswered, including: Who decides whether a national security emergency exists?; What response is appropriate to a particular emergency?; and, How does one decide whether a particular legislative provision should be read to unconstitutionally

intrude upon the President's power to respond to such an emergency?' 214 As a practical matter, the President often must decide those questions initially. 125 Courts, however, can often review those decisions when they are implemented by officials other than the President and when the decisions affect individual rights.126 Indeed, sometimes the federal courts can set aside such decisions, as the Court's recent decision in Hamdan v. Rumsfeld shows. 12 7 Thus, regardless of the power the President may individually possess as a "unitary executive," he or she is judicially accountable in many settings. In addition, the President is politically accountable for his or her unilateral responses to genuine national security emergencies, at least once those decisions become public. 128

By any standard, 9/11 constituted a genuine national security emergency. 129 Accordingly, it empowered the President to take some immediate actions that he reasonably thought necessary, even if those actions violated federal statutes. Suppose, for example, that the passengers aboard United Airlines Flight 93 had not caused the plane to crash in Shanksville, Pennsylvania, and that it had continued its suicide mission toward the U.S. Capitol. 130 Can anyone doubt that the President could have ordered the flight shot down before it hit the Capitol, even if that order violated a federal statute? 131 Similarly, suppose the President had ordered the instant electronic monitoring of all cell phone calls to and from the plane to determine the plane's target and those responsible for the suicide mission. Would not the President have authority to order that surveillance even if it violated FISA?'32

One basis for concluding that the President would have that authority is to interpret FISA (and other statutes limiting the President's power in genuine emergencies) to implicitly include exceptions for genuine emergencies. That interpretation finds support in the canon requiring courts to avoid statutory interpretations that produce "absurd results."' 1 33 But the canon should not obscure the reason why it would be absurd to interpret FISA to prohibit the President from responding to genuine national security emergencies: It is absurd to give Congress such a prohibitory power. To the contrary, **common sense and precedent** support recognition of presidential power, irreducible by Congress, to make necessary, immediate responses to genuine national security emergencies.

Terrorism links

1nc – FAA exclusivity link

FAA exclusivity undermines counterterrorism measures—time, standards, and authorizations
Seamon 8 – Professor, University of Idaho College of Law (Richard, “Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits”, Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

True, FISA has shortcomings. The shortcomings reflect changes in surveillance technology and in international terrorism. Those shortcomings could very well justify surveillance outside FISA-even today-if the President reasonably determines that, in a particular instance, it is reasonably necessary to depart from FISA. Specifically, FISA has at least three shortcomings that could create "genuine emergencies" justifying event-specific departures from FISA.

First, it can take too long to get a FISA surveillance order.164 True, the Attorney General can authorize "emergency orders" approving FISA surveillance without prior court approval. 165 But this statutory emergency authority has drawbacks. The Attorney General must personally determine the existence of both an emergency and a factual basis for the issuance of an order.166 Until he or she does so, emergency surveillance cannot occur.167 NSA, however, may need to start surveillance the instant that NSA determines the surveillance is justified, without awaiting Attorney General authorization.' 68 Furthermore, the Attorney General is only one person, and he or she may be called upon personally and very quickly to make dozens or hundreds of "emergency" determinations. The Attorney General could become a bottleneck. Finally, the government must advise the FISA court of each emergency order and apply within seventy-two hours for a surveillance order from the court to ratify the attorney general's emergency order. 169 This supposedly expedited application process, required for every emergency order, could keep dozens of government lawyers employed on a continual fire drill without coming close to achieving the instantaneous authorization that is sometimes required for national security surveillance.

Second, the standards for getting FISA surveillance orders can be too high. NSA monitors phone calls and emails into and out of the United States involving people whom NSA has a "reasonable basis" for believing are associated with al Qaeda.170 The government may not have probable cause to believe that these people are "agents of foreign power" who can be targeted under FISA.171 Indeed, the person in the United States whose phone calls or emails are monitored may be entirely innocent, if it is the person outside the U.S. who is associated with al Qaeda and who triggers NSA surveillance. 172 To cite another example, perhaps the person in the U.S. who is being monitored is associated with al Qaeda but the association does not make that person a foreign agent.173 Even so, the government may have good reason to monitor the communication.174

Third, FISA orders could be too narrow. FISA authorizes surveillance of one target at a time. 175 The government, however, sometimes needs to conduct wholesale surveillance-for example, by monitoring phone calls to all persons in the United States from particular individuals outside the U.S and by filtering communications to detect certain words and patterns of words.176 Wholesale surveillance may very well violate FISA but be reasonably necessary in a genuine national security emergency, such as when the government has strong evidence that someone outside the U.S. is planning terrorist attacks on a U.S. target with accomplices inside the U.S. 177

In sum, the President may have power to authorize surveillance **"outside FISA"** in situations presenting a "genuine emergency." That power, however, exists only when national security exigencies make it reasonably necessary to ignore FISA. Even so, the power justifies surveillance outside FISA even today, to the extent FISA's shortcomings create exigent circumstances precluding resort to the FISA process. This residual power does not support the current NSA surveillance "program," which authorizes wholesale departure from FISA. 178

2nc – FAA exclusivity link

Adhering to FISA undermines intelligence collection capabilities and effective counter-terrorism strategy

Sievert 14 * Professor, Bush School of Government and U.T. Law School, author of three editions of Cases and Materials on US Law and National Security (Ronald, "Time to Rewrite the Ill-Conceived and Dangerous Foreign Intelligence Surveillance Act of 1978", National Security Law Journal Vol. 3, Issue 1 – Fall 2014)//GK p. 51-52

To counter these and other ongoing threats, the United States government has been burdened with the restrictions of the misguided and ill-conceived Foreign Intelligence Surveillance Act of 1978 ("FISA").14 This statute requires that, in their effort to protect the nation's security, intelligence analysts, agents, and attorneys must produce evidence before members of the federal judiciary that meets the maximum criminal law search standard of probable cause before they can monitor the domestic conversations and emails of agents of a foreign power and terrorist organizations.15 The procedure created by this statute is both confusing and, in the words of New York City Police Commissioner Raymond Kelly, "an unnecessarily protracted, risk-adverse process that is dominated by lawyers, not investigators and intelligence collectors."16 Both the 9/11 Commission17 and Amy Zegart in her book Spying Blind18 have detailed how FBI agents were stymied in tracking the hijackers before the September 11th attacks because, as a result of FISA interpretations, lawyers in the Department of Justice's "Office of Intelligence and Policy Review, FBI leadership and the FISA Court built barriers between agents—even agents serving on the same squads."19 This "wall" was breached to some extent with the 2001 PATRIOT Act provisions permitting information sharing,20 but the statute's basic restrictions and confusion surrounding its interpretation remain. The FBI had detained hijacker Zacarias Moussaoui in Minneapolis days before the 9/11 attacks, but agents were prevented from scanning his computer because a supervisor at FBI Headquarters concluded there was not probable cause for a FISA warrant. Meanwhile, according to the DOJ Inspector General's report, the Minneapolis office believed that "probable cause for the warrant was clear" and "became increasingly frustrated with the responses and guidance it was receiving." The Bush administration initiated the publicly criticized Terrorist Surveillance Program because, even with the PATRIOT Act's modifications, obtaining FISA warrants "incurr(ed) a delay that was unacceptable given the time-sensitivity and sheer volume of intelligence requirements after 9/11."22 The government apparently knew that 2007 Times Square bomber Faisal Shahzad had "established interaction with the Pakistani Taliban, including bomb making training in Waziristan" and had made "thirteen trips to Pakistan in seven years," yet did not monitor him as he slowly assembled the materials to construct his potentially devastating weapon.23 This led the Wall Street Journal to question whether the failure was due to "restrictions imposed on wiretapping by the Foreign Intelligence Surveillance Act" and to quote officials on the reduced effectiveness and excessive delays of the judicially regulated program.24 In a very extensive, detailed investigation of the Boston Marathon bombing, Keith Maart further highlighted the confusion endemic to attempts at interpreting FISA. 25 He noted that the Russian Federal Security Service ("FSB") had twice informed the FBI and CIA that Tamerlan Tsarnaev "had contacts with foreign Islamic militants/agents, was visiting jihadist websites and was looking to join jihadist groups" and that he had travelled to Dagestan on an unknown mission.26 Maart offered that it would certainly appear there was "sufficient probable cause to obtain FISA warrants that would allow . . . more encompassing surveillance."27 However, the FBI had apparently come to a contrary conclusion.28 By adhering to FISA, we are weakening our intelligence collection capabilities rather than strengthening our ability to prevent catastrophic attacks by those who do not hesitate to target and inflict mass casualties on innocents. At the same time, we are overreacting to the government's access to the limited information contained in metadata that has been routinely collected by telephone companies for decades.29 This Article will explain how FISA was an excessive response to the Supreme Court's decision in U.S. v. U.S District Court (Keith)30 and the Watergate era, and demonstrate why, because of the foreign affairs power and the Supreme Court's decisions on public safety searches, it is not constitutionally required.31 Furthermore, this Article will show that most of our foreign partners in the supposedly sophisticated, privacy-protecting nations of Europe do not restrain their security forces in a similar manner in intelligence cases. This is due to the obvious reason that national security investigations involve threats that endanger the lives of thousands of people and potentially imperil the very existence of the nation, unlike the far more constrained menace of ordinary crime.32 It is well recognized that the arguments contained here are directly opposed to those who are demanding more, not fewer, government regulation in the wake of the revelations attributed to Edward Snowden.33 Accordingly, this Article will also address why our recent media, political, and judicial reactions might once again lead to restrictions that are not constitutionally required, and that could further undermine the government's reasonable efforts to provide security for the American people.

FISA is the exclusive means for domestic electronic surveillance for foreign intelligence purposes

Seamon 8 – Professor, University of Idaho College of Law (Richard, "Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits", Hastings Constitutional Law Quarterly, Spring 2008, http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf)//DBI

First, the TSP may violate FISA. FISA prescribes "the exclusive means by which electronic surveillance [for foreign intelligence purposes]... may be conducted" in the United States.21 FISA's legislative history confirms that Congress intended FISA to govern all domestic electronic surveillance for foreign intelligence purposes.22 Congress made FISA exclusive to stop executive abuses exposed in the 1970s through efforts such as the Church Committee investigations." The Church Committee revealed that Presidents since Franklin D. Roosevelt had authorized warrantless surveillance of Americans.24 Although Presidents claimed "inherent" power to authorize this surveillance for "national security" purposes, the surveillance often targeted people merely because of their political views.25 By enacting FISA in 1978, Congress intended to "prohibit the President, notwithstanding any inherent powers," from conducting domestic electronic surveillance for foreign intelligence purposes without complying with FISA. 6 Congress seemingly **precluded any domestic surveillance outside of FISA**.

2nc - FAA exclusivity link – probable cause

FISA has a rigorous warrant requirement based upon probable cause

Harper 14, University of Chicago Law School, U.S. Department of Justice, Civil Division, (Nick, "FISA's Fuzzy Line between Domestic and International Terrorism", University of Chicago Law Review;Summer2014, Vol. 81 Issue 3)//AK

Each FISA warrant application must meet several requirements. The application must identify the target of the surveillance and describe both the nature of the information sought and the type of communications or activities that would likely be subject to surveillance.41 The government also must propose procedures to minimize its use of the information sought and must certify that (1) the information sought is deemed to be foreignintelligence information, (2) a "significant purpose of the surveillance is to obtain foreign intelligence information," and (3) "such information cannot reasonably be obtained by normal investigative techniques."42

FISA also requires a submission of facts that establishes probable cause that the target is a "foreign power or an agent of a foreign power."43 Unlike in Title III, the target of surveillance need not be tied to a specific criminal offense.44 Instead, to satisfy probable cause, the government must show some linkage to a "foreign power" as outlined in the definitional section of the Act (known as the "targeting provisions").45

Because of this peculiar probable cause requirement, the scope of the definitions of "foreign powers" effectively controls the potential reach of FISA-authorized surveillance. FISA lists seven different types of foreign powers, but they basically consist of foreign governments and entities controlled by those governments, foreign-based political organizations, and international terrorist groups.46 FISA then has two sets of definitions of "agent of a foreign power,"47 depending on whether the target is a "United States person."48 There are several differences between the two agency provisions, but the main distinction is that the government must show that US persons knowingly engaged in forbidden activity on behalf of a foreign power.49 Thus, for example, to surveil a US person suspected of being an al-Qaeda operative, the government would have to show that the person knowingly engaged in international terrorism on behalf of al-Qaeda. Once the government submits its application, a FISC judge must approve the surveillance if he finds that the government has met the above requirements, provided that no US person was considered a foreign power or an agent of a foreign power solely based on activities protected by the First Amendment.50 This represents the last step in the FISC's involvement with the FISA wiretap process: district court judges, rather than FISC judges, assess the application's compliance with FISA and FISA's compliance with the Fourth Amendment when evidence derived from the wiretaps is challenged in a criminal proceeding.

Link – 'domestic' limit

Attempting to preclude NSA 'domestic' surveillance guts their ability to do bulk collection – they lack the technological ability to distinguish

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

In its October 2011 memorandum opinion, the court confronted two areas: first, targeting procedures as applied to the acquisition of communications other than Internet transactions -- that is, "discrete communications between or among the users of telephone and Internet communications facilities that are to or from a facility tasked for collection." n290 As in the past, the court found the targeting procedures with regard to non-Internet transactions to be sufficient. Second, the court considered de novo the sufficiency of the government's targeting procedures in relation to Internet transactions [*192] transactions. n291 Despite the acknowledgement by the government that it knowingly collected tens of thousands of messages of a purely domestic nature, FISC found the procedures consistent with the statutory language that prohibited the intentional acquisition of domestic communications. n292

The court's analysis of the targeting procedures focused on upstream collection. n293 At the time of acquisition, the collection devices lacked the ability to distinguish "between transactions containing only a single discrete communication to, from, or about a tasked selector and transactions containing multiple discrete communications, not all of which may be to, from, or about a tasked selector." n294 The court continued: "As a practical matter, this means that NSA's upstream collection devices acquire any Internet transaction transiting the device if the transaction contains a targeted selector anywhere within it." n295 Because of the enormous

volume of communications intercepted, it was impossible to know either how many wholly domestic communications were thus acquired or the number of non-target or U.S. persons' communications thereby intercepted. n296 The number of purely domestic communications alone was in the tens of thousands. n297

Despite this finding, FISC determined that the targeting procedures were consistent with the statutory requirements that they be "reasonably designed" to (1) "ensure that any acquisition authorized under [the certifications] is limited to targeting persons reasonably believed to be located outside the United States" and (2) "prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States." n298

To reach this conclusion, the court read the statute as applying, in any particular instance, to communications of individuals "known at the time of acquisition to be located in the United [*193] States." n299 As the equipment **did not have the ability to distinguish between purely domestic communications and international communications**, the NSA could not technically know, at the time of collection, where the communicants were located. From this, the court was "inexorably led to the conclusion that the targeting procedures are 'reasonably designed' to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States." n300 This was true despite the fact that the NSA was fully aware that it was collecting, in the process, tens of thousands of domestic communications. n301 As far as the targeting procedures were concerned, at least with regard to MCTs, the NSA had circumvented "the spirit" but not the letter of the law. n302

The court's reading led to an extraordinary result. The statute bans the knowing interception of entirely domestic conversations. The NSA said that it knowingly intercepts entirely domestic conversations. Yet the court found its actions consistent with the statute.

A few points here deserve notice. First, it is not immediately clear why the NSA is unable to determine location at the moment of intercept and yet can ascertain the same at a later point. Second, in focusing on the technical capabilities of any discrete intercept, the court encouraged a form of willful blindness--that is, an effort to avoid criminal or civil liability for an illegal act by intentionally placing oneself into a position to be unaware of facts that would otherwise create liability. n303 In light of the court's interpretation, [*194] the NSA has a diminished interest in determining at the point of intercept whether intercepted communications are domestic in nature. Its **ability to collect more information would be hampered**. So there is a perverse incentive structure in place, even though Congress intended the provision to protect individual privacy.

Link – programmatic surveillance

Programmatic surveillance is necessary for pattern analysis that can identify future terrorist threats – forcing individualized determinations wrecks investigations

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar--i.e., individualized or particularized surveillance. Individualized surveillance takes place when authorities have some reason to think that a specific, known person is breaking the law. Investigators will then obtain a court order authorizing them to collect information about the target, with the goal of assembling evidence that can be used to establish guilt in subsequent criminal proceedings. Individualized surveillance is common in the world of law enforcement, as under Title III of the Omnibus Crime Control and Safe Streets Act of 1968. n23 It is also used in national security investigations. FISA allows authorities to obtain a court order to engage in wiretapping if they demonstrate, among other things, probable cause to believe that the target is "a foreign power or an agent of a foreign power." n24

By contrast, programmatic surveillance has very different objectives and is conducted in a very different manner. It usually involves the government collecting bulk data and then examining it to identify previously unknown terrorists, spies, and other national security threats. A good example of the practice is link analysis, in [*528] which authorities compile large amounts of information, use it to map the social networks of known terrorists--has anyone else used the same credit card as Mohamed Atta?--and thus identify associates with whom they may be conspiring. n25 (It is also possible, at least in theory, to subject these large databases to pattern analysis, in which automated systems search for patterns of behavior that are thought to be indicative of terrorist activity, but it's not clear that the NSA is doing so here.) Suspects who have been so identified can then be subjected to further forms of monitoring to determine their intentions and capabilities, such as wiretaps under FISA or other authorities. In a sense, programmatic surveillance is the mirror image of individualized surveillance. With individualized monitoring, authorities begin by identifying a suspect and go on to collect information; with programmatic monitoring, authorities begin by collecting information and go on to identify a suspect.

Programmatic surveillance is a potentially **powerful counterterrorism tool**. The Ra'ed al-Banna incident is a useful illustration of how the technique, when coupled with old-fashioned police work, can identify possible threats who otherwise might escape detection. Another example comes from a 2002 Markle Foundation study, which found that authorities could have identified the ties among all 19 of the 9/11 hijackers if they had assembled a large database of airline reservation information and subjected it to link analysis. n26 In particular, two of the terrorists--Nawaf al-Hamzi and Khalid al-Mihdhar--were on a government watchlist after attending a January 2000 al-Qaeda summit in Malaysia. So they could have been flagged when they bought their tickets. Querying the database to see if any other passengers had used the pair's mailing addresses would have led investigators to three more hijackers, including Mohamed Atta, the plot's operational leader. Six others could have been found by searching for passengers who used the same frequent-flyer and telephone numbers as these suspects. And so on. Again, the Markle study concerns airline reservation data, not the communications data that are the NSA's focus. But it is still a useful illustration of the technique's potential.

The government claims that programmatic surveillance has been responsible for concrete and actual counterterrorism benefits, not just hypothetical ones. Officials report that PRISM has helped detect and [*529] disrupt about 50 terrorist plots worldwide, including ten in the United States. n27 Those numbers include Najibullah Zazi, who attempted to bomb New York City's subway system in 2009, and Khalid Ouazzani, who plotted to blow up the New York Stock

Exchange. n28 Authorities further report that PRISM played an important role in tracking down David Headley, an American who aided the 2008 terrorist atrocities in Bombay, and later planned to attack the offices of a Danish newspaper that printed cartoons of Mohamed. n29 The government also claims at least one success from the telephony metadata program, though it has been coy about the specifics: "The NSA, using the business record FISA, tipped [the FBI] off that [an] individual had indirect contacts with a known terrorist overseas. . . . We were able to reopen this investigation, identify additional individuals through a legal process and were able to disrupt this terrorist activity." n30 Quite apart from foiling attacks, the government also argues that the NSA programs can **conserve scarce investigative resources** by helping officials quickly spot or rule out any foreign involvement in a domestic plot, as after the 2013 Boston Marathon bombing. n31

These claims have to be taken with a few grains of salt. Some observers believe that the government could have discovered the plots using standard investigative techniques, and without resorting to extraordinary methods like programmatic surveillance. n32 The metadata program has elicited special skepticism: The President's Review Group on Intelligence and Communications Technologies bluntly concluded that "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained [*530] in a timely manner using conventional section 215 orders." n33 The Privacy and Civil Liberties Oversight Board reached the same conclusion. n34 (Judicial opinion is split on the program's value. One judge has expressed "serious doubts" about its utility, n35 while another has concluded that its effectiveness "cannot be seriously disputed.") n36 Furthermore, we should always be cautious when evaluating the merits of classified intelligence initiatives on the basis of selective and piecemeal revelations, as officials might tailor the information they release in a bid to shape public opinion. n37 But even if specific claimed successes remain contested, programmatic surveillance in general can still be a useful counterterrorism technique.

As these examples imply, effective programmatic surveillance often requires huge troves of information--e.g., large databases of airline reservations, compilations of metadata concerning telephonic and internet communications, and so on. This is why it typically will not be feasible to limit bulk collection to particular, known individuals who are already suspected of being terrorists or spies. Some officials have defended the NSA programs by pointing out that, "[i]f you're looking for the needle in a haystack, you have to have the haystack." n38 That metaphor doesn't strike me as terribly helpful; rummaging around in a pile of hay is, after all, a paradigmatic image of futility. But, the idea can be expressed in a more compelling way. Programmatic surveillance cannot be done in a particularized manner. The whole point of the technique is to identify unknown threats to the national security; by definition, it cannot be restricted to threats that have already been identified. We can't limit programmatic [*531] surveillance to the next Mohamed Atta when we have no idea who the next Mohamed Atta is--and when the goal of the exercise is indeed to identify the next Mohamed Atta.

Link – bulk collection

Bulk collection is vital to reduce terrorism risk – terrorists will use the plan's privacy protection to hide communications

Lewis 5/28 – Director and Senior Fellow, Strategic Technologies Program (James Lewis, "What Happens on June 1?", CSIS Strategic Technologies Program, http://www.csistech.org/blog/2015/5/28/what-happens-on-june-1, 5/28/2015)//MBB

After a week or so, potential attackers will probably look for ways they can exploit **newly unsurveilled space** for operational advantage. Risk will increase steadily once they get over their shock, and then plateau two or three months out (when they've presumably adjusted their operations to reduced surveillance). How much risk increases will depend on whether the USG can compensate for the lost collection and whether attackers find ways to gain advantage.

All the propaganda about how this kind of collection "never stopped an attack" is divorced from reality. It is the the totality of collection that reduced risk. Reduce collection and risk increases. How much is unclear, and Americans may be willing to trade a small increase in risk for less government surveillance. 215 is probably the least valuable program, and ending it creates the least risk, but ending it is not risk free.

Adding some privacy advocates to the Foreign Intelligence Surveillance Court will also increase risk. We don't do this for any other kind of warrant process, and it will add delays. One of the problems with FISC that led to the 9/11 success (for the other side) was the slowness of its processes. Adding privacy advocates will return us to the bad old days of FISA. It's also insulting to the judges.

Link – narrowing 702

Requiring individualized determinations for targets creates a massive bureaucratic drain, wrecking investigations

Cordero, 15 - Director of National Security Studies, Georgetown University Law Center, Adjunct Professor of Law (Carrie, "The Brennan Center Report on the FISA Court and Proposals for FISA Reform" 4/2, Lawfare, http://www.lawfareblog.com/brennan-center-report-fisa-court-and-proposals-fisa-reform

1. "End Programmatic Surveillance"…"or If Programmatic Surveillance Continues, Reform It"

One of the major criticisms of the government's use of FISA to emerge in the recent debate is that the Court has shifted from approving individual surveillance or search requests directed at a particular agent of a foreign power or foreign power, to a practice of approving "programmatic" requests for collection authority. The criticism is a repudiation of not only the bulk telephone metadata program, but also of section 702 of FISA, which was added to the Act in 2008. Section 702 authorizes the Director of National Intelligence and the Attorney General to issue directives to communications service providers under a set of procedures and certifications that have been approved by FISC.

Referring to the collection authorized by Section 702 as "programmatic" can lead to misunderstanding. Acquisition under section 702 is programmatic in the sense that the Court approves rules and procedures by which the acquisition takes place. The Court does not, under section 702, make a substantive finding about a particular target. It does not approve individual requests for collection. Instead, the FISC approves the rules and procedures, and then intelligence community personnel abide by a decision-making process in which there are actual intended targets of acquisition. In his February 4, 2015 remarks at Brookings, ODNI General Counsel Bob Litt described it this way:

"Contrary to some claims, this [section 702 collection] is not bulk collection; all of the collection is based on identifiers, such as telephone numbers or email addresses, that we have reason to believe are being used by non-U.S. persons abroad to communicate or receive foreign intelligence information."

Regardless of the characterization, however, it is correct to say that section 702 allows the intelligence community, not the Court, to make the substantive determination about what targets to collect against. Those decisions are made consistent with intelligence community leadership and policymaker strategic priorities, which Litt also discussed in his February 4th remarks. Targets are selected based on their anticipated or demonstrated foreign intelligence value. And targeting decisions are subject to continuous oversight by compliance, legal and civil liberties protection authorities internal to NSA, and external at the Office of the Director of National Intelligence and the Department of Justice.

The question, then, is why was the change needed in 2008? And, if the Brennan Center's recommendation were accepted, what would be the alternatives? What follows is a shorthand answer to the first question (which I previously addressed here): basically, the change was needed because the pre-2008 definitions in FISA technically required that the government obtain a probable-cause based order from the Court in order to collect the communications of Terrorist A in Afghanistan with Terrorist B in Iraq. This was a problem for at least two reasons: one, as non-U.S. persons outside the United States, Terrorist A and Terrorist B are not entitled to Constitutional protections; and two, the bureaucratic ~~man~~power it took to supply and check facts, prepare applications and present these matters to the Court were **substantial.** As a result, **only a subset of targets** who may have been worth covering for foreign intelligence purposes were able to be covered.

This is an extremely condensed version of the justification for 702 and does not cover additional reasons that 702 was sought. But, from my perspective, it is the bottom line, and one that cannot be overlooked when suggestions are made to scale back 702 authority.

Section 702 has empirically been used to stop terrorist attacks

Young 14– President and General Counsel of Ronin Analytics, LLC. and former NSA senior leader (Mark, "National Insecurity: The Impacts of Illegal Disclosures of Classified Information", I/S: A Journal of Law and Policy for the Information Society, 2014, http://moritzlaw.osu.edu/students/groups/is/files/2013/11/Young-Article.pdf)//DBI

The Deputy Attorney General has noted that the Federal Bureau of Investigation benefited from NSA's Section 702 collection in the fall of 2009. Using Section 702 collection and "while monitoring the activities of Al Qaeda terrorists in Pakistan, the National Security Agency (NSA)

noted contact from an individual in the U.S. that the Federal Bureau of Investigation (FBI) subsequently identified as Colorado-based Najibulla Zazi. The U.S. Intelligence Community, including the FBI and NSA, worked in concert to determine his relationship with Al Qaeda, as well as identify any foreign or domestic terrorist links."44

"The FBI tracked Zazi as he traveled to New York to meet with co-conspirators, where they were planning to conduct a terrorist attack. Zazi and his co-conspirators were subsequently arrested. Zazi, upon indictment, pled guilty to conspiring to bomb the NYC subway system. Compelled collection (authorized under Foreign Intelligence Surveillance Act, FISA, Section 702) against foreign terrorists was critical to the discovery and disruption of this threat against the U.S."45 Regardless of the accuracy of the information released by Snowden, the types of programs described by the material contribute to national security and its release, regardless of its validity, will negatively impact US security.

Removing section 702 means probable cause requirements would be applied to foreign investigations

Cordero, 15 - Director of National Security Studies, Georgetown University Law Center, Adjunct Professor of Law (Carrie, "The Brennan Center Report on the FISA Court and Proposals for FISA Reform" 4/2, Lawfare, http://www.lawfareblog.com/brennan-center-report-fisa-court-and-proposals-fisa-reform

Which brings us to the second question I posed above—what are the alternatives if Section 702 authority, were, as the Brennan Center recommends, repealed? One option is to revert to the pre-2008 practice: obtaining Court approval based on probable cause for non-U.S. persons located outside the United States. The operational result would be to forego collection on legitimate targets of foreign intelligence collection, thereby potentially losing insight on important national security threats. Given the challenging and complex national security picture the United States faces today, I would think that most responsible leaders and policymakers would say, "no thanks" to that option.

A second option would be to conduct the acquisition, but without FISC supervision. This would be a perverse outcome of the surveillance debate. It is also, probably, in the current environment, not possible as a practical matter, because an additional reason 702 was needed was to be able to serve lawful process, under a statutory framework, on communications service providers, in order to effectuate the collection.

In light of these options: collect less information pertaining to important foreign intelligence targets, or, collect it without statutory grounding (including Congressional oversight requirements) and judicial supervision, the collection framework established under 702 looks pretty good.

Link – FISC special advocate

A FISC advocate wrecks terrorism investigations – litigation delays and public notice

Cordero, 15 - Director of National Security Studies, Georgetown University Law Center, Adjunct Professor of Law (Carrie, "The Brennan Center Report on the FISA Court and Proposals for FISA Reform" 4/2, Lawfare, http://www.lawfareblog.com/brennan-center-report-fisa-court-and-proposals-fisa-reform

Instead, the Brennan Center report calls for a special advocate that would "be notified of cases pending before the court, have the right to intervene in cases of their choosing, and are given access to all materials relevant to the controversy in which they are intervening." (p.46). If this type of special advocate were created by legislation, here is just a snapshot of what it would mean:

We would be providing greater ability to challenge surveillance to foreign intelligence targets, than to subjects of criminal investigation domestically, for whom wiretap applications are approved in camera ex parte by district court judges and magistrates.

We would be endorsing the concept of litigating surveillance conducted for national security purposes before it takes place, placing intelligence operations and national security at risk.

We would be creating an entire new bureaucracy duplicating the legal and oversight functions that the Justice Department, under the leadership of the Attorney General, and the Court, comprised of independent federal district court judges, perform.

There are currently many different components involved in the oversight of activities under FISA. They include: internal compliance offices at the collecting agencies, Offices of General Counsel, Inspectors General, the Office of the Director of National Intelligence, the Department of Justice, the FISC, Congressional oversight committees and the newly invigorated Privacy and Civil Liberties Oversight Board. If there is a desire to strengthen the oversight and accountability of activities conducted under FISA, focus should be given to making the existing structure more effective, not adding more bureaucracy.

Link – primary purpose test

The primary purpose test builds a wall between intelligence services and criminal investigation – that wrecks terrorism investigation and is the reason 9/11 occurred

Cordero, 15 - Director of National Security Studies, Georgetown University Law Center, Adjunct Professor of Law (Carrie, "The Brennan Center Report on the FISA Court and Proposals for FISA Reform" 4/2, Lawfare, http://www.lawfareblog.com/brennan-center-report-fisa-court-and-proposals-fisa-reform

3. "Restore the Primary Purpose Test"

This recommendation could alternatively be called "re-build the 'wall'." The report's least persuasive recommendation is that FISA should revert to its pre-9/11 standards that resulted in a

"wall" separating criminal investigators and intelligence investigators chasing the pre-2001 al Qaeda threat. It is a provocative recommendation in that it is a clear call to fully push the pendulum back to the pre-9/11 construct. Given the way that the national security and law enforcement communities have implemented various recommendations to work collaboratively, share information, and fulfill the mandate to prevent acts of international terrorism, reverting to the old legal standards that led to the creation of the "wall" would involve undoing many of the positive changes that have taken place in the last decade-plus. In addition, similar to section 702 (discussed above) the purpose standard is not one of the provisions that is up for sunset this year; the provision is currently permanent, unless there were to a new effort to undo it.

The report attempts to place distance between the prevailing pre-9/11 interpretation of the "primary purpose" standard, the implementation of procedures that were intended to support that interpretation, and the practical effects. In other words, the report suggests that the legal standard did not demand the rules and restrictions that were put in place. But the reality is that the rules and restrictions were put in place, and the "wall" was the result.

The actual, practical impact of the "wall" has been described in various statements before Congress by current and former government officials. One such compelling testimony was the 2003 statement before the Senate Judiciary Committee of Patrick Fitzgerald, the former United States Attorney in the Northern District of Illinois. New York served as the hub of the FBI and DOJ's efforts against al Qaeda prior to the 9/11 attacks. Fitzgerald was a lead prosecutor in New York at the time who worked closely with the FBI's New York office. He had first-hand experience with the "wall":

"It is nearly impossible to comprehend the bizarre and dangerous implications that "the wall" caused without reviewing a few examples. While most of the investigations conducted when the wall was in place remain secret, a few matters have become public. I was on a prosecution team in New York that began a criminal investigation of Usama Bin Laden in early 1996. The team -- prosecutors and FBI agents assigned to the criminal case -- had access to a number of sources. We could talk to citizens. We could talk to local police officers. We could talk to other U.S. Government agencies. We could talk to foreign police officers. Even foreign intelligence personnel. And foreign citizens. And we did all those things as often as we could. We could even talk to al Qaeda members -- and we did. We actually called several members and associates of al Qaeda to testify before a grand jury in New York. And we even debriefed al Qaeda members overseas who agreed to become cooperating witnesses.

But there was one group of people we were not permitted to talk to. Who? The FBI agents across the street from us in lower Manhattan assigned to a parallel intelligence investigation of Usama Bin Laden and al Qaeda. We could not learn what information they had gathered. That was "the wall." A rule that a federal court has since agreed was fundamentally flawed -- and dangerous."

The federal court that, I believe, Fitzgerald's testimony refers to is the 2002 decision In Re Sealed Case, issued by the Foreign Intelligence Surveillance Court of Review. The Brennan Center report provides the background for how the case reached the Court of Review, but in short, the Court rejected the notion that the "primary purpose" test was required by the 1978 version of FISA.

For all the criticisms of the USA Patriot Act of 2001, changing FISA's standard to "a significant purpose" and removing the justification for the old "wall" is one that has been overwhelmingly understood as an important substantive correction. There is no reason to go backwards.

Link – transparency

Increasing transparency alerts terrorists of NSA tactics – increases the risk of cyberterrorism

De 14 - General Counsel, National Security Agency (Rajesh, "The NSA and Accountability in an Era of Big Data", JOURNAL OF NATIONAL SECURITY LAW & POLICY, 2014,p.4//DM)

Perhaps the most alarming trend is that the digital communications infrastructure is increasingly also becoming the domain for foreign threat activity. In other words, it is no longer just a question of "collecting" or even "connecting" the dots in order to assess foreign threats amidst more and more digital noise, it is also a question of determining which of the so-called "dots" may constitute the threat itself. As President Obama has recognized, "the cyber threat to our nation is one of the most serious economic and national security challenges we face."

Many of us read in the papers every day about cyber attacks on commercial entities. Hackers come in all shapes and sizes, from foreign government actors, to criminal syndicates, to lone individuals. But as former Secretary of Defense Leon Panetta warned a few months ago, "the greater danger facing us in cyberspace goes beyond crime and it goes beyond harassment. A cyber attack perpetrated by nation states or violent extremist groups could be as destructive as the terrorist attack on 9/11." And as the President warned in his recent State of the Union address, we know that our enemies are "seeking the ability to sabotage our power grid, our financial institutions, our air-traffic control systems." We also have seen a disturbing trend in the evolution of the cyber threat around the world. As General Keith Alexander, the Director of NSA, describes it, the trend is one from "exploitation" to "disruption" to "destruction." In fundamental terms, the cyber threat has evolved far beyond simply stealing – the stealing of personal or proprietary information, for example-to include more disruptive activity, such as distributed denial of service attacks that may temporarily degrade websites; and more alarmingly, we now see an evolution toward truly destructive activity. Secretary Panetta, for example, recently discussed what he described as "probably the most destructive attack the private sector has seen to date" – a computer virus used to infect computers in the Saudi Arabian State Oil Company Aramco in mid-2012, which virtually destroyed 30,000 computers.

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Within this context, big data presents opportunities and challenges for the government and the private sector. Improving our ability to gain insights from large and complex collections of data holds the promise of accelerating progress across a range of fields from health care to earth science to biomedical research. But perhaps nowhere are the challenges and opportunities of big data as stark as in the national security field, where the stakes are so high – both in terms of the threats we seek to defeat, and of the liberties we simultaneously seek to preserve. This reality is readily apparent in the evolving and dynamic cyber environment, and perhaps no more so than for an agency at the crossroads of the intelligence and the defense communities, like NSA.

Of course, NSA must necessarily operate in a manner that protects its sources and methods from public view. If a person being investigated by the FBI learns that his home phone is subject to a wiretap, common sense tells us that he will not use that telephone any longer. The same is true for NSA. If our adversaries know what NSA is doing and how it is doing it – or even what NSA is not doing and why it is not doing it – they could well find ways to evade surveillance, to obscure themselves and their activities, or to manipulate anticipated action or inaction by the U.S. government. In sum, they could more readily use the ocean of big data to their advantage.

Link - PRISM

PRISM collects vast amount of data—prevents terrorism

Kelly et al, 2014 – Project director for Freedom on the Net, author and editor ("Freedom on the Net", Freedom House, no date, https://freedomhouse.org/sites/default/files/FOTN_2014_Full_Report_compressedv2_0.pdf)//TT

Leaked documents indicated that the Foreign Intelligence Surveillance Court (FISA Court) had interpreted Section 215 of the PATRIOT Act to permit the FBI to obtain orders that compel the largest telephone carriers in the United States (Verizon, AT&T, Sprint, and presumably others) to provide the NSA with records of all phone calls made to, from, and within the country on an ongoing basis. These billions of call records include numbers dialed, length of call, and other "metadata."81 Data are gathered in bulk, without any particularized suspicion about an individual, phone number, or device. Without approval from the FISA Court or any other judicial officer, NSA analysts conduct queries on this data, generating contact chains that show the web of connections emanating from a single phone number suspected of being associated with terrorism.82

Leaks also revealed new details about programs authorized by Section 702 of the Foreign Intelligence Surveillance Act. Section 702 allows the NSA to conduct surveillance of people who are not U.S. citizens and who are reasonably believed to be located outside the United States in order to collect "foreign intelligence information."83 Under a program called "PRISM," the NSA has been compelling at least nine large U.S. companies, including Google, Facebook, Microsoft and Apple, to disclose content and metadata relating to emails, web chats, videos, images, and documents.84 Also under Section 702, the NSA taps into the internet backbone for "collection of communications on fiber cables and infrastructure as data flows past."85 Although these programs are targeted at persons abroad, the NSA is able to retain and use information "incidentally" collected about U.S. persons.

Link – third party doctrine

Narrowing the third party doctrine will wreck terrorism investigations

Sievert 14 * Professor, Bush School of Government and U.T. Law School, author of three editions of Cases and Materials on US Law and National Security (Ronald, "Time to Rewrite the Ill-Conceived and Dangerous Foreign Intelligence Surveillance Act of 1978", National Security Law Journal Vol. 3, Issue 1 – Fall 2014)//GK

As discussed in this Article, at present the government must demonstrate probable cause that a target is an agent of a foreign power before conducting FISA surveillance. The government also needs probable cause for physical searches, arrests, and indictments. Probable cause does not exist at the moment an informant advises an agent an individual is a dangerous terrorist, or when an agent observes a suspect clandestinely meet a terrorist or spy. It is generally established only after the receipt of corroborating evidence such as that contained in phone, bank, and travel records. These records are currently obtained with a Grand Jury subpoena or court order based merely on relevance to the federal investigation.267 This lower standard exists because in the past the Supreme Court has held, in cases such as Smith and Miller, that there was no expectation of privacy in these records because of the third party doctrine. Probable cause is not needed and often is not present at this stage of an investigation. Judge Leon's essential rejection of the third party doctrine finds support in the questions raised by Justice Sotomayor. It is also supported by the public outcry of those whose response to the Snowden revelations has been to demand probable cause before the government obtains records.268 If this rejection of the third party doctrine were to lead to statutory or judicial requirements that the government meet a standard higher than legitimate relevance before obtaining phone, bank, travel, and other records shared with a third party, the government would often be stymied in the earliest stages of an investigation. Probable cause, as defined, seldom if ever exists in these early stages. The ability to obtain the corroborating evidence that would support a FISA order, Title III warrant, or indictment, would be foreclosed. As has been repeatedly stated in this Article, the mandate to demonstrate probable cause before conducting electronic surveillance in intelligence cases was an unjustified overreaction to the Watergate era. A further requirement that the government show probable cause to obtain basic records from a third party would be another overreaction, which would likely **eviscerate** the government's ability to protect the American people.

AT: No data confirms link

NSA programs are key to stop terrorists—empirics prove

Young 14– President and General Counsel of Ronin Analytics, LLC. and former NSA senior leader (Mark, "National Insecurity: The Impacts of Illegal Disclosures of Classified Information", I/S: A Journal of Law and Policy for the Information Society, 2014, http://moritzlaw.osu.edu/students/groups/is/files/2013/11/Young-Article.pdf)//DBI

It is not only logic that leads one to believe in the value of NSA collection, but also testimony by intelligence professionals. For example, according to the House Intelligence Committee, NSA activities have "been **integral** in preventing multiple terrorist attacks, including a plot to attack on the New York Stock Exchange in 2009."42 The PRISM program – a program reported to provide NSA access to information some of the largest technology companies - provided **"critical leads"** to disrupt more than 50 potential terrorist events in more than 20 countries. The Foreign Intelligence Surveillance Act authority - the congressional authorization to target communications of foreign persons who are located abroad for foreign intelligence purposes - contributed to **more than 90 percent** of these disruptions.43

AT: info overload

Bulk data collection is necessary to ensure we have the important information

Young 14– President and General Counsel of Ronin Analytics, LLC. and former NSA senior leader (Mark, "National Insecurity: The Impacts of Illegal Disclosures of Classified Information",

I/S: A Journal of Law and Policy for the Information Society, 2014, http://moritzlaw.osu.edu/students/groups/is/files/2013/11/Young-Article.pdf)//DBI

This information was declassified and publically released to inform the public about what data were collected and analyzed by NSA, to balance inaccurate speculations by the media about NSA, and to facilitate the debate about U.S. intelligence Community operations. When examined together, the information disclosed by Snowden and the declassified information released by the ODNI present a positive picture of prudent measures for national security. If the information about programs such as PRISM, FAIRVIEW, or OAKSTAR is accurate, then it appears as if the intelligence community has not only adjusted well to global technical advancements in telecommunications, but also learned significant lessons from the September 11, 2001 terrorist attacks.

It was known in early 2001 that NSA's effectiveness was challenged by the "multiplicity of new types of communications links, by the widespread availability of low-cost encryption systems, and by changes in the international environment in which dangerous security threats can come from small, but well organized, terrorist groups as well as hostile nation states."39 Any challenge about the value of an intelligence program must address the importance of data quantity and quality. First, since intelligence analysis depends on having access to relevant information, logic dictates that more data is always better. As noted by Mark Lowenthal:

The issue then becomes how to extract the intelligence from the mountain of information. One answer would be to increase the number of analysts who deal with the incoming intelligence, but that raises further demands on the budget. Another possible response, even less palatable, would be to collect less. But, even then, there would be no assurance that the "wheat" remained in the smaller volume still being collected.40

Thus, quantity has an intelligence quality all its own. In addition, the type of information needed by the intelligence community is also important. Given the priorities noted in the National Security Strategy, the importance of NSA collection and analysis as noted in congressional testimony and the ever-present threats by terrorist groups and hostile nations the American public should vigorously endorse the type of programs viewed by Snowden as oppressive. It is troubling to see the disclosure of techniques allegedly used by NSA to obtain "cryptographic details of commercial cryptographic information security systems through industry relationships,"41 and the rampant speculation about the monitoring of the mobile phones of the heads of state from Europe.

AT: Freedom Act N/U

The Freedom Act only got low hanging fruit – it didn't curtail the bulk of NSA actions

Dyer, 15 – staff for Financial Times (Geoff, "Surveillance bill fails to curtail bulk of NSA activities" 6/3,

http://www.ft.com/cms/s/0/39089cc6-097f-11e5-b643-00144feabdc0.html#axzz3dwYfO1mL

The passage of the first bill since 9/11 to **curtail** government surveillance represents a dramatic shift in the politics surrounding terrorism in the US, but a much less significant change in the way the intelligence community actually operates.

The USA Freedom Act, which has been comfortably approved by both the Senate and the House, bars the government from collecting the phone records of millions of US citizens, a programme which became the focus of public fears about overbearing electronic surveillance.

The surveillance legislation reform still leaves the US intelligence community with formidable legal powers and tools to collect data and other online information for terrorism-related investigations, however.

Despite the tidal wave of revelations and public anger towards the National Security Agency following the 2013 leaks by Edward Snowden, congressional efforts to rein in the agency have **so far not curtailed the bulk** of its activities.

"The more savvy members of the intelligence community have been saying for some time, 'If this is the hit that we have to take, then so be it'," says Mieke Eoyang at the centrist Third Way think-tank in Washington, referring to the bulk telephone data collection programme.

The very first Snowden leak was a secret court order requiring Verizon to hand over the call records of its customers, in the process revealing an official dragnet that was capturing details about tens of millions of Americans.

Amid the many Snowden documents about the NSA that followed, it was this programme that crystallised public fears in the US that the government was abusing privacy rights in its zeal to monitor terrorist threats.

The Freedom Act is designed to tackle those concerns about the bulk collection programme. The legislation calls for telephone companies and not the government to store the information and requires a court order before the call data can be searched.

Supporters of the reform celebrated two further conditions in the bill. It limits the scope of government inquiries, so that officials cannot ask, for instance, for all calls in the 212 area code. And it requires that the secret foreign intelligence court publish legal opinions that change the scope of information that can be collected.

Beyond the specifics, the passage of the bill represents a landmark in the underlying politics of national security. Before the Snowden revelations, the political climate over terrorism would have made it routine to renew the sections of the post-9/11 Patriot Act that have now been replaced by the USA Freedom Act.

Yet the reality is that for the past 18 months, the administration has been making a tactical retreat from the call records programme. A panel of experts appointed by the White House, which included former senior intelligence officials, said in December 2013 that the programme was "not essential" for preventing terrorist attacks. In early 2014, President Barack Obama called for many of the changes to the programme contained in the new legislation.

"This is something we can live with," says a former senior intelligence official of the USA Freedom Act.

Moreover, even the bill's biggest supporters among privacy advocates acknowledge that it leaves much of the intelligence collection conducted by the US untouched.

"We have now addressed the excesses from the very first Snowden story, so for that I am lifting a glass," says Julian Sanchez at the libertarian Cato Institute in Washington. "But there is a lot left. In terms of the total scope of surveillance conducted by the NSA, this is a tiny corner."

The Freedom Act didn't actually curtail surveillance

Brenner, 15 - Senior Fellow, the Center for Transatlantic Relations; Professor of International Affairs, University of Pittsburgh (Michael, Huffington Post, "The NSA's Second Coming" 6/8,

http://www.huffingtonpost.com/michael-brenner/the-nsas-second-coming_b_7535058.html

That all makes for one awesome production. Doubtless there will be a film adaptation immortalized in a script by Bob Woodward. Something like that will happen -- even though it is a concocted yarn whose meaning has been twisted and whose significance has been vastly inflated. For the truth is that what Congress did, and what it did not do earlier, changes very little -- and nothing of cardinal importance. The main effect is to give the impression of change so as to release pressure for reform that might really be meaningful. The base truth is that everything that counts remains the same. To entrench and to legitimate a system of massive surveillance that undercuts our privacy while doing nothing to secure our well-being.

Let's look at the false notes struck by this narrative.

Matters of Fact

1. The so-called restrictions on bulk data collection apply only to telephone calls. All else is exempted: emails, Internet searches, social media, and info regarding each that is retained in our communicating devices.

2. The restrictions on real-time surveillance of telephone calls can be overcome by the granting of a warrant by the FISA upon request by NSA, FBI, Justice Department, CIA -- not to speak of local authorities. That Court, over the past eight years, has refused only 11 of 33,900 requests. The judges, by the way, are handpicked by Supreme Court Chief Justice John Roberts who has jumped into the policy arena by declaring himself strongly opposed to any tightening of restrictions on how the court operates or on the NSA's methods. The FISA court's attitude toward government spying on Americans has been generous to the extreme. Former lead judge of the FISA Court, John D. Bates, has campaigned vigorously on behalf of the status quo. He even objected to the extra workload of requiring that courts approve all national security letters, which are administrative subpoenas allowing the F.B.I. to obtain records about communications and financial transactions without court approval.

3. The specified targets may be organizations, groups and networks as well as an individual. In practice, that means each grant of surveillance power may authorize comprehensive electronic spying on hundreds or thousands of citizens.

Currently the NSA is overwhelmed by the billions of communications they register and try to catalogue each week. Long-term data retention only makes sense if there is a project afoot to

exploit it systematically in order to control, to suppress, to penalize. There is no such Big Brother plan in place or on the horizon. NSA operations fortunately have instead been conceived and managed by fantasists and bureaucratic empire builders -- as is demonstrated by Edward Snowden's leaks of their immense target list and their major intelligence failures.

4. The terms of the warrants allow for a two-step "hop" from the identified target to others whose suspect communications emerge from the initial combing.

Here is one hypothetical scenario. The NSA requests approval from the FISA court to collect the communications of the Arab-American Civil Rights League on the grounds that it suspects some dubious characters have been using its facilities. Over a period of months (if there a restriction on the duration of electronic surveillance under FISA rules), they register 1,000 communications. Using 'first hop' privileges they identify 250 persons whose own communications they wish to tap. Using "second hop" privileges they next identify a total of 1,500 more people whose communications they wish to tap. That makes a total of 2,700 persons whose telephone calls they are monitoring and storing. Each year, the NSC requests warrants from the FISA courts about 500 times. Hence, we can project more than 1 million telephone numbers now under surveillance for an indefinite period of time. For we should further note that once an official investigation is begun the records acquire the status of legal documents in a judicial or quasi-judicial proceeding.

5. There is an exemption for on-going investigations. The Patriot Act's Section 224, its "grandfather clause", allows active investigations that began prior to midnight on Monday to continue using the expired programs.They number in the thousands given the hyper-activism of our security agencies in identifying subjects for their attentions in order to justify vast capabilities and vast budgets. Those broadly cast investigations can go on for years. And all of this is secret.

FREEDOM Act creates no actual constraints against intelligence

Brenner, 15 - Senior Fellow, the Center for Transatlantic Relations; Professor of International Affairs, University of Pittsburgh (Michael, Huffington Post, "The NSA's Second Coming" 6/8,

http://www.huffingtonpost.com/michael-brenner/the-nsas-second-coming_b_7535058.html

The United States Freedom Act does not trouble Intelligence agency leaders. They have widely assumed, as admitted in private statements, that the compromise provisions merely create a few procedural inconveniences that could be circumvented or neutralized by exploiting loopholes - no more than speed bumps. None of the Agency's core activities would be significantly affected. So there is no reason for anyone in the intelligence agencies to sweat the small stuff: a shift in the number of days the NSA can retain the sweepings of Metadata collection; or whether the data should be held at their storage lock-up or the one across the street protected by a bicycle lock and owned by a very accommodating neighbor? And who's checking, anyway -- the FBI? the FCC?

NSA Starter JDI

Squo Solves

1NC Card

The squo solves all your advantages- the Freedom Act is a major shift in surveillance and solves symbol advantages

CDT 6/7 [Columbia Daily Tribune, June 7, 2015, With USA Freedom Act, America finally moves beyond 9/11, http://www.columbiatribune.com/opinion/oped/with-usa-freedom-act-america-finally-moves-beyond/article_b6113c88-ae7c-53ab-8942-7d6f206c295d.html]

In the end, Congress did the right thing. The USA Freedom Act, which ends the National Security Agency's bulk collection of American phone records, passed the Senate convincingly Tuesday, ending a long and labored fight.

This is no small achievement. Practically, it ends an unpopular, legally dubious and empirically ineffective domestic espionage program. Politically, **it signals that Congress can still make progress on serious matters when it tries**. And **symbolically, it suggests that, 14 years after the Sept. 11, 2001, attacks, the United States might finally be getting back to normal**.

Perhaps the most potent expression of that symbolism came from the bill's opponents. In successive attempts to block, delay and dilute this legislation, they employed some familiar oratorical excesses: Sen. Mitch McConnell called the bill "a resounding victory for those currently plotting attacks against the homeland." Yet the opponents failed completely.

This indicates, perhaps, **a deeper cultural shift**. If Americans no longer respond to this kind of alarming rhetoric as they once did — if they're no longer quite so comfortable ceding liberties for the false promise of total security — that is both psychic and civic progress. Democracy requires a sturdy spine no less than a level head.

As it happens, McConnell's fears are baseless. The law still allows the NSA to collect phone records, **as long as it has a court order**. It renews other counterterrorism tools that were jeopardized by this fight. And **it preserves the NSA's most important surveillance programs while ensuring that the government can no longer continuously spy on its own citizens**. It was a compromise, supported by everyone from the intelligence community to Human Rights Watch.

It isn't perfect, of course. Some of its language might be prone to misinterpretation, accidental or otherwise. It doesn't address other aspects of the NSA's global spying operation that require more scrutiny. And some of its transparency requirements might prove ineffective.

Yet the new law is of a piece with the long and cyclical history of American espionage, the limits on which change with the tenor of the times. After World War I, the NSA's predecessor organization was found to be overzealously spying on the communications of U.S. allies. Secretary of State Henry Stimson cut off its funding, memorably saying that "Gentlemen do not read each other's mail." When the NSA and its fellow travelers acquired expansive new powers during the Cold War, overreach followed once again, this time in the form of domestic spying, assassination attempts abroad and much more. The resulting Church Committee investigations led to a systematic overhaul of their oversight.

In rolling back some of the extensive powers granted to intelligence agencies after Sept. 11, the USA Freedom Act suggests that this long civic quest to balance liberty and safety remains vigorous. It shows that fearfulness isn't a permanent condition of American politics. And it affirms the value of transparency and liberty, even in a dangerous age.

Solves- Civil Liberties

Freedom Act solves- reverses anti-freedom trend

CM 6/7 [Concord Monitor, June 7, 2015 , Editorial: Freedom Act returns a bit of liberty, http://www.concordmonitor.com/home/17165482-95/editorial-freedom-act-returns-a-bit-of-liberty]

Sixteen years before the first shots of the Revolutionary War were fired at Lexington and Concord, Benjamin Franklin told people who would become his countrymen that "those who give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety."

In the wake of the terror attacks of Sept. 11, 2001, Congress, with the support of the great majority of Americans, rushed to enact the Patriot Act, a law that curbs liberty in the name of security.

The law, as many now realize, went too far, and those charged with enforcing it, the National Security Agency and the FBI, as always happens, interpreted the law to take it far further than its authors intended. Under it, according the American Civil Liberties Union, authorities can search your home without telling you, monitor emails and internet use, demand records from credit card, internet and telephone companies, and take property without a hearing.

Last week, Americans reclaimed a little bit of their lost liberty when President Obama signed the USA Freedom Act, a reform that begins to curb some of the worst elements of the Patriot Act. The new act curtails the government's practice, revealed by former government security employee Edward Snowden, of amassing bulk records of citizens' phone calls, call locations, numbers and length of the call but not content. The bill also begins to chip away at the terrifying wall of secrecy surrounding the actions of the secret Foreign Intelligence Surveillance Court, which can authorize without probable cause the collection of citizen information that includes medical records, books read, goods purchased, websites searched and bank records. Citizens who learn that they are under investigation cannot, under the act, reveal that fact and thereby defend themselves.

In a sign that Americans may be coming out of shock and heeding Franklin's warning, the reform bill had overwhelming support in Congress. It passed the House, 338-88, and the Senate, 67-32.

Solves- International
Obama's plan solves international concerns

Fitzpatrick 14 (Jack,- staff correspondent at National Journal Quoting European Commission President Jose Manuel Barroso and European Council President Herman Van Rompuy "Obama Hints at European Fracking Following Russia Sanctions")

Obama also declined to address worries in Europe over U.S. spying programs. Barroso said he and Van Rompuy have "concerns, shared widely by citizens in E.U. member states," about U.S. surveillance, but that they had discussed the issue with Obama earlier in the day and are **confident about Obama's proposals** for NSA reforms—including ending the agency's mass collection of phone data.

Unilateral action solves the alt causes but legislation is still key

Reuters 14 ("US needs to win back European trust after NSA spying revelations: Obama")

President Barack Obama said on Tuesday that U.S. intelligence agencies were not snooping on ordinary citizens but admitted it would take time to win back the trust of European governments and people after revelations of extensive U.S. surveillance.

Former intelligence contractor Edward Snowden disclosures about the sweep of the National Security Agency's monitoring activities triggered a national debate over privacy rights but also damaged relations with some European governments. Obama said one of the aims of his trip to Europe this week was to reassure allies that he was acting to meet their concerns by limiting the scope of data-gathering. "I am confident that everybody in our intelligence agencies operates in the best of intentions and is not snooping into the privacy of ordinary Dutch, German, French or American citizens," Obama told reporters after a nuclear security summit in The Hague. However, Obama said he recognised that "because of these revelations, there is a process that is taking place where we have to win back the trust, not just of governments, but more importantly of ordinary citizens, and that is not going to happen overnight." (Also see: Obama to propose curbing of bulk collection of phone records by NSA: Report) As Obama began his trip to Europe on Monday, a senior administration official said Obama planned to ask Congress to end the bulk collection and storage of phone records by the NSA but allow the government to access the "metadata", which lists millions of phone calls made in the United States, when needed. Obama said he was confident that the change "allows us to do what is necessary in order to deal with the dangers of a terrorist attack, but does so in a way that addresses some of the concerns that people have raised". "I am looking forward to working with Congress to make sure that we go ahead and pass the enabling legislation quickly so that we can get on with the business of effective law enforcement," he said. Checks and balances He said this was "an example of us slowly, systematically putting in more checks, balances, legal processes. The good news is that I am very confident that it can be achieved." Allegations in Britain's Guardian newspaper that the United States had monitored the phone conversations of 35 world leaders including German Chancellor Angela Merkel caused outrage in Europe last year. Germany summoned the U.S. ambassador for the first time in living memory. (Also see: Merkel-tapping allegations prompt Germany to send intelligence chiefs to US) In response, Obama in January banned U.S. eavesdropping on the leaders of close friends and allies, and began reining in the vast archive of Americans' phone data, seeking to reassure Americans and foreigners alike that the United States would take more account of privacy concerns. He said on Tuesday that, although some coverage of the Snowden revelations had been sensationalised, fears over privacy "in this age of the Internet and 'big data'" were justified. He also voiced faith in strong U.S. ties with Europe, saying the issue could be an "irritant" but did not define the relationship. He said intelligence played a critical role in U.S. cooperation with other countries in countering terrorism, nuclear proliferation or human trafficking. As technology had evolved, however, "the guidelines and structures that constrain

how our intelligence agencies operated have not kept pace with these events and this technology", he said. "There is a danger because of these new technologies that at some point it could be abused, and that is why I initiated a broad-based review." He said U.S. intelligence teams were consulting closely with counterparts in other nations to ensure there was greater transparency about U.S. activities. In an interview with the U.S. Fox network that aired on Tuesday, NSA Director General Keith Alexander said that under the administration's proposal the agency would work with telecommunications companies to retrieve data on "specific numbers that have a terrorist nexus." "Rather than us taking all the data, all we're going to get is that data that directly links to a terrorist's number," he said on FOX News Channel's "Special Report with Bret Baier." "This is an approach that I think meets the intent of protecting our civil liberties and privacy and the security of this country," he said. Alexander denied that the NSA listens to all phone calls and reads all emails. "I would get more respect if we could do all that. If you think about all the data that's out there, it's wrong. We don't do it. We wouldn't do it not even close."

Solves- Domestic

Obama plan key --- key first step to broader reform and only alternative to worse alternatives

Serwer 14 (Adam,- D.C.-based Reporter at msnbc "NSA reform proposals fail to fully protect privacy")

"Right now the Obama proposal seems better and much more comprehensive, but again, these two proposals are trying to supercede proposals already on the table that end bulk collection and do a lot more," says Mark Jaycox of the Electronic Frontier Foundation. "These proposals are competing with one privacy advocates already do support." While privacy advocates prefer the Obama administration's proposal to the one put forth by the House intelligence committee Tuesday or the Senate intelligence committee bill proposed months ago, as described in news reports, the White House plan would only affect collection of phone records. Yet the program, the breadth of which was first revealed through leaks facilitated by former NSA contractor Edward Snowden last June, is only one aspect of the government's claimed surveillance powers under Section 215 of the Patriot Act. "We know that 215 is potentially used, and we have always suspected, that it's also used for financial records, credit card records, and we also know from the FISA court opinions that they used it for Internet metadata," says Jaycox, calling the phone records program "one patch of a veritable quilt." That's why privacy advocates, while preferring Obama's proposal to the ones put forth by the intelligence committees, prefer the plan Sensenbrenner and Leahy are backing. "The biggest problem with the Obama proposal is that it doesn't deal with other records collection under 215, much less all the other authorities," says Michelle Richardson of the American Civil Liberties Union. "The phone records program is just the tip of the iceberg." The NSA has also relied on legal authority granted in Section 702 of the FISA Amendments Act and Executive Order 12333 for some of its spying powers. Democratic Rep. Adam Schiff, a member of the intelligence committee who proposed a bill similar to the plan the White House is backing, said that the focus on the phone records program doesn't mean other reform proposals are off the table. "I'm assuming that this is not the end of what the administration is proposing, **but the beginning**," said Schiff. "I think they decided to focus on the phone records program first because **that was of the most concern to the public**." As for the Sensenbrenner-Leahy proposal, Schiff said it would have a difficult time passing. "I'm not sure that bill can move through the Congress," Schiff said. "I think what the president has proposed is much more likely to navigate the difficult political course on the Hill, because it is a good balance between the need to get the information to protect the country and protect the privacy interests of

the public." Privacy advocates take heart in the fact that the Obama administration and the intelligence committee proposals are positioning themselves as curbing the NSA program that thus far has been the focus of public outrage. Two government panels that have examined the NSA's phone records program have concluded that it has been of little use in preventing terror attacks, contrary to the agency's claims. "The White House understands that we need to do something to deal with the issue of holding bulk collection **because of the perception** of our constituents," Maryland Democratic Rep. Dutch Ruppersberger, the ranking member on the intelligence committee, told reporters Tuesday.

Obama bill is the only alternative to house legislation which can't solve our impacts

Ackerman 14 (Spencer,- national security editor for Guardian "NSA critics express 'deep concern' over route change for House reform bill")

Congressional critics of the bulk collection of telephone records by the National Security Agency fear that its allies are circumventing them in the House of Representatives. The House parliamentarian, who oversees procedural matters, has determined that a new bill that substantially modifies the seminal 1978 Foreign Intelligence Surveillance Act will go through the intelligence committee rather than the judiciary committee, a move that two congressional aides consider "highly unusual." Seemingly an arcane parliamentary issue, the jurisdiction question reveals a subterranean and intense fight within the House about the future course of US surveillance in the post-Edward Snowden era. The fight does not align with partisan divides, with both sides claiming both Republican and Democratic support. The bill, authored by Republican Mike Rogers of Michigan and Democrat Dutch Ruppersberger of Maryland, would largely get the NSA out of the business of collecting US phone data in bulk. Rogers and Ruppersberger, both staunch advocates of the NSA and until now just as staunch defenders of bulk collection, are the leaders of the intelligence committee. Yet the House judiciary committee thought it was the natural choice for primary legislative jurisdiction over the Fisa Transparency and Modernization Act, introduced on Tuesday. While the intelligence committee oversees US spy activities, the judiciary committee has oversight responsibilities over surveillance law. The judiciary committee is also a stronghold of support for a rival bill, the USA Freedom Act, two of whose principal sponsors are its top Democrat and a former GOP chairman. The Freedom Act also ends NSA bulk collection, but includes more civil libertarian provisions, such as the prior approval of a judge to force phone companies to turn over customer data and a threshold requirement of relevance to an ongoing investigation to secure such approval. Ruppersberger, in a press conference on Tuesday, blasted the USA Freedom Act, saying it would make Americans "less safe." But the USA Freedom Act, despite also being centrally concerned with intelligence policy, was given primarily to the judiciary committee, raising an expectation on the committee that the same would hold for Rogers and Ruppersberger's bill despite the committee affiliations of its sponsors. A congressional aide who would only speak on condition of anonymity said it was "new and different that a bill that amends Fisa wouldn't come to us first." The House parliamentarian, Thomas Wickham, declined to comment. Representative Jerrold Nadler, a New York Democrat, issued a statement on Wednesday expressing "deep concern" about the jurisdictional switch. "I am deeply concerned that today, for what appears to be the first time ever, a Fisa reform bill has been sent first to the House intelligence committee. The House judiciary committee must assert

its critically important role with regard to Fisa reform efforts so as to ensure that our constitutional liberties are properly protected as we seek to promote national security," Nadler said. The suspicion amongst some Hill staffers is that the next step for Rogers and Ruppersberger, after securing approval from the full intelligence committee, will be to attempt to get their bill to the House floor without putting it before the judiciary committee at all. Circumventing the judiciary committee, staffers said, would reflect the difficulties Rogers and Ruppersberger would have winning the panel's backing for their bill. While on the surface the bill has similarities with the USA Freedom Act, the intelligence leaders' proposal would not require a judge's approval before the government compels telecoms or internet providers to turn over customer data, which an aide called a "**fatal flaw**" of the bill for the judiciary panel. Yet the USA Freedom Act itself faces **significant congressional obstacles**. Despite possessing 142 co-sponsors in the House, the bill has been bottled up in a judiciary subcommittee since January. The committee chairman, Republican Bob Goodlatte of Wisconsin, has given it lukewarm support. Its backers say the bill might be modified or even renamed as a way to shore up its prospects. Advocates detect hostility from House leadership of both parties, to say nothing of the NSA and the Obama administration. The administration has, to the committee leadership's frustration, studiously denied expressing any opinion on the bill, which panel members read as opposition. Both camps are claiming the Obama administration for their own. Rogers and Ruppersberger, appearing to cut off the USA Freedom Act at the pass, declared themselves "very, very close" on Tuesday to a deal with the White House over surveillance. Hours later, Senator Ron Wyden of Oregon, a USA Freedom Act supporter, said Obama's forthcoming surveillance reform proposals show "it's very clear now that the administration agrees with us." But in an indication of the USA Freedom Act's uncertain course, Wyden, joined by fellow Senate bulk-surveillance critics Republican Rand Paul of Kentucky and Democrat Mark Udall of Colorado, urged the president to end bulk surveillance unilaterally, without recourse to Congress. All sides are waiting for Obama's specific proposals, which the administration expects to unveil this week. The GOP leadership permitted a floor debate in July on an amendment that would have killed NSA bulk surveillance outright, and which came close to passage. The amendment's architect, Republican Justin Amash of Michigan, backs the USA Freedom Act. But the speaker of the House, John Boehner, came out on Tuesday in favor of Rogers and Ruppersberger's bill, and Boehner has **great influence** over what will come to the House floor.

Solvency- Cyber

New info-sharing initiatives are vital --- Congress is key

Corrin 14 (Amber,- Senior staff writer, Federal Times/C4ISR and Networks at Gannett Government Media Corporation "Alexander: Congress should address cyberthreat information sharing")

Under the program, DHS and other agencies are to share cyber threat intelligence between the government and owners and operators of critical infrastructure. Information-sharing also is a key component of the National Institute of Standards and Technology's cyber framework released in February. In a March 7 appearance at Georgetown University in Washington, Gen. Keith Alexander, director of the National Security Agency and commander of U.S. Cyber Command, once again called for expanded threat-intelligence sharing. "We have a lot of capabilities in our government that we ought to share, analogous to the way we share capabilities to defend our

nation in physical space," Alexander said. . "If a bank is attacked by another nation-state [in cyberspace], our country shouldn't say, 'good luck with that.' Because if the bank were attacked in physical space with missiles, we wouldn't say, 'you have to have your own missile defense system.' In this space we have to figure out how that government-industry partnership will work." Echoing previous appeals for Congress to pass laws to catch up with technology, Alexander said that effective cyber information-sharing **hinges on legislation**. "This is a team sport – not just NSA and Cyber Command. It's DHS, FBI and many others," he said. "The government has to work with industry. We have to have the [policies] and we're working our way through, but **the key thing we need** is legislation."

Info sharing is vital to cybersecurity --- solves largest threats

Dickinson 14 (Russell,- Online Marketing Executive/Ecommerce Analyst at Misco, quoting qualified folk "Cyber Security Forum Highlights Importance Of Information Sharing")

When it comes to cyber security, it is critical for industry sectors or professional communities to share information so that threats can be identified, attacker tactics exposed and attacks mitigated, data security professionals believe. This was one of the points raised by participants at the London SC Congress 2014, Computer Weekly reported. Brian Brackenborough, chief information security officer at Channel 4, used as example the security forum established by the UK media industry. It has grown to become an international information sharing portal and Brackenborough described it as "one of the most successful security strategies" he had ever witnessed. This example should be followed by other industries, he added. That view was supported by Thomson Reuters' information security director Daniel Schatz, who said that information sharing enabled sectors or communities to access actionable intelligence. They can find out about attacker tactics and plan their actions accordingly, Schatz said. The panellists also drew attention to the issue of insider threats. According to Frank Florentine, head of consultancy firm LilyCo, this represents one of the most serious security problems and it's worth remembering that technical experts tend to be overlooked. Another point raised during the discussion was the importance of a focused response. This means business organisations need to concern themselves primarily with threats relevant to their industry vertical and their specific business activity. If cyber security chiefs try to address every potential threat, they will end up defending nothing, as Schatz put it. Last but not least, companies should raise awareness and responsibility among their staff. One way of doing that is by educating them about the security risks they face at home, which will also affect their attitude to corporate cyber security.

Info sharing provisions are key

Clinton '14 (Larry,- President & CEO Internet Security Alliance http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Clinton%20Amended.pdf)

This realization has nothing to do with politics. It is based on the fact that in cyber conflicts, it is the private sector that is most likely to be on the front lines and it is the networks owned and operated by the private sector that provide the critical infrastructure ---both the regulated and non-regulated ones---upon which any modern nation relies. Government does not have all the answers

and often will not be the best judge of how to manage private systems. Altering our strategy to give the federal government final say over how private companies manage their systems will be costly, inefficient and ineffectual. Cyber security must be achieved through a true partnership between the public and private sectors. We specifically endorsed this foundation as embraced in these documents: "The current critical infrastructure protection partnership is sound, the framework is widely accepted, and the construct is one in which both government and industry are heavily invested. The current partnership model has accomplished a great deal. However, an effective and sustainable system of cybersecurity requires a fuller implementation of the voluntary industry--- government partnership originally described in the NIPP. Abandoning the core tenets of the model in favor of a more government--- centric set of mandates would be counterproductive to both our economic and national security. Rather than creating a new mechanism to accommodate the public--- private partnership, government and industry need to continue to develop and enhance the existing one."1 In an attempt to develop our own policy proposals via the established partnership model, we not only notified the White House of our intent to create the industry White Paper, but reached out to them on a regular basis to keep them informed of our progress. We discussed the work at the forums established under the NIPP, such as the IT Sector Coordinating Council meetings, which are regularly attended by DHS staff. When the paper was completed, well prior to release, we sent a full copy to the White House for their review and comment. We requested, and eventually received, a one hour meeting at the White House to brief them on our proposals and requested ongoing interaction so that we could, as partners, come to a common ground on the way forward. Unfortunately, no subsequent meetings were scheduled and we were never briefed on the White House's own---substantially different---approach until it was released and sent to the Congress. III. WE HAVE THE TOOLS TO STOP BASIC ATTACKS The Committee is aware of numerous and varied cyber attacks. Indeed, the Internet is under attack all day, every day, and while we successfully deal with the vast majority of the attacks, we also must aggressively improve our cyber security. However, not all attacks are the same. Cyber attacks can of course be segmented many ways, but given the shortage of time, we can create two broad categories: one of basic attacks (which can be extremely damaging) and one of very sophisticated attacks. Most cyber attacks fall into the first---the basic ---category. Although these attacks can be devastating from many different perspectives, they also are largely preventable. Several different sources, including government, industry and independent evaluators, have concluded that the vast majority of these attacks --- between 80 and 90% --- could be prevented or successfully mitigated simply by adopting best practices and standards that already exist. Among the sources who have reported this finding, we can list the CIA, the NSA, PricewaterhouseCoopers and CIO Magazine. Most recently, a comprehensive study jointly conducted by the U.S. Secret Service and Verizon included a forensic analysis of hundreds of breaches and literally thousands of data points and concluded that 94% of these, otherwise successful, cyber attacks could have been successful managed simply by employing existing standards and practices. IV. WHY ARE WE NOT STOPPING THE BASIC ATTACKS? Cost. Some have suggested that the market has failed to produce the needed technology to address the cyber threat. That is not the case. President Obama's own Cyberspace Policy Review documents the fact that the private sector has developed many adequate mechanisms to address our cyber insecurity, but they are not being deployed: "many technical and network management solutions that would greatly enhance security already exist in the marketplace but are not always used because of cost and complexity."2 This finding is substantiated by multiple independent surveys that also identified cost as the biggest barrier to deploying effective cyber security solutions. This research shows that although many enterprises

are investing heavily in cybersecurity, many others, largely due to the economic downturn, are reducing their cybersecurity investments.3 The fact is that many companies don't see an adequate ROI to cyber investments. This real world problem cannot be permanently wiped away by granting a government department the power to mandate uneconomic expenditures as President Obama himself pointed out last year at the White House: "Due to the interconnected nature of the system this lack of uniform implementation of sound security practices both undermines critical infrastructure and makes using traditional regulatory mechanisms difficult to achieve security."4 Rather, we need to find ways to work within the partnership to encourage firms to make investments that may go beyond their own commercial risk management requirements for security, but might rise to the level of a broader national interest. This principle was recognized in the creation of the original NIPP: "The success of the [public--- private] partnership depends on articulating the mutual benefits to government and private sector partners. While articulating the value proposition to the government typically is clear, it is often more difficult to articulate the direct benefits of participation for the private sector.... In assessing the value proposition for the private sector, there is a clear national security and homeland security interest in ensuring the collective protection of the Nation's [critical infrastructure and key resources] (CI/KR).

Ext – Solves Bulk Collection

Obama proposal solves bulk collection --- most qualified ev

Greenwald 14 (Glenn,- Winner of Electronic Frontier Foundation's Pioneer Award, Glenn Greenwald is a journalist, constitutional lawyer, commentator, and author of three New York Times best-selling books on politics and law Foreign Policy magazine named him one of the top 100 Global Thinkers for 2013 "Obama's New NSA Proposal and Democratic Partisan Hackery")

This proposal **differs in significant respects** from the incredibly vague and cosmetic "reforms" Obama suggested in his highly touted NSA speech in January. Although bereft of details, it was widely assumed that Obama's January proposal would not end the bulk data collection program at all, but rather simply shift it to the telecoms, by simultaneously requiring that the telecoms keep all calling records for 5 years (the amount of time the NSA now keeps those records) and make them available to the government on demand. But under Obama's latest proposal, the telecoms "would not be required to retain the data for any longer than they normally would" (the law currently requires 18 month retention) and "the NSA could obtain specific records only with permission from a judge, using a new kind of court order." As always with Obama, it remains to be seen whether his words will be followed by any real corresponding actions. That he claims to support a bill does not mean he will actually try to have Congress enact it. The details, still unknown, matter a great deal. And even if this did end the domestic bulk collection spying program, it would leave undisturbed the vast bulk of the NSA's collect-it-all system of suspicionless spying. Nonetheless, this clearly constitutes an attempt by Obama to depict himself as trying to end the NSA's domestic bulk surveillance program, which was the first program we reported with Snowden documents. I agree with the ACLU's Jameel Jaffer, who told the New York Times: "We have many questions about the details, but we agree with the administration that the NSA's bulk collection of call records should end." This new proposal would not, as some have tried to suggest, simply shift the program to telecoms. Telecoms – obviously – already have their customers' phone records, and the key to any proposal is that it not expand the length of

time they are required to retain those records (though telecoms only have their specific customers' records, which means that – unlike the current NSA program – no one party would hold a comprehensive data base of all calls). As reported by Savage, Obama's proposal does nothing to change how long telecoms keep these records ("the administration considered and rejected imposing a mandate on phone companies that they hold on to their customers' calling records for a period longer than the 18 months that federal regulations already generally require"). That's why, if enacted as he's proposing it, Obama's plan **could actually end the NSA's bulk collection program**.

Ext – Solves Trust

Reform can rebuild trust with public and allies

FitzGerald '13 (12-18 Ben,- senior fellow and director of the Technology and National Security Program at the Center for a New American Security "NSA revelations: Fallout can serve our nation")

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

Politics NB

Politics is a net benefit- the Freedom Act has a bipartisan consensus that the plan would have to upset to pass

BCN '15 [Business Cloud News, USA Freedom Act passes ending bulk data collection, May 14, 2015, http://www.businesscloudnews.com/2015/05/14/usa-freedom-act-passes-ending-bulk-data-collection/]

"The bill's authors have worked hard to forge a bipartisan consensus, and the approved bill is supported by the Obama Administration, including the intelligence community. The bill now moves to the other side of the Capitol, and we hope that the Senate will use the June 1 expiration of Section 215 and other legal authorities to modernize and reform our surveillance programs, while recognizing the importance of protecting Americans from harm," she added.

Terror DA

NSA bulk collection crucial to counter-terror

McCall '15 [ALEXANDER MCCALL, Indiana Public Media, June 1, 2015, Indiana Politicians Aren't Happy About Patriot Act Expiring, http://indianapublicmedia.org/news/indianas-senators-patriot-act-82874/]

In the debate over the Patriot Act, which, in part, allows the National Security Agency's bulk collection of Americans' phone records and temporarily expired last night, Indiana's Senators are seeking for it to be re-instated.

Three provisions of the Patriot Act lapsed after a midnight deadline Sunday, at least temporarily.

One of those three provisions, Section 215, accommodates the NSA collection of phone records – a collection that has come under fire since former military contractor Edward Snowden revealed the collection program nearly two years ago.

In the days leading up to the provisions' expiration, Sen. Rand Paul, R-Ky., called that bulk collection "illegal."

But in a recent opinion published in Goshen News, Indiana Republican Sen. Dan Coats argued those provisions were "valuable." Coats has been part of the Republican faction pushing for the provisions' renewal.

"I certainly understand concerns about the possibility that this program could be used to breach personal privacy and civil liberties, which are important to all Americans and protected by the Constitution," Coats said in the piece. "But to date, there is no evidence to support accusations of abuse or unlawful spying on American citizens under this program."

Coats has expressed concerns about **implementing a replacement program, adding that he's worried it would make U.S. counter-terrorism efforts less effective**.

"**It puts Americans at risk**," Coats said in an interview with Fox59.

And Sen. Coats' Democratic counterpart, Indiana Sen. Joe Donnelly, says he's on the same page.

"At a time when ISIS is causing so much havoc in the Middle East and at the same time trying to stir up lone wolf attacks right here in our own country, to leave the country without the ability to do surveillance even for a minute is extremely dangerous," Donnelly told Fox59.

Cybersecurity Bad DA

1NC

NSA reform is horse traded for cybersecurity

Bennett '15 [Cory Bennett, 05/31/15, Surveillance reform could tee up cyber bill, The Hill, http://thehill.com/policy/cybersecurity/243498-surveillance-reform-could-tee-up-cyber-bill]

Supporters of cybersecurity reform are hoping a breakthough on the Patriot Act could pave the way for the Senate to consider their prized legislation.

Getting a surveillance reform measure through the Senate might assuage some of the privacy concerns that have held up cybersecurity legislation in the upper chamber, say supporters of the bill.

"**If a deal is reached**, it may in fact improve the chances of cybersecurity legislation coming through," said Jim Penrose, a former head of the National Security Agency's Operational Discovery Center who is now an executive vice president at cybersecurity firm DarkTrace.

The Senate has been trying to move a bill that would shield companies from legal liability when sharing cyber threat data with the government.

Backers of the Cybersecurity Information Sharing Act (CISA) say exchanging more information on hackers will help the public and private sector harden network defenses that have been repeatedly breached over the last year.

A bipartisan group of lawmakers, government officials and most major industry groups are supporting the bill.

But civil liberties groups and several lawmakers believe the offering would simply shuttle more personal data to the National Security agency, **further empowering its surveillance program**.

The House passed two companion pieces of legislation back in April, but CISA has been mired in the upper chamber, lost amid the heated debate over re-writing the Patriot Act and reforming the NSA programs.

"I don't think cyber information-sharing legislation is in any way off the table," said Paul Martino, senior policy counsel at the National Retail Federation, which supports CISA. "I think it is just being held up right now in a traffic jam."

Cyber-bill leads to information overload, makes protections worse

Katznelson 11

Zachary, "Commentary: The Patriot Act, cyber-edition," http://www.kansascity.com/2011/10/23/3214814/commentary-the-patriot-act-cyber.html

> Cybersecurity is the new buzzword in Washington, capturing a wide range of potential responses to internet-related threats both real and imagined. Congress is starting to play a role, considering legislation that purports to make cyberspace more secure. But many of the solutions being offered echo those of the deeply flawed Patriot Act, enacted ten years ago this month. Just as the Patriot Act swept aside long-standing constitutional protections against government prying into private lives, current cybersecurity proposals threaten to expand the government's ability to collect personal information — even when there is no indication that the people targeted have been involved in any

wrongdoing. Over the past decade, we have learned that such policies fail on two fronts: they are largely ineffective and they violate civil liberties. The Patriot Act presumes that if the government could know more of what we do with our daily lives by monitoring our e-mails and phone calls, downloading our financial transactions, and tracking our locations, it could spot patterns and find terrorists. The Fourth Amendment's prohibition against unreasonable searches have mattered little as claims of national security swept such concerns aside. That thinking has led even further, to warrantless wiretapping and government databases so massive that numbers most of us have never heard of (like yottabytes) have to be used to quantify the data taken in. But counter-terrorism officials consistently lament being swamped with reports and analyses while trying to come to grips with the astronomical amount of data our powerful computers struggle to collate and interpret. In seeking the needle of terrorism, we have built the biggest haystack in history. As we turn to the challenge of cybersecurity, we should be careful not to repeat past mistakes. The Obama administration's plan again seeks to gather more and more private information about regular citizens in the hope of spotting patterns. Under this proposal, private companies would be asked to hand over increasing amounts of our personal information. Once more, information gathering would be incredibly broad, sweeping in law-abiding Americans against whom there is not even a hint of alleged wrongdoing. In the name of making us safe, we once again face the prospect of flooding our systems with excessive information, and hamstringing the officials trying to protect us. There cannot be a meaningful debate about these policies until the public knows what the government is already doing with our private information. The government currently collects reams of data from private companies, some demanded, some handed over voluntarily. But we have no idea how much or how often, or maybe even more importantly, what is done with all these private details once they are in government hands. That is all kept secret. As citizens, we deserve to know what the companies holding our financial details, communications records, and other personal information are doing with it — and what the government is requiring of them. For that reason, the ACLU has filed a Freedom of Information Act request to learn more about how corporations and the government already pass our private information back and forth. To date, no government agency has revealed anything in response. Before Washington asks for even more power to sweep in data, surely it should disclose how much it takes in now. We must avoid the Patriot Act's pitfalls: a civil-liberties-defying policy that might actually make things worse.

Private sector solves cyber-terrorism now – legislation is too static and prevents innovation

Lee 11

Amy, "White House Cybersecurity Plan Feared Inadequate By Experts, Could Violate Privacy," http://www.huffingtonpost.com/2011/05/13/white-house-cybersecurity-plan_n_861738.html

Experts fear a new government plan to combat the growing threat of cyberattacks on private computers, the government's own systems and the nation's critical infrastructure could end up implementing outdated controls and introduce possible privacy violations. The plan, unveiled by the White House on Thursday, was lauded by experts for increasing attention on cybersecurity and recommending higher penalties for cybercriminals. But some say the proposal lacks the force, flexibility and specificity necessary to effectively protect the nation's cybersecurity. While most affirm the need to take a tougher stance on cybersecurity measures, many experts worry the proposed legislation will not be adequate to deal with new threats as they emerge given the complicated, ever-shifting nature of cybercrime. While legislation can take years to pass, cybercriminals are often one step ahead of cybersecurity vendors. By the time the government steps in to act to prevent cybercrime, the protections it requires might already be obsolete. "The attackers are two years ahead of the defenders, security vendors, who are two years ahead of market, which is two years ahead of compliance, and legislation is five years behind that," said Josh Corman, the Research Director of the 451 Group's enterprise security practice. "These practices may be even more stale once enacted. It's unlikely the law could ever keep pace, given the glacial pace of legislation." Some experts say that legislation governing security practices could lead to the establishment of industry standards that will quickly be made obsolete by cybercriminals. But by asking companies to protect specific kinds of information using specific kinds of protections, those standards will

continue to remain dominant, even if they are inadequate to protect against the present state of cyber threats. "You've already failed before you've begun," said Corman. "It's hard enough simply for vendors to keep pace." Others are worried by the proposal's lack of specificity regarding how security protections will be implemented and say the plan would allow contractors to fleece those trying to stay protected. "This is being pushed through as something we have to do, but where's the plan behind it? Where's what we're going to be implementing?" said Kurt Roemer, Citrix Systems' chief security strategist. "A call to audit -- without a detailed audit plan -- is a license to print money for contractors." Security experts were puzzled by the prominent inclusion of intrusion prevention systems, or IPS, as protections for federal executive branch civilian computers. IPS is an outdated security protection, Corman said, adding that the technology only stops previously known kinds of breaches. Last year, 89 percent of the attacks were of a kind that IPSs cannot prevent, according to Corman. "An IPS would not have protected against Wikileaks, stuxnet or any other targeted unknown threat," added Roemer. "To specifically call out IPS was laughable."

Extinction

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

The conflicts in the Middle East and Afghanistan, to name the most prominent, are taking their toll on human life and limb. However, the escalating cyberconflict among nations is far more dangerous, argues retired general Wesley Clark, who spoke with TechNewsWorld in an exclusive interview. That cyberconflict will take a far greater toll on the world, contends Clark, who last led the NATO forces to end the ethnic cleansing in Albania. There is a pressing need for new institutions to cope with the ongoing conflict, in his view. Clark is a member of the boards of several organizations. He has a degree in philosophy, politics and economics from Oxford University and a master's degree in military science from the U.S. Army's Command and General Staff College. Background: In November 2008, the Center for Strategic and International Studies, a Washington-based bipartisan think tank, presented recommendations on national security to the then-incoming Obama administration. These called for an overhaul of the existing national cybersecurity organization. Since then, the state of national cybersecurity has appeared chaotic. In August, White House cybersecurity adviser Melissa Hathaway resigned for reasons that echoed the departure in 2004 of Amit Yoran, who then held essentially the same post. In an exclusive interview earlier this year, Yoran told TechNewsWorld that national cybersecurity was still a mess. TechNewsWorld: Security experts warn that nations are preparing for a new cyberwar. Is our government doing enough to protect our national cyber-infrastructure? Or is it in the process of protecting the cyber-infrastructure? Gen. Wesley K. Clark: I think we're in the process of trying to get it protected, but unlike conventional security considerations, where one can easily see an attack and take the appropriate response, the cyberstruggle is a daily, ongoing affair. It's a matter of thousands of probes a day, in and out, against systems that belong to obvious targets like the United States Department of Defense; not-so-obvious targets like banks and energy companies; and individual consumers or taxpayers. It's ongoing, it's undeclared, it's often unreported, and it's very much an ongoing concern at all levels -- business, commerce and individual privacy. TechNewsWorld: The national security infrastructure has repeatedly been reported to be sorely lacking. Is the government moving fast enough? Does it need to do more? Clark: It does need to do more. It's in the process of doing more, and there's a tremendous amount of public and private sector effort going into cybersecurity right now. Whether it's going to be

adequate or not is not the issue. There are many approaches to this problem that are mainly based on software, but software is vulnerable. When you open up to communicate with the Web, when you bring in data and programs from another source, when you bring in applications -- all that entails huge risks. It's dealing with those risks and trying to gain the rewards of doing so that make it such a difficult proposition. Online banking was a novelty 20 years ago. Now, everything happens on the Internet. People pay their bills, they do business, they do their work with customers. People don't fax documents any more if they don't have to -- they do webinars and briefings. All of this exposes the opportunity for mischief. You don't know the source of the mischief. You don't know whether it's individuals trying to solve a difficult technical challenge on their own or if they're connected to governments, or if they're cells attached to governments -- and it's very difficult to pin down ... incoming probes to a source. TechNewsWorld: While it's generally agreed that the next war may be a cyberwar, much of our infrastructure is either hooked up to the Internet or in the process of being hooked up to the Internet. Electricity companies, for example, are agitating for the use of smart meters. That being the case, and with hackers increasing the frequency and sophistication of their attacks, does the increasing pace of hooking everything up to the Internet pose a real security threat? Clark: We're going into completely digitized medical records, which could lead to a huge invasion of privacy. It could also lead to things like blackmail and is physically dangerous because people can tamper with records of vital signs, or can alter prescriptions. There's no telling just what could be done. Companies could lose their supply chain management, lose their accounting records, lose their customer lists. Trying to rebuild this on paper when we've all been interconnected on the Internet will cause years of economic decline. We are, as a civilization, quite vulnerable to disruption, and this security problem doesn't just affect one nation but the whole global economic infrastructure. You can't conceive of the threats from the point of view of a traditional war. Cyber-efforts are ongoing today; we're in a cyber-struggle today. We don't know who the adversaries are in many cases, but we know what the stakes are: continued economic vitality and, ultimately, global civilization.

2NC Internal Link

Major spillover from NSA reform to cybersecurity

Bennett '15 [Cory Bennett, 05/31/15, Surveillance reform could tee up cyber bill, The Hill, http://thehill.com/policy/cybersecurity/243498-surveillance-reform-could-tee-up-cyber-bill]

"**If something can pass on surveillance does that mean it helps in terms of getting enough votes to pass information sharing? Yes, I think so**," Martino said.

In addition to ending the NSA's bulk collection of telephone metadata, USA Freedom would institute more accountability mechanisms. It would institute a panel to advise the Foreign Intelligence Surveillance Court, which oversees intelligence agencies, on cases that may infringe on people's privacy or civil liberties. The bill would also boost public reporting about the NSA's spying programs.

Penrose believes senators who are worried CISA would embolden the NSA "may in fact take some piece of mind" from these privacy oversight provisions.

But the vitriolic debate that has caused the Senate to go down to the wire on the Patriot Act could also extend to the upcoming CISA discussion.

"**It is inevitable that there will be spillover from this debate into the cyber debate, despite the fact that many of them had hoped to keep it separate**," Krayem said. "And if the cyber info sharing bill is the next one, then that debate could be much stickier."

2NC Link T/C

Cybersecurity backdoors bulk data collection- turns the case

Bennett '15 [Cory Bennett, 05/31/15, Surveillance reform could tee up cyber bill, The Hill, http://thehill.com/policy/cybersecurity/243498-surveillance-reform-could-tee-up-cyber-bill]

And no Patriot Act reform will truly mitigate all the privacy concerns floating around CISA.

"CISA could actually result in the kind of bulk surveillance activity that USA Freedom is intended to stop," said Gabe Rottman, legislative counsel and policy advisor for the American Civil Liberties Union, which opposes CISA. "Once information flows from the private sector to the government, the military and intelligence community could store and mine it for purposes that go far beyond 'cybersecurity.'"

2NC Information Overload Link

CISA causes major information overloads and collapses cybersecurity

Castillo '15 [Andrea Castillo, The Hill, May 7, 2015, Cybersecurity bill more likely to promote information overload than prevent cyberattacks, http://thehill.com/blogs/congress-blog/homeland-security/241242-cybersecurity-bill-more-likely-to-promote-information]

A growing number of information security and hacking incidents emphasize the importance of improving U.S. cybersecurity practices. But many computer security experts are concerned that the Cybersecurity Information Sharing Act of 2015 (CISA) is unlikely to meaningfully prevent cyberattacks as supporters claim. Rather, it will provide another avenue for federal offices to extract private data without addressing our root cybersecurity vulnerabilities.

The main premise of CISA is that cyber breaches can be prevented by encouraging private companies to share cyber threat data with the government. CISA would extend legal immunity to private entities that share sensitive information about security vulnerabilities—often containing personally identifiable information (PII) about users and customers—with federal offices like the Department of Justice (DOJ), Department of Homeland Security (DHS) and Director of National Intelligence (DNI).

This concerns privacy advocates who point out that such data collection could serve as an alternative surveillance tool for the NSA. Section 5(A) of CISA authorizes federal agencies to "disclose, retain, and use" shared data for many purposes beyond promoting cybersecurity, like investigating terrorism, the sexual exploitation of children, violent felonies, fraud, identity theft, and trade secret violation. In other words, CISA would allow federal agencies to use data obtained under the auspices of "cybersecurity protection" in entirely unrelated criminal investigations—**potentially indefinitely**. Indeed,CISA is currently stalled in the Senate in deference to debate over the NSA's controversial bulk collection programs.

But the Senate cool-down should not let us forget that CISA does not just threaten civil liberties, it could actually undermine cybersecurity. Information security experts point out that existing information sharing measures run by private companies like IBM and Dell SecureWorks rarely prevent attacks like CISA advocates promise. One survey of information security professionals finds that 87 percent of responders did not believe information sharing measures such as CISA will significantly reduce privacy breaches. The federal government already operates at least 20 information sharing offices collaborating on cybersecurity with the private sector, as Eli Dourado and I found in our new analysis through the Mercatus Center at George Mason University.

These numerous federal information-sharing initiatives have not stemmed the tidal wave of government cyberattacks. Another Mercatus Center analysis Dourado and I conducted finds that the number of reported federal information security failures has increased by an astounding 1,012 percent—from 5,502 in FY 2006 to 61,214 in FY 2013. Almost 40 percent of these involved the PII of federal employees and civilians. CISA could therefore have the unintended consequence of creating a juicy and unprepared target for one-stop hacking.

The Office of Management and Budget reports that many of the federal agencies that would be given large data management responsibilities through CISA, like the DOJ and DHS, reported thousands of such breaches in FY 2014. These agencies' own information security systems are unlikely to become miraculously impervious to external hacking upon CISA's passing. In fact, the massive amounts of new data to manage could further overwhelm currently suboptimal practices.

The federal government's information security failures indicate a technocratic mindset that falsely equates the complexity of bureaucracy with the strength of a solution. In reality, **the government's brittle and redundant internal cybersecurity policies actively contribute to their security challenges**. The Government Accountability Office (GAO) has reported for years that **such overlapping and unclear responsibility in federal cybersecurity policy limits the offices' ultimate effectiveness**. A 2015 GAO investigation concludes that without significant change "the nation's most critical federal and private sector infrastructure systems will remain at increased risk of attack from adversaries."

The federal government must get its own house in order before such comprehensive information sharing measures like CISA could be even technically feasible. But **CISA would be a failure even if managed by the most well-managed government systems because it seeks to impose a technocratic structure on a dynamic system**.

Information overload prevents effective preparation

Spira 10

Jonathan, "The Christmas Day Terrorism Plot: How Information Overload Prevailed and Counterterrorism Knowledge Sharing Failed," http://www.basexblog.com/2010/01/04/the-christmas-day-terrorism-plot-how-information-overload-prevailed-and-counterterrorism-knowledge-sharing-failed/

> The tools to manage information on a massive scale do indeed exist and it is clear that the U.S. government is either not deploying the right ones or not using them correctly. The National Counterterrorism Center, created in 2004 following recommendations of the 9/11 Commission, has a mission to break "the older mold of national government organizations" and serve as a center for joint operational planning and joint intelligence. In other words, various intelligence agencies were ordered to put aside decades-long

rivalries and share what they know and whom they suspect. Unfortunately, while this sounds good in theory, in practice this mission may not yet be close to be being fully carried out. In addition to the fact that old habits die hard (such as a disdain for inter-agency information sharing), it appears that the folks at the NCTC failed to grasp basic tenets of knowledge sharing, namely that search, in order to be effective, needs to be federated and contextual, that is to say it needs to simultaneously search multiple data stores and present results in a coherent manner. Discrete searches in separate databases will yield far different results compared to a federated search that spans across multiple databases. All reports indicate that intelligence agencies were still looking at discrete pieces of information from separate and distinct databases plus the agencies themselves were not sharing all that they knew. In this case, much was known about Umar Farouk Abdulmutallab, the Nigerian man accused of trying to blow up Northwest Flight 253. In May, Britain put him on a watch list and refused to renew his visa. In August, the National Security Agency overheard Al Qaeda leaders in Yemen discussing a plot involving a Nigerian man. In November, the accused's father warned the American Embassy (and a CIA official) in Abuja that his son was a potential threat. As a result, the son was put on a watch list that flagged him for future investigation. He bought his plane ticket to Detroit with cash and boarded the flight with no luggage. Yet, almost unbelievably, no one saw a pattern emerge here. Shouldn't a system somewhere have put the pieces of this puzzle together and spit out "Nigerian, Abdulmutallab, Yemen, visa, plot, cash ticket purchase, no luggage = DANGER!"? Information Overload is partially to blame as well. Given the vast amount of intelligence that the government receives every day on suspected terrorists and plots, it could very well be that analysts were simply overwhelmed and did not notice the pattern. Rather than being immune from the problem, given the sheer quantity of the information it deals with, the government is more of a poster child for it. Regardless of what comes out of the numerous investigations of the Christmas Day terrorism plot and the information-sharing failures of the various intelligence agencies, one thing was abundantly clear by Boxing Day: the Federal Government needs to greatly improve its ability to leverage the intelligence it gathers and connect the dots.

2NC Innovation Link

Heavy-handed government security preventions tanks private sector innovation – that solves security more effectively

CDT 10

Center for Democracy and Technology, Cybersecurity Policy Should Protect Privacy, Innovation, http://www.cdt.org/blogs/greg-nojeim/cybersecurity-policy-should-protect-privacy-innovation

In comments filed yesterday, CDT asked the Department of Commerce to take a careful, nuanced approach to cybersecurity, to favor market-based approaches over government mandates, and to ensure that its efforts are not so heavy-handed as to stifle innovation or slow the development of necessary cybersecurity measures. CDT also urged the Department to take a leading role in implementing the National Strategy for Trusted Identities in Cyberspace, now being developed by the White House. We alerted the Commerce Department to our concern about NSTIC's current focus on the use of government credentials for private transactions: A pervasive government-run online authentication scheme is incompatible with fundamental American values, CDT's comments said. CDT asked the Department to distinguish between various private systems and elements of the Internet as it formulates its cybersecurity policy. We pointed out that policy toward private systems should have a light touch and should seek to preserve the characteristics of the Internet that make it such a success – its open, decentralized and user-controlled nature. Policy toward government systems can be more prescriptive, the comments said. We also cautioned that cybersecurity measures should not compromise President Obama's promise that the government's pursuit of cybersecurity will not include government monitoring of private sector networks or Internet traffic. The comments urge the Department to resist calls to create a cybersecurity information sharing regime that would involve sharing of Internet communications traffic that would compromise the promise of privacy that underlies the laws governing electronic surveillance.

2NC Turns Democracy Adv

Turn – *liberal democracy* – cyber-bill collapses it

Burghardt 10

Tom, “Obama's National Cybersecurity Initiative: Privacy and Civil liberties are Damned,” http://www.globalresearch.ca/index.php?context=va&aid=17993

As long time readers of Antifascist Calling are well aware, while hacking, online thievery and sociopathic behavior by criminals is a troubling by-product of the "information superhighway," state officials and shadowy security corporations have framed the debate in terms of yet another in a series of endless "wars." Mike McConnell, a former NSA Director, Bush regime Director of National Intelligence and currently an executive vice president with the spooky Booz Allen Hamilton corporation (a post he held for a decade before signing-on for the "War on Terror") penned an alarmist screed for The Washington Post February 28. McConnell, whose firm stands to reap billions of dollars in taxpayer largesse under CNCI, claimed that "The United States is fighting a cyber-war today, and we are losing." Drawing a spurious and half-baked (though self-serving) parallel between the Cold World nuclear stand-off with the former Soviet Union and today's cybercriminals, McConnell declared that a "credible" cyber-deterrent analogous to the doctrine of Mutually-Assured Destruction (MAD) would serve the United States "well." Ever the Cold warrior, McConnell avers that the U.S. needs to "develop an early-warning system to monitor cyberspace, identify intrusions and locate the source of attacks with a trail of evidence that can support diplomatic, military and legal options." "More specifically," McConnell writes, "we need to reengineer the Internet to make attribution, geolocation, intelligence analysis and impact assessment--who did it, from where, why and what was the result--more manageable." In other words, the secret state's role in monitoring each and every electronic communication, email, text message, web search, phone conversation or financial transaction must be subject to a pervasive and all-encompassing surveillance by securocrats or we won't be "safe." Indeed, as McConnell and his shadowy firm are well aware since they helped develop them, "the technologies are already available from public and private sources and can be further developed if we have the will to build them into our systems and to work with our allies and trading partners so they will do the same." Reckless advocacy such as this is the kiss of death for any notion of privacy, let alone the constitutional right to dissent. As Wiredinvestigative journalist Ryan Singel wrote last week, "The biggest threat to the open internet is not Chinese government hackers or greedy anti-net-neutrality ISPs, it's Michael McConnell, the former director of national intelligence." Why? Singel insists, "McConnell's not dangerous because he knows anything about SQL injection hacks, but because he knows about social engineering." And during his stint as DNI, "scared President Bush with visions of e-doom, prompting the president to sign a comprehensive secret order that unleashed tens of billions of dollars into the military's black budget so they could start making firewalls and building malware into military equipment." Self-serving rhetoric by the likes of McConnell about an alleged "cyber-armageddon" are not only absurd but the height of corporatist venality. As investigative journalist Tim Shorrock revealed in his essential book Spies for Hire and for CorpWatch, Booz Allen Hamilton, a wholly-owned subsidiary of the shadowy private equity firm, The Carlyle Group, "is involved in virtually every aspect of the modern intelligence enterprise, from advising top officials on how to integrate the 16 agencies within the Intelligence Community (IC), to detailed analysis of signals intelligence, imagery and other critical collections technologies." Clocking-in at No. 10 on Washington Technology's "Top 100" list of Federal Prime Contractors, Booz Allen pulled down some $2,779,421,015 in contracts in 2009. According to Shorrock, "BAH is one of the NSA's most important contractors, and owes its strategic role there in part to Mike McConnell, who was Bush's director of national intelligence." During an earlier stretch with BAH, "McConnell and Booz Allen were involved in some of the Bush administration's most sensitive intelligence operations, including the infamous Total Information Awareness (TIA) program run by former Navy Admiral John Poindexter of Iran-Contra fame." In his Washington Post op-ed, McConnell wrote that "we must hammer out a consensus on how to best harness the capabilities of the National Security Agency," and that the "challenge" is to shape "an effective partnership with the private sector so information can move quickly back and forth from public to private--and classified to unclassified--to protect the nation's critical infrastructure." Super spook McConnell claims this will be accomplished by handing "key private-sector leaders (from the transportation, utility and financial arenas) access to information on emerging threats so they can take countermeasures." However, the "private" portion of the "public-private" surveillance "partnership" must have a quid pro quo so that private sector sharing of privileged, highly personal, network information with the secret state doesn't invite "lawsuits from shareholders and others." In other words, privacy and civil liberties be damned! As Ryan Singel points out, "the contractor he works for has massive, secret contracts with the NSA" and McConnell now proposes that NSA "take the lead in guarding all government and private networks." But McConnell, and Booz Allen's advocacy goes far further than simple advocacy in developing a defensive cyber strategy. Indeed, BAH, and a host of other giant defense and security firms such as Lockheed Martin, are actively developing offensive cyber weapons for the Pentagon. According to Washington Technology, Lockheed Martin will continue to work with the Defense Advanced Research Project Agency (DARPA) in that Pentagon agency's development of a National Cyber Range under CNCI. That program is suspected of being part of Pentagon research to develop and field-test offensive cyber weapons. According to DARPA, "the NCR will provide a revolutionary, safe, fully automated and instrumented environment for U.S. cybersecurity research organizations to evaluate leap-ahead research, accelerate technology transition,

and enable a place for experimentation of iterative and new research directions." "Now the problem with developing cyberweapons--say a virus, or a massive botnet for denial-of-service attacks," Singel writes, "is that you need to know where to point them." "That's why," the Wired journalist avers, "McConnell and others want to change the internet. The military needs targets." Add to the mix a Senate bill that would hand the president "emergency" powers over the Internet and a clear pattern of where things are headed begins to emerge. With giant ISP's such as Google already partnering-up with the NSA and other secret state agencies, the question is how long will it be before an American version of China's Golden Shield enfolds the heimat within its oppressive tentacles? Described by privacy advocates as a massive, ubiquitous spying architecture, the aim of the Golden Shield is to integrate a gigantic online data base with an all-encompassing surveillance network, one that incorporates speech and face recognition, closed-circuit television, smart cards, credit records, and Internet surveillance technologies. And considering that the Empire has reportedly stood-up a giant data base of dissidents called "Main Core," whose roots lie in programs begun during the Reagan administration, assurances by the Obama administration that Americans' privacy rights will be protected as CNCI is rolled-out ring hollow. According to exposés by investigative journalists Christopher Ketchum and Tim Shorrock, writing respectively in Radar Magazine and Salon, Main Core is a meta data base that contains personal and financial data on millions of U.S. citizens believed to be threats to national security. The data, which comes from the NSA, FBI, CIA, and other secret state sources, is collected and stored with neither warrants nor court orders. The name is derived from the fact that it contains "copies of the 'main core' or essence of each item of intelligence information on Americans produced by the FBI and the other agencies of the U.S. intelligence community," according toSalon. While the total cost of CNCI is classified, rest assured it will be the American people who foot the bill for the destruction of our democratic rights.

Internet Freedom Bad

1NC CCP Collapse Mod

Xi is increasing Internet censorship now – he's intensified his efforts in order to strengthen party unity and control

Feeney 12 (Caitlain, Claremont McKenna, CMC Thesis, "China's Censored Leap forward: The Communist Party's Battle with Internet Censorship in the Digital Age")

Media and information controls have long been an essential dimension of the CCP's authoritarian system, and the apparatus for censoring and monitoring internet communications increased dramatically during the decade of the Hu Jintao-led Politburo Standing Committee. Nevertheless, since the change in leadership in November 2012, the dedication of top leaders to reasserting party dominance over an information landscape whose control was perceived to be slipping away has contributed to a more sophisticated, strategic, and in many ways, effective effort compared to the pre-existing apparatus.¶ In particular, after intellectuals and members of civil society urged the CCP to adhere to China's constitution and a rare strike by journalists at a major newspaper sparked broader calls to reduce censorship, the authorities responded with campaigns to **intensify** ideological controls. These efforts and their impact contributed to China's slight decline on Freedom House's recently released Freedom of the Press 2014 index.[1]

The plan causes a collapse of the CCP – internet freedom in China is a MASSIVE threat to regime stability

- Evidence cites: Isaac Mao, Chinese venture capitalist and blogger who has been threatened by the regime for internet freedom violations

Tech In Asia 12 ("What Would China Be Like If the Internet Wasn't Censored")

Everyone I spoke with agreed that whatever other effects it might have on society, a free internet would force a greater degree of honesty and transparency from both the government and Chinese companies. As Jeremy Goldkorn put it: An open Internet would place the government and companies under a **great deal of scrutiny** which would lead to more openness and make corruption more difficult, but would also lead to political battles and competition between companies playing out in a nasty and vicious way online. Could that transparency (and that public ugliness) bring an end to the one-party rule of the CCP? Isaac Mao thinks so. He didn't want to speculate on a specific timeline, but he said that **"the CCP is the natural enemy of freedom"** and that eventually only one of those two things can survive. Sinocism founder Bill Bishop was not so sure. "They [the CCP] have survived plenty of challenges," he said, and as long as they continue to deliver an increasing quality of life for Chinese citizens, they might be able to survive a free internet, too. "But," he added, "if the transparency and accountability that an uncensored Internet provides are anathema to the Party then probably not. [...] **Ideological work is one of the key pillars for the Party** going back to its founding, and a free for all Internet may corrode that pillar even faster than the current managed one."

CCP collapse causes global nuclear war and extinction

Yee and Storey '02 [Professor of Politics and International Relations at Hong Kong Baptist University and Lecturer in Defence Studies at Deakin University, "The China Threat: Perceptions, Myths and Reality," p. 5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialization and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario – nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.12 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

Taiwan Impact

Threats to the CCP will cause a lashout against Taiwan to boost domestic support

Martin 2007 (Peter B Martin, "America's Nuclear Military Dilemma with China", American Thinker, August 20, http://www.americanthinker.com/2007/08/americas_nuclear_military_dile.html

A year from now China will be on its benevolent best conduct, two years from now that could all change. There is little to fear from China until the Olympics are over; what follows may be a different story altogether. Just as Ancient Greeks would recess their wars during the Olympic Games, China will keep the peace leading up to and during the games. But nationalism has not been entirely sidelined, as it is an essential device to preserve communist rule. China's leadership has an inherent fear of losing power; this perpetual dread is what drives their political and strategic decisions. And Taiwan is the principal catalyst to preserving the Beijing government. Should the political system feel threatened, nationalism would come into play and Taiwan would be the scapegoat.

That draws in the United States and causes nuclear conflict -

Straits Times 2000 ("No one gains in war over Taiwan", June 25, Pg 40)

THE high-intensity scenario postulates a cross-strait war escalating into a full-scale war between the US and China. If Washington were to conclude that splitting China would better serve its national interests, then a full-scale war becomes unavoidable. Conflict on such a scale would embroil other countries far and near and -horror of horrors -raise the possibility of a nuclear war. Beijing has already told the US and Japan privately that it considers any country providing bases and logistics support to any US forces attacking China as belligerent parties open to its retaliation. In the region, this means South Korea, Japan, the Philippines and, to a lesser extent, Singapore. If China were to retaliate, east Asia will be set on fire. And the conflagration may not end there as opportunistic powers elsewhere may try to overturn the existing world order. With the US distracted, Russia may seek to redefine Europe's political landscape. The balance of power in the Middle East may be similarly upset by the likes of Iraq. In south Asia, hostilities between India and Pakistan, each armed with its own nuclear arsenal, could enter a new and dangerous phase.

Will a full-scale Sino-US war lead to a nuclear war? According to General Matthew Ridgeway, commander of the US Eighth Army which fought against the Chinese in the Korean War, the US had at the time thought of using nuclear weapons against China to save the US from military defeat. In his book The Korean War, a personal account of the military and political aspects of the conflict and its implications on future US foreign policy, Gen Ridgeway said that US was confronted with two choices in Korea -truce or a broadened war, which could have led to the use of nuclear weapons. If the US had to resort to nuclear weaponry to defeat China long before the latter acquired a similar capability, there is little hope of winning a war against China 50 years later, short of using nuclear weapons. The US estimates that China possesses about 20 nuclear warheads that can destroy major American cities. Beijing also seems prepared to go for the nuclear option. A Chinese military officer disclosed recently that Beijing was considering a review of its "non first use" principle regarding nuclear weapons. Major-General Pan Zhangqiang, president of the military-funded Institute for Strategic Studies, told a gathering at the Woodrow Wilson International Centre for Scholars in Washington that although the government still abided by that principle, there were strong pressures from the military to drop it. He said military leaders considered the use of nuclear weapons mandatory if the country risked dismemberment as a result of foreign intervention. Gen Ridgeway said that should that come to pass, we would see the destruction of civilisation. There would be no victors in such a war. While the prospect of a nuclear Armaggedon over Taiwan might seem inconceivable, it cannot be ruled out entirely, for China puts sovereignty above everything else.

2NC Censorship Up

Censorship is increasing –

A. Social media crackdowns -

Council on Foreign Relations 14 (Beina Xu, September 25th 14, "Media Censorship in China")

The Xi administration, in power since March 2013, has further tightened the reins on journalists. A new July 2014 directive on journalist press passes bars reporters from releasing information from interviews or press conferences on social media without permission of their employer media organizations. The government also said it would not grant press passes to those who failed to sign the secrecy agreement.¶ Publicizing the CPD guidelines also invites punishment, as they may be classified as "state secrets." Such was the case of Shi Tao, a journalist who served eight years in jail for detailing, in a Yahoo! email, the CPD's instructions for how to report the fifteenth anniversary of Tiananmen Square. Pottinger adds that on top of such national restrictions, local officials also release their own directives. Some of these have restricted information at the cost of public health, as in early 2014, when China's national poultry association requested provincial governments to stop reporting individual cases of H7N9 bird flu infections, fearing damage to profits.

B. He is ramping up control because he perceives it to be essential to regime survival

Lloyd 13 (October, 2013, John, Reuters Columnist, "Colum: China's Great Firewall Grows Ever Higher")

Not only have the boldest spirits among China's journalists been squelched, but the Internet has, too. Bill Clinton once argued that trying to control the Internet was "like nailing jello to the wall," but in China it's being controlled nonetheless. Reportedly up to 2 million Internet monitors scan the estimated 700 million Chinese Web users (which is more than half the population), while an even greater army of "50-centers" put out positive messages about society, government and the Party for which they are paid 50 cents. The artist Ai Weiwei managed to persuade one of them to

speak to him last year: the 50-center told the artist that every day, an email from the government's Internet publicity office gives "instructions on which direction to guide the netizens' thoughts, to blur their focus, or to fan their enthusiasm for certain ideas."¶ On the micro blog site Weibo - developed by the Sina online media corporation after the Chinese authorities barred Twitter from the country, now with 500 million users' accounts - the more outspoken commentators have been warned to cool it. In one case, Charles Xue, a Chinese-American venture capitalist with 12 million followers on Weibo, was arrested in August, and charged with having sex with a prostitute: whatever the truth of the charge, Mr. Xue's public apology was not for a sin of the flesh but for - as he said in his confession - "irresponsibility in spreading information online (in)…a negative mood…freedom of speech cannot override the law." An authoritative account for the Reuters Institute by the Beijing-based reporter Bei Jiao concluded that "control over Weibo is intensifying, limiting freedom of speech. Journalists are increasingly cautious posting anything significant after learning the lessons of their own or others' mistakes."¶ One observer, Xiao Qiang of the University of California at Berkeley, told the New York Times that "we're only seeing the beginning of this campaign…(the authorities) will be much harsher, and the targets will be the more influential people in the Chinese public sphere."¶ Most observers credit the crackdown to Xi Jinping, the new Communist Party leader and president: though Chinese top level politics remain opaque, informed commentators believe that he and his closest colleagues have a strong bias toward closer control over all aspects of society.¶ Last week, People's Daily published a long editorial by the chief editor Yang Zhenwu. It was a commentary on Xi Jinping's speech in August, at a conference on propaganda and ideology, underscoring how important the words of the new leader were. The piece repeated, many times, the absolute necessity of having the media "run by politicians" - by which the editor means that all media must be under the direction of the Party, and "consolidate and expand mainstream ideology and public opinion."

2NC IFreedom Link Run

First – Regime stability – opening up of the internet runs counter to the CCP political strategy of controlling messaging – causes a SERIOUS THREAT to the regime

Feeney 12 (Caitlain, Claremont McKenna, CMC Thesis, "China's Censored Leap forward: The Communist Party's Battle with Internet Censorship in the Digital Age")

As a powerful but insecure authoritarian regime,. **the CCP values its survival above ¶ anything else** Because the Internet threatens the Party's monopoly of power, few should be ¶ surprised that the CCP will apply censorship to maintain its control. Confronted with the ¶ possibility of the 500 million Chinese Internet users utilizing the web as an outlet to publicize ¶ opinion or discontent, the Party's Internet censorship and regulation has "evolved into a ¶ comprehensive, multidimensional system that governs Internet infrastructure, commercial and ¶ social use as well as legal domains."25 The relationship between the Internet and democracy ¶ worldwide is clear, and it is commonly understood that the Internet poses a **serious threat** to ¶ communist regimes. There is often the expectation that the introduction of the Internet in ¶ authoritarian countries will lead to the regime's demise, but "Internet use and development in ¶ ¶ 23 Ibid, 118. ¶ 24 Chung, 732. ¶ 25 Liang and Lu, 105. China has so far failed such an expectation, and some even argue that the Internet has become a ¶ new tool for government control."26

Leadership perception is the ONLY thing that matters in terms of evaluating the link – the Chinese leadership PERCIEVES their stability to be tied to the opening of the internet

- Even if they try to kick solvency this still applies because the plan triggers perception of threats to total control of the internet

- Proves our lash-out arguments, if China perceives they are going to face push-back from their public they are more likely to be adventurist in order to spark nationalism.

Cook 5/14/14 (Sarah, Senior Research Analyst for East Asia, Freedom House, The Freedom House, "Stability in China: Lessons from Tiananmen and Implications for the United States")

Emphasis on the leadership role of the party in managing the media. This may be nothing new but its reiteration indicates the limited prospects of the party voluntarily loosening its grip on the media or internet sector. One set of internal party instructions, Document No. 9, specifically warned against "propagating Western news views" and "opposing Party leadership of our media, in an attempt to open breaches for the ideological infiltration of our country."[2] ¶ A heightened sense of insecurity, lack of control, and depleted ability to influence public opinion, even to the point of this being an **existential threat to the regime**. The speeches and documents convey an especially **high level of anxiety** over the spread of ideas about democracy or its components, including an independent judiciary or an unfettered press. In an August speech by Xi to cadres involved in propaganda work, he acknowledges popular dissatisfaction with the government, notes that positive comments about the party are challenged or attacked online, and expresses concern that mainstream media are losing their influence, especially among young people who instead look to the internet for information. Interestingly, one of the other concerns Xi voices is that party cadres themselves are not ideologically "clear." According to reports of the speech published by Xinhua News Agency and an apparently authentic, more complete leaked version, Xi noted that "we are currently engaged in a magnificent struggle that has many new historical characteristics; the challenges and difficulties we face are unprecedented."[3] As a result, according to Xi, "on this battlefield of the internet, whether we can stand up, and gain victory directly relates to our country's ideological security and regime security."[4]¶ Responding with a combination of militant rhetoric and calls for innovation. In outlining what the party should do in response to the sense of weakened influence and control, Xi draws on warlike imagery, describing the situation as an "**ideological battleground**" and in a more disturbing use of terminology reminiscent of Mao-era campaigns calls for a "public opinion struggle (douzheng)."[5] This sometimes anachronistic aggressiveness is combined with calls for innovation, including increasing the attractiveness of state media content, improving expertise on new media to resolve a "skills panic," and developing different approaches for different segments of the population and across various media types.¶ These speeches and attitudes have translated into a number of concrete actions, including an aggressive campaign to reassert dominance over social media. In one striking example, four days after Xi's aggressive August speech to party cadres on the subject, Chinese-American businessman Charles Xue, whose web commentaries on social and political issues were regularly shared with more than 12 million followers on Sina Weibo, was detained for allegedly soliciting prostitutes.[6] He was later shown handcuffed on state television, expressing regret over the way he had used his microblog account to influence public opinion.[7] The appearance reinforced suspicions of a politically motivated prosecution and his case became the first in a series of events signaling a multi-faceted clampdown on social media that my co-panelist David Wertime will describe in more detail.

AT: Impact Turn – Econ

It doesn't the US doesn't do anything to the businesses – they are there to make money not political statements

Mulvenon (James, "Breaching the Great Firewall? Beijing's Internet Censorship Policies and US-China Relations")

The current economic environment in China encourages the Internet's ¶ commercialization, **not its politicization**. As one Internet executive put it, for ¶ Chinese and foreign companies, "the point is to make profits, not political ¶ statements."24¶ Even so, American companies involved in the Chinese information revolution ¶ have come under increasing scrutiny from NGOs and the Congress for their ¶ possible collaborative role in the construction and maintenance of the Great ¶ Firewall. On the software and services side, the controversial practices of Yahoo!, ¶ Google, Microsoft and others have already been documented above. On the ¶ hardware side, companies like Cisco and Nortel have been accused of designing, ¶ selling, installing, and maintaining equipment used to censor the Chinese ¶ Internet. Cisco has even been accused of producing a custom "censorware" box ¶ 22 Guo Liang, The CASS Internet Report 2003: Surveying Internet Usage and Impact in Twelve ¶ Chinese Cities (Beijing: Chinese Academy of Social Sciences Research Center for Social ¶ Development, 2003), 55–57. About 72 percent of Internet users surveyed agreed that the Internet ¶ would provide people in China greater opportunities to express their political views, ¶ approximately 61 percent stated that it would make it easier to criticize government policies, some ¶ 79 percent indicated it would improve people's understanding of political issues, and 72 percent ¶ said they believed the Internet would allow government officials to enhance their understanding of ¶ the public's views. 23 Guo Liang, 2003, p. 55. ¶ 24 Interview with U.S. businessperson, 2001. 808ames Mulvenon 89¶ for China,25 though the company's CEO in February 2006 denied the charge before ¶ the House International Relations Committee. Indeed, much if not all of the ¶ functionality ascribed to a custom censorware box is available from off-the-shelf ¶ Cisco equipment like the PIX Firewall. At the same time, the company has not ¶ explicitly denied that it provides customized training to use Cisco equipment for ¶ censorship purposes, not has it denied that in China, Cisco products are marketed ¶ explicitly for Internet policing. ¶ Even if some U.S. software and hardware companies are complicit in Chinese ¶ Internet censorship, however, there are very few attractive policy options to deal ¶ with the situation, given the domestic Chinese competition faced by U.S. ¶ companies and the inherently dual-use nature of the technologies involved. ¶ Google's introduction of the censored google.cn, for example, was largely a ¶ response to its dramatic loss of market share to a domestic Chinese search engine, ¶ Baidu, which is known as "China's Google." Yahoo! and Microsoft also confront ¶ successful and dynamic domestic competitors in the e-mail and blog market ¶ spaces. Penalizing these companies for their role in censorship would only further ¶ erode their market share and cede more of the market to Chinese companies that ¶ have few if any qualms about collaborating with the Beijing government to control ¶ Internet information. Similarly, penalizing companies like Cisco for selling routers ¶ and firewalls to China would simply drive the authorities to purchase their ¶ equipment from competing vendors in Europe, Japan, Korea, and elsewhere.

US China War Boosters

US-China war escalates- subs increase risk for miscalc

Twomey, co-director of the Center for Contemporary Conflict at the Naval Postgraduate School, 2009 (Christopher P., Arms Control Today, January/February, http://www.armscontrol.org/act/2009_01-02/china_us_dangerous_dynamism)

Further, the dangers of inadvertent escalation have been exacerbated by some of these moves. Chinese SSBN deployment will stress an untested command-and-control system. Similar dangers in the Cold War were mitigated, although not entirely overcome, over a period of decades of development of personnel and technical solutions. China appears to have few such controls in place today. U.S. deployment of highly accurate nuclear warheads is consistent with a first-strike doctrine and seems sized for threats larger than "rogue" nations. These too would undermine stability in an intense crisis.

1NC AT Chinese Soft Power

Chinese soft power fails

Boot 10—Snr Fellow, CFR. Master's in diplomatic history, Yale (Max, The Rising Dragon and "Smart" Diplomacy, 27 September 2010, http://www.commentarymagazine.com/blogs/index.php/category/contentions?author_name=boot)

For years we have been hearing about how effective Chinese diplomacy is — a supposed contrast with a ham-handed, distracted Uncle Sam who was letting the rising dragon take over East Asia while we weren't paying attention. No one should underestimate the rising military challenge posed by China. As Robert Kaplan notes in this Washington Post op-ed: China has the world's second-largest naval service, after only the United States. Rather than purchase warships across the board, it is developing niche capacities in sub-surface warfare and missile technology designed to hit moving targets at sea. At some point, the U.S. Navy is likely to be denied unimpeded access to the waters off East Asia. China's 66 submarines constitute roughly twice as many warships as the entire British Royal Navy. **But a funny thing happened on the way to Chinese hegemony: its rise has alarmed** pretty much **all its neighbors**, ranging from India and Australia to Japan and South Korea. **The latest sign of how Chinese** hectoring and **bullying is souring other countries is the flap over a Chinese fishing trawler** that collided with Japanese coast-guard vessels near a disputed island in the East China Sea that is claimed by both countries. **The Japanese agreed to release the** fishing **captain** on Friday **after** what the New York Times described as "**a furious diplomatic assault from China**," **which included the cut-off of "ministerial-level talks on issues like joint energy development, and curtailed visits to Japan by Chinese tourists**." In the short term, **this** is a victory for China. But for the long term, it **leaves hard feelings behind and convinces** many more Japanese — and other **Asians** — that **China's rise poses a threat to them**. Keep in mind that the Democrats, the current Japanese ruling party, came to power talking about weakening the U.S.-Japanese alliance and strengthening ties with China. If China were better behaved, that might have come to pass. But **Chinese assertiveness is rubbing the Japanese the wrong way. The same is true with South Koreans, Australians, and other key Chinese trade partners.** In those countries, too, **hopes of a closer relationship with China have been frustrated**; instead, they are drawing closer to the U.S. **The** fundamental **problem is that China's** ruling **oligarchy has no Marxist legitimacy left**; **its only claim to power is to foster an aggressive Chinese nationalism. That may do wonders for support on the home front, but it is doomed to antagonize its neighbors** and possibly bring into being a de facto coalition to contain Beijing. That, at least, should be the goal of American policy. Even as we continue to trade with China, we should make sure to curb its geo-political ambitions. That is a goal in which we should be able to get the cooperation of many of China's neighbors — if we actually practice the sort of "smart power" diplomacy that the Obama-ites came into office promising.

Alt causes to Chinese soft power and they won't use it effectively

Walker 11—Senior Director of the Global Business Policy Council, senior scholar at the Woodrow Wilson International Center, and a senior fellow at the World Policy Institute (28 June 2011, Martin, China's soft-power hurdle, http://www.upi.com/Top_News/Analysis/Walker/2011/06/28/Walkers-World-Chinas-soft-power-hurdle/UPI-39731309267283/)

It is far from clear that this will succeed. Three years ago, **at the time of the Beijing Olympics, the goodwill for what China called its "peaceful rise" was widespread**. The World Bank's Robert Zoellick was talking of China as a fellow stakeholder in the global economy, ready to play by the common rules of international commerce and behavior.

> **That was then. This is now.** Surging with self-confidence after navigating the global financial crisis, **China has been throwing its weight around in the South China Sea**, alarming Vietnam, the Philippines, Indonesia and Brunei with its insistence that the whole sea and its mineral wealth belong to China. **Japan has been shaken by** some minor **clashes** over other disputed islands, **and India frets over China's** apparent **plans to** start **build**ing **dams in Tibet** near the source of the Brahmaputra River, which supplies about a third of northern India's water.
>
> **China's** impressive **investments in Africa have become controversial**, **since** so many of **the jobs in construction are going to imported Chinese workers rather than Africans**. China's readiness to do business with unsavory regimes does not go down quite as well in the age of the democratic upsurge of the Arab Spring as it did before.
>
> **China's** latest **clampdown on** various **dissidents and on the Internet** (while also being blamed for many cyberattacks) **has caused alarm.** The United Nations startled Chinese diplomats with its recent press release expressing concerns over China's "recent wave of enforced disappearances."
>
> Doubtless China will learn from this, even as it navigates the preliminary phases of the transition of power to the next generation of leaders, a process that may help explain the latest crackdown on dissidents, human-rights lawyers and other activists. And doubtless China's astute deployment of its massive wealth to investments and various causes overseas will also pay dividends.
>
> But the fact remains that **China may** well **be influencing people**, and it has a highly impressive record of economic management to flaunt, **but it is not** exactly **winning friends.** Joseph **Nye** of Harvard's Kennedy School of Government invented the concept of soft power, as opposed to the hard power of coercion. He **defined it as the ability to get other people and countries to want what you want. China has yet to show it understands the distinction**. It is in Beijing's own interest -- as well as the world's -- that the Chinese leadership learns this quickly.

1NC Returning Anyway

Major returners now, even with censorship- trending towards returns

Liu 2/12 [IRENE JAY LIU, Reuters, Feb 12, 2015, For many of China's biotech brains-in-exile, it's time to come home, http://uk.reuters.com/article/2015/02/12/us-china-health-returnees-idUKKBN0LG2UQ20150212In biotech parks across the Yangtze River Delta, dozens of start-ups are working to develop drugs to treat China's biggest emerging diseases - from diabetes and Hepatitis B to respiratory illnesses and cancer.]

It's early days, but firms like Hua Medicine and Innovent Biologics embody China's hopes for competitive biomedical innovation. And their Chinese-born, Western-educated founders represent the long-awaited return of the nation's brightest life scientists.

From school in the late 1970s and 1980s, when only elite students gained entry intoChina's few biochemistry and molecular biology programs, they left China, graduated and worked their way up to senior positions in the world's top pharmaceutical companies.

For decades, China tried to woo them home, but **they were reluctant to return** to a cloistered, politicized scientific establishment where winning research funds and promotion often depends on who you know. It took the jobs squeeze of the 2008 global financial crisis and fresh government incentives - from state-of-the-art research labs to grants, loans and government venture capital - to prise them from international careers to launch their own start-ups in China.

"To obtain major grants in China, it's an open secret that doing good research is not as important as schmoozing with powerful bureaucrats and their favorite experts," returnees Shi Yigong and Rao Yi wrote in a 2010 editorial in Science.

"If returnees want to do innovation, in academia there is traditional resistance and old practices," said Huiyao Wang at the Center for China & Globalization. "It's the private sector that really attracts people to start new ventures."

China has committed more than $300 billion to science and technology, with biotech one of seven pillar industries in the latest Five-Year Plan. Biomedical research investment jumped more than four-fold in 2007-12, though it is still dwarfed by spending in the United States and Europe, according to a 2014 study in the New England Journal of Medicine.

Returnee firms have listed in New York and London, work closely with 'Big Pharma' and attract investment from U.S. venture capital and multinationals.

"China is coming up, **especially with returnees coming back**. The innovation will come with the people," said Jimmy Zhang, a vice-president at Johnson & Johnson Innovation, which opened a regional center in Shanghai last autumn.

2NC Returning Anyway/Drug Trials Alt Cause

Returners already high and drug trail processing time is a major alt cause

Liu 2/12 [IRENE JAY LIU, Reuters, Feb 12, 2015, For many of China's biotech brains-in-exile, it's time to come home, http://uk.reuters.com/article/2015/02/12/us-china-health-returnees-idUKKBN0LG2UQ20150212In biotech parks across the Yangtze River Delta, dozens of start-ups are working to develop drugs to treat China's biggest emerging diseases - from diabetes and Hepatitis B to respiratory illnesses and cancer.]

"I sometimes ask myself, 'why did I return to China?' I had a very comfortable life in the U.S. and my family's still there," said Michael Yu, Innovent's founder and CEO. "But for lots of Chinese men, there's always something in the heart ... a desire to go back and do something. Biotech has only just started in China so you can have significant impact for a whole industry, for a country."

After completing postdoctoral training at the University of California, San Francisco, Yu spent a decade at U.S. biotech firms before going home in 2006 to co-found Kanghong Biotech, which developed the first homegrown innovative monoclonal antibody to be approved by China's regulators. He later launched Innovent with funding from Chinese and U.S.-based investors, including bioBAY, a government-funded biosciences park in Suzhou. bioBAY spent $140 million on Innovent's 1 million square foot (92,903 square meter) laboratory and production facility.

Another returnee, Li Chen, was chief scientific officer at Roche's China R&D center when, in 2009, he was invited to dinner by U.S.-based ARCH Venture Partners, which encouraged him to go out on his own. "It wasn't something I was expecting," Chen said. He launched Hua Medicine

in 2011 with $50 million from U.S. and Chinese investors. Last month, it closed another $25 million in series-B financing.

The returnee start-ups are leveraging shifts in the global R&D landscape. The financial crisis, expiry of blockbuster drug patents, and mega-mergers have forced major drugs firms to reprioritize, giving newcomers a chance to develop promising compounds already in the pipeline.

Hua is about to launch Phase 2 trials for a novel Type 2 diabetes drug in-licensed from Roche. Zai Laboratory, another returnee firm, has an in-licensing deal with Sanofi to develop two compounds to potentially treat chronic respiratory diseases.

By focusing on diseases that are on the rise in China, these firms can recruit from a vast patient population, speeding up the time it takes to conduct clinical studies.

However, China's regulatory environment, especially for drug approval, "has been quite inefficient and often inadequate," says Jonathan Wang at OrbiMed, a global healthcare-dedicated investment firm. Getting approval for human trials can take over a year, compared to just weeks in the United States.

"Everything else being equal, you'd go where the approval process is easier," said Wang.

EMPTY NESTS AND ANGEL MONEY

For some, coming home is as much a personal as professional issue. Many are 'empty nesters' whose own children are now at college, or they have ageing parents.

"In the U.S., people have family and friends who can support them with 'angel money.' As first-generation immigrants, we don't have that kind of access there," said Zhang at J&J Innovation.

For the returnees, it's just the beginning.

"We've planted the seed for a fast-growing, innovation driven environment in China," said Steve Yang, chief operating officer at WuXi AppTec. "The impact of this group will be better measured in another 10-20 years."

1NC No I/L

Censorship just causes offshoring of Chinese biotech scientists- that just means they relocate to places like the US and continue doing their research

1AC EV Jacobs 1/29/15

Andrew Jacobs is an American correspondent for The New York Times. Jacobs has been based in Beijing, China, since April 2008, NYT, January 29, 2015, “China Further Tightens Grip on the Internet”, http://www.nytimes.com/2015/01/30/world/asia/china-clamps-down-still-harder-on-internet-access.html

On Tuesday, however, a senior official at the Ministry of Industry and Information Technology acknowledged that the government was targeting V.P.N.s to foster the “healthy development” of the nation’s Internet and he announced that such software was essentially illegal in China. “The country needs new methods to tackle new problems,” Wen Ku, a director at the ministry, said at a news conference, according to People’s Daily. In recent weeks, a number of Chinese academics

have gone online to express their frustrations, particularly over their inability to reach Google Scholar, a search engine that provides links to millions of scholarly papers from around the world. "**It's like we're living in the Middle Ages**," Zhang Qian, a naval historian, complained on the microblog service Sina Weibo. In an essay that has been circulating on social media, one **biologist described how the unending scramble to find ways around website blockages was sapping colleagues' energy.** "It's completely ridiculous," he wrote of the wasted hours spent researching and downloading V.P.N. software that works. "**For a nation that professes to** respect science and wants to **promote scientific learning, such barriers suggest little respect for** the **people actually engaged in science.**" It is not just **scientists** who have come to **depend on an unabridged Internet for their work.** Cheng Qingsong, a prominent film critic, complained that it was more and more difficult to stream foreign movies. Andrew Wang, a professor of translation at Beijing Language and Culture University, worried that his students would be unable carry out assignments that require them to watch English-language videos on YouTube, which has long been blocked here. The vast majority of Chinese Internet users, especially those not fluent in English and other foreign languages, have little interest in vaulting the digital firewall. But those who require access to an unfiltered Internet are **the very people Beijing has been counting on to** transform the nation's low-end manufacturing economy into one **fuel**ed by entrepreneurial **innovation.** Illustrating such contradictions, the central government this week announced a series of programs that seek to lure more international business talent by easing visa requirements and through other incentives. "We have to focus on the nation's strategic goals and attract high-level talent to start innovative businesses in China," said Zhang Jianguo, director of the State Administration of Foreign Experts Affairs, who **bemoaned the nation's shortage of scientists** and technology entrepreneurs. Those **goals**, however, **will not be helped by** the **assaults on Internet access**, critics say. Avery Goldstein, a professor of contemporary Chinese studies at the University of Pennsylvania, said the growing online constraints would not only dissuade expatriates from relocating here, but could also compel ambitious young Chinese studying abroad to look elsewhere for jobs. "If they aren't able to get the information to do their jobs, the best of the best might simply **decide not to go home**," he said. For those who have already returned to China and who crave membership in an increasingly globalized world, the prospect of making do with a circumscribed Internet is dispiriting. Coupled with the unrelenting air pollution and the crackdown on political dissent, a number of **Chinese said** the **blocking of V.P.N.s could push them over the edge.** "It's as if we're shutting down half our brains," said Chin-Chin Wu, an artist who spent almost a decade in Paris and who promotes her work online. "**I think that the day that information from the outside world becomes completely inaccessible in China, a lot of people will choose to leave.**"

India fills in to solve- that's probably where the Chinese scientists would go btw since your ev says their firms are basically identical

<can footnote if you want- the entire card says "India and China" every time it mentions China>

1AC EV Frew et. al, 8

[Sarah Frew is a research associate at the McLaughlin-Rotman Centre for Global Health, University Health Network and University of Toronto, in Ontario, Canada. Hannah Kettler is a program officer at the Bill and Melinda Gates Foundation in Seattle, Washington. Peter Singer is a senior scientist at the McLaughlin-Rotman Centre for Global Health, " The Indian And Chinese

Health Biotechnology Industries: Potential Champions Of Global Health?," Health Affairs, 27, no. 4 (2008)]

DISCOVERY, DEVELOPMENT, AND DELIVERY OF "accessible"—that is, affordable, appropriate, and available—**products to treat infectious diseases** such as HIV, malaria, TB, and respiratory and diarrheal diseases, as well as noncommunicable diseases, **are critical to improving the health of the world's poor**. During the past ten years, global health product development has improved dramatically, with new money from government and philanthropic donors, new not-for-profit initiatives, and contributions of expertise from the private sector. But **sustainable solutions are still lacking. One approach** to this problem **is to explore opportunities to use the market potential of the poor**.1 As Bill Gates noted in his June 2007 remarks at Harvard's commencement: We can make market forces work better for the poor if we can develop a more creative capitalism—if we can stretch the reach of market forces so that more people can make a profit, or at least make a living, serving people who are suffering from the worst inequities.2 **Multinational drug companies** and even some larger biotechnology companies **are making important contributions** to global health through product donation and not-for-profit research and development (R&D) initiatives.3 **However, their core business model, which depends primarily on earning blockbuster returns to compensate risky and expensive R&D and commercialization while also meeting investors' expectations for return on investment** (ROI), **is** by definition **poorly suited to addressing the health needs of the world's poorest populations**. Through a better understanding of how pharmaceutical and biotech companies in **India and China are already making a profit serving the poor**, we can gain insight into sustainable business models in global health. Drug manufacturers in **China** and India—specifically, Cipla, Ranbaxy, and Hetero—**are well known in the global health community for manufacturing and selling low-cost antimalarial and antiretroviral therapies in Africa**. Less well known are the products and strategies of the emerging biotech companies in India and China. Our case studies of Indian and **Chinese biotech companies reveal a surprising and important focus on appropriate, affordable products for infectious diseases and other local maladies**.4 For example, we found that **Shanghai United Cell Biotech had developed the only tablet formulation of cholera vaccine**; that the Serum Institute of India (Pune), through its 138-country global distribution network and relationships with United Nations Children's Fund (UNICEF) and Pan American Health Organization (PAHO), provides one of every two doses of vaccine given worldwide; and that Shantha Biotechnics (Hyderabad) developed a cost-effective manufacturing process for hepatitis B vaccine (Shanvac-B), India's first indigenously developed recombinant DNA product, driving down the price from US$15 per dose for the imported product to US$0.50, and is now supplying about 30 percent of UNICEF's global requirement for hepatitis B vaccine. In addition, **recent changes in** intellectual property (IP), industrial**, trade,** and regulatory **policies have caused** Indian and **Chinese** companies **to move farther up the value chain—investing in innovative research** and entering new, wealthier markets. We contend that existing global health financing vehicles could be made more sustainable through greater inclusion of emerging-market companies.

1NC AT Disease Impact

No impact to any diseases

Nick **Beckstead 14**, Research Fellow at the Future of Humanity Institute, citing Peter Doherty, recipient of the 1996 Nobel Prize for Medicine, PhD in Immunology from the University of Edinburgh, Michael F. Tamer Chair of Biomedical Research at St. Jude Children's Research

Hospital, "How much could refuges help us recover from a global catastrophe?" in Futures, published online 18 Nov 2014, Science Direct

That leaves pandemics and cobalt bombs, which will get a longer discussion. While there is little published work on human extinction risk from pandemics, it seems that **it would be extremely challenging for any pandemic**—whether **natural or manmade**—to leave the people in a specially constructed refuge as the **sole survivors**. In his introductory book on pandemics (Doherty, 2013, p. 197) argues:¶ "**No pandemic is likely to wipe out the human species**. Even without the protection provided by modern science, we survived **smallpox, TB, and the plagues of recorded history.** Way back when human numbers were **very small,** infections may have been responsible for some of the **genetic bottlenecks** inferred from evolutionary analysis, but there is **no formal proof** of this."¶ Though some authors have **vividly described worst-case scenarios** for engineered pandemics (e.g. Rees, 2003 and Posner, 2004; and Myhrvold, 2013), it would take a **special effort** to infect people in **highly isolated locations**, especially the 100+ "**largely uncontacted" peoples who prefer to be left alone.** This is not to say it would be impossible. A madman intent on annihilating all human life could use cropduster-style delivery systems, flying over isolated peoples and infecting them. Or perhaps a pandemic could be engineered to be delivered through animal or environmental vectors that would reach all of these people.

1NC AT Poverty→Radicalization

Poverty doesn't lead to radicalization- that's their internal link claim

Heathershaw and Montgomery '14 [John Heathershaw and David W. Montgomery, The Myth of Post-Soviet Muslim Radicalization in the Central Asian Republics, November 2014, http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141111PostSovietRadicalizationHeathershawMontgomery.pdf]

It has become routine to assume that the combination of authoritarianism and poverty cause radicalization. 24 This claim is prevalent throughout ICG reporting. The 2011 report Central Asia: Decay and Decline noted that Central Asian governments 'should realize that tolerating the status quo will bring about the very problems they fear most – further impoverishment and instability, radicalization and latent state collapse'. 25 The 'disappearance of basic services', 26 'poor living conditions, corruption and abuse of office', 27 'economic crisis and rigged elections', 28 'declining¶ demand for labour migrants', 29 'woeful social and economic conditions', 30 and 'a venal and corrupt political elite' are all cited as causes of radicalization in ICG reports. 31 The conflation of political and economic underdevelopment in these reports reflects a deep-seated modernization thinking which is routine in Western secular security discourse and particularly evident in ICG reports. From this very narrow optic, it is underdevelopment which causes both high levels of religiosity and religious violence. Even Central Asia's one emerging economy is subject to this analysis. The report Kazakhstan: Waiting for Change puts it bluntly, While there are many different theories as to who is behind the [terrorist] attacks [that Kazakhstan suffered in 2011] and the kind of ideology and agenda they follow, the expert and political community in Kazakhstan is almost unanimous about the main reason for the existence and spread of religious radicalisation: the grim socio-economic situation in the regions, especially the west. 32 This claim in the myth of post-Soviet radicalization is apparently commonsensical and is consistent with the kind of political analysis offered by many journalists and policy commentators. It is particularly powerful because it is widely shared between the elites of Western states, regional powers and Central Asian republics (all of whom have experienced long-term and large-scale secular modernization themselves). Non-governmental voices in the least repressive parts of

Central Asia are quick to make similar claims. For example, the Kyrgyz analyst Kanybek Osmaniliev refutes the claim that recent acts of political violence in Kyrgyzstan could be considered 'religious terrorism' but speculates about the increased influence of Hizb ut-Tahrir (HT) in the country as a reaction to the authoritarian nature of the government. 33 Such an analysis is consistent with the international secularist security discourse about Islam in Central Asia. Once again, however, **there is little or no evidence to support this claim**. There are no reliable data on the magnitude of support across the region for banned transnational groups – violent or nonviolent – that hold extremist political views. However, such groups clearly have some support in Kazakhstan (by far the wealthiest Central Asian republic) and in Kyrgyzstan (one of the poorest). These are also the two 'most democratic' according to respected indices. Yet Turkmenistan, with the most authoritarian government in the region, has not seen acts of violent extremism. Uzbekistan is also highly authoritarian but has successfully suppressed and/or ejected most of the groups that have emerged on its territory. In Tajikistan, violent extremist organizations (VEOs) that were minor players during the civil war declined following its conclusion in the late 1990s. 34 The Tajik experience suggests that there is an obvious relationship between political instability and the manifestation of violent extremism, including, though by no means primarily, Islamic extremism. But this is to make a statement that borders on tautology. Where there is conflict, Islam – as a¶ major social force – will find itself drawn into that mix as one of several sources of contention and conciliation. 35 All this is not to diminish the importance of poverty, authoritarian government and attendant political instability in the region's plight. It is merely to say that there is no evidence to support the idea that radicalization is more likely to occur in authoritarian states and among poor populations. Furthermore there is growing evidence suggesting that a small number of individuals and small groups are drawn to violent extremism from within democratic and prosperous Western societies. However, scholars of radicalization are able to offer few convincing and valid explanations for why (and where) this radicalization takes place.

Econ/Trade Impact Turns

*1NC---Growth Causes War

Growth causes war

Trainer 2 Senior Lecturer of School of Social Work @ University of New South Wales (Ted, If You Want Affluence, Prepare for War, Democracy & Nature, Vol. 8, No. 2, EBSCO)

If this limits-to-growth analysis is at all valid, the implications for the problem of global peace and conflict and security are clear and savage. If we all remain determined to increase our living standards, our level of production and consumption, in a world where resources are already scarce, where only a few have affluent living standards but another 8 billion will be wanting them too, and which we, the rich, are determined to get richer without any limit, then nothing is more guaranteed than that there will be increasing levels of conflict and violence. To put it another way, if we insist on remaining affluent we will need to remain heavily armed. Increased conflict in at least the following categories can be expected. First, the present conflict over resources between the rich elites and the poor majority in the Third World must increase, for example, as 'development' under globalisation takes more land, water and forests into export markets. Second, there are conflicts between the Third World and the rich world, the major recent examples being the war between the US and Iraq over control of oil. Iraq invaded Kuwait and the US intervened, accompanied by much high-sounding rhetoric (having found nothing unacceptable about Israel's invasions of Lebanon or the Indonesian invasion of East Timor). As has often been noted, had Kuwait been one of the world's leading exporters of broccoli, rather than oil, it is doubtful whether the US would have been so eager to come to its defence. At the time of writing, the US is at war in Central Asia over 'terrorism'. Few would doubt that a 'collateral' outcome will be the establishment of regimes that will give the West access to the oil wealth of Central Asia. Following are some references to the connection many have recognised between rich world affluence and conflict. General M.D. Taylor, US Army retired argued '... US military priorities just be shifted towards insuring a steady flow of resources from the Third World'. Taylor referred to '... fierce competition among industrial powers for the same raw materials markets sought by the United States' and '... growing hostility displayed by have-not nations towards their affluent counterparts'.62 'Struggles are taking place, or are in the offing, between rich and poor nations over their share of the world product; within the industrial world over their share of industrial resources and markets'.63 'That more than half of the people on this planet are poorly nourished while a small percentage live in historically unparalleled luxury is a sure recipe for continued and even escalating international conflict.'64 The oil embargo placed on the US by OPEC in the early 1970s prompted the US to make it clear that it was prepared to go to war in order to secure supplies. 'President Carter last week issued a clear warning that any attempt to gain control of the Persian Gulf would lead to war.' It would '... be regarded as an assault on the vital interests of the United States'.65 'The US is ready to take military action if Russia threatens vital American interests in the Persian Gulf, the US Secretary of Defence, Mr Brown, said yesterday.'66 Klare's recent book Resource Wars discusses this theme in detail, stressing the coming significance of water as a source of international conflict. 'Global demand for many key materials is growing at an unsustainable rate. ... the incidence of conflict over vital materials is sure to grow. ... The wars of the future will largely be fought over the possession and control of vital economic goods. ... resource wars will become, in the years ahead, the most distinctive feature of the global security environment.'67 Much of the rich world's participation in the conflicts taking place throughout the world is driven by the determination to back a faction that will then look favourably on Western interests. In a report entitled, 'The rich prize that is Shaba', Breeze begins, 'Increasing rivalry over a share-out between France and Belgium of the mineral riches of Shaba Province lies behind the joint Franco– Belgian paratroop airlift to Zaire. ... These mineral riches make the province a valuable prize and help explain the West's extended diplomatic courtship ...'68 Then there is potential conflict between the rich nations who are after all the ones most dependent on securing large quantities of resources. 'The resource and energy intensive modes of production employed in nearly all industries necessitate continuing armed coercion and competition to secure raw materials.'69 'Struggles are taking place, or are in the offing, between rich and poor nations over their share of the world product, within the industrial world over their share of industrial resources and markets ...'70 Growth, competition, expansion ... and war Finally, at the most abstract level, the struggle for greater wealth and power is central in the literature on the causes of war. '... warfare appears as a normal and periodic form of competition within the capitalist world economy. ... world wars regularly occur during a period of economic expansion. '71 'War is an inevitable result of the struggle between economies for expansion.'72 Choucri and North say their most important finding is that domestic growth is a strong

determinant of national expansion and that this results in competition between nations and war.73 The First and Second World Wars can be seen as being largely about imperial grabbing. Germany, Italy and Japan sought to expand their territory and resource access. Britain already held much of the world within its empire ... which it had previously fought 72 wars to take! 'Finite resources in a world of expanding populations and increasing per capita demands create a situation ripe for international violence.'74 Ashley focuses on the significance of the quest for economic growth. 'War is mainly explicable in terms of differential growth in a world of scarce and unevenly distributed resources ... expansion is a prime source of conflict. So long as the dynamics of differential growth remain unmanaged, it is probable that these long term processes will sooner or later carry major powers into war.'75 Security The point being made can be put in terms of security. One way to seek security is to develop greater capacity to repel attack. In the case of nations this means large expenditure of money, resources and effort on military preparedness. However there is a much better strategy; i.e. to live in ways that do not oblige you to take more than your fair share and therefore that do not give anyone any motive to attack you. Tut! This is not possible unless there is global economic justice. If a few insist on levels of affluence, industrialisation and economic growth that are totally impossible for all to achieve, and which could not be possible if they were taking only their fair share of global resources, then they must remain heavily armed and their security will require readiness to use their arms to defend their unjust privileges. In other words, if we want affluence we must prepare for war. If we insist on continuing to take most of the oil and other resources while many suffer intense deprivation because they cannot get access to them then we must be prepared to maintain the aircraft carriers and rapid deployment forces, and the despotic regimes, without which we cannot secure the oil fields and plantations. Global peace is not possible without global justice, and that is not possible unless rich countries move to 'The Simpler Way'.

Extinction

Chase-Dunn 96 Distinguished Professor of Sociology and Director of the Institute for Research on World-Systems at the University of (Christopher, Conflict Among Core States: World-System Cycles and Trends, 23 January 1996, http://wsarch.ucr.edu/archive/papers/c-d&hall/warprop.htm)

Note-figure omitted

Late in the K-wave upswing (i.e. in the 2020s), the world-system schema predicts a window of vulnerability to another round of world war. This is when world wars have occurred in the past. Intensified rivalry and competition for raw materials and markets will coincide with a multipolar distribution of military power among core states. The world-system model does not predict who the next hegemon will be. Rather it designates that there will be structural forces in motion that will favor the construction of a new hierarchy. Historical particularities and the unique features of the era will shape the outcome and select the winners and losers. If it were possible for the current system to survive the holocaust of another war among core states, the outcome of the war would be the main arbiter of hegemonic succession. While the hegemonic sequence has been a messy method of selecting global "leadership" in the past, the settlement of hegemonic rivalry by force in the future will be a disaster that our species may not survive. It is my concern about this possible disaster that motivates this effort to understand how the hegemonic sequence has occurred in the past and the factors affecting hegemonic rivalry in the next decades. What are the cyclical processes and secular trends that may affect the probability of future world wars? The world-system model is presented in Figure 1. This model depicts the variables that I contend will be the main influences on the probability of war among core states. The four variables that raise the probability of core war are the Kondratieff cycle, hegemonic decline, population pressure (and resource scarcity) and global inequality. The four variables that reduce the probability of core war are the destructiveness of weaponry, international economic interdependency, international political integration and disarmament. The probability of war may be high without a war occurring, of course. Joshua Goldstein's (1988) study of war severity (battle deaths per year) in wars among the "great powers" demonstrated the existence of a fifty-year cycle of core wars. Goldstein's study shows how this "war wave" tracks rather closely with the Kondratieff long economic cycle over the past 500 years of world-system history. It is the future of this war cycle that I am trying to predict. Factors that Increase the Likelihood of War Among Core States The proposed model divides variables into those that are alleged to increase the probability of war among core states and those that decrease that probability. There are

four of each. Kondratieff waves The first variable that has a positive effect on the probability of war among core powers is the Kondratieff wave -- a forty to sixty year cycle of economic growth and stagnation. Goldstein (1988) provides evidence that the most destructive core wars tend to occur late in a Kondratieff A-phase (upswing). Earlier research by Thompson and Zuk (1982) also supports the conclusion that core wars are more likely to begin near the end of an upswing. Boswell and Sweat's (1991) analysis also supports the Goldstein thesis. But several other world-system theorists have argued that core wars occur primarily during K-wave B-phases. This disagreement over timing is related to a disagreement over causation. According to Goldstein states are war machines that always have a desire to utilize military force, but wars are costly and so statesmen tend to refrain from going to war when state revenues are low. On the other hand, statesmen are more likely to engage in warfare when state revenues are high (because the states can then afford the high costs of war). Boswell and Sweat call this the "resource theory of war."

2NC---Growth Causes War

Prefer our models ---only historical analysis --- k-wave means growth causes extinction

Chase-Dunn and Podobnik 99 [Director of the Institute for Research on World-Systems, Assistant Professor in the Department of Sociol006Fgy and Anthropology at Lewis and Clark College Professor in the Department of Sociology and Anthropology at Lewis and Clark College Christopher and Bruce, *The Future of Global Conflict*, ed. Bornschier and Chase-Dunn, pg 43]

While the onset of a period of hegemonic rivalry is in itself disturbing, the picture becomes even grimmer when the influence of long-term economic cycles is taken into account. As an **extensive body of research** documents (see especially Van Duijn, 1983), the 50 to 60 year business cycle known as the Kondratieff wave (K-wave) has been in synchronous operation on an international scale for at least the last two centuries. Utilizing data gathering by Levy (1983) on war severity, Goldstein (1988) demonstrates that there is a corresponding 50 to 60 year cycle in the number of battle deaths per year for the period 1495-1975. Beyond merely showing that the K-wave and the war cycle are linked in a systematic fashion, Goldstein's research suggests that severe core wars are **much more likely to occur** late **in the upswing** phase of the K-wave. This finding is interpreted as showing that, while states always desire to go to war, they can afford to do so only when **economic growth** is providing them with sufficient resources. Modelski and Thompson (1996) present a more complex interpretation of the systemic relationship between economic and war cycles, but it closely resembles Goldstein's hypothesis. In their analysis, a first economic upswing generates the economic resources required by an ascending core state to make a bid for hegemony; a second period of economic growth follows a period of global war and the establishment of a new period of hegemony. Here, again, specific economic upswings are associated with an increased likelihood of the outbreak of core war. It is **widely accepted** that the current K-wave, which entered a downturn around 1967-73, is probably now in the process of beginning a new upturn which will reach its apex around 2025. It is also widely accepted that by this period US hegemony, already unraveling, will have been definitively eroded. This convergence of a plateauing economic cycle with a period of political multicentricity within the core should, if history truly does repeat itself, result in the outbreak of full-scale warfare between the declining hegemon and the ascending core powers. Although both Goldstein (1991) and Modelski and Thompson (1996) assert that such a global war can (somehow) be avoided, other theorists consider that the possibility of such a core war is sufficiently high that **serious steps should be taken to ensure that** such **collective suicide does not occur.**

1NC---Growth Causes Warming

Short-term collapse of the global economy is the only way to avoid catastrophic warming---delay locks in catastrophic emissions---*extinction*

David **Holmgren 13**, founder of Holmgren Design Services, an environmental design and consulting firm, inventor of the Permaculture system for regenerative agriculture, 2013, "Crash on Demand: Welcome to the Brown Tech Future," Simplicity Institute report, http://simplicityinstitute.org/wp-content/uploads/2011/04/CrashOnDemandSimplicityInstitute.pdf

Many climate policy professionals and climate activists are now reassessing whether there is anything more they can do to help prevent the global catastrophe that climate change appears to be. The passing of the symbolic 400ppm CO2 level certainly has seen some prominent activists getting close to a change of strategy. As the Transition Town movement founder and

permaculture activist Rob Hopkins says, the shift in the mainstream policy circles from mitigation to adaptation and defence is underway (i.e. giving up).13

While political deadlock remains the most obvious obstacle, I believe at least some of that deadlock stems from widespread doubt about whether greenhouse gas emissions can be radically reduced without economic contraction and/or substantial wealth redistribution. Substantial redistribution of wealth is not generally taken seriously perhaps because it could only come about through some sort of global revolution that would itself lead to global economic collapse. On the other hand, massive economic contraction seems like it might happen all by itself, without necessarily leading to greater equity.

The predominant focus in the "climate professional and activist community" on policies, plans and projects for transition to renewable energy and efficiency has yet to show evidence of absolute reductions in greenhouse gas emissions that do not depend on rising greenhouse gas emissions in other parts of the global economy. For example, the contribution of renewable technology installation to reduced GGE in some European countries appears to be balanced by increased GGE in China and India (where much of the renewable technologies are manufactured).

The Jevons' paradox14 suggests than any gains in efficiency or tapping of new sources of energy will simply expand total consumption rather than reduce consumption of resources (and therefore GGE).

Richard Eckersley in his article 'Deficit Deeper Than Economy' identifies the improbability of ever decoupling economic growth from resource depletion and green house gas emissions. He states "Australia's material footprint, the total amount of primary resources required to service domestic consumption (excludes exports and includes imports) was 35 tonnes per person in 2008, the highest among the 186 countries studied. Every 10 per cent increase in gross domestic product increases the average national material footprint by 6 per cent. By 2050, a global population of 9 billion people would require an estimated 270 billion tonnes of natural resources to fuel the level of consumption of OECD countries, compared with the 70 billion tonnes consumed in 2010."15

Time seems to be running out for any serious planned reductions in GGE[Greenhouse Gas Emissions] adequate to prevent dangerous climate change without considering a powerdown of the growth economy. The ideas of degrowth16 are starting to get an airing, mostly in Europe, but the chances of these ideas being adopted and successfully implemented would require a long slow political evolution if not revolution. We don't have time for the first, and the second almost certainly crashes the financial system, which in turn crashes the global economy.

IS TIME RUNNING OUT FOR BOTTOM UP ALTERNATIVES?

Like many others, I have argued that the bottom up creation of household and community economies, already proliferating in the shadow of the global economy, can create and sustain different ways of well-being that can compensate, at least partly, for the inevitable contraction in centralised fossil fuelled economies (now well and truly failing to sustain the social contract in countries such as Greece and Egypt). When the official Soviet Union economy collapsed in the early '90s it was the informal economy that cushioned the social impact. Permaculture strategies focus on the provision of basic needs at the household and community level to increase resilience, reduce ecological footprint and allow much of the discretionary economy to shrink. In principle, a major contraction in energy consumption is possible because a large proportion of that

consumption is for non-essential uses by more than a billion middle class people. That contraction has the potential to switch off greenhouse gas emissions but this has not been seriously discussed or debated by those currently working very hard to get global action for rapid transition by planned and co-ordinated processes. Of course it is more complicated because the provision of fundamental needs, such as water, food etc., are part of the same highly integrated system that meets discretionary wants.

However, the time available to create, refine and rapidly spread successful models of these bottom-up solutions is running out, in the same way that the time for government policy and corporate capitalism to work their magic in converting the energy base of growth from fossil to renewable sources.17 If the climate clock is really so close to midnight what else could be done?

Economic crash as hell or salvation

For many decades I have felt that a collapse of the global economic systems might save humanity and many of our fellow species great suffering by happening sooner rather than later because the stakes keep rising and scale of the impacts are always worse by being postponed. An important influence in my thinking on the chances of such a collapse was the public speech given by President Ronald Reagan following the 1987 stock market crash. He said "there won't be an economic collapse, so long as people don't believe there will be an economic collapse" or words to that effect. I remember at the time thinking; fancy the most powerful person on the planet admitting that faith (of the populous) is the only thing that holds the financial system together.

Two decades on I remember thinking that a second great depression might be the best outcome we could hope for. The pain and suffering that has happened since 2007 (from the more limited "great recession") is more a result of the ability of the existing power structures to maintain control and enforce harsh circumstances by handing the empty bag to the public, than any fundamental lack of resources to provide all with basic needs. Is the commitment to perpetual growth in wealth for the richest the only way that everyone else can hope to get their needs met? The economy is simply not structured to provide all with their basic needs. That growth economy is certainly coming to an end; but will it slowly grind to a halt or collapse more rapidly?

The fact that the market price for carbon emissions has fallen so low in Europe is a direct result of stagnating growth. Past economic recessions and more serious economic collapses, such as faced by the Soviet Union after its oil production peaked in the late 1980's,18 show how greenhouse gas emissions can and have been reduced, then stabilizing at lower levels once the economy stabilized without any planned intention to do so. The large number of oil exporters that have more recently peaked has provided many case studies to show the correlation with political upheaval, economic contraction and reductions in GGE. Similarly many of the countries that have suffered the greatest economic contraction are also those with the greatest dependence on imported energy, such as Ireland, Greece and Portugal. The so-called Arab Spring, especially in Egypt, followed high food and energy prices driven by collapsed oil revenues and inability to maintain subsidies. The radical changes of government in Egypt have not been able to arrest the further contraction of the economy.

The effects of peak oil and climate change have combined with geopolitical struggles over pipeline routes to all but destroy the Syrian economy and society.19

Slow Contraction or Fast Collapse

The fragility of the global economy has many unprecedented aspects that make some sort of rapid collapse of the global economy more likely. The capacity of central banks to repeat the massive stimulus mechanism in response to the 2008 global financial crisis, has been greatly reduced, while the faith that underpins the global financial system has weakened, to say the least. Systems thinkers such as David Korowicz20 have argued that the inter-connected nature of the global economy, instantaneous communications and financial flows, "just in time" logistics, and extreme degrees of economic and technological specialisation, have increased the chances of a large scale systemic failure, at the same time that they have mitigated (or at least reduced) the impact of more limited localised crises.

Whether novel factors such as information technology, global peak oil and climate change have increased the likelihood of more extreme economic collapse, Foss and Keen have convinced me that the most powerful and fast-acting factor that could radically reduce greenhouse gas emissions is the scale of financial debt and the long-sustained growth of bubble economics stretching back at least to the beginnings of the "Thatcherite/Reaganite revolution" in the early 1980s. From an energetics perspective, the peak of US oil production in 1970, and the resulting global oil crises of 73 and 79, laid the foundations for the gigantic growth in debt that super accelerated the level of consumption, and therefore GGE.

Whatever the causes, all economic bubbles follow a trajectory that includes a rapid contraction, as credit evaporates, followed by a long-sustained contraction, where asset values decline to lower levels than those at the beginning of the bubble. After almost 25 years of asset price deflation in Japan, a house and land parcel of 1.5ha in a not too isolated rural location can be bought for $25,000. A contraction in the systems that supply wants are likely to see simultaneous problems in the provision of basic needs. As Foss explains, in a deflationary contraction, prices of luxuries generally collapse but essentials of food and fuel do not fall much. Most importantly, essentials become unaffordable for many, once credit freezes and job security declines. It goes without saying that deflation rather inflation is the economic devil that governments and central banks most fear and are prepared to do almost anything to avoid.

Giving credence to the evidence for fast global economic collapse may suggest I am moving away from my belief in the more gradual Energy Descent future that I helped articulate. John Michael Greer has been very critical of apocalyptic views of the future in which a collapse sweeps away the current world leaving the chosen few who survive to build the new world. In large measure I agree with his critique but recognise that some might interpret my work as suggesting a permaculture paradise growing from the ashes of this civilisation. To some extent this is a reasonable interpretation, but I see that collapse, as a long drawn-out process rather than resulting from a single event.21

I still believe that energy descent will go on for many decades or even centuries. In Future Scenarios I suggested energy descent driven by climate change and peak oil could occur through a series of crises separating relatively stable states that could persist for decades if not centuries. The collapse of the global financial system might simply be the first of those crises that reorganise the world. The pathways that energy descent could take are enormously varied, but still little discussed, so it is not surprising that discussions about descent scenarios tend to default into ones of total collapse. As the language around energy descent and collapse has become more nuanced, we start to see the distinction between financial, economic, social and civilisational

collapse as potential stages in an energy descent process where the first is fast changing and relatively superficial and the last is slow moving and more fundamental.

In Future Scenarios I suggested the more extreme scenarios of Earth Steward and Lifeboat could follow Green Tech and Brown Tech along the stepwise energy descent pathway. If we are heading into the Brown Tech world of more severe climate change, then as the energy sources that sustain the Brown Tech scenario deplete, and climate chaos increases, future crises and collapse could lead to the Lifeboat Scenario. In this scenario, no matter how fast or extreme the reductions in GGE due to economic collapse, we still end up in the climate cooker, but with only the capacity for very local, household and communitarian organisation.

If the climate crisis is already happening, and as suggested in Future Scenarios, the primary responses to the crisis increase rather than reduce GGE, then it is probably too late for any concerted effort to shift course to the more benign Green Tech energy descent future. Given that most of the world is yet to accept the inevitability of Energy Descent and are still pinning their faith in "Techno Stability" if not "Techno Explosion", the globally cooperative powerdown processes needed to shift the world to Green Tech look unlikely. More fundamental than any political action, the resurgent rural and regional economies, based on a boom for agricultural and forestry commodities, that structurally underpins the Green Tech scenario, will not eventuate if climate change is fast and severe. Climate change will stimulate large investments in agriculture but they are more likely to be energy and resource intensive, controlled climate agriculture (greenhouses), centralised at transport hubs. This type of development simply reinforces the Brown Tech model including the acceleration of GGE.

While it may be too late for the Green Tech Scenario, it still may be possible to avoid more extreme climate change of a long drawn out Brown Tech Scenario before natural forcing factors lock humanity into the climate cooker of 4-6 degrees and resource depletion leads to a collapse of the centralised Brown Tech governance and a rise of local war lords (Lifeboat Scenario).

The novel structural vulnerabilities highlighted by David Korowicz, and the unprecedented extremity of the bubble economics highlighted by Nicole Foss suggest the strong tendencies towards a Brown Tech world could be short lived. Instead, severe global economic and societal collapse could switch off GGE enough to begin reversing climate change; in essence the Earth Steward scenario of recreated bioregional economies based on frugal agrarian resources and abundant salvage from the collapsed global economy and defunct national governance structures.

2NC---Growth Causes Warming

Global economic collapse makes it impossible to finance the resource extraction projects that will lock in warming---makes it impossible to restart the global economy with anything other than drastically reduced emissions

David **Holmgren 13**, founder of Holmgren Design Services, an environmental design and consulting firm, inventor of the Permaculture system for regenerative agriculture, 2013, “Crash

on Demand: Welcome to the Brown Tech Future," Simplicity Institute report, http://simplicityinstitute.org/wp-content/uploads/2011/04/CrashOnDemandSimplicityInstitute.pdf

The evidence that the global financial system is a not-so-slow moving train crash is getting stronger. That investors and the billion or so middle class people who have any savings and discretionary expenditure are losing faith, might be an understatement. It may be that paralysis and inertia is all that is holding the system together.

A collapse in credit could make it very difficult to raise the finance necessary for the ongoing extraction of tar sands, shale gas and other mad resource extraction projects that are accelerating the production of GGE[Greenhouse Gas Emissions]. A deflationary spiral that follows from a credit crisis and collapsing asset (housing, etc.) values could change behaviour to the extent that people stop spending on anything but essentials because of job insecurity and the fact that everything will be cheaper next month.

I believe the chances of global economic collapse (in the next five years) being severe enough to achieve this have to be rated at least 50%. Further I believe many climate activists and policy professionals are shifting to at least privately hoping this might be the case because the chances of a planned powerdown seems to be fading.

If we accept a global financial crash could make it very difficult, if not impossible, to restart the global economy with anything other than drastically reduced emissions, then an argument can be mounted for putting effort into precipitating that crash, the crash of the financial system. Any such plan would of course invite being blamed for causing it when it happens. No one wants to be strung up along with the bankers for causing a global version of Greece, Egypt or many other countries, let alone the horrors of Syria. On the other hand, we have no precedent to indicate how bad conditions might be in currently affluent countries.

The picture I am building is that it is almost inevitable that those who warn of the crisis will get the blame for causing it. So if we are going to be blamed anyway, we could be proactive about it and at least get the advantage for humanity of crisis now, rather than later. For the people of Syria caught in the grip of climate, energy and geopolitical struggle, all this hardly matters because it couldn't get worse for them. In fact conditions in such stricken places could actually improve if global superpower competition is disabled by the collapse of the global finance. Even the average citizen in Greece or Egypt might be hoping to see the remaining affluent countries get a 'taste of their own medicine'. The complexity of global human overshoot, so long predicted, and now unfolding, is far too multifaceted to be captured by any simple story about good, innocence, evil and blame.

Before considering whether this is a good idea or not, I want to consider whether concerted action by limited numbers of activists could bring it about?

Given the current fragilities of global finance, I believe a radical change in the behaviour of a relatively small proportion of the global middle class could precipitate such a crash. For example a 50% reduction of consumption and 50% conversion of assets into building household and local community resilience by say 10% of the population in affluent countries would show up as 5% reduction in demand in a system built on perpetual growth and a 5% reduction in savings capital available for banks to lend. Small fluctuations in the supply-demand balance can have a massive effect on prices. Further, when the system has been growing due to rising debt, arguably for

decades, then the vulnerability to drops in demand can be massive. For example, small drops in demand for new houses and the high fuel costs of commuting for those servicing mortgages, triggered the collapse of the housing bubble in the USA and other countries.

It seems obvious to me that it is easier to convince a minority that they will be better off by disengaging from the system than any efforts to build mass movements demanding impossible outcomes or convincing elites to turn off the system that is currently keeping them in power.

I accept that many people find the idea of assisting economic collapse abhorrent, even if that collapse is becoming more and more likely as a collective outcome of human actions. Daryl Taylor uses the caring metaphor "hospicing and euthanasing" the old/dying system along with "doula-ing and midwifing the new/emerging system. Whatever the metaphors, climate activists who believe we are on the verge of runaway catastrophic climate change that will be far worse than simply stalling the economy, do have options other than shouting louder for mitigation or shifting to adaptation and defence. Rather than simply planning for bad and rocky energy descent delivered initially by economic depression, they could choose to focus their energy on actively trying to destroy faith in the financial system.

1NC---Unsustainable

Economic collapse is 100% inevitable---the only question is whether it happens fast enough to avoid warming

Dr. Samuel **Alexander 14**, lecturer with the Office for Environmental Programs, University of Melbourne, and research fellow, Melbourne Sustainable Society Institute, February 2014, "Post-Growth Economics: A Paradigm Shift in Progress," http://www.sustainable.unimelb.edu.au/files/mssi/Post-Growth%20Economics.pdf

There is one final post-growth perspective deserving of acknowledgement, even if the intricacies cannot be explored. It builds upon the recognition by some ecological economists that there is a close connection between energy use and economic activity (Hall and Klitgaard, 2012). From this view – sometimes called 'biophysical economics' – the unprecedented levels of economic growth experienced since the industrial revolution have been largely due to the available abundance of cheap energy in the forms of coal, gas, and especially oil. Fossil fuels are finite resources, however, and energy analysts since Marion King Hubbert (1956) have known that at some time the production of finite fossil fuels will 'peak' and, after a plateau, eventually enter decline. The concern here is that, while production may plateau, demand is still expected to increase (Hirsch et al, 2010), thereby putting an upward pressure on the price of fossil fuels, even as the 'energy return on investment' declines (Murphy and Hall, 2011). This phenomenon seems to be underway already in relation to oil, with crude oil production entering a plateau around 2005, causing the price of oil to increase from around $25 per barrel, historically, to an average price of $110 since 2011 (IEA, 2013a: 2). In a world that consumes 90 million barrels of oil every day, such sharp price rises have significant economic implications, by sucking discretionary

expenditure and investment away from the rest of the economy. Indeed, some analysts argue that expensive oil is at least part of the reason the global economy, which is so dependent on oil for transport, pesticides, plastics, etc., is showing persistent signs of stagnation and instability (Heinberg, 2011). Furthermore, if expensive oil and other 'limits to growth' are indeed bringing an end to more than two centuries of economic growth, then this is likely to cause havoc with the heavily indebted societies around that world that currently, under a capitalist framework, depend on growth to pay back debts and keep unemployment at bay. At the pessimistic end of the spectrum, some analysts argue that the global financial crisis was merely the first of series of forthcoming crises that are going to increase in magnitude as the growth model fails to deal with, or even acknowledge, energy, resource, and debt limits (Tverberg, 2012). From such perspectives, the world may have an alternative to the growth model imposed upon it sooner rather than later, irrespective of whether the world wants or is ready for such an alternative (see, e.g. Clarke and Lawn, 2010).

The relationship between energy and economics also becomes problematic in the context of climate change mitigation. Currently, fossil fuels make up over 80% of the global energy supply (IEA, 2013b: 6). If nations around the world choose to decarbonise economies in response to climate change (see Wiseman et al, 2013), this may well imply an end to growth, or even significant economic contraction, because there are serious doubts about whether renewable energy will be able to fully replace the energy-dense fossil fuels in a timely or affordable way (see, e.g. Trainer, 2013a, 2013b). This is not an argument against renewable energy, of course; the suggestion is merely that growth-orientated consumer societies could not be sustained if the world rapidly decarbonised to run solely or primarily on renewable sources of energy (Hopkins and Miller, 2013). A transition to 100% renewable energy, therefore, may well imply consuming significantly less energy, and in the highly developed regions of the world, energy descent would probably mean transitioning to some post-growth economic paradigm via a process of planned economic contraction, or degrowth. Kevin Anderson's work is particularly important here (see Anderson, 2013), for he is one of the only climate scientists who recognises (or is outspoken enough to say) that the world's shrinking carbon budget requires degrowth and reduced consumption in high consumption societies. That is not an implication many are prepared to accept, even amongst many or even most participants in the broad environmental movement. Indeed, this blindness – it might even be wilful blindness – is arguably the environmental movement's greatest short-coming.

2NC---Unsustainable

Economic collapse inevitable --- now's better than later

MacKenzie 8 [Debora, Are We Doomed, New Scientist, Vol. 197 Issue 2650, p32-35, 4p, 4 May 2005, EBSCO)

> DOOMSDAY. The end of civilisation. Literature and film abound with tales of plague, famine and wars which ravage the planet, leaving a few survivors scratching out a primitive existence amid the ruins. Every civilisation in history has collapsed, after all. Why should ours be any different? Doomsday scenarios typically feature a knockout blow: a massive asteroid, all-out nuclear war or a catastrophic pandemic. Yet there is another chilling possibility: what if the very nature of civilisation means that ours, like all the others, is destined to collapse sooner or later? A few researchers have been making such claims for years. Disturbingly,

recent insights from fields such as complexity theory suggest that they are right. It appears that once a society develops beyond a certain level of complexity it becomes increasingly fragile. Eventually, it reaches a point at which even a relatively minor disturbance can bring everything crashing down. Some say we have already reached this point, and that it is time to start thinking about how we might manage collapse. Others insist it is not yet too late, and that we can - we must - act now to keep disaster at bay. History is not on our side. Think of Sumeria, of ancient Egypt and of the Maya. In his 2005 best-seller, Jared Diamond of the University of California, Los Angeles, blamed environmental mismanagement for the fall of the Mayan civilisation and others, and warned that we might be heading the same way unless we choose to stop destroying our environmental support systems. Lester Brown of the Earth Policy Institute in Washington DC agrees. He has that governments must pay more attention to vital environmental resources. "It's not about saving the planet. It's about saving civilisation," he says. Others think our problems run deeper. From the moment our ancestors started to settle down and build cities, we have had to find solutions to the problems that success brings. "For the past 10,000 years, problem solving has produced increasing complexity in human societies," says Joseph Tainter, an archaeologist at the University of Utah, Salt Lake City, and author of the 1988 book The Collapse of Complex Societies. If crops fail because rain is patchy, build irrigation canals. When they silt up, organise dredging crews. When the bigger crop yields lead to a bigger population, build more canals. When there are too many for ad hoc repairs, install a management bureaucracy, and tax people to pay for it. When they complain, invent tax inspectors and a system to record the sums paid. That much the Sumerians knew. Diminishing returns There is, however, a price to be paid. Every extra layer of organisation imposes a cost in terms of energy, the common currency of all human efforts, from building canals to educating scribes. And increasing complexity, Tainter realised, produces diminishing returns. The extra food produced by each extra hour of labour - or joule of energy invested per farmed hectare - diminishes as that investment mounts. We see the same thing today in a declining number of patents per dollar invested in research as that research investment mounts. This law of diminishing returns appears everywhere, Tainter says. To keep growing, societies must keep solving problems as they arise. Yet each problem solved means more complexity. Success generates a larger population, more kinds of specialists, more resources to manage, more information to juggle - and, ultimately, less bang for your buck. Eventually, says Tainter, the point is reached when all the energy and resources available to a society are required just to maintain its existing level of complexity. Then when the climate changes or barbarians invade, overstretched institutions break down and civil order collapses. What emerges is a less complex society, which is organised on a smaller scale or has been taken over by another group. Tainter sees diminishing returns as the underlying reason for the collapse of all ancient civilisations, from the early Chinese dynasties to the Greek city state of Mycenae. These civilisations relied on the solar energy that could be harvested from food, fodder and wood, and from wind. When this had been stretched to its limit, things fell apart. Western industrial civilisation has become bigger and more complex than any before it by exploiting new sources of energy, notably coal and oil, but these are limited. There are increasing signs of diminishing returns: the energy required to get is mounting and although global is still increasing, constant innovation is needed to cope with environmental degradation and evolving - the yield boosts per unit of investment in innovation are shrinking. "Since problems are inevitable," Tainter warns, "this process is in part ineluctable." Is Tainter right? An analysis of complex systems has led Yaneer Bar-Yam, head of the New England Complex Systems Institute in Cambridge, Massachusetts, to the same conclusion that Tainter reached from studying history. Social organisations become steadily more complex as they are required to deal both with environmental problems and with challenges from neighbouring societies that are also becoming more complex, Bar-Yam says. This eventually leads to a fundamental shift in the way the society is organised. "To run a hierarchy, managers cannot be less complex than the system they are managing," Bar-Yam says. As complexity increases, societies add ever more layers of management but, ultimately in a hierarchy, one individual has to try and get their head around the whole thing, and this starts to become impossible. At that point, hierarchies give way to networks in which decision-making is distributed. We are at this point. This shift to decentralised networks has led to a widespread belief that modern society is more resilient than the old hierarchical systems. "I don't foresee a collapse in society because of increased complexity," says futurologist and industry consultant Ray Hammond. "Our strength is in our highly distributed decision making." This, he says, makes modern western societies more resilient than those

like the old Soviet Union, in which decision making was centralised. Things are not that simple, says Thomas Homer-Dixon, a political scientist at the University of Toronto, Canada, and author of the 2006 book The Upside of Down. "Initially, increasing connectedness and diversity helps: if one village has a crop failure, it can get food from another village that didn't." As connections increase, though, networked systems become increasingly tightly coupled. This means the impacts of failures can propagate: the more closely those two villages come to depend on each other, the more both will suffer if either has a problem. "Complexity leads to higher vulnerability in some ways," says Bar-Yam. "This is not widely understood." The reason is that as networks become ever tighter, they start to transmit shocks rather than absorb them. "The intricate networks that tightly connect us together - and move people, materials, information, money and energy - amplify and transmit any shock," says Homer-Dixon. "A financial crisis, a terrorist attack or a disease outbreak has almost instant destabilising effects, from one side of the world to the other." For instance, in 2003 large areas of North America and Europe suffered when apparently insignificant nodes of their respective electricity grids failed. And this year China suffered a similar blackout after heavy snow hit power lines. Tightly coupled networks like these create the potential for propagating failure across many critical industries, says Charles Perrow of Yale University, a leading authority on industrial accidents and disasters. Credit crunch Perrow says interconnectedness in the global production system has now reached the point where "a breakdown anywhere increasingly means a breakdown everywhere". This is especially true of the world's financial systems, where the coupling is very tight. "Now we have a debt crisis with the biggest player, the US. The

consequences could be enormous." "A networked society behaves like a multicellular organism," says Bar-Yam, "random damage is like lopping a chunk off a sheep." Whether or not the sheep survives depends on which chunk is lost. And while we are pretty sure which chunks a sheep needs, it isn't clear - it may not even be predictable - which chunks of our densely networked civilisation are critical, until it's too late. "When we do the analysis, almost any part is critical if you lose enough of it," says Bar-Yam. "Now that we can ask questions of such systems in more sophisticated ways, we are discovering that they can be very vulnerable. That means civilisation is very vulnerable." So what can we do? "The key issue is really whether we respond successfully in the face of the new vulnerabilities we have," Bar-Yam says. That means making sure our "global sheep" does not get injured in the first place - something that may be hard to guarantee as the climate shifts and the world's fuel and mineral resources dwindle. Scientists in other fields are also warning that complex systems are prone to collapse. Similar ideas have emerged from the study of natural cycles in ecosystems, based on the work of ecologist Buzz Holling, now at the University of Florida, Gainesville. Some ecosystems become steadily more complex over time: as a patch of new forest grows and matures, specialist species may replace more generalist species, biomass builds up and the trees, beetles and bacteria form an increasingly rigid and ever more tightly coupled system. "It becomes an extremely efficient system for remaining constant in the face of the normal range of conditions," says Homer-Dixon. But unusual conditions - an insect outbreak, fire or drought - can trigger dramatic changes as the impact cascades through the system. The end result may be the collapse of the old ecosystem and its replacement by a newer, simpler one. Globalisation is resulting in the same tight coupling and fine-tuning of our systems to a narrow range of conditions, he says. Redundancy is being systematically eliminated as companies maximise profits. Some products are produced by only one factory worldwide. Financially, it makes sense, as mass production maximises efficiency. Unfortunately, it also minimises resilience. "We need to be more selective about increasing the connectivity and speed of our critical systems," says Homer-Dixon. "Sometimes the costs outweigh the benefits." Is there an alternative? Could we heed these warnings and start carefully climbing back down the complexity ladder? Tainter knows of only one civilisation that managed to decline but not fall. "After the Byzantine empire lost most of its territory to the Arabs, they simplified their entire society. Cities mostly disappeared, literacy and numeracy declined, their economy became less monetised, and they switched from professional army to peasant militia." Pulling off the same trick will be harder for our more advanced society. Nevertheless, Homer-Dixon thinks we should be taking action now. "First, we need to encourage distributed and decentralised production of vital goods like energy and food," he says. "Second, we need to remember that slack isn't always waste. A manufacturing company with a large inventory may lose some money on warehousing, but it can keep running even if its suppliers are temporarily out of action." The electricity industry in the US has already started identifying hubs in the grid with no redundancy available and is putting some back in, Homer-Dixon points out. Governments could encourage other sectors to follow suit. The trouble is that in a world of fierce competition, private companies will always increase efficiency unless governments subsidise inefficiency in the public interest. Homer-Dixon doubts we can stave off collapse completely. He points to what he calls "tectonic" stresses that will shove our rigid, tightly coupled system outside the range of conditions it is becoming ever more finely tuned to. These include population growth, the growing divide between the world's rich and poor, financial instability, weapons proliferation, disappearing forests and fisheries, and climate change. In imposing new complex solutions we will run into the problem of diminishing returns - just as we are running

out of cheap and plentiful energy. "This is the fundamental challenge humankind faces. We need to allow for the healthy breakdown in natural function in our societies in a way that doesn't produce catastrophic collapse, but instead leads to healthy renewal," Homer-Dixon says. This is what happens in forests, which are a patchy mix of old growth and newer areas created by disease or fire. If the ecosystem in one patch collapses, it is recolonised and renewed by younger forest elsewhere. We must allow partial breakdown here and there, followed by renewal, he says, rather than trying so hard to avert breakdown by increasing complexity that any resulting crisis is actually worse. Lester Brown thinks we are fast running out of time. "The world can no longer afford to waste a day. We need a Great Mobilisation, as we had in wartime," he says. "There has been tremendous progress in just the past few years. For the first time, I am starting to see how an alternative economy might emerge. But it's now a race between tipping points - which will come first, a switch to sustainable technology, or collapse?" Tainter is not convinced that even new technology will save civilisation in the long run. "I sometimes think of this as a 'faith-based' approach to the future," he says. Even a society reinvigorated by cheap new energy sources will eventually face the problem of diminishing returns once more. Innovation itself might be subject to diminishing returns, or perhaps absolute limits. Studies of the way by Luis Bettencourt of the Los Alamos National Laboratory, New Mexico, support this idea. His team's work suggests that an ever-faster rate of innovation is required to keep cities growing and prevent stagnation or collapse, and in the long run this cannot be sustainable.

AT: Tech

Tech's not sufficient to make global industrial civilization environmentally sustainable

Dr. Samuel **Alexander 14**, lecturer with the Office for Environmental Programs, University of Melbourne, and research fellow, Melbourne Sustainable Society Institute; and Jonathan Rutherford, Professor of Cultural Studies at the University of Middlesex, 2014, "The Deep Green Alternative: Debating Strategies of Transition," Simplicity Institute, http://simplicityinstitute.org/wp-content/uploads/2011/04/The-Deep-Green-Alternative.pdf

Evidence continues to mount that industrial civilisation, driven by a destructive and insatiable growth imperative, is chronically unsustainable, as well as being grossly unjust. The global economy is in ecological overshoot, currently consuming resources and emitting waste at rates the planet cannot possibly sustain (Global Footprint Network 2013). Peak oil is but the most prominent example of a more general situation of looming resource scarcity (Klare, 2012), with high oil prices having a debilitating effect on the oil-dependent economies which are seemingly dependent on cheap oil to maintain historic rates of growth (Heinberg, 2011). At the same time, great multitudes around the globe live lives of material destitution, representing a vast, marginalised segment of humanity that justifiably seeks to expand its economic capacities in some form (World Bank, 2008). Biodiversity continues to be devastated by deforestation and other forms of habitat destruction (United Nations, 2010), while the global development agenda seems to be aiming to provide an expanding global population with the high-impact material affluence enjoyed by the richest parts of the world (Hamilton, 2003). This is despite evidence crying out that the universalisation of affluence is environmentally unsupportable (Smith and Positano, 2010; Turner, 2012) and not even a reliable path to happiness (Lane, 2001; Alexander, 2012a). Most worrying of all, perhaps, is the increasingly robust body of climate science indicating the magnitude of the global predicament (IPCC, 2013). According to the Climate

Tracker Initiative (2013: 4), the world could exceed its 'carbon budget' in around 18 years, essentially locking us into a future that is at least 2 degrees warmer, and threatening us with 4 degrees or more. It is unclear to what extent civilisation as we know it is compatible with runaway climate change. And still, almost without exception, all nations on the planet - including or especially the richest ones - continue to seek GDP growth without limit, as if the cause of these problems could somehow provide the solution. If once it was hoped that technology and science were going to be able decouple economic activity from ecological impact, such a position is no longer credible (Huesemann and Huesemann, 2011). Technology simply cannot provide any escape from the fact that there are biophysical limits to growth. Despite decades of extraordinary technological advance, which it is was promised would lighten the ecological burden of our economies, global energy and resource consumption continues to grow, exacerbated by a growing population, but which is primarily a function of the growth-orientated values that lie at the heart of global capitalism (Turner, 2012).

Against this admittedly gloomy backdrop lies a heterogeneous tradition of critical theorists and activists promoting what could be called a 'deep green' alternative to the growth-orientated, industrial economy. Ranging from the radical simplicity of Henry Thoreau (1983), to the post-growth economics of the Club of Rome (Meadows et al, 1972; 2004), and developing into contemporary expressions of radical reformism (Latouche, 2009; Heinberg, 2011; Jackson, 2009), eco-socialism (Sarkar, 1999; Smith, 2010), and eco-anarchism (Bookchin, 1989; Holmgren, 2002; Trainer; 2010a), this extremely diverse tradition nevertheless agrees that the nature of the existing system is inherently unsustainable. Tinkering with or softening its margins - that is, any attempt to give capitalism a 'human face' - is not going to come close to addressing the problems we, the human species, are confronted with. What is needed, this tradition variously maintains, is a radically alternative way of living on the Earth - something 'wholly other' to the ways of industrialisation, consumerism, and limitless growth. However idealistic or Utopian their arguments might seem, the basic reasoning is that the nature of any solutions to current problems must honestly confront the magnitude of the overlapping crises, for else one risks serving the destructive forces one ostensibly opposes.

*1NC – Trade Bad

Trade regionalism coming now and solves war, the aff's push for global trade liberalization decks the transition

Brkic 13, Economics Prof at U of Sarajevo (Snježana, 3/25, Regional Trading Arrangements – Stumbling Blocks or Building Blocks in the Process of Global Trade Liberalization?, papers.ssrn.com/sol3/papers.cfm?abstract_id=2239275)

Besides those advocating the optimistic or pessimistic view on regionalism effect on global trade liberalization, some economists, such as Frankel and Wei, hold a neutral position, in a way. Frankel and Wei believe that forms and achievements of international economic integrations can vary and that, for this reason, regionalism can be – depending on circumstances – linked to greater or smaller global trade liberalization. In the years-long period of regional integration development, four periods have been identified during which the integration processes were becoming particularly intensive and which have therefore been named "waves of regionalism". The first wave was taking place during the capitalism development in the second half of the 19th century, in the course of British sovereign domination over the world market. Economic

integrations of the time primarily had the form of bilateral customs unions; however, owing to the comparative openness of international trading system based on the golden standard automatism, this period is called the "era of progressive bilateralism". The next two waves of regionalism occurred in the years following the world wars. Since the disintegration processes caused by the wars usually spawned economic nationalisms and autarchic tendencies, it is not surprising that post-war regionalisms were marked by discriminatory international economic integrations, primarily at the level of so-called negative integration, with expressedly "beggar-thy-neighbor" policies that resulted in considerable trade deviations. This particularly refers to the regionalism momentum after the First World War, which was additionally burdened by the consequences of Big Economic Crisis. The current wave of regionalism started in late 1980s and spread around the world to a far greater extent than any previous one did: it has covered almost all the continents and almost all the countries, even those which have mis to join all earlier regional initiatives, such as the USA, Canada, Japan and China. Integration processes, however, do not show any signs of flagging. Up till now, over 200 RTAs have been registered with GATT/WTO, more than 150 of them being still in force, and most of these valid arrangement have been made in the past ten years. Specific in many ways, this wave was dubbed "new regionalism". The most specific characteristics of new regionalism include: geographic spread of RTAs in terms of encompassing entire continents; greater speed; integration forms success; deepening of integration processes; and, the most important for this theoretical discussion, generally **non-negative impact on outsiders,** world economy as a whole, and the multilateral liberalization process. Some theorists (Gilpin) actually distinguish between the "benign" and "malign" regionalism. On the one hand, regionalism can advance the international economic stability, multilateral liberalization and world peace. On the other, it can have mercantilist features leading to economic well-being degradation and increasing international tensions and conflicts**. Analyses of trends within the contemporary integration processes show that they** mainly **have features of "benign" regionalism**. Reasons for this are numerous. Forces driving the contemporary regionalism development differ from those that used to drive earlier regionalism periods in the 20th century. The present regionalism emerged in the period characterized by the increasing economic inter-dependence between different world economy subjects, countries attempts to resolve trade disputes and multilateral framework of trade relations. As opposed to the 1930s episode, **contemporary regional initiatives represent attempts to make the members' participation in the world economy easier, rather than make them more distant** from it. As opposed to 1950s and 1960s episode, new initiatives are less frequently motivated exclusively by political interests, and are less frequently being used for mercantilist purposes. After the Second World War, more powerful countries kept using the economic integration as a means to strengthen their political influence on their weaker partners and outsiders. The examples include CMEA and European Community arrangements with its members' former colonies. As opposed to this practice, the new regionalism, mostly driven by common economic interests, yielded **less trade diversion** than previous one, **and has also contributed to the prevention of military conflicts of greater proportions**. Various analyses have shown that many regional integrations in earlier periods resulted in trade deviations, particularly those formed between less developed countries and between socialist countries. In recent years, however, the newly formed or revised regional integrations primarily seem to lead to **trade creation**. Contrary to the "beggar thy- neighbor" model of former international economic integrations, the integrations now offer certain advantages to outsiders as well, by stimulating growth and spurring the role of market forces. The analyses of contemporary trends in world economy also speak in favor of the "optimistic" proposition. The structural analysis shows that the world trade is growing and that this growth

results both from the increase in intra-regional and from the increase in extra-regional trade value (Anderson i Snape 1994.)28. Actually, the intraregional trade has been growing faster, both by total value and by its share in world GDP. The extra-regional trade share in GDP was increasing in some regions – in North America, Asia-Pacific and Asian developing countries. However, the question arises as to whether the extra-regional trade would be greater without regional integrations or not? The answer would primarily depend both on the estimate of degree of some countries' trade policy restrictedness in such circumstances, and on factors such as geographic distance, transport communications, political relations among states. One should also take into account certain contemporary integration features – the primarily economic, rather than strategic motivation, and continuous expansion, which mostly includes countries that are significant economic partners. With respect to NAFTA, many believe that the negative effects on outsiders will be negligible, since the USA and Canada have actually been highly integrated economies for a long time already, while the Mexican economy is relatively small. The same view was pointed out by the EU, with respect to its expansion. It particularly refers to the inclusion of the remaining EFTA countries, because this will actually only complete, in institutional terms, the EU strong economic ties with these countries. Most EFTA countries have been part of the European economic area (EEA), i.e. the original EC-EFTA agreement, for a few years already, and conduct some 70% of their total international exchange with the Union countries. EU countries are also the most significant foreign-trade partners of Central and East Europe countries, and the recent joining the Union of several of them is not expected to cause a significant trade diversion. Besides, according to some earlier studies, during the previous wave of regionalism, in the 1967-70 period, the creation of trade in EEC was far greater than trade diversion: trade creation ranged from 13 to 23% of total imports, while trade diversion ranged from 1 to 6%. In Latin America, the new regionalism resulted in the faster growth of intra-regional trade, while the extra-regional exports and imports also continued to grow. Since early 1990s, the value of intra-regional imports registered the average annual growth of 18%. In the same time, the extra-regional exports were also growing, although at a lower rate of 9% average a year; its share in the total Latin America exports at the end of decade amounted to 18% as compared to 12% in 1990. In the 1990-1996 period, the intraregional imports grew by some 18% a year. The extra-regional imports were also growing very fast, reaching the 14% rate. These data reflect a great unbalance in the trade with extra-regional markets, since the imports from countries outside the region grew much faster the exports.30 Since the described trends point to the continued growth of extra-regional imports and exports, they also show that regional integration in Latin America has had the open regionalism character. Besides, the pending establishment of FTAA – Free Trade Area of Americas will gather, in the same group, the so-called "natural" trade partners – countries that have had an extremely extensive mutual exchange for years already, and the outsiders are therefore unlikely to be affected by strengthening of regionalism in this part of the world. **Contemporary research shows that intra-regional trade is growing**, however, same as interdependence between North America and East Asia and between the EU and East Asia. It can also be seen that the biggest and the most powerful countries, i.e. blocs, are extremely dependent on the rest of the world in terms of trade. For the EU, besides the intra-European trade, which is ranked first, foreign trade has the vital importance since it accounts for 10% of European GDP. In early 1990s, EU exchanged 40% of its foreign trade with non-members, 16% out of which with North America and East Asia together. EU therefore must keep in mind the rest of the world as well. The growing EU interest in outsiders is confirmed by establishing "The Euro-Med Partnership", which proclaimed a new form of cooperation between the EU and the countries at its South periphery32. Besides, the past few years witnessed a series of inter-regional agreements between the EU on the one hand, and

certain groups from other regions on the other (MERCOSUR, CARICOM, ASEAN and GCC). In case of North America the ratio between intra-regional and inter-regional trade is 40:60, and in East Asia, it is 45:55. **Any attempt to move towards significantly closed blocs ("fortresses") would require overcoming the significant inter-dependence between major trading blocs**. Besides the analysis of contemporary trends in extra- and intra-regional trade, other research was conducted that was supposed to point to the reasons why the **new regionalism has** mainly **a non-negative impact on outsiders and global liberalization**. The distinctive features of new regionalism were also affected to characteristics of international economic and political environment it sprouted in. In the 1980s, economic nationalisms were not so expressed as in the interventionism years following the Second World War; however, the neo-liberalism represented by GATT activities did not find the "fertile ground" in all parts of the world. Regionalism growth in the circumstances of multilateral system existence is, among other things, **the consequence of distrust in multilateralism**. „The revival of the forces of regionalism stemmed from frustration with the slow pace of multilateral trade liberalization... If the world trade regime could not be moved ahead, then perhaps it was time for deeper liberalization within more limited groups of like-minded nations... Such efforts would at least liberalize some trade... and might even prod the other nations to go along with multilateral liberalization."33 Kennedy's round and Tokyo round of trade negotiations under GATT auspices brought a certain progress in the global trade liberalization. However, the 1980s witnessed significant changes in the world economy that the GATT trade system was not up to. Besides. GATT had not yet managed to cover the entire trade in goods, since there were still exceptions in the trade in agricultural and textile products that particularly affected the USA and developing countries. GATT system of conflict resolutions, and its organizational and administrative mechanism in general also required revision. In this vacuum that was created in promoting trade and investment multilateralism from the point when **GATT inadequacy** became obvious until the start of the Uruguay round and the establishment of World Trade Organization, the wave of regionalism started spreading across the world again. Prodded by the Single European Act and the success of European integration, many countries turned to an alternative solution – establishment of new or expansion and deepening of the existing economic integrations. Even the USA, the multilateralism bastion until then, made a radical turn in their foreign-trade policy and started working on designing a North American integration.

2NC – Multilat Trade is Worse/RTAs Solve War

That outweighs—multilateral trade causes wars with a larger impact

Thoma- Economics Prof, U of Oregon- **'7** Mark, Trade Liberalization and War, July, http://economistsview.typepad.com/economistsview/2007/07/trade-liberaliz.html

Globalisation is by construction an increase in both bilateral and multilateral trade flows. What then was the net effect of increased trade since 1970? We find that it generated an increase in the probability of a bilateral conflict by around 20% for those countries separated by less than 1000kms, the group of countries for which the risk of disputes that can escalate militarily is the highest. The effects are much smaller for countries which are more distant. Contrary to what these results (aggravated by our nationality) may suggest, we are not anti-globalisation activists even though we are aware that some implications of our work could be (mis)used in such a way. The result that bilateral trade is pacifying brings several more optimistic implications on globalisation. First, if we think of a world war as a war between two large groups or coalitions of countries, then globalisation makes such a war less likely because it increases the opportunity cost of such a conflict. Obviously, this conclusion cannot be tested but is a logical implication of our results. From this point of view, our work suggests that globalisation may be at the origin of a change in the nature of conflicts, less global and more local. Second, our results do confirm that increased trade flows created by regional trade agreements (such as the EU) are indeed

pacifying as intended. Given that most military conflicts are local, because they find their origins in border or ethnic disputes, this is not a small achievement. These beneficial political aspects of regional trade agreements are not usually considered by economists who often focus on the economic distortions brought by their discriminatory nature. Given the huge human and economic costs of wars, this political effect of regional trade agreements should not be discounted. This opens interesting questions on how far these regional trade agreements should extend – a topical issue in the case of the EU. The entry of Turkey in the EU would indeed pacify its relations with EU countries (especially Greece and Cyprus), but also increase the probability of a conflict between Turkey and its non-EU neighbours. However, our simulations suggest that in this case, the first effect dominates the second by a large margin. More generally, our results should be interpreted as a word of caution on some political aspects of globalisation. As it proceeds and weakens the economic ties of proximate countries, those with the highest risk of disputes that can escalate into military conflicts, local conflicts may become more prevalent. Even if they may not appear optimal on purely economic grounds, regional and bilateral trade agreements, by strengthening local economic ties, may therefore be a necessary political counterbalance to economic globalisation.

2NC – RTAs Solve Trade/Multilat Impacts

RTAs best solve their impacts

Powell & Low 11 (Stephen Powell --- Professor of International Trade Law @ Florida Law and former chief counsel for Department of Commerce, Trisha Low --- JD from Levin College and Associate Legal Counsel @ Deutsche Bank, "Is the WTO Quietly Fading Away?: The New Regionalism and Global Trade Rules" 2011, 9 Geo. J.L. & Pub. Pol'y 261)

D. RTAs Increase Liberalization

RTAs provide flexibility in terms of their design and content.58 Countries often have a number of non-economic considerations in approaching RTAs such as national security and regional stability.59 RTAs in Latin America and the Caribbean have occurred for various reasons including economic complementarity, geographical proximity, and political affinity.60 They can address issues on a regional level that multilateral agreements cannot, such as migration, energy, transit, water, customs, labor, and standards.61 The specific problems related to each issue differ based upon the country and region. Therefore, it is not feasible for multilateral agreements to encompass each of these issues in a way that is favorable to all countries involved. It would make multilateral agreements far too complicated and cumbersome. RTAs provide a framework for making progress on these issues.62 In addition, many governments are more familiar with the governments of neighboring countries and RTAs provide a forum for promoting liberalization in a manner that is **consistent with their national interests**.63 For example, MERCOSUR was established to decrease tensions between Brazil and Argentina.64 "It also helped avert a coup in Paraguay following reaffirmation by the presidents of the MERCOSUR member countries that democracy was a condition for membership."65 While MERCOSUR was established to become a customs union, it also provides member countries a platform to discuss other issues such as security and drug trafficking.66 Trade liberalization increases competition in domestic markets.67 For some countries it is not politically feasible to open its internal market to trade from all countries.68 Therefore, RTAs provide a stepping stone toward liberalization.69 RTAs condition states for liberalization, while making states more amenable to true multilateral trade.70 RTAs may also encourage countries to liberalize by presenting a non-member country with a "carrot" if it liberalizes.71 Under the "carrot" approach, RTAs can merge and expand to **encompass more economies as a bridge to global trade**.72 RTAs can increase liberalization through new trade

rules in the area of market regulations and investment rules.73 By eliminating internal barriers and creating larger internal markets, **these new trade rules** can raise the return on investments and create an incentive for members and third countries to invest.74 Firms investing in the RTA countries can achieve economies of scale by serving a larger market of potential buyers, decrease their transaction costs, and if services are included, can benefit from more efficient telecommunications, financial, and other services.75 New trade rules may also induce greater efficiency in transactions with the global economy. Investments to reach the local market may include utilizing lower cost production sites within the RTA to serve the wealthier customers.76 For example, one study done in 2004 showed that firms in the businesses of electronics, textiles, and autos moved their production to Mexico to serve the U.S. market.77 Some scholars argue that removal by RTAs of trade barriers among partners can create economies of scope at the individual firm level and economies of scale at the industry level.78 Economies of scope and economies of scale allow for the increased rationalization of production, leading to the efficient use of resources and resulting in a greater volume of global trade.79 This benefits members and non-members, and the benefits which spill over to outsiders may **outweigh the costs of the original trade diversion**.80 Larger markets can increase competition between suppliers and take advantage of differing regional factor prices in order to increase productivity and **cause more rapid growth**.81 Increased competition forces firms to develop more efficient methods of production and can decrease the cost of the product. Firms have an incentive to create goods that are cheaper and more improved than similar goods from similar firms, thereby benefitting the global welfare. This rapid growth attracts intra-bloc and extra-bloc investments.82

Solves trade faster and more efficiently

Leal-Arcas 11 (Rafael, PhD – European University Institute, JSM – Stanford Law, LLM – Columbia Law, M. Phil – London School of Economics, BA/JD – Granada University, Senior Lecturer in International Economic Law & European Union Law and Deputy Director of Graduate Studies @ Queen Mary University of London, "Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism?" Winter 2011, 11 Chi. J. Int'l L. 597)

The development of new technologies has also contributed toward shaping international trade by changing the way business is conducted and the way people interact. The rapid development of technology has generated both new challenges and new opportunities for economic agents worldwide. WTO Director-General Pascal Lamy recently said that "it now costs less to ship a container from Marseille to Shanghai--half way around the world--than to move it from Marseille to Avignon--100 kilometers away. A phone call to Los Angeles [from Europe] is as inexpensive as a phone call next door." n77 What are [*621] then the main economic, political, and technological factors shaping world trade? What is the potential of technological progress and innovation for improving the trading position of the poorest countries? What is the role of the WTO rules-based multilateral system in contributing to the global economic recovery? Might these be reasons why countries engage in RTAs so frequently? n78 There are both economic and political reasons why countries engage in RTAs so frequently. One of the economic reasons for the conclusion of RTAs is that countries are in constant search for larger markets since they feel the pressure of competitive regional liberalization. The negotiations of EPAs n79 between the African, Caribbean and Pacific (ACP) n80 countries and the EU are of particular relevance in this process, not least because of their importance for LDCs. EPAs have been negotiated with ACP regions engaged in a regional economic integration process. EPAs are thus intended to consolidate regional integration initiatives within the ACP. They are also aimed at providing an open, transparent, and predictable framework for goods and services to circulate freely, thus increasing the competitiveness of the ACP and ultimately facilitating the transition toward their full participation in a liberalizing world economy--thereby complementing any initiative taken in the multilateral context. n81 Formal negotiations started in September 2002 and EPAs entered into force on January 1, 2008. Moreover, deeper integration is always much easier at the regional level than it is at the multilateral level. Furthermore, as we know from previous [*622] experience, multilateral negotiations can take a very long time and are very complex, whereas RTAs move much faster. n82 Despite repeated statements of support and of engagement, **WTO Members seem incapable**

of marshalling the policies and political will needed to move the multilateral trade agenda forward. A worrying leadership vacuum has opened that has so far proven difficult to fill. A very good example is the Doha Round of multilateral trade negotiations, which started in November 2001 in the Qatari capital. A WTO mini-ministerial conference took place in July 2008 composed of a trade G-7. n83 Governments' attempts to salvage a deal in the Doha Round of multilateral trade negotiations broke down on 29 July 2008, as trade ministers acknowledged that they were unable to reach a compromise after nine days of a WTO mini-ministerial summit. This raises the question of how to move forward in this complex international trade negotiations scenario. n84 Given how difficult it is to move forward multilaterally, there has been in recent years a proliferation of RTAs. Trade powers want to gain greater access to one another's markets but, at the same time, have struggled to lower their own trade barriers. n85 At the G8 Summit in Muskoka in June 2010, world leaders dropped a commitment to complete the troubled Doha Round in 2010 and vowed to push forward on bilateral and regional trade talks until a multilateral deal could be finalized. n86 This decision demonstrates that bilateralism/**regionalism is the natural consequence of failed or troubled multilateralism**. n87 This decision to [*623] move forward bilaterally/regionally certainly has dangerous repercussions for weak economies. n88 Assuming that the Doha Round will be concluded in 2011, it will then take another four years to ratify the multilateral agreements that will come out of the Round, which means that it will have taken at least fourteen years for these new multilateral agreements to see the light of day. There are several political reasons for countries to engage in RTAs: they ensure or reward political support; regulatory cooperation is easier regionally than it is multilaterally; there is less scope for free riding on the MFN principle; and there are always geopolitical as well as security interests for the conclusion of RTAs. Thus, while most countries continue to formally declare their commitment to the successful conclusion of the Doha Round--which would contribute toward enhancing market access and strengthening the rules-based multilateral trading system--for many countries, bilateral deals have taken precedence and their engagement at the multilateral level is becoming little more than just **a theoretical proposition**. The emergence of rapidly growing economies and new forms of South-South relations, as illustrated by the case of China in Africa, further complicates the equation and renders the need for empirical research, information, and dialogues in this area even more acute. VI. EFFECTS OF REGIONALISM ON MULTILATERALISM The effects of RTAs on the multilateral trading system remain unclear, as is their impact on trade and sustainable development. While preferential deals can contribute to strengthening regional integration, n89 some RTAs have generated negative effects on regional integration schemes, as was the case of the Andean [*624] Community-US RTA n90 and certain EPAs signed with individual countries and not with the region as a whole. The effects of RTAs on the multilateral trading system are manifold. One of the positive effects is that RTAs allow for **greater efficiency gains** thanks to the elimination of barriers to trade, which is key to achieving economies of scale. n91 RTAs are also laboratories for change (a very good example being that of the EU, whose transformation since its inception in the 1950s has been absolutely remarkable n92). In addition, RTAs provide competition and attract foreign direct investment (FDI). An example of this last point is Spain in the case of the EU, or Mexico in the case of the North American Free Trade Agreement (NAFTA). n93 In both cases, Spain and Mexico benefited very much from FDI thanks to the EU and NAFTA, respectively.

It's a sufficient substitute

Trakan 8 (Leon, LL.M., S.J.D. (Harvard); Professor of Law and Immediate Past Dean, Faculty of Law, University of New South Wales, "THE PROLIFERATION OF FREE TRADE AGREEMENTS: BANE OR BEAUTY?" UNSW Law Research Paper No. 2007-54, Journal of World Trade, Vol. 42, 2008) ***Footnote 3 Added

The proliferation of bilateral trade agreements has helped to **fill a gap** in a multilateral trade process that is impeded by the impasse of negotiations in the World Trade Organization [WTO].1 At the same time, the development of bilateral trade agreements arguably has discouraged some states from engaging in multilateral negotiations.2 The result is a new genre of trade relations in which bilateral and regional mechanisms are increasingly adopted in substitution for multilateral trade processes.3 3 This sidelining of WTO dispute resolution will include the tendency to direct a greater volume of trade disputes to state courts and regional tribunals. On dispute resolution

under the WTO, see Yang Guohua, Bryan Mercurio & Li Yongjie, WTO Dispute Settlement Understanding: A Detailed Interpretation (London, Kluwer Law International, 2005); Petros C. Mavroidis & N. David Palmeter, Dispute Settlement in the World Trade Organization: Practice and Procedure (Cambridge, U.K.: Cambridge Un. Press, 2004); Ernst-Ulrich Petersmann, The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement (London, the Hague, Boston: Kluwer Law International, 1997). On regional trade agreements, see e.g. James H Mathis, Regional Trade Agreements in the GATT/WTO: Article XXIV and the International Trade Requirement (The Hague: T.M.C. Asser Press, 2002). While, bilateral trade agreements diverge significantly in their form and substance, they are having an important, albeit disparate impact upon multilateral trade.4

Case

1NC Squo Solves Perception

Obama's plan solves public trust even if it doesn't stop spying

SBS 14 (The Special Broadcasting Service is a hybrid-funded Australian public broadcasting radio and television network "Obama moves to end NSA data collection")

James Lewis, a senior fellow who follows national security at the Center for Strategic and International Studies, said the Obama proposal appeared to be "a cosmetic change" to NSA authority. "This **will pacify domestic critics**, but we don't know how it will play overseas," Lewis told AFP. "If it's done right, there will be no impact on national security." Joseph Wippl, director of graduate studies at Boston University's Department of International Relations and a 30-year CIA operations officer, said the measure could allay public fears about NSA surveillance, but added: "There is nothing here which protects foreign nationals, which is the way it has always been."

1NC AT Democracy Adv

Democracy in America is doomed

Diamond 14 (Jared, Prof. of Geography and Environmental Health Sciences @ UCLA, Feb 19, 2014, "Four threats to American democracy" http://newsroom.ucla.edu/stories/four-threats-to-american-democracy-250120)

First, political compromise has been deteriorating in recent decades, and especially in the last five years. That deterioration can be measured as the increase in Senate rejections of presidential nominees whose approvals used to be routine, the increasing use of filibusters by the minority party, the majority party's response of abolishing filibusters for certain types of votes, and the decline in number of laws passed by Congress to the lowest level of recent history. The reasons for this breakdown in political compromise, which seems to parallel increasing levels of nastiness in other areas of American life, remain debated. Explanations offered include the growth of television and then of the Internet, replacing face-to-face communication, and the growth of many narrowly partisan TV channels at the expense of a few broad-public channels. Even if these reasons hold a germ of truth, they leave open the question why these same trends operating in Canada and in Europe have not led to similar deterioration of political compromise in those countries as well. Second, there are increasing restrictions on the right to vote, weighing disproportionately on voters for one party and implemented at the state level by the other party. Those obstacles include making registration to vote difficult and demanding that registered voters show documentation of citizenship when they present themselves at the polls. Of course, the United States has had a long history of denying voting rights to blacks, women and other groups. But access to voting had been increasing in the last 50 years, so the recent proliferation of restrictions reverses that long positive trend. In addition to those obstacles preventing voter registration, the United States has by far the lowest election turnout among large First World democracies: under 60 percent of registered voters in most presidential elections, 40 percent for congressional elections, and 20 percent for the recent election for mayor of my city of Los Angeles. (A source of numbers for this and other comparisons that I shall cite is an excellent recent book by Howard Steven Friedman, The Measure of a Nation). And, while we are talking about elections, let's not forget the astronomical recent increase in costs and durations of election campaigns, their funding by wealthy interests, and the shift in campaign pitches to sound bites. Those trends, unparalled in other large First World democracies, undermine the democratic prerequisite of a well-informed electorate. A third contributor to the growing breakdown of democracy is our growing gap between rich and poor. Among our most cherished core values is our belief that the United States is a "land of opportunity" and that we uniquely offer to our citizens the potential for rising from "rags to riches" provided that citizens have the necessary ability and work hard. This is a myth. Income and wealth disparity in the United States (as measured by the Gini index of equality/inequality, and in other ways) is much higher in the United States than in any other large First World democracy. So is hereditary socioeconomic immobility, that is, the probability that a son's relative income will just mirror his father's relative income, and that sons of poor fathers will not become wealthy. Part of the reason for those depressing facts is inequality of educational opportunities. Children of rich Americans tend to receive much better educations than children of poor Americans. That is bad for our economy, because it means that we are failing to develop a large fraction of our intellectual capital. It is also bad for our political stability, because poor parents who correctly perceive that their children are not being given the opportunity to succeed may express their resulting frustration in violence. Twice during my 47 years of residence in Los Angeles, in 1964 and 1993, frustration in poor areas of Los Angeles erupted into violence, lootings, and killings. In the 1993 riots, when police feared that rioters would spill into the wealthy suburb of Beverly Hills, all that the outnumbered police could do to protect Beverly Hills was to string yellow plastic police tape across major streets. As it turned out, the rioters did not try to invade Beverly Hills in 1993. But if present trends causing frustration continue, there will be more riots in Los Angeles and other American cities, and yellow plastic police tape will not suffice to contain the rioters. The remaining contributor to the decline of American democracy is the decline of government investment in public purposes, such as education, infrastructure, and nonmilitary research and development. Large segments of the American populace deride government investment as "socialism." But it is not socialism. On the contrary, it is one of the longest established functions of government. Ever since the rise of the first governments 5,400 years ago, governments have served two main functions: to maintain internal peace by monopolizing force, settling disputes, and forbidding citizens to resort to violence in order to settle disputes themselves; and to redistribute individual wealth

for investing in larger aims — in the worst cases, enriching the elite; in the best cases, promoting the good of society as a whole. Of course, some investment is private, by wealthy individuals and companies expecting to profit from their investments. But many potential payoffs cannot attract private investment, either because the payoff is so far off in the future (such as the payoff from universal primary school education), or because the payoff is diffused over all of society rather than concentrated in areas profitable to the private investor (such as diffused benefits of municipal fire departments, roads, and broad education). Even the most passionate American supporters of small government do not decry as socialism the funding of fire departments, interstate highways, and public schools.

Seriously, we live in an oligarchy and policy debates like this are useless for creating political change.

Gilens & Kapur '14 (Martin, Prof. of Politics @ Princeton U., and Sahil, TPM staff writer, "Scholar Behind Viral 'Oligarchy' Study Tells You What It Means" http://talkingpointsmemo.com/dc/princeton-scholar-demise-of-democracy-america-tpm-interview)

Let's talk about the study. If you had 30 seconds to sum up the main conclusion of your study for the average person, how would you do so?

I'd say that contrary to what decades of political science research might lead you to believe, ordinary citizens have virtually no influence over what their government does in the United States. And economic elites and interest groups, especially those representing business, have a substantial degree of influence. Government policy-making over the last few decades reflects the preferences of those groups -- of economic elites and of organized interests.

You say the United States is more like a system of "Economic Elite Domination" and "Biased Pluralism" as opposed to a majoritarian democracy. What do those terms mean? Is that not just a scholarly way of saying it's closer to oligarchy than democracy if not literally an oligarchy?

People mean different things by the term oligarchy. One reason why I shy away from it is it brings to mind this image of a very small number of very wealthy people who are pulling strings behind the scenes to determine what government does. And I think it's more complicated than that. It's not only Sheldon Adelson or the Koch brothers or Bill Gates or George Soros who are shaping government policy-making. So that's my concern with what at least many people would understand oligarchy to mean. What "Economic Elite Domination" and "Biased Pluralism" mean is that rather than average citizens of moderate means having an important role in determining policy, ability to shape outcomes is restricted to people at the top of the income distribution and to organized groups that represent primarily -- although not exclusively -- business.

Would you say the government is most responsive to income earners at the top 10 percent, the top 1 percent or the top 0.1 percent?

This is a great question and it's not one we can answer with the data that we used in the study. Because we really don't have good info about what the top 1 percent or 10 percent want or what issues they're engaged with. As you can imagine, this is not really a group that's eager to talk with researchers.

How exactly do you measure the preferences of average citizens in an academic way? Polls show that many American voters feel on a gut level that the government isn't looking out for them. But what kind of data do you use to test this theory and how confident are you in the conclusions?

What we did was to collect survey questions that asked whether respondents would favor or oppose some particular change in federal government policy. These were questions asked across the decades from 1981 to 2002. And so from each of those questions we know what citizens of average income level prefer and we know what people at the top of the income distribution say they want. For each of the 2,000 possible policy changes we determined whether in fact they've

been adopted or not. I had a large number of research assistants who spent years putting that data together.

There are criticisms of your study within the academic community. Some say public opinion surveys are a poor measure because people don't understand policy or that their stated preferences are self-contradictory. Tyler Cowen says citizens vote retrospectively so it's better to judge on outputs rather than whether voters get their preferred inputs. How do you respond?

These are all good questions. They're questions I address in some length in my book, "Affluence and Influence." There is some truth to some of these perspectives. But in a nutshell I think citizens overall have fairly sensible policy preferences which appear not to change much if citizens have an opportunity to learn more and debate the policy and view pros and cons.

Talk about some examples of policy preferences that the majority holds that the government is not responsive to.

Financial reform -- the deregulatory agenda has been pursued, somewhat more fervently among Republicans but certainly by Democrats as well in recent decades. Higher minimum wage. More support for the unemployed. More support for education spending. We'd see, perhaps ironically, less liberal policies in some domains like religious or moral issues. Affluent people tend to be more socially liberal on things like abortion or gay rights.

Which party, Democrat or Republican, caters to the interests of the rich more? Does your research find them to be equal or is one more responsive than the other?

We didn't look at that in this paper. Other work I've done suggest it depends. There are a set of economic issues on which the Democratic party is more consistently supportive of the needs of the poor and middle class. But it's by no means a strong relationship. Both parties have to a large degree embraced a set of policies that reflect the needs, preferences and interests of the well to do.

Relatedly, does divided government like we have now make politicians more or less likely to cater to the affluent than one-party control?

It does seem, absolutely, that divided government has the effect of reducing the amount of policy that gets adopted, restricting the policies that get adopted that are more broadly popular.

When did things start to become this way?

It's possible that in earlier eras, that we don't have data for, that things were better. But in the time period that we do have data for, there's certainly no such evidence. Over time responsiveness to elites has grown.

It seems to me the paradox here is that sometimes non-rich people favor an agenda that supports the rich. For instance, middle class tea partiers want low taxes on the highest earners, just as Steve Forbes does. Isn't that still democracy at work, albeit in an arguably perverse way?

Yes, absolutely. I think people are entitled to preferences that conflict with their immediate interests -- narrowly conceived interests. That may be an example of that. Opposition to the estate tax among low-income individuals is another. But what we see in this study is that's not what this is happening. We don't look at whether preferences expressed by these different groups are consistent or inconsistent with their interests, narrowly conceived. We just look at whether they're

responded to by government policy-makers, and we find that in the case of ordinary Americans, they're not.

How does a system like this perpetuate itself when after all it's ordinary voters who cast their ballots and elect their leaders. Theoretically they can change it in a heartbeat. Why don't they?

That's a very good question. I don't have a complete answer for you. Part of it clearly is that while politicians need votes while in office, they need money to obtain and retain office. So they need to balance the activities that will benefit them in terms of money with the activities that'll benefit them in terms of votes. Voters are not particularly effective at holding politicians accountable for the policies they adopt. Voters also have a limited choice set when going into an election. We find that policies adopted during presidential election years in particular are more consistent with public preferences than policies adopted in other years of the electoral cycle.

What are the three or four most crucial factors that have made the United States this way?

Very good question. I'd say two crucial factors. One central factor is the role of money in our political system, and the overwhelming role that affluent individuals that affluent individuals and organized interests play, in campaign finance and in lobbying. And the second thing is the lack of mass organizations that represent and facilitate the voice of ordinary citizens. Part of that would be the decline of unions in the country which has been quite dramatic over the last 30 or 40 years. And part of it is the lack of a socialist or a worker's party.

1NC AT Democracy Adv- Alt Cause

You don’t do any of the important things for global democracy either

Diamond ‘15 (Larry, founding coeditor of the Journal of Democracy, senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University, and director of Stan- ford’s Center on Democracy, Development, and the Rule of Law, “Facing Up to the Democratic Recession” Journal of Democracy, 26.1, p. 154)

The key imperative in the near term is to work to reform and consolidate the democracies that have emerged during the third wave—the majority of which remain illiberal and unstable, if they remain democratic at all. With more focused, committed, and resourceful international engagement, it should be possible to help democracy sink deeper and more enduring roots in countries such as Indonesia, the Philippines, South Africa, and Ghana. It is possible and urgently important to help stabilize the new democracies in Ukraine and Tunisia (whose success could gradually generate significant diffusion effects throughout the Arab world). It might be possible to nudge Thailand and Bangladesh back toward electoral democracy, though ways must be found to temper the awful levels of party polarization in each country. With time, the electoral authoritarian project in Turkey will discredit itself in the face of mounting corruption and abuse of power, which are already growing quite serious. And the oil-based autocracies in Iran and Venezuela will face increasingly severe crises of economic performance and political legitimacy.

1NC AT Democracy- No Model

It’s not because of America – Russian/Chinese authoritarian promo is a bigger internal link to the global democracy recession

Diamond ‘15 (Larry, founding coeditor of the Journal of Democracy, senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford

University, and director of Stan- ford's Center on Democracy, Development, and the Rule of Law, "Facing Up to the Democratic Recession" Journal of Democracy, 26.1, pp. 151-152)

An important part of the story of global democratic recession has been the deepening of authoritarianism. This has taken a number of forms. In Russia, space for political opposition, principled dissent, and civil society activity outside the control of the ruling authorities has been shrinking.13 In China, human-rights defenders and civil society activists have faced increasing harassment and victimization.

The (mainly) postcommunist autocracies of the Shanghai Cooperation Organization, centered on the axis of cynical cooperation between Russia and China, have become much more coordinated and assertive. Both countries have both been aggressively flexing their muscles in dealing with their neighbors on territorial questions. And increasingly they are pushing back against democratic norms by also using instruments of soft power—international media (such as RT, Russia's slick 24/7 global television "news" channel), China's Confucius Institutes, lavish conferences, and exchange programs—to try to discredit Western democracies and democracy in general, while promoting their own models and norms.14 This is part of a broader trend of renewed authoritarian skill and energy in using state-run media (both traditional and digital) to air an eclectic mix of proregime narratives, demonized images of dissenters, and illiberal, nationalist, and anti-American diatribes.15

African autocrats have increasingly used China's booming aid and investment (and the new regional war on Islamist terrorism) as a counterweight to Western pressure for democracy and good governance. And they have been only too happy to point to China's formula of rapid state-led development without democracy to justify their own deepening authoritarianism. In Venezuela, the vise of authoritarian populism has tightened and the government's toleration (or even organization) of criminal violence to demobilize middle-class opposition has risen. The "Arab Spring" has imploded in almost every country that it touched save Tunisia, leaving in most cases even more repressive states or, as in the case of Libya, hardly a state at all.

The resurgence of authoritarianism over the past eight years has been quickened by the diffusion of common tools and approaches. Prominent among these have been laws to criminalize international flows of financial and technical assistance from democracies to democratic parties, movements, media, election monitors, and civil society organizations in authoritarian regimes, as well as broader restrictions on the ability of NGOs to form and operate and the creation of pseudo-NGOs to do the bidding (domestically and internationally) of auto- crats.16 One recent study of 98 countries outside the West found that 51 of them either prohibit or restrict foreign funding of civil society, with a clear global trend toward tightening control; as a result, international democracy-assistance flows are dropping precipitously where they are needed most.17 In addition, authoritarian (and even some democratic) states are becoming more resourceful, sophisticated, and unapologetic in suppressing Internet freedom and using cyberspace to frustrate, subvert, and control civil society.18

1NC AT IFreedom- Alt Causes/Solvency

Reversing surveillance doesn't solve ifreedom

Fontaine 14 Richard Fontaine is the President of the Center for a New American Security (CNAS). He served as a Senior Advisor and Senior Fellow at CNAS from 2009-2012 and previously as foreign policy advisor to Senator John McCain for more than five years. He has also worked at the State Department, the National Security Council and on the staff of the Senate Foreign Relations Committee. http://www.cnas.org/sites/default/files/publications-pdf/CNAS_BringingLibertyOnline_Fontaine.pdf

Such moves are destined to have only a modest effect on foreign reactions. U**.S. surveillance will inevitably continue** under any reasonably likely scenario (indeed, despite the expressions of outrage, not a single country has said that it would cease its surveillance activities). Many of the demands – such as for greater transparency – will not be met, simply due to the clandestine nature of electronic espionage. Any limits on surveillance that a govern - ment might announce will not be publicly verifiable and thus perhaps not fully credible. Nor will there be an international "no-spying" convention to reassure foreign citizens that their communications are unmonitored. As it has for centuries, state- sponsored espionage activities are likely to remain accepted international practice, unconstrained by international law. The one major possible shift in policy following the Snowden affair – a stop to the bulk collection of telecommunications metadata in the United States – will not constrain the activ - ity most disturbing to foreigners; that is, America's surveillance of them. At the same time, U.S. offi - cials are highly unlikely to articulate a global "right o privacy" (as have the U.N. High Commissioner for Human Rights and some foreign officials), akin to that derived from the U.S. Constitution's fourth amendment, that would permit foreigners to sue in U.S. courts to enforce such a right. 39 The Obama administration's January 2014 presidential directive on signals intelligence refers, notably, to the " legiti - mate privacy interests" of all persons, regardless of nationality, and not to a privacy "right.

US surveillance tech industry destroys i-freedom signal

MacKinnon 4/3/12

http://www.foreignpolicy.com/articles/2012/04/03/The_Worlds_No_1_Threat_to_Internet_Freedom Rebecca MacKinnon is a blogger and co-founder of Global Voices Online. She is notable as a former CNN journalist who headed the CNN bureaus in Beijing and later in Tokyo. She is on the Board of Directors of the Global Network Initiative[1] and the Committee to Protect Journalists,[2] and is currently director of the Ranking Digital Rights project at the New America Foundation's Open Technology Institute.

Internet Freedom Starts at Home The United States needs to practice what it preaches online. Implied though not explicit in Obama's remarks was the idea that if Iran's Internet were freer and more open, Iran's relationship with the world generally -- and the United States in particular -- would be different. Cases like Iran are the main driver of Washington's bipartisan consensus around the idea that a free and open global Internet is in the United States' strategic interest. Yet more than two years after Secretary of State Hillary Clinton gave her first speech declaring "Internet freedom" to be a major component of U.S. foreign policy, it turns out that many of the most sophisticated tools used to suppress online free speech and dissent around the world are

actually Made in the USA. American corporations are major suppliers of software and hardware used by all sorts of governments to carry out censorship and surveillance -- and not just dictatorships. Inconveniently, governments around the democratic world are pushing to expand their own censorship and surveillance powers as they struggle to address genuine problems related to cybercrime, cyberwar, child protection, and intellectual property. Even more inconveniently, the U.S. government is the biggest and most powerful customer of American-made surveillance technology, shaping the development of those technologies as well as the business practices and norms for public-private collaboration around them. As long as the U.S. government continues to support the development of a surveillance-technology industry that clearly lacks concern for the human rights and civil liberties implications of its business -- even rewarding secretive and publicly unaccountable behavior by these companies -- the world's dictators will remain well supplied by a robust global industry. American-made technology has turned up around the Middle East and North Africa over the past year -- from Syria to Bahrain to Saudi Arabia, from pre-revolutionary Tunisia to Egypt -- in contexts that leave no doubt that the software and hardware in question were being used to censor dissenting speech and track activists. While much of this technology is considered "dual use" because it can be used to defend computer networks against cyberattack as well as to censor and monitor political speech, some members of Congress are seeking to prevent its use for political repression. To that end, the Global Online Freedom Act (GOFA), which passed through the House of Representatives Subcommittee on Africa, Global Health, and Human Rights last week, takes aim not only at U.S.-headquartered companies but also overseas companies funded by U.S. capital markets.

Nonunique – cyber security bill

MacKinnon 4/3/12

http://www.foreignpolicy.com/articles/2012/04/03/The_Worlds_No_1_Threat_to_Internet_Freedom Rebecca MacKinnon is a blogger and co-founder of Global Voices Online. She is notable as a former CNN journalist who headed the CNN bureaus in Beijing and later in Tokyo. She is on the Board of Directors of the Global Network Initiative[1] and the Committee to Protect Journalists,[2] and is currently director of the Ranking Digital Rights project at the New America Foundation's Open Technology Institute.

Meanwhile, as GOFA moves forward, Congress is considering several cybersecurity bills that would authorize Internet service providers and other companies not only to monitor private communications passing over their networks, but also to share private communications with the National Security Agency and other federal entities or with any other agency of the federal government designated by the Department of Homeland Security -- and with less due process and judicial oversight than ever before. While acknowledging that cybersecurity is a legitimate goal, groups focused on the defense and protection of Internet users' rights, including the Center for Democracy and Technology and the Electronic Frontier Foundation, have expressed deep-seated concerns about the extent to which these bills open the door even wider for civil liberties violations. GOFA's supporters argue that one has to start somewhere and that focusing on the relationship between U.S. companies and authoritarian dictatorships is the best way to obtain bipartisan consensus to pass legislation. That is no doubt true. But if the American people continue to allow the U.S. government and American industry to forge increasingly unaccountable and opaque relationships around the exchange and use of citizens' private information, the damage will extend well beyond American democracy and civil liberties. The

business norms and technological innovations born of such opaque and unaccountable relationships will keep dictators supplied with handy tools for decades to come.

Allies' monitoring destroys i-freedom signal

Hanson 10/25/12, Nonresident Fellow, Foreign Policy, Brookings
http://www.brookings.edu/research/reports/2012/10/25-ediplomacy-hanson-internet-freedom

Another challenge is dealing with close partners and allies who undermine internet freedom. In August 2011, in the midst of the Arab uprisings, the UK experienced a different connection technology infused movement, the London Riots. On August 11, in the heat of the crisis, Prime Minister Cameron told the House of Commons: Free flow of information can be used for good. But it can also be used for ill. So we are working with the police, the intelligence services and industry to look at whether it would be right to stop people communicating via these websites and services when we know they are plotting violence, disorder and criminality. This policy had far-reaching implications. As recently as January 2011, then President of Egypt, Hosni Mubarak, ordered the shut-down of Egypt's largest ISPs and the cell phone network, a move the United States had heavily criticized. Now the UK was contemplating the same move and threatening to create a rationale for authoritarian governments everywhere to shut down communications networks when they threatened "violence, disorder and criminality." Other allies like Australia are also pursuing restrictive internet policies. As OpenNet reported it: "Australia maintains some of the most restrictive Internet policies of any Western country…" When these allies pursue policies so clearly at odds with the U.S. internet freedom agenda, several difficulties arise. It undermines the U.S. position that an open and free internet is something free societies naturally want. It also gives repressive authoritarian governments an excuse for their own monitoring and filtering activities. To an extent, U.S. internet freedom policy responds even-handedly to this challenge because the vast bulk of its grants are for open source circumvention tools that can be just as readily used by someone in London as Beijing, but so far, the United States has been much more discreet about criticising the restrictive policies of allies than authoritarian states.

Alt causes – snowden other violations AND broader internet control – they will also inevitably regulate other stuff that's illegal takes out the signal

China Post, 9/29/14 [http://www.chinapost.com.tw/life/science-&-technology/2014/09/29/418280/Inventor-of.htm]

LONDON--The British inventor of the World Wide Web warned on Saturday that the freedom of the internet is under threat by governments and corporations interested in controlling the web. Tim Berners-Lee, a computer scientist who invented the web 25 years ago, called for a bill of rights that would guarantee the independence of the Internet and ensure users' privacy. "If a company can control your access to the internet, if they can control which websites they go to, then they have tremendous control over your life," Berners-Lee said at the London "Web We Want" festival on the future of the internet. "If a Government can block you going to, for example, the opposition's political pages, then they can give you a blinkered view of reality to keep themselves in power." "Suddenly the power to abuse the open Internet has become so tempting both for government and big companies." Berners-Lee, 59, is director of the World Wide Web Consortium, a body that develops guidelines for the development of the Internet. He called for an Internet version of the "Magna Carta," the 13th century English charter credited with guaranteeing basic rights and freedoms. Concerns over privacy and freedom on the Internet have increased in the wake of the revelation of mass government monitoring of online activity following leaks by former U.S. intelligence contractor Edward

Snowden. A ruling by the European Union to allow individuals to ask search engines such as Google to remove links to information about them, called the "right to be forgotten," has also raised concerns over the potential for censorship. "There have been lots of times that it has been abused, so now the Magna Carta is about saying ... I want a web where I'm not spied on, where there's no censorship," Berners-Lee said. The scientist added that in order to be a "neutral medium," the Internet had to reflect all of humanity, including "some ghastly stuff." "Now **some things are of course just illegal, child pornography, fraud, telling someone how to rob a bank, that's illegal before the web and it's illegal after the web,**" Berners-Lee added.

Comcast outweighs

Sasso Sept 14 (Brendan; FCC Chief: Cable Companies Are Wrong About Internet Competition; www.nationaljournal.com/tech/fcc-chief-comcast-is-wrong-about-internet-competition-20140904; kdf)

September 4, 2014 **Most Americans lack any real choice in accessing high-speed Internet, the chairman of the F**ederal **C**ommunications **C**ommission **said** Thursday. **Comcast and** other **cable giants have argued that the industry is already plenty competitive**. Consumers in many areas can choose to access the Internet from a DSL provider or on their smartphones, the cable companies argue. While FCC Chairman Tom Wheeler didn't mention Comcast by name, he said those other options don't deliver the speeds that consumers need today. To reliably stream high-definition video, as consumers expect, providers must deliver speeds of at least 25 megabits per second, Wheeler said. In most areas, that means the only option is the local cable company. "**At 25 Mbps, there is simply no competitive choice for most Americans**," the FCC chief said. "Stop and let that sink in**. Three-quarters of American homes have no competitive choice for the essential infrastructure for 21st century economics and democracy. Included in that is almost 20 percent who have no service at all."** The conclusion doesn't bode well for Comcast's bid to buy Time Warner Cable. The deal would unite the top two cable providers, creating a new behemoth controlling a large portion of the nation's high-speed Internet access. But Comcast frequently notes that its network doesn't overlap with Time Warner Cable, meaning the merger would not actually create fewer choices for any consumers. Comcast didn't respond to a request to comment. The speech could also have implications for the agency's net-neutrality regulations. Wheeler noted that, historically, the absence of competition has "forced the imposition of strict government regulation in telecommunications." But he made it clear that h**e would prefer a competitive market with light regulation than heavy regulation of monopolies**. One of the **consequences of past monopoly regulation was the "thwarting of the kind of innovation that competition stimulates**," Wheeler said.

Guantanamo, and drones outweigh

Mainen, 11 - policy analyst at the Institute for Gulf Affairs (Matthew, "Morally Usurped by Brutal Monarchs," http://mainen.blogspot.com/2011/08/morally-usurped-by-brutal-monarchs.html)

President Obama entered office pledging to restore America's moral standing in the world. But his response to the Arab Spring has thus far has left much to be desired. This week, however, the president allowed the U.S. unprecedented embarrassment as it stood on the sidelines as two of the world's worst human rights violators – Saudi Arabia and Bahrain – along with Kuwait withdrew their ambassadors from Syria following its intensified crackdown. It's time to reclaim the initiative.

The president's cautious position is understandable. His predecessor's hawkish Mideast policy in response to the unprecedented environment created by the September 11 attacks and rise of international Islamic extremism challenged ties with Europe and temporarily destabilized Iraq.

Obama's policies, however, are far from dovish, and have not adequately mended ties with the Muslim world. He reneged on his campaign pledge to close Guantanamo Bay. He intensified drone attacks in Pakistan and Afghanistan, killing many civilians. And in an insult to American values, he personally approved Bahrain's brutal crackdown on pro-democracy activists behind closed doors.

1NC AT IFreedom- ITU Conference Solves

ITU proves no threat

Guardian 11/7/14 http://www.theguardian.com/technology/2014/nov/07/how-will-internet-governance-change-after-the-itu-conference

If internet governance were a James Bond movie, ITU would be cast as the cat-stroking villain with an intricate and ambitious model laid out before her (we can always hope) plotting world domination through seizing control of global communications. "The whole world will listen to me, and only me! Ha ha!" The reality, as ever, is far **less dramatic** and not significantly less sinister. Internet issues do form a minor part of ITU's mandate, and were overshadowed at the Busan event by a range of other issues: political disputes over Crimea and Palestine, resolutions to address Ebola and better ways to track planes, a four-year debate on how to define "ICT", public access to ITU's documents, and an unexpected 30m Swiss Franc reduction in ITU's budget for the next four years **ITU is not taking over the internet** Member States often presented as the foes of the internet (Russia, the Arab states, India and, on occasion, Brazil) submitted some proposals that had a few liberal western countries wringing their hands in earnest before the plenipot had begun. Russia proposed that ITU begin allocating internet protocol (IP) addresses, which is a function already performed by other non-intergovernmental organisations. The Arab states had submitted proposals that would have strengthened the role of governments in making decisions about the internet and would have given the ITU a role in developing legal and policy frameworks to combat illegal international online surveillance. Brazil made proposals for ITU to work on online privacy issues. Advertisement And India submitted a last-minute proposal that would have required some major changes to the way the internet works. (The proposal aimed to keep all domestic internet traffic within national borders, so citizens would have to use a telephone-style international dialling code to access a site outside the country. Most of the proposal is possible to implement, but would require work outside ITU's current mandate.) These were proposals that had the US administration in a bit of a spin, with Penny Pritzker, US secretary of commerce, telling a key group of internet folk at the opening ceremony of the most recent ICANN meeting, "We will see proposals to put governments in charge of internet governance. You can rest assured that the United States will oppose these efforts at every turn." However, anyone with any experience of intergovernmental negotiations knows that proposals start off fairly strong, then get watered down to the politically homeopathic levels. This is what happened at the plenipot. For example, both the proposals to give governments a more active role in the internet as well as the proposals to give non-governments a more active role in ITU kind of neutralised each other. Also, back room negotiations spearheaded by the US delegation meant many of the changes proposed by other countries were taken off the table. Those negotiations

took placed behind closed doors, but it is understood that the US gave up its demand to have non-governmental groups invited into ITU's council working groups, which were designed to be for governments only. In return, other states withdrew proposals about online privacy, cybersecurity and other internet proposals. **No major threats to the internet have emerged** as a result of the conference. Instead, many of the hottest internet issues have been shunted off to a small group of the ITU, known by the convoluted name of **the Council Working Group** on International Internet-related Public Policy Issues, or CWG-Internet for short. As a result of compromises made at the plenipot, this group, which is attended by barely more than a handful of states, will decide at the beginning of each year what its topics of discussion will be.

Multistakeholder winning now

Szyndler 11/13/14

http://www.circleid.com/posts/20141113_why_we_dont_stick_to_our_knitting_auda_role_in_internet_governance/ Paul Szyndler, GM of International & Govt Affairs, AUDA

Every four years, these Resolutions are meticulously pored over by Member States, with every phrase and section analysed and debated. Agreed words are very powerful in inter-governmental fora, and the importance of such a granular and detailed debate should not be under-estimated.

This is where the fear and loathing comes in — the ITU is not a multi-stakeholder body. It is multi-national. It is a forum for governments and those of us (ccTLD managers, ICANN, civil society, business, academia) from the broader community that has successfully steered the technical and policy development of the Internet don't have a seat at the table. Aside from lobbying our national governments and weaselling our way on to delegations, we cannot directly influence the direction of the ITU. This is why the recent Plenipotentiary was so significant, keenly followed and generally distrusted.

However, an interesting thing happened in Busan. While there was the usual level of debate around Internet issues, a **far greater proportion** of governments spoke in favour of the current multi-stakeholder model for Internet Governance. A far greater number of governments are now meaningfully engaged with our community, trust our processes and work with stakeholders to improve the current model, rather than re-invent it with national administrations in control. Far more governments get it.

Our Government, like Britain's, is committed to freedom on and of the Internet. That means the governance of the Internet should not be in the hands of any government or group or organisation of governments.

—The Hon Malcolm Turnbull MP, Australian Minister for Communicatios.

Chatham House speech, May 2014

[Emphasis from the Minister's original speech]

This was particularly evident at PP-14 when a bunch of wacky [author's expert opinion only] Internet-related proposals were tabled from usual suspects such as Russia, the Arab States and India. These proposals would have significantly increased the ITU's mandate but, instead of just being opposed by the U.S. and a handful of nations in Europe, **many more Member States** played a vocal role in ensuring these ideas did not proceed.

No uniqueness – Bhusan consensus

Sepulveda 12/16/14 https://openinternet.state.gov/message-ambassador-sepulveda/ Ambassador Daniel Sepulveda United States of America

The Plenipotentiary Conference occurs every four years and is a treaty level conference that sets the ITU general policies, scope of authority, and course of work for the next four years. Going into the Plenipotentiary Conference, there was considerable concern that it could end with member states divided, which could adversely affect the work of the ITU, or create uncertainty for the future of the global Internet. Fortunately, thanks to the efforts of our delegation and our partners, this division didn't happen. Instead, the conference concluded with **strong consensus**, the **Busan Consensus**. In Busan, we established a basis and process that enables the ITU to work within its mandate to promote global connectivity while leaving decisions about how people use that connectivity to more appropriate institutions and deliberations.

Plenipotentiary conference established free internet – checked ITU threats to internet freedom

European Institute 12/18/14 http://www.euintheus.org/event/the-busan-consensus-a-turning-point/ The EU is represented in the United States by the Washington, DC Delegation of the European Union, which works in close coordination with the Embassies and Consulates of the 28 EU Member States.

Following 800 hours of negotiations on 452 proposals over three weeks, delegates to the ITU's (International Telecommunications Union) 19th Plenipotentiary Conference reached consensus on continuing the ITU's mandate to promote global connectivity, while ensuring that the international body's role would not expand beyond telecommunications and into the Internet content or core functionality. Internet governance and cyber security issues will be addressed in other international fora, and the ITU's own work will be given greater transparency. The panelists will address the outcomes of the ITU Plenipotentiary, and what implications they have for the multi-stakeholder model of internet governance, in which openness, transparency and democratic principles can sustainably prevail in the digital age.

1NC AT IFreedom- No I/L

Reputational capital is not uniform or zero sum – have a high threshold for a link argument

Guzman 8—Andrew, is Jackson H. Ralston Professor of Law and Associate Dean at UC Berkeley School of Law @ Berkeley, "Reputation and International Law," http://andrewguzman.net/wp-content/uploads/2012/07/Reputation-and-International-Law.pdf

Reputation can be defined as judgments about an actor's past behavior used to predict future behavior7 . Consistent with that definition we can define a state's reputation for compliance with

international law as judgments about an actor's past response to international legal obligations used to predict future compliance with such obligations. This reputation is an estimate of the state's true willingness to comply even when non-reputational payoffs favor violation. This willingness to comply depends on the state's discount rate, the domestic politics in the state (e.g., the extent to which domestic political structures make violation of international law difficult or costly), that state's willingness to impose costs on others,8 the value of future opportunities to cooperate (which may be jeopardized by a current violation), and so on.

Other states are assumed to be unable to observe this underlying willingness to comply, and so they must estimate it based on the actions of the state. In principle every observing state has its own perception of a particular state's reputation. Thus, **the United States may have different reputations in Canada, Argentina, Russia, and Syria**. For the moment we abstract away from this issue and assume that every observer has the same view of the state's reputation. This assumption is relaxed later in the article.

A simple model of reputation would treat the acquisition and loss of reputation in an extremely straightforward way—states that honor their commitments acquire **reputational capital**, and states that violate their commitments **lose it.** A moment's thought, **however**, makes it clear that **things must be more complicated** than this. If it were simply a matter of counting the instances of compliant behavior, states could build their reputations by signing many treaties that impose trivial obligations. A sensible model of reputation building cannot, for example, lead to the conclusion that Bolivia, a land-locked country, can improve its reputation by committing to keep its ports open. Similarly, **it cannot be that the tiny island republic of Vanuatu**, whose total GDP in 2004 was $316 million, can improve its reputation **by agreeing to refrain from placing weapons in space**. The acquisition of reputation clearly must be more complex than simply complying with commitments.

1NC AT IFreedom- No Trade Impact

Trade is strong and resilient

Ikenson, 9 [Daniel, associate director of the Center for Trade Policy Studies at the Cato Institute, " A Protectionism Fling: Why Tariff Hikes and Other Trade Barriers Will Be Short-Lived," March 12, 2009, http://www.cato.org/pub_display.php?pub_id=10651]

Although some governments will dabble in some degree of protectionism, the combination of a sturdy rules-based system of trade and the economic self interest in being open to participation in the global economy **will limit** the risk of **a protectionist pandemic**. According to recent estimates from the International Food Policy Research Institute, if all WTO members were to raise all of their applied tariffs to the maximum bound rates, the average global rate of duty would double and the value of global **trade would decline by 7.7 percent** over five years.8 That would be a substantial decline relative to the 5.5 percent annual rate of trade growth experienced this decade.9 But, to put that 7.7 percent decline in historical perspective, the value of global trade declined by **66 percent** between 1929 and 1934, a period mostly in the wake of Smoot Hawley's passage in 1930.10 So the potential downside today from what Bergsten calls "legal protectionism" is actually **not** that "**massive**," even if all WTO members raised all of their tariffs to the highest permissible rates. If most developing countries raised their tariffs to their bound rates, there would be an adverse impact on the countries that raise barriers and on their most

important trade partners. But most developing countries **that have room to backslide** (i.e., not China) **are not major importers**, and thus the impact on global trade flows would not be that significant. OECD countries and China account for the top twothirds of global import value.11 Backsliding from India, Indonesia, and Argentina (who collectively account for 2.4 percent of global imports) is not going to be the spark that ignites **a global trade war**. Nevertheless, governments are keenly aware of the events that transpired in the 1930s, and have made various pledges to **avoid protectionist measures** in combating the current economic situation. In the United States, after President Obama publicly registered his concern that the "Buy American" provision in the American Recovery and Reinvestment Act might be perceived as protectionist or could incite a trade war, Congress agreed to revise the legislation to stipulate that the Buy American provision "be applied in a manner consistent with United States obligations under international agreements." In early February, China's vice commerce minister, Jiang Zengwei, announced that China would not include "Buy China" provisions in its own $586 billion stimulus bill.12 But even more promising than pledges to avoid trade provocations **are actions** taken **to reduce** existing **trade barriers**. In an effort to "reduce business operating costs, attract and retain foreign investment, raise business productivity, and provide consumers a greater variety and better quality of goods and services at competitive prices," the Mexican government initiated a plan in January to unilaterally reduce tariffs on about 70 percent of the items on its tariff schedule. Those 8,000 items, comprising 20 different industrial sectors, accounted for about half of all Mexican import value in 2007. When the final phase of the plan is implemented on January 1, 2013, the average industrial tariff rate in Mexico will have fallen from 10.4 percent to 4.3 percent.13v And Mexico is not alone. In February, the Brazilian government suspended tariffs entirely on some capital goods imports and reduced to 2 percent duties on a wide variety of machinery and other capital equipment, and on communications and information technology products.14 That decision came on the heels of late-January decision in Brazil to scrap plans for an import licensing program that would have affected 60 percent of the county's imports.15 Meanwhile, on February 27, a new free trade agreement was signed between Australia, New Zealand, and the 10 member countries of the Association of Southeast Asian Nations to reduce and ultimately eliminate tariffs on 96 percent of all goods by 2020. While the media and members of the trade policy community fixate on how various protectionist measures around the world might foreshadow a plunge into the abyss, there is plenty of evidence that governments **remain interested in removing barriers to trade**. Despite the occasional temptation to indulge discredited policies, there is a growing body of institutional knowledge that when people are free to engage in commerce with one another as they choose, regardless of the nationality or location of the other parties, they can leverage that freedom to accomplish economic outcomes far more impressive than when governments attempt to limit choices through policy constraints.

No correlation between trade and peace

MARTIN, et al '8 (Phillipe, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, and Centre for Economic Policy Research; Thierry MAYER, University of Paris 1 Pantheon—Sorbonne, Paris School of Economics, CEPII, and Centre for Economic Policy Research, Mathias THOENIG, University of Geneva and Paris School of Economics, The Review of Economic Studies 75)

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

Trade wars don’t escalate

Ikenson, 12 [March 5th, Daniel, Daniel Ikenson is director of the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute,

http://www.cato.org/publications/free-trade-bulletin/trade-policy-priority-one-averting-uschina-trade-war]

. Nature of the U.S.-China Trade War It should not be surprising that the increasing number of commercial exchanges between entities in the world's largest and second largest economies produce frictions on occasion. But the U.S.-China economic relationship **has not descended into an existential call to arms.** Rather, both governments have taken protectionist actions that are **legally defensible** or plausibly justifiable within the rules of global trade. That is not to say that those measures have been advisable or that they would withstand closer legal scrutiny, but to make the distinction that, unlike the free-for-all that erupted in the 1930s, these trade "skirmishes" have been prosecuted in a manner that **speaks to a** mutual **recognition of the** primacy of — if not respect for — the **rules-based system** of trade. And that suggests that the **kerfuffle is containable and the recent trend reversible.1**

2NC AT Trade Cred Impact

No trade/cred spillover

Yevgeniya **Roysen 9**, Articles Editor, Cardozo Arts & Ent. L.J.; J.D. Candidate, 2009, TAKING CHANCES, 26 Cardozo Arts & Ent LJ 873

Moreover, it has also been argued that withdrawal from its Internet gambling commitments under the GATS, while lawful, will be damaging to the United States' reputation within the international community. n149 Rather than seeking a compromise and an alternate solution, the United States' decision to withdraw "could be viewed as duplicitous and would undermine U.S. credibility in any future negotiations of international agreements, even those outside the context of the WTO." n150 The marring of the United States' international reputation, it is thereby argued, will have a more damaging effect on the American economy and culture than a compromise that would allow for the continuation of Internet gambling.

While **these arguments** contain some strength, they **are flawed**. Setting aside agreements made as a member of the WTO, the United States has often failed to comply with international law, with **minimal repercussions**. On several occasions, the United States has either **blatantly disregarded or manipulated** aspects of the United Nations Charter so that it would better suit its own needs. The Charter is itself an international treaty of which 192 countries are members. n151 The most obvious instances of United States violations involve its interventions in the affairs of other countries without the proper authorization from the United Nations Security Council ("SC"). While Article 2, Section 4 of the Charter explicitly prohibits the use of force against another nation, n152 [*897] Articles 39 through 51 allow for it under the express authorization of the SC. n153 While the SC granted authorization for the use of force during the first Gulf War, it has failed to do so for the current conflict in Iraq. Nevertheless, the United States has argued that the SC's prior authorization continues to extend to the present conflict and that the United States is not in violation of its treaty agreements to refrain from the use of force. President George W. Bush insisted that "under [the SC Resolutions authorizing the use of force in the first Gulf War] - both still in effect - the United States and our allies are authorized to use force in ridding Iraq of weapons of mass destruction." n154

In another instance, in 1999, the United States led a campaign as a member of the North-Atlantic Treaty Organization ("NATO") for an alleged humanitarian intervention in Kosovo, once again in the absence of express authorization by the SC. This time, the United States argued that its intervention could be justified morally and politically, and that circumstances such as those in Kosovo at the time require a certain degree of flexibility in international agreements. n155 The government maintained that "UN Security Council resolutions mandating or authorizing NATO efforts are not required as a matter of international law." n156

While these instances of disregard for the United States' international responsibilities are not condonable, they do serve to illustrate that the United States is very familiar with various forms of noncompliance and manipulation of its agreements with other nations. The United States is unlikely to face significant consequences as a result of its withdrawal from its Internet gambling commitments under the GATS, and therefore can feel at ease allowing its domestic concerns to supersede any international implications that may arise as a result of its anti-Internet gambling legislation. Thus far, aside from some criticism, the international reaction has been limited to eight WTO members requesting compensation as a result of the withdrawal. n157 The United States has reached settlements with all but Antigua. n158

1NC AT Cyber- Squo Solves
Cyber legislation first key to solve

Volz ’15 [DUSTIN VOLZ, National Journal, Key Democrat: Congress Won’t Tackle NSA Reform Before Cybersecurity, March 22, 2015, http://www.nationaljournal.com/tech/key-democrat-congress-won-t-tackle-nsa-reform-before-cybersecurity-20150322]

Congress likely needs to pass cybersecurity legislation before it can pave the way to addressing the National Security Agency bulk collection of American phone records, despite the looming June expiration of a key surveillance authority, the top Democrat on the House Intelligence Committee says.

And "high-level" conversations about NSA reform, said Rep. Adam Schiff of California, aren't even happening yet.

"We're going to have to acknowledge that those who don't support any kind of cyber bill in advance of [Foreign Intelligence Surveillance Act] reform are probably not going to be satisfied," Schiff said last week after speaking about surveillance at an event hosted by the centrist group Third Way. "Because the timetable does not [make] that likely. Unless the information-sharing bill runs into unexpected roadblocks and gets pushed until after the summer, it's likely that's going to have to go first."

Schiff, who favors NSA reform, said information sharing was not necessarily a "prerequisite" for dealing with surveillance, but he believes it would be an easier sell than the inverse option. His comments nonetheless are likely to irk some in the privacy community who insist they cannot back any information sharing—which they fear might embolden more government snooping—before Congress overhauls the intelligence community's mass surveillance powers.

AT Cybersecurity Adv- No Cyber Threat

Cyber threat exaggerated.

Rid '12

Thomas Rid, reader in war studies at King's College London. March/April 2012. "Think Again: Cyberwar". http://www.foreignpolicy.com/articles/2012/02/27/cyberwar

Time for a reality check: Cyberwar is still more hype than hazard. Consider the definition of an act of war: It has to be potentially violent, it has to be purposeful, and it has to be political. The cyberattacks we've seen so far, from Estonia to the Stuxnet virus, simply don't meet these criteria. Take the dubious story of a Soviet pipeline explosion back in 1982, much cited by cyberwar's true believers as the most destructive cyberattack ever. The account goes like this: In June 1982, a Siberian pipeline that the CIA had virtually booby-trapped with a so-called "logic bomb" exploded in a monumental fireball that could be seen from space. The U.S. Air Force estimated the explosion at 3 kilotons, equivalent to a small nuclear device. Targeting a Soviet pipeline linking gas fields in Siberia to European markets, the operation sabotaged the pipeline's control systems with software from a Canadian firm that the CIA had doctored with malicious code. No one died, according to Thomas Reed, a U.S. National Security Council aide at the time who revealed the incident in his 2004 book, At the Abyss; the only harm came to the Soviet economy. But did it really happen? After Reed's account came out, Vasily Pchelintsev, a former KGB head of the Tyumen region, where the alleged explosion supposedly took place, denied the story. There are also no media reports from 1982 that confirm such an explosion, though accidents and pipeline explosions in the Soviet Union were regularly reported in the early 1980s. Something likely did happen, but Reed's book is the only public mention of the incident and his account relied on a single document. Even after the CIA declassified a redacted version of Reed's source, a note on the so-called Farewell Dossier that describes the effort to provide the Soviet Union with defective technology, the agency did not confirm that such an explosion occurred. The available evidence on the Siberian pipeline blast is so thin that it shouldn't be counted as a proven case of a successful cyberattack. Most other commonly cited cases of cyberwar are even less remarkable. **Take the attacks on Estonia in April 2007**, which came in response to the controversial relocation of a Soviet war memorial, the Bronze Soldier. The well-wired country found itself **at the receiving end of a massive distributed Denial-Of-Service attack** that emanated from up to 85,000 hijacked computers and lasted three weeks. The attacks reached a peak on May 9, when 58 **Estonian websites were attacked at once and the online services of Estonia's largest bank were taken down**. "What's the difference between a blockade of harbors or airports of sovereign states and the blockade of government institutions and newspaper websites?" asked Estonian Prime Minister Andrus Ansip. **Despite his analogies, the attack was no act of war. It was certainly a nuisance and an emotional strike on the country, but the bank's actual network was not even penetrated; it went down for 90 minutes one day and two hours the next. The attack was not violent**, it wasn't purposefully aimed at changing Estonia's behavior, and no political entity took credit for it**. The same is true for the vast majority of cyberattacks on record. Indeed, there is no known cyberattack that has caused the loss of human life. No cyberoffense has ever injured a person or damaged a building.** And if an act is not at least potentially violent, it's not an act of war. Separating war from physical violence makes it a metaphorical notion; it would mean that there is no way to distinguish between World War II, say, and the "wars" on obesity and cancer. Yet those ailments, unlike past examples of cyber "war," actually do kill people. Keep waiting. U.S. Defense Secretary Leon Panetta delivered a stark warning last summer: "**We could face a cyberattack that could be the equivalent of Pearl Harbor." Such alarmist predictions have been ricocheting inside the Beltway for the past two decades, and some scaremongers have even upped the ante by raising the alarm about a cyber 9/11**. In his 2010 book, Cyber War, former White House counterterrorism czar Richard Clarke invokes the specter of nationwide power blackouts, planes falling out of the sky, trains derailing, refineries burning, pipelines exploding, poisonous gas clouds wafting, and satellites spinning out of orbit -- events that would make the 2001 attacks pale in comparison. But **the empirical record is less hair-raising, even by the standards of the most drastic example available**. Gen. Keith Alexander, head of U.S. Cyber Command (established in 2010 and now boasting a budget of more than $3 billion), shared his worst fears in an April 2011 speech at the University of Rhode Island: "What I'm concerned about are destructive attacks," Alexander said, "those that are coming." He then invoked a remarkable accident at Russia's Sayano-Shushenskaya hydroelectric plant to highlight the kind of damage a cyberattack might be able to cause. Shortly after midnight on Aug. 17, 2009, a 900-ton turbine was ripped out of its seat by a so-called "water hammer," a sudden surge in water pressure that then caused a transformer explosion. The turbine's unusually high vibrations had worn down the bolts that kept its cover in place, and an offline sensor failed to detect the malfunction. Seventy-five people died in the accident, energy prices in Russia rose, and rebuilding the plant is slated to cost $1.3 billion.

AT Cybersecurity Adv- Accidental Launch Impact

Hotline solves

FNR '11

Federal News Radio. 7/13/2011. "Cyber hot line could help thaw U.S.-Russia relations". http://www.federalnewsradio.com/?nid=85&sid=2456172

> A Washington and Moscow Cybersecurity Hot Line is in the works, and should be operating by the end of the year. That's according to a blog by White House Cybersecurity Coordinator Howard Schmidt. Schmidt says he's been meeting with his Russian counterpart, and the Hot Line will help increase information exchange on security threats and head off misinterpretations of other incidents. The men also discussed each nation's military views on operating in cyberspace. The hope is to reset U.S.-Russian cyber relations, GovInfo Security reports

Can't hack the system

Weiman 4

Gabriel Weimann is a senior fellow at the United States Institute of Peace and professor of communication at the University of Haifa, Israel. "Cyberterrorism: How Real is the threat?" United States Institute of Peace, December 2004, http://www.usip.org/files/resources/sr119.pdf

> Many computer security experts do not believe that it is possible to use the Internet to inflict death on a large scale. Some pointed out that the resilience of computer systems to attack is the result of significant investments of time, money, and expertise. As Green describes, nuclear weapons systems are protected by "air-gapping": they are not connected to the Internet or to any open computer network and thus they cannot be accessed by intruders, terrorists, or hackers. Thus, for example, the Defense Department protects sensitive systems by isolating them from the Internet and even from the Pentagon's own internal network. The CIA's classified computers are also air-gapped, as is the FBI's entire computer system

Russia Won't respond with Nukes

Karas '1

Thomas, PHD in Political Science from Harvard, De-alerting and De-activating Strategic Nuclear Weapons, Sandia Report, April 2001, http://www.nti.org/e_research/official_docs/labs/de_alt_act_tnw.pdf

> Nevertheless, interpretation of warning information will take place in the context of information about the general state of relations between the potential adversaries. If there is no reason to think that a state of conflict exists, decision-makers are more likely to question false alarms and delay a response until the situation can be sorted out. On January 25, 1995, a scientific rocket probe launched from Norway appeared on Russian radar screens. Within minutes, President Yeltsin was alerted that this might be a U.S. submarine-launched missile (no one having been told that the Norwegians had notified Russian authorities of the launch plan weeks earlier). A few minutes later the Russian military determined that the rocket posed no threat. We do not know how close the Russians came to erroneously concluding that the rocket was a missile, or whether President Yeltsin would have ordered a counterattack based solely on the warning that a single missile was coming.13 Nevertheless, given the extreme improbability of a "bolt-from-the-blue" U.S. attack, a rapid nuclear response seems unlikely.

AT Cybersecurity Adv- Econ Impact

Cyber attacks won't bring down the economy.

Morozov '9

Evgeny Morozov, fellow at the Open Society Institute and a board member of its Information Program. "Cyber-Scare". Boston Review. July/August 2009. http://bostonreview.net/BR34.4/morozov.php

From a national security perspective, cyber-attacks matter in two ways. First, because **the back-end infrastructure underlying our economy** (national and global**) is now digitized, it is subject to new risks.** Fifty years ago it would have been hard—perhaps impossible, short of nuclear attack—to destroy a significant chunk of the U.S. economy in a matter of seconds; today all it takes is figuring out a way to briefly disable the computer systems that run Visa, MasterCard, and American Express. Fortunately, **such massive disruption is unlikely to happen anytime soon**. Of course **there is already plenty of petty cyber-crime,** some of it involving stolen credit card numbers**. Much of it, however, is due to low cyber-security awareness by end-users** (you and me), **rather than banks or credit card companies**. Second, a great deal of internal government communication flows across computer networks, and hostile and not-so-hostile parties are understandably interested in what is being said. Moreover, data that are just sitting on one's computer are fair game, too, as long as the computer has a network connection or a USB port. Despite the "cyber" prefix, however, the basic risks are strikingly similar to those of the analog age. Espionage has been around for centuries, and there is very little we can do to protect ourselves beyond using stronger encryption techniques and exercising more caution in our choices of passwords and Wi-Fi connections. To be sure, there is a war-related caveat here: if the military relies on its own email system or other internal electronic communications, it is essential to preserve this capability in wartime. Once more, however, the concern is not entirely novel; when radio was the primary means of communication, radio-jamming was also a serious military concern; worries about radio go back as far as the Russo-Japanese War of 1904-1905. The ultimate doomsday scenario—think Live Free or Die Hard—could involve a simultaneous attack on economic e-infrastructure and e-communications: imagine al Qaeda disabling banks, destroying financial data, disrupting networks, and driving the American economy back to the nineteenth century. This certainly sounds scary—almost as scary as raptors in Central Park or a giant asteroid heading toward the White House. The latter two are not, however, being presented as "national security risks" yet. There are certainly genuine security concerns associated with the Internet. But before accepting the demands of government agencies for new and increased powers to fight threats in cyberspace and prepare for cyber-warfare, we should look more closely at well-defined dangers and ask just where existing technological means and legal norms fall short. Because the technologies are changing so quickly, we cannot expect definitive answers. But cyber-skeptics—who argue that cyber-warfare is still more of an urban legend than a credible hazard—appear to be onto something important. One kind of cyber-security problem grows out of resource scarcity. A network has only so much bandwidth; a server can serve only so much data at one time. So if you want to disable (or simply slow down) the computer backbone of a national economy, for example, you need to figure out how to reach its upper limit. It would be relatively easy to protect against this problem if you could cut your computer or network off from the rest of the world. But as the majority of governmental and commercial services have moved online, we expect them to be offered anywhere; Americans still want to access their online banking accounts at Chase even if they are travelling in Africa or Asia. What this means in practice is that institutions typically cannot shut off access to their online services based on nationality of the user or the origin of the computer (and in the case of news or entertainment sites, they do not want to: greater access means more advertising income). Together, these limitations create an opportunity for attackers. Since no one, not even the U.S. government, has infinite computer resources, any network is potentially at risk. Taking advantage of this resource scarcity could be an effective way of causing trouble for sites one does not like. The simplest—and also the least effective—way of doing this is to visit the URL and hit the "reload" button on your browser as often (and for as long) as you can. Congratulations: you have just participated in the most basic kind of "denial-of-service" (DoS) attack, which aims to deny or delay the delivery of online services to legitimate users. These days, however, it would be very hard to find a site that would suffer any noticeable damage from such a nuisance; what is missing from your cyber-guerilla campaign is scale. Now multiply your efforts by a million—distribute your attacks among millions of other computers—and this could be enough to cause headaches to the administrators of many Web sites. These types of attacks are known as "distributed denial-of-service" or DDoS attacks. Administrators may be able to increase their traffic and bandwidth estimates and allocate more resources. Otherwise they have to live with this harassment, which may disable their Web site for long periods. DDoS attacks work, then, by making heavier-than-normal demands on the underlying infrastructure, and they usually cause inconvenience rather than serious harm. Not sure how to do it yourself? No problem: you can buy a DDoS attack on the black market. Try eBay. In fact, your own computer may well be participating in a DDoS attack right now. You may, for example, have inadvertently downloaded a trojan—a hard-to-detect, tiny piece of software—that has allowed someone else to take control of your machine, without obvious effect on your computer's speed or operations. Some computer experts put the upper limit of infected computers as high as a quarter of all computers connected to the Internet. Because a single computer is inconsequential, the infected computers form "botnets"—nets of robots—that can receive directions from a command-and-control center—usually just another computer on the network with the power to give commands. What makes the latest generation of botnets hard to defeat is that every infected computer can assume the role of the command-and-control center: old-fashioned methods of decapitation do not work against such dispersed command-and-control. Moreover, botnets are strategic: when network administrators try to block the attacks, botnets can shift to unprotected prey. Commercial cyber-security firms are trying to keep up with the changing threats; thus far, however, the botnets are staying at least one step ahead. DDoS threats have been far more commercial than political. The driving force has been cyber-gangs (many of them based in the former Soviet Union and Southeast Asia) which are in the extortion business. They find a profitable Internet business that cannot afford downtime and threaten to take down its Web site(s) with DDoS attacks. The online gambling industry—by some estimates, a $15-billion-a-year business—is a particularly appealing target because it is illegal in the United States: it cannot seek protection and take advantage of robust U.S. communications infrastructure. Thus, administrators of popular gambling sites commonly receive threats of DDoS attacks and demands for $40,000-$60,000 to "protect" the sites from attacks during peak betting periods (say, before big sporting events such as the Super Bowl). Many legitimate businesses fall victim to cyber-extortion, too. Since it is better to dole out a little cash to stop future attacks than to deal with the PR fallout—and possible drop in stock prices—that usually follows cyber-attacks, cyber-crime is underreported and underprosecuted. Another commercial opportunity for cyber-gangs is the creation of a large army of for-hire botnets, with extremely powerful attack capabilities. It is currently quite straightforward to rent the destructive services of a botnet ($1000/day is a going rate). The point was made forcefully by a controversial recent experiment: a group of BBC reporters purchased the services of a botnet 22,000 infected-computers strong from a vendor of cyber-crime services and used it to attack the site of a cyber-security company. The commercial availability of DDoS-attack capability has generated excitement about political applications. The risks to online freedom of expression may be considerable: saying anything controversial may trigger a wave of cyber-attacks that your adversaries can purchase easily. These attacks are financially burdensome and politically disabling for the victim. Getting your server back online is usually the least of your problems. Your Web hosting company may kick you off its servers because the cost of dealing with the damage caused by cyber-attacks usually outweighs the monetary gains of hosting controversial groups, from political bloggers to LGBT groups to exiled media from countries such as Burma (just to mention some recent victims of DDoS attacks). Protection from DDoS is available, but usually too expensive for nonprofits. An alternative to expensive DDoS protection is a kind of distributed defense network. Imagine an idealized world in which every computer has the latest anti-virus update and where users do not open suspicious attachments or visit dubious Web sites. Cyber-gangs would then be left to their own devices—to attacking with computers they own—and the security issues would be considerably diminished. This perfect world is impossible to achieve, but the right policies could get us pretty close. One option is to go "macro"—to ensure that all critical national infrastructure is prioritized and protected, with extremely flexible resource allocation for the key assets (part of the job of a cyber-czar). This, however, would do little to curb the DDoS market. Indeed, it might embolden the attackers to ratchet up their capabilities. An alternative is to go "micro"—ensure that people who are responsible for the creation of this market in DDoS attacks in the first place (i.e., you and me) are knowledgeable (or at least literate) in cyber-security matters and do not surf with their antivirus protection turned off. This latter solution could eliminate the problem at root: if all computers were secure and computer users careful, botnets would significantly shrink in size. This, however, is a big "if," and most skepticism over whether the federal government is well-placed to educate about these threats is justified. The security threats from DDoS attacks pale in comparison with the potential consequences of another kind of online insecurity, one more likely to be associated with terrorists than criminals and potentially more consequential politically: data breaches or network security compromises (I say "potential" because very few analysts with access to intelligence information agree to speak on the record). After all, with DDoS, attackers simply slow down everyone's access to data that are, in most cases, already public (some data are occasionally destroyed). With data breaches, in contrast, attackers can gain access to private and classified data, and with network security compromises, they might also obtain full control of high-value services like civil-aviation communication systems or nuclear reactors. Data breaches and network security compromises also create far more exciting popular narratives: the media frenzy that followed the detection of China-based GhostNet—a large cyber-spying operation that spanned more than 1250 computers in 103 countries, many of them belonging to governments, militaries, and international organizations—is illustrative. Much like botnets, cyber-spying operations such as GhostNet rely on inadvertently downloaded trojans to obtain full control over the infected computer. In GhostNet's case, hackers even gained the ability to turn on computers' camera and audio-recording functions for the purposes of remote surveillance, though we have no evidence that attackers used this function. In fact, what may be most remarkable about GhostNet is what did not happen. No computers belonging to the U.S. or U.K. governments—both deeply concerned about cyber-security—were affected; one NATO computer was affected, but had no classified information on it. It might be unnerving that the computers in the foreign ministries of Brunei, Barbados, and Bhutan were compromised, but the cyber-security standards and procedures of those countries probably are not at the global cutting edge. With some assistance on upgrades, they could be made much more secure. In part, then, the solution to cyber-insecurity is simple: if you have a lot of classified information on a computer and do not want to become part of another GhostNet-like operation, do not connect it to the Internet. This is by far the safest way to preserve the integrity of your data. Of course, it may be impossible to keep your computer disconnected from all networks. And by connecting to virtually any network—no matter how secure—you relinquish sole control over your computer. In most cases, however, this is a tolerable risk: on average, you are better off connected, and you can guard certain portions of a network, while leaving others exposed. This is Network Security 101, and high-value networks are built by very smart IT experts. Moreover, most really sensitive networks are designed in ways that prevent third-party visitors—even if they manage somehow to penetrate the system—from doing much damage. For example, hackers who invade the email system of a nuclear reactor will not be able to blow up nuclear facilities with a mouse click. Data and security breaches vary in degree, but such subtlety is usually lost on decision-makers and journalists alike. Hype aside, what we do know is that there are countless attacks on the government computers in virtually every major Western country, many of them for the purpose of espionage and intelligence gathering; data have been lost, compromised, and altered. The United States may have been affected the most: the State Department estimates that it has lost "terabytes" of data to cyber-attacks, while Pentagon press releases suggest that it is under virtually constant cyber-siege. Dangerous as they are, these are still disturbing incidents of data loss rather than seriously breached data or compromised networks. Breakthroughs in encryption techniques have also made data more secure than ever. As for the data loss, the best strategy is to follow some obvious rules: be careful, and avoid trafficking data in open spaces. (Don't put important data anywhere on the Internet, and don't leave laptops with classified information in hotel rooms.) Although there is a continuous spectrum of attacks, running from classified memos to nuclear buttons, we have seen no evidence that access to the latter is very likely or even possible. Vigilance is vital, but exaggeration and blind acceptance of speculative assertions are not. So why is there so much concern about "cyber-terrorism"? Answering a question with a question: who frames the debate? Much of the data are gathered by ultra-secretive government agencies—which need to justify their own existence—and cyber-security companies—which derive commercial benefits from popular anxiety. Journalists do not help. Gloomy scenarios and speculations about cyber-Armaggedon draw attention, even if they are relatively short on facts. Politicians, too, deserve some blame, as they are usually quick to draw parallels between cyber-terrorism and conventional terrorism—often for geopolitical convenience—while glossing over the vast differences that make military metaphors inappropriate. In particular, cyber-terrorism is anonymous, decentralized, and even more detached than ordinary terrorism from physical locations. Cyber-terrorists do not need to hide in caves or failed states; "cyber-squads" typically reside in multiple geographic locations, which tend to be urban and well-connected to the global communications grid. Some might still argue that state sponsorship (or mere toleration) of cyber-terrorism could be treated as casus belli, but we are yet to see a significant instance of cyber-terrorists colluding with governments. All of this makes talk of large-scale retaliation impractical, if not irresponsible, but also understandable if one is trying to attract attention. Much of **the cyber-security problem**, then, **seems to be exaggerated: the economy is not about to be brought down, data and networks can be secured, and terrorists do not have the upper hand**. But what about genuine cyber-warfare? The cyber-attacks on Estonia in April-May 2007 (triggered by squabbling between Tallinn and Moscow over the relocation of a Soviet-era monument) and the cyber-dimension of the August 2008 war between Russia and Georgia have reignited older debates about how cyber-attacks could be used by and against governments.

Cyber crime does not have a major impact on the economy or competitiveness – there is data is manipulated by the security sector.

Economist '11

The Economist. "Measuring the black web: Is cybercrime as big as its foes fear?". October 15, 2011. http://www.economist.com/node/21532263

> Big numbers and online crime go together. **One well-worn assertion is that cybercrime revenues exceed those from the global trade in illegal drugs**. **Another nice round number is the $1 trillion-worth of intellectual property** that, **one senator claimed** earlier this year, cybercriminals snaffle annually. **It is hard to know what to make of these numbers**. **Online crooks**, like their real-world brethren, **do not file quarterly reports**. In the absence of figures from the practitioners, **experts tend to fall back on surveys of victims, often compiled by firms that sell security software**. **These have a whiff of self interest about them: they are the kind of studies that get press released but not peer reviewed**. **A paper by two researchers at Microsoft**, Dinei **Florencio and** Cormac **Herley, shows why: because losses are unevenly distributed**. Most people never have their bank accounts raided by cyber criminals, but an unfortunate few do, and lose a lot. This means that per capita losses, which the surveys calculate before extrapolating to a national figure, are dominated by a handful of big online heists. **Errors in the reporting of such infrequent crimes have a huge effect on the headline figure**. In a 1,000-person survey in America, for example, **exaggerating the impact of a single crime by $50,000 would add $10 billion to the national figure.** Other **data can be skewed this way too**. But those who analyse it take precautions to protect their results. **Few cybercrime surveys cite the methodology they used.** Those that do expose their plumbing do not convince the Microsoft authors. **The few researchers who have observed cyber criminals in action are similarly sceptical** about the industry's estimates. In the latest instalment of a mammoth four-year exercise Chris **Kanich** of the University of California, San Diego, **and colleagues tracked around 20 outfits that use spam to advertise illegal online pharmacies**. First they secretly monitored the spammers' payment systems. Then they obtained logs from one of the servers that power the illegal pharmaceutical sites. They even ordered (and—perhaps surprisingly—received) some of the non-prescription drugs on sale. **Their findings suggest that only two of the 20 or so operators bring in $1m or more per month**. The criminals behind fake security software appear to reap similar rewards, say Brett Stone-Gross and colleagues at the University of California, Santa Barbara. Their study, due to be presented at next month's eCrime 2011 conference in San Diego, puts the annual revenue of each criminal group at a few tens of millions of dollars. As with Mr Kanich's study, it is not clear how much of this is profit. **Such hauls fall well short of extravagant claims from the security industry that some spammers make millions every day**. Stefan Savage, Mr Kanich's PhD supervisor, says that **the security industry sometimes plays "fast and loose" with the numbers, because it has an interest in "telling people that the sky is falling"**.

AT Cybersecurity Adv- Heg Impact

Threat of cyber attacks are over hyped – the U.S. is economy and military is resistant to attacks.

Lewis '6

James A. Lewis is director of the technology and public policy program for the Center for Strategic and International Studies in Washington. "The War on Hype". February 19, 2006. San

Francisco Chronicle. http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/02/19/INGDDH8E2V1.DTL&ao=all

> **Americans receive a steady stream of warnings and alarms about new and horrific perils** that await them. Pandemics, dirty bombs, **cyber attacks**, bioterror and other exotic threats are **always on the verge of being unleashed** onto a shamefully unprepared republic. **Yet, judging from statistic**s on life expectancy, violent deaths and war, **we live in much less perilous times** than any generation before us. Avian flu, for example. We are cautioned that a pandemic on the scale of the 1918 Spanish influenza outbreak, which cost hundreds of thousands of lives, is only months away. One World Health Organization estimate says 2 million to 7 million people will die in the next pandemic. But it is not 1918. The WHO reports that since 2003, there have been 152 cases of avian flu, resulting in 83 deaths. A flu pandemic has been regularly predicted since 1997 and (knock on wood) it has never arrived. **Or cyber terror. In 1995, the first in a long series of warnings of an "electronic Pearl Harbor"** was made. **Although terrorists have launched many attacks since 1995, none has involved cyber terror**. The closest thing to a cyber attack occurred in Australia, when a disgruntled employee who had designed the computer system for a sewage treatment plant was able to penetrate the network after 49 consecutive attempts that went unnoticed and release raw sewage. The government report on the incident says this produced an unbearable smell for several days. Residents were unhappy, but able to control their terror. **Cyber terror was at first suspected in the 2003 Northeast blackout. The cause turned out to be incompetence and falling trees**. **The widespread blackout did not degrade U.S. military capabilities, did not damage the economy**, and caused neither casualties nor terror. **One lesson to draw from this is that large, modern economies are hard to defeat. Their vulnerability -- to cyber attack** or dirty bombs or the other exotic weapons -- **is routinely exaggerated**. **Yes, computer networks are vulnerable to attack, but nations are not equally vulnerable. Countries like the U**nited **S**tates, **with its abundance of services and equipment and the ability and experience in restoring critical functions, are well equipped to overcome an attack**.

The Heg debate is OVER- U.S. decline is not only inevitable, it has arrived. The U.S. must accept China's ascendancy.

Christopher **Layne 2012** (is Robert M. Gates Chair in Intelligence and National Security at the George Bush School of Government and Public Service at Texas A&M University; ISQ* peer reviewed: ISI Journal Citation Reports® Ranking: 2010: International Relations: 10 / 73; Political Science: 18 / 139 Impact Factor: 1.523) "This Time It's Real: The End of Unipolarity and the Pax Americana" *International Studies Quarterly, 1-11*

> **The Cold War's end stifled the** burgeoning late 1980s' **debate about America's relative decline while triggering a new debate about unipolarity**. In the Great Recession's aftermath, **a verdict on those debates now can be rendered**. First, it turns out the **declinists were right** after all. **The United States' power has declined relatively.** By 2014, the US share of global GDP will shrink to 18%, which is well below the "normal" post-World War II share of 22% to 25% (Nye 1991, 2011). Just as the 1980s declinists predicted**, chronic budget and current account deficits, overconsumption, undersaving, and deindustrialization have exacted their toll on the American economy. Judgment also now can be rendered on the debate between balance of power realists and unipolar stability theorists. As balance of power realists predicted, one new great power already has emerged to act as a counterweight to American power, with others**

waiting in the wings. In contrast to unipolar stability theorists who said unipolarity would extend well into the twenty-first century, balance of power realists predicted that unipolarity would come to an end around 2010. **Instead of looking at the trend lines fueling China's rise and America's decline, unipolar stability theorists were wrong because they relied on static measures of national power and failed to grasp the velocity of China's rise. If, indeed, it has not already done so, sometime this decade**---perhaps as early as 2016-**China's GDP will surpass the United States'**. **No longer is China an emerging great power; it is a "risen" one. The debate about unipolarity is over**. The balance of power realists have won. Tbe distribution of power in international political system is shifting dramatically. **The US grand strategy must respond to the emerging constellation of power**. Yet, US policymakers and many security studies scholars are in thrall to a peculiar form of denialism. First, they believe the world still is unipolar even in the face of overwhelming evidence that it is not. Second, they believe that even if unipolarity were to end, there would be no real consequences for the United States because it will still be the "pivotal" power in international politics, and the essential features of the "liberal order" -the Pax Americana-will remain in place even though no longer buttressed by the US economic and military power that have undergirded it since its inception after World War II. This is myopic. Hegemonic decline always has consequences. As the twenty-first century's second decade begins, history and multipolarity are staging a comeback. **The world figures to become a much more turbulent place geopolitically than it was during the era of the Pax Americana. Accepting the reality of the Unipolar Exit---coming to grips with its own decline and the end of unipolarity symbolized by China's rise-will be the United States' central grand strategic preoccupation** during the next ten to fifteen years.

And it doesn't resolve any conflicts

Fettweis 11

Christopher, Professor of Political Science @ Tulane, Dangerous Times?: The International Politics of Great Power Peace, pg. 172-174

The primary attack on restraint, or justification of internationalism, posits that if the United States were to withdraw from the world, a variety of ills would sweep over key regions and eventually pose threats to U.S. security and/or prosperity. These problems might take three forms (besides the obvious if remarkably unlikely, direct threats to the homeland.). generalized chaos, hostile imbalances in Eurasia, and/or failed states. Historian Arthur Schlesinger was typical when he worried that restraint would mean "a chaotic, violent, and ever more dangerous planet." All of these concerns either implicitly or explicitly assume that the presence of the United States is the primary reason for international stability, and if that presence were withdrawn chaos would ensue. In other words, they depend upon hegemonic-stability logic. Simply stated, the hegemonic stability theory proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules. At the height of Pax Romana between 27 BC and 180 AD, for example, Rome was able to bring unprecedented peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana where no power is strong enough to challenge its dominance, and because it has established a set of rules that are generally in the interests of all countries to follow. Without a benevolent hegemon, some strategists fear, instability may break out around the globe..'". Unchecked conflicts could cause humanitarian disaster and, in today's interconnected world, economic turmoil that would ripple throughout global financial markets. If the United States were to abandon its commitments abroad, argued Art, the world would "become a more dangerous place' and, sooner or later, that would 'redound to America's detriment.'" If the massive spending that the United States engages in actually provides stability in the international political and economic systems, then perhaps internationalism is worthwhile. **There are good theoretical and empirical reasons**, however, **to believe that U.S hegemony is not the primary cause of the current era of stability. First** of all, **the hegemonic-stability argument overstates the role that the United States plays in the system. No country is strong enough to police the world** on its own. The only way there can be stability in the community of great powers is if self-policing occurs, if states have decided that their interests are served by peace. if no pacific normative shift had occurred among the great powers that

was filtering down through the system, then no amount of international constabulary work by the United States could maintain stability. Likewise, if it is true that such a shift has occurred, then most of what the hegemon spends to bring stability would he wasted. The 5 percent of the world's population that live in **the United States simply could not force peace upon an unwilling** 95. At the risk of beating the metaphor to death, **the United States maybe patrolling a neighborhood that has already rid itself of crime. Stability and unipolarity may be simply coincidental.** In order for U.S. hegemony to he the reason for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not always proven to he especially eager to engage in humanitarian interventions abroad. Even rather incontrovertible evidence of genocide has not been sufficient to inspire action. **Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence**, whether physical or psychological, of the United States. **Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention. Since most of the world today is free to fight without U.S. involvement, something else must be at work. Stability exists in many places where no hegemony is present**. Second, the limited empirical evidence we have suggests that **there is little connection between the relative level of U.S. activism and international stability**. During the 1990s the United States cut back on its defense spending fairly substantially. By 1998 the United States was spending $100 billion less on defense in real terms than it had in 1990,72 To internationalists, defense hawks, and other believers in hegemonic stability, this irresponsible peace dividend" endangered both national and global security. "No serious analyst of American military capabilities;' argued Kristol and Kagan, 'doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peac&'73 If the pacific trends were due not to U.S. hegemony but a strengthening norm against interstate war, however, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew' more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable Pentagon, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove mistrust and arms races; no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and it kept declining as the Bush Administration ramped spending back up. **No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated**. It is also worth noting for our purposes that the United States was no less safe.

Neoliberalism Prisons Link DDI

Prisons Link

The aff focuses on the wrong problem and gets coopted to make the prison system stronger—they make prisons look better while leaving in place the larger neoliberal structures that sustain the prison-industrial complex

Heitzeg, 14 – Ph.D, professor of sociology and director of the critical studies of race/ethnicity program at St. Catherine University (Nancy A., 12/18. "The Perils of Criminal Justice "Reform" and the Promise of Abolition." http://www.truth-out.org/news/item/28087-the-perils-of-criminal-justice-reform-and-the-promise-of-abolition)

But as we traverse what Kilgore aptly calls the Contradictory Road of "Reforming" Mass Incarceration, let's question, too, the legitimacy of well-meaning classically liberal models of "corrections" and "reform." These models can do their own sort of damage. Early this year right about the time that Angela Davis issued her words of warning – I was reminded of this again at a panel hosted by the Minneapolis League of Women Voters, Interrupting the Prison Pipeline: Partnerships, Prevention, Advocacy, Intervention. The panel included a host of well-connected Minneapolis political, nonprofit and faith-based "leaders." And despite the claims of "interrupting" in the title, the primary focus was in providing services to those already incarcerated or to ex-offenders in the form of increased employment opportunities via Ban the Box legislation, expanded voting rights for probationers, and more Second Chances. And of course we are for that. But where was discussion about prevention, alternatives to the criminal legal system, dismantling the school to prison pipeline, and the impetus for the first chances? Here's the truth: Minnesota, a couple of anomalies not withstanding, is a Blue state. Minneapolis an even bluer city. The state has one of the lowest incarceration rates in the nation (with fewer people in prison in the entire state than the two largest maximum security prisons in the U.S.. combined), and a Department of Corrections that advertizes its' "bold set of reforms that created one of the best correctional systems in the nation." Still, the racial disparities are staggering, with Blacks and American Indians dramatically over-represented, and more than 100,000 on probation/community supervision, a rate, that while declining, is near the top of the nation. So Minnesota runs a kinder gentler correctional industrial complex, where mostly "nice" white liberals control vast percentages of select populations (read: Black, Latino, Hmong, East African and American Indian) through racial profiling, community supervision/probation, and by offering an array of "re-entry' services to those released from our prisons. The entire endeavor is funded and blessed by a complex web that includes Hennepin County government services, the local nonprofit industrial complex, including an array of powerful statewide foundations, "socially responsible" corporations, interfaith coalitions, and elite research think tanks of the University of Minnesota. It is an obvious improvement over mass incarceration or raw "Right on Crime" profiteering, but it is still a nearly impenetrable economic web that creates and sustains a huge employment sector. These interests insure that the system is always needed, and no issue is ever "solved", that any grassroots groups that wants funding must jettison the more radical aspects of their agenda, and that innovative community-centered models, such as restorative justice, are immediately co-opted and institutionalized. Ultimately, we must question this too, and in fact,

question the entire enterprise known as "criminal justice." If the "best" practices still produce an excessive and unnecessary vortex of raced, classed, gendered social control, then alternatives to this must be envisioned as well. We must ask again, with Angela Davis: So, the question is: How does one address the needs of prisoners by instituting reforms that are not going to create a stronger prison system? Now there are something like two-and-a-half million people behind bars, if one counts all of the various aspects of what we call the prison-industrial complex, including military prisons, jails in Indian country, state and federal prisons, county jails, immigrant detention facilities—which constitute the fastest-growing sector of the prison-industrial complex. Yeah, so how—the question is: How do we respond to the needs of those who are inside, and at the same time begin a process of decarceration that will allow us to end this reliance on imprisonment as a default method of addressing—not addressing, really—major social problems? And the answer – Abolition.

Nuclear DA vs. Exports Northwestern

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The US nuclear energy sector is weak, but export reforms revitalize it

NEI, 12, National Energy Institute, Winter 2012, "US Nuclear Export Rules Hurt Global Competitiveness", http://www.nei.org/News-Media/News/News-Archives/us-nuclear-export-rules-hurt-global-competitivenes

Nuclear Winter 2012—Fifty years ago, the United States was the global leader in nuclear technology and services, the first country to harness atoms for peace, and the first to profit from it internationally. Today, U.S. dominance of the global nuclear power market has eroded as suppliers from other countries compete aggressively against American exporters. U.S. suppliers confront competitors that benefit from various forms of state promotion and also must contend with a U.S. government that has not adapted to new commercial realities. The potential is tremendous—$500 billion to $740 billion in international orders over the next decade, representing tens of thousands of potential American jobs, according to the U.S. Department of Commerce. With America suffering a large trade deficit, nuclear goods and services represent a market worth aggressive action. However, **antiquated U.S. government approaches to nuclear exports are challenging U.S. competitiveness in the nuclear energy market.** New federal support is needed if the United States wants to reclaim dominance in commercial nuclear goods and services—and create the jobs that go with them. "The U.S. used to be a monopoly supplier of nuclear materials and technology back in the '50s and '60s," said Fred McGoldrick, former director of the Office of Nonproliferation and Export Policy at the State Department. "That position has eroded to the point where we're a minor player compared to other countries." America continues to lead the world in technology innovation and know-how. So what are the issues? And where is the trade? Effective coordination among the many government agencies involved in nuclear exports would provide a boost to U.S. suppliers. "Multiple U.S. agencies are engaged with countries abroad that are developing nuclear power, from early assistance to export controls to trade finance and more," said Ted Jones, director for supplier international relations at NEI. The challenge is to create a framework that allows commercial nuclear trade to grow while ensuring against the proliferation of nuclear materials. "To compete in such a situation, an ongoing dialogue between U.S. suppliers and government needs to be conducted and U.S. trade promotion must be coordinated at the highest levels," Jones said. Licensing U.S. Exports Jurisdiction for commercial nuclear export controls is divided among the Departments of Energy and Commerce and the Nuclear Regulatory Commission and has not been comprehensively updated to coordinate among the agencies or to reflect economic and technological changes over the decades. The State Department also is involved in international nuclear commerce. It negotiates and implements so-called "123 agreements" that allow for nuclear goods and services to be traded with a foreign country. The federal agencies often have different, conflicting priorities, leading to a lack of clarity for exporters and longer processing times for export licenses. "The U.S. nuclear export regime is the most complex and restrictive in the world and the least efficient," said Jones. "Furthermore, it is poorly focused on items and technologies that pose little or no proliferation concern. By trying to protect too much, we risk diminishing the focus on sensitive technologies and handicapping U.S. exports."

Allows the US to challenge Russia in the nuclear sphere

Jack **Spencer, 6/9**, Vice President of the Institute for Economic Freedom and Opportunity at The Heritage Foundation, "Ex–Im Is Not the Key to Nuclear Industry's Competitiveness", http://dailysignal.com/2015/06/09/ex-im-is-not-the-key-to-nuclear-industrys-competitiveness/

In the final days before the charter of the Export–Import Bank (Ex–Im) is set to expire, supporters of its export subsidies are claiming that Congress must reauthorize and expand Ex–Im if the U.S. commercial nuclear industry is to succeed internationally. We should take the concerns of the nuclear industry seriously—but not accept Ex–Im as a solution. Those who advocate for Ex–Im as a necessity for the U.S. nuclear industry's success argue: Without Ex–Im, the U.S. nuclear industry cannot compete with aggressive Russian expansion in nuclear energy exports, which is heavily financed by the

Russian government. As the argument goes, Russian financing not only threatens the U.S. nuclear industry's ability to compete, but it fosters the region's overdependence on Russia for energy. The response to Russia's strategy is not to reciprocate with a similar, albeit milder, policy that encourages cronyism and puts taxpayers on the hook for corporate interests. The right approach is for the U.S. government to streamline export regulations with nations with whom we have entered into nuclear agreements and for nuclear companies to compete by offering superior products and services. Subsidies only undercut the industry's competitive strength. American companies already have a distinct advantage over the Russian nuclear industry in the same regions Ex–Im supporters claim particular concern. European nations are willing to pay for secure access to energy resources, and the European Union has launched a strategic initiative to diversify the energy options of member nations.

Nuclear energy is the lynchpin of Russia's economy

Andrei **Frolov, 14**, PhD degrees in physics from Alberta University, June 26, 2014, "Nuclear energy is still important for Russia", http://in.rbth.com/opinion/2014/06/26/nuclear_energy_is_still_important_for_russia_36237.html

The third reason for developing its nuclear resources is the growing prospects for the export of nuclear technologies. Russia's nuclear energy sector is becoming a major world exporter of nuclear power units. Russian nuclear power units operate in countries ranging from China and India to Turkey and Slovakia. There are currently five Russian power units being built abroad, with 13 more under contract to be built in the next several years. Discussions are in progress for at least 10 more units. In addition to exporting reactor technology, under these contracts Russia agrees to provide fuel, components, spare parts and services such as maintenance and spent fuel recycling for the duration of the reactor's life, which could be as much as 60 years. The value of these services to Russia's economy is far greater than the sale of the reactor itself. Another important reason for the continued development of Russia's nuclear sector is the country's security. The existence of a strong civilian nuclear energy sector ensures effective operations of its nuclear weapons complex. In addition, civilian orders keep the sector's dual-purpose enterprises busy. Russia lags behind in renewable energy 'game' For example, it is now clear that the Rosatom-funded program for the construction of a floating nuclear power station, which was heavily criticized in its early stages, has allowed Russia to retain its ship reactor technology, which was later used to expand the nuclear icebreaker fleet. This fleet, in turn, is becoming ever more important for the global shipping industry as more goods are shipped through the Northern Sea Route. Nuclear power is important for Russia's continued economic development for reasons far beyond maintaining military readiness. Keeping up with the latest technologies in the sector keeps thousands of highly qualified Russian scientists employed.

Russian Economic decline cause nuclear war

Sheldon **Filger, 9**, Author and founder of www.GlobalEconomicCrisis.com, June 10, 2009,"Russian Economy Faces Disastrous Free Fall Contraction", http://www.huffingtonpost.com/sheldon-filger/russian-economy-faces-dis_b_201147.html

In Russia, historically, economic health and political stability are intertwined to a degree that is rarely encountered in other major industrialized economies. It was the economic stagnation of the former Soviet Union that led to its political downfall. Similarly, Medvedev and Putin, both intimately acquainted with their nation's history, are unquestionably alarmed at the prospect that Russia's economic

crisis will endanger the nation's political stability, achieved at great cost after years of chaos following the demise of the Soviet Union. Already, strikes and protests are occurring among rank and file workers facing unemployment or non-payment of their salaries. Recent polling demonstrates that the once supreme popularity ratings of Putin and Medvedev are eroding rapidly. Beyond the political elites are the financial oligarchs, who have been forced to deleverage, even unloading their yachts and executive jets in a desperate attempt to raise cash. Should the Russian economy deteriorate to the point where economic collapse is not out of the question, the impact will go far beyond the obvious accelerant such an outcome would be for the Global Economic Crisis. There is a geopolitical dimension that is even more relevant then the economic context. Despite its economic vulnerabilities and perceived decline from superpower status, Russia remains one of only two nations on earth with a nuclear arsenal of sufficient scope and capability to destroy the world as we know it. For that reason, it is not only President Medvedev and Prime Minister Putin who will be lying awake at nights over the prospect that a national economic crisis can transform itself into a virulent and destabilizing social and political upheaval. It just may be possible that U.S. President Barack Obama's national security team has already briefed him about the consequences of a major economic meltdown in Russia for the peace of the world. After all, the most recent national intelligence estimates put out by the U.S. intelligence community have already concluded that the Global Economic Crisis represents the greatest national security threat to the United States, due to its facilitating political instability in the world.

Block

Russia's economy is rebounding, but its still weak

Mark **Adomanis, 15**, MA/MBA candidate at the Lauder Institute and the Wharton School of Business contributor to Forbes, April 22, 2015, "Russia's Economy Pulls Back From the Brink", http://www.themoscowtimes.com/opinion/article/russias-economy-pulls-back-from-the-brink/519581.html

As he faced the nation, Putin was much more optimistic than he has been over the past few months, proclaiming that the worst of the crisis has passed and that Russia would return to "normal" growth in less than two years. According to the Kremlin, then, the economic war against Russia is over, and Russia won. Putin very well might, as German Chancellor Angela Merkel put it, live in "another world." Certainly his statements about Ukraine have very little basis in objective reality, and it would be exceedingly foolish to simply take his upbeat proclamations at face value. In this particular instance, however, Putin really doesn't seem to be that far off of the mark. The idea that Russia's economy could already be emerging from the recent crisis is not a Kremlin conspiracy. Western outlets like Newsweek have also featured upbeat stories about Russia's unexpectedly robust economic performance. Even people who are critical of Putin and Putinism, like Bloomberg View columnist Leonid Bershidsky, have noted that Russia's current downturn might not prove so bad after all. Financial professionals are not quite as upbeat as the Russian government, of course, but have gone on the record with expectations that the economy will bottom out in the second or third quarter and cumulatively shrink by somewhere between 3 and 4 percent. A few individual forecasts (like Standard & Poor's) now predict a hit to Russian gross domestic product of only 2.6 percent. This relative optimism is very different compared to how the situation was just a few months ago. Back in December and January it really did look like the bottom had fallen out from under Russia.

Export controls deck the nuclear industry

James A. **Glasgow, 12**, partner at Pillsbury Winthrop Shaw Pittman LLP, October 2012, "NUCLEAR EXPORT CONTROLS A Comparative Analysis of National Regimes for the Control of Nuclear Materials, Components and Technology", http://www.pillsburylaw.com/siteFiles/Publications/NuclearExportControls.pdf

Commercial nuclear companies that export goods and services from the United States have long pointed to the U.S. nuclear export control system as a major competitive disadvantage as they compete with their counterparts in nuclear supplier nations such as the Russian Federation, Japan, the Republic of Korea (ROK) and France. Their concerns are based on a belief that the U.S. nuclear export control regime is: (1) **more complex and difficult for U.S. companies to navigate**, impeding their ability to secure required licenses and authorizations for exports of nuclear services and commodities; (2) significantly **less efficient** in processing export licenses than its counterparts in other nations, and (3) **more restrictive** in its controls than the regimes of other nuclear supplier nations, causing potential customers to refrain from doing business with U.S. nuclear vendors and service providers and/or hindering the ability of the U.S. companies to execute and perform contracts with foreign customers. In a November 2010 report on commercial nuclear exports, the Government Accountability Office (GAO) cited concerns that the U.S. export control regime imposes a competitive disadvantage on U.S. exports. GAO reported industry statements "that [the U.S. Department of Energy's (DOE)] Part 810 authorization regulations are vaguely defined and that DOE interprets its authority to include transfers of technology and technical assistance too broadly." 1 The objective of this report is to evaluate whether U.S. commercial nuclear exporters do, in fact, face a competitive

disadvantage because of the U.S. export control regime and, if such burdens exist, to identify them. This requires a comparative analysis of the commercial nuclear export control regimes of major supplier countries. The report provides an overview of four national regimes for the control of exports of nuclear materials, components and technology – those of Russia, Japan, ROK and France – and compares these regimes to the U.S. nuclear export control regime.

Nuclear exports are extremely important for Russia's economy

Gary **Sampson, 11**, writer for EnergyBiz, January/February 2011, "Russia's Nuclear Ambitions PUSHING EXPORTS", http://www.energybiz.com/magazine/article/195961/russias-nuclear-ambitions

RUSSIA IS CONTINUING ITS POLICY OF vigorously pushing the export of all things pertaining to nuclear energy production. The year 2010 proved to be a good year for business. The past year has witnessed multibillion-dollar nuclear power plant sales to countries ranging from Venezuela to India and from China to Turkey. Russia is building 15 of the 60 nuclear reactors currently under construction in the world. Russia itself has some 31 nuclear reactors in operation and plans to increase that number to 59 in the near future, nearly doubling power output by 2020. Concern over the 1986 disaster at Chernobyl no longer appears to be a major factor in nuclear power plant sales as the current technology of the Russian nuclear industry is acknowledged to be on a par with any in the world. Russia was the first country to have a nuclear power plant producing electricity. That was in 1954 at the Obninsk reactor. The similar, but less serious nuclear event at Three Mile Island in Pennsylvania in 1979 turned much American public opinion against nuclear power. The Russian nuclear power industry, being less influenced by public opinion, continued working on improving nuclear power technology and has now fully caught up with current practice. Some of the success may be due to special technology-sharing agreements with Western and Japanese companies. In 2009, the Russian Atomic Energy Power Corp., Atomenergoprom, signed a framework agreement with Japan's Toshiba for collaboration in the development of nuclear power technology. Toshiba purchased Westinghouse Electric in 1996 for $5.4 billion and Westinghouse technology is the basis for about 50 percent of the world's operating commercial nuclear power plants. The Russian-Japanese agreement centers on the design and engineering of commercial nuclear power plants and related equipment. Another joint technology agreement is with Germany's Siemens. Siemens will provide turbines for Rosatom, the Russian state-owned nuclear corporation. Siemens and Rosatom will work together on developing designs for new nuclear power plants and upgrading the efficiency and lifespan of existing plants. The Siemens agreement is expected to be finalized in 2011. Russia is currently working on a project to extend the life of existing Russian nuclear power plants beyond their designed 30-year limit. With confidence in the quality of its product, Russia hopes to supply a significant percentage of the world demand for new nuclear power plant capacity, which is expected to grow by about 300 gigawatts between now and 2030. Russia plans to be rid of environmentally harmful fossil fuel power generation by 2050 by using the new type of fast reactor nuclear plants. Russia markets its state-of-the-art nuclear products with a host of special incentives for customers. At the top of the incentive list is price. Russian 1,000-megawatt plants cost an average of $2.9 billion in Russia, less financing. This price is 20 to 50 percent below the Western norm. The low prices are being challenged now by a consortium of South Korean manufacturers. The Korean consortium, led by Korean Electric Power, KEPCO, recently beat out both France's Areva group and a joint venture between GE and Hitachi to win a $20 billion contract in the United Arab Emirates. The Koreans came in at 20 percent below their competitors. Not all deals are simple sales to a customer. Russia will retain ownership of the $20 billion project to build Turkey's first nuclear power plant, to be located on the country's southern coast. The Russian entity running the plant will be Atomstroyexport. Local sale of electricity will pay for construction of the plant. The four reactors, each with a capacity of 1.2 gigawatts, are expected to begin operation between 2016 and 2019. The Turkish government pays nothing up front. When the plant is finished in seven years, Atomstroyexport will be free to sell up to 49 percent of the business to investors. The Russians have another distinct advantage in that their contracts usually include an agreement to bundle the complete fuel-cycle supply with plant construction. Among competitors, only France's Areva does the same. This means the Russians will supply the low-enriched uranium used to fuel the plant and take the spent fuel back to Russia. In a sense the fuel is leased to the users of the plant. Spent fuel is a product in itself. It can be reprocessed in various ways, making it valuable for use in fast neutron reactors. Supply of nuclear fuel to any power plant, not just Russian-built ones, is an important Russian business in itself. Rosatom or its subsidiaries supply 30 percent of the nuclear fuel used in France, 100 percent of the fuel used in Switzerland, and about 45 percent of the fuel used by American utilities. Ten percent of all electricity in the United States is generated by uranium material taken from decommissioned Russian nuclear weapons. This is the result of the Megatons to Megawatts agreement between Russia and the United States. Both countries have been converting bombs into reactor fuel, but the agreement expires in 2013. Russia has about 40 percent of global uranium enrichment capacity and supplies 17 percent of the nuclear fuel used around the world at the present time. Rosatom hopes

to increase its market share to 25 percent by 2025. Russia does not have to rely on its old nuclear weapons alone for uranium. In June, Russia purchased a controlling interest in Canada's Uranium One mining and exploration company for $610 million. This acquisition, along with Russia's proven 8 percent of the world's uranium reserves, should ensure a reliable, continuing supply of fuel. Low prices and waste management agreements are not always enough to make the sale. The contract signed in March between Russia and India called for the construction of 16 nuclear reactors in India - six to be completed by 2017. Russia is also to throw in 29 new fighter aircraft, an unspecified number of new transport aircraft, and a refitting of an Indian aircraft carrier. There is also a further difference from the usual contractual arrangements in that the Indians do not have to return the spent fuel

Export controls are the key internal link

Jack **Spencer, 6/9**, Vice President of the Institute for Economic Freedom and Opportunity at The Heritage Foundation, "Ex–Im Is Not the Key to Nuclear Industry's Competitiveness", http://dailysignal.com/2015/06/09/ex-im-is-not-the-key-to-nuclear-industrys-competitiveness/

The biggest threat to the competitiveness of the American nuclear industry may in fact be the American government. The Nuclear Regulatory Commission currently has **60 rulemakings** underway and operates under an **outdated regulatory system that unnecessarily inflates cost** and that makes bringing new technologies to market prohibitively difficult. Commercial nuclear exports are likewise inhibited. The commercial nuclear export regime is convoluted and burdensome and spread between three different federal agencies—all of which **increases costs, imposes delays, and limits innovation**.

Choosing specific countries can't solve

David **Damast, 10**, J.D. from Georgetown University Law Center in May 2010 and currently employed by the Air Force Space Command, Fall 2010, "EXPORT CONTROL REFORM AND THE SPACE INDUSTRY", http://www.lexisnexis.com.turing.library.northwestern.edu/lnacui2api/results/docview/docview.do?docLinkInd=true&risb=21_T22415302054&format=GNBFI&sort=RELEVANCE&startDocNo=1&resultsUrlKey=29_T22415302058&cisb=22_T22415302057&treeMax=true&treeWidth=0&selRCNodeID=2&nodeStateId=411en_US,1&docsInCategory=22&csi=294116&docNo=5

H.R. 2410 also adds yet another layer of difficulty to the export control regime by maintaining satellites and related technologies on the USML as to China and China alone. This would create serious [*229] problems of administration and enforcement. Historically, items have either been covered by the USML, which distinguishes by use, not destination, or by BIS's Commerce Control List (CCL), which does distinguish by destination or end-use. There is some precedent for classifying items on multiple lists, as many items subject to permissive export on the CCL are also subject to nearly complete denial under the Treasury Department's list of embargoed countries. n112 A key difference arises, though, due to ITAR's lack of a de minimis exception. This will create uncertainty in the application of the law to American exports, because a product may be exported under EAR control but then be re-exported to China far down the distribution chain, long after it has been incorporated into another product. For example, a component may be exported to Europe or Japan permissively under EAR jurisdiction for use in manufacturing a commodity satellite bus. That manufacturer may also source the same part from a foreign supplier. The satellite may then be bought by an operator who decides shortly thereafter to launch from China. The satellite component would then become subject to all of the restrictions of ITAR, including the need for a TAA and DTSA monitoring--possibly without the

knowledge of the exporter, manufacturer, operator, or launcher. Had the item been covered by ITAR throughout, the exporters would have had to be responsible for their product through the entire supply chain and any attempts at re-export would have required licensing; the same is true under EAR for items requiring licenses, which is not the case for de minimis parts. Given the severity of the penalties for violating ITAR, n113 this places a heavy burden on exporters. In practice, the regulations would be unenforceable unless the original manufacturer kept tabs on the part all the way down the line until final disposition. Enforcing the regulations would therefore require such an effort. At that point, the protections required would only be slightly less intrusive than ITAR--if so, the legislation will have failed to achieve its stated purpose. An additional complication arises in that some satellite components, such as certain kinds of communications equipment and solar panels, are currently classified not under ITAR jurisdiction, but under EAR jurisdiction. From an administrative perspective, this would require keeping two lists: one for satellite components on the CCL as of the date of H.R. 2410's passage and one for those subject to ITAR. Under the bill, those that were on the CCL, such as solar panels, could be exported to China as much as [*230] allowed under the EAR, while those that were not, such as fuel for a satellite's maneuvering rockets, would be subject to ITAR. A further complication could arise in that the Executive could choose to place some of the items currently under EAR jurisdiction under ITAR jurisdiction. At that point, the Executive might lose the discretion to return them to EAR jurisdiction for export to China. Alternatively, a separate list would need to be maintained of those items that were originally subject to EAR as of the date of the bill's passage but were subsequently transferred to ITAR jurisdiction: the Executive might then retain the discretion to return those items to the CCL. Given these problems of implementation, it might be better to eliminate the China exclusion entirely and simply allow BIS to subject satellite exports to China to the highest levels of licensing scrutiny afforded under the EAR. Furthermore, the post-Tiananmen requirement that the President approve, and notify Congress of, every satellite exported to launch from or by China remains in effect. n114 If Congress were truly worried about Chinese military use of civil American space technologies, it could simply mandate a general policy of exclusion under the EAR, thus preserving the de minimis exception. Alternatively, it could add a de minimis exception to ITAR. The current political climate, however, allows for none of these changes. In fact, the original draft of the bill did not include the China exclusion; its addition was necessary to pass the bill. n115

Overload Core Michigan 7

A2: overload link turn

Alt Causes

Alt causes – data reduction *isn't* enough to solve

Zoldan, 13

Ari Zoldan is an entrepreneur in the technology industry and business analyst based primarily in New York City and Washington, D.C. "More Data, More Problems: is Big Data Always Right?" Wired, May 2013, http://www.wired.com/2013/05/more-data-more-problems-is-big-data-always-right/ // IS

How do we fight the problems of big data? First, we need to approach every data set with skepticism. You have to assume that the data has inherent flaws, and that just because something seems statistically right, doesn't mean it is. Second, you need to realize that data is a tool, not a course of action. Would you ask your hammer how to build a house? Of course not! You can't let the data do the thinking for you, and can never sacrifice common sense. And third, having a lot of data is good, but what we need are the means to analyze and interpret it for use.

Inev

Overload is inevitable and quick-fix solutions fail

Bawden & Robinson, Department of Information Science City University London, '08

(David Bawden; Lyn Robinson, Department of Information Science, City University London, "The dark side of information:¶ overload, anxiety and other¶ paradoxes and pathologies" 9/19/2008 http://www.bollettinoadapt.it/old/files/document/21976david_b-2008.pdf) //GY

While it is true to say that overload has been recognised most clearly in the business and commercial¶ sectors, and in specialist areas such as science and healthcare, it has been a matter of¶ concern to information specialists in all environments, including academic and public libraries.¶ It may be argued that information overload is the natural and inevitable condition of the human¶ species. There has been a consistent viewpoint suggesting that the issue is exaggerated, or even¶ imagined: see, for example, Savolainen [23]. Our senses, particularly the visual sense, are able to¶ handle a huge amount of input, and to identify significant patterns within it. The modern information¶ environment, however, presents us with information in forms with which our senses, and prior experiences,¶ are ill-equipped to deal. The causes of overload, in this sense, are multiple and complex;¶ hence the difficulty in providing any single "quick fix" solution.¶ It is tempting, and usual, to assume that a major contributing factor, if not the only significant¶ factor, in information overload is the TMI effect: "too much information". This is readily supported¶ by statistics of the sort often quoted [17]:¶ • a weekly edition of the New York Times contains more information than the average person was¶ likely to come across in a lifetime in seventeenth-century England¶ • the English language of the late 20th century contains about 50,000 words, five times more than¶ in Shakespeare's lifetime¶ • the collections of the large US research libraries doubled between 1876 and 1990¶ • over one thousand books were published each day across the world during 1990¶ • more information has been created in the past 30 years than in the previous 5,000 years¶ • the number of records in publicly available online databases increased from 52 million in 1975¶ to 6.3 thousand million in 1994¶ • the number of documents on the Internet

doubled from 400 million to 800 million from 1998 to 2000¶ • it would take over 200,000 years to 'read all the Internet', allowing 30 minutes per document.¶ Increasing diversity of information can also lead to overload, partly by virtue of a consequent¶ increase in the volume of information on a given topic, which may come from varying perspectives,¶ but also because of an intellectual difficulty in fitting it within a cognitive framework appropriate¶ for the use and the user. Diversity may occur both in the nature of the information itself, and in the¶ format in which it appears, with a typical business user having to deal with paper, e-mail, voicemail,¶ traditional websites, and so on, to which the newer blogs, wikis and the like must be added.¶ New information and communication technologies, aimed at providing rapid and convenient access¶ to information, are themselves responsible for a high proportion of the overload effect: see, for example,¶ Allen and Shoard [24]. Certain kinds of technology are generally highlighted in this respect, particularly¶ "push" systems, which actively deliver information to the user without any request for it. While the volume of information available for search and retrieve at the user's discretion—"pull"—may be so large¶ as to be daunting, there is not the same sense of information constantly arriving without being under¶ the user's control as with the active delivery systems. E-mail is usually regarded as the worst offender,¶ particularly with overuse of "blanket" e-mail or needless "cc-ing" of messages.

More data good

Bitcoin avoids PRISM compliance—the plan prevents federal data collection on it through domestic companies

Neagle, 13

(Colin, 6-12-13, Network World, "Bitcoin isn't PRISM-proof", http://www.networkworld.com/article/2167213/software/bitcoin-isn-t-prism-proof.html, amp)

In the aftermath of the revelation of PRISM, the NSA spying program that collects user data from nine major U.S. tech companies, many have highlighted alternate options from organizations that are not known to be cooperating with government surveillance efforts.

Among those alternatives, Bitcoin has been pegged as a more private payment option. At Prism-Break.org, which lists alternatives to all the services that fall under the PRISM umbrella, Bitcoin is the only listed alternative to online payment services, such as PayPal and Google Wallet.

Bitcoin ATM is 'horrible for money laundering', says co-creator

But users should know that Bitcoin is not as anonymous as it seems, and while there is no evidence that Bitcoin services are collaborating with federal agencies, information on Bitcoin transactions is readily available to them on the Internet.

A 2011 study conducted by University College Dublin researchers Fergal Reid and Martin Harrigan concluded that although anonymity has been one of Bitcoin's main selling points, "Bitcoin is not inherently anonymous."

"We have performed a passive analysis of anonymity in the Bitcoin system using publicly available data and tools from network analysis," the researchers wrote in a blog post. "The results show that the actions of many users are far from anonymous. We note that several centralized services, e.g. exchanges, mixers and wallet services, have access to even more information should

they wish to piece together users' activity. We also point out that an active analysis, using say marked Bitcoins and collaborating users, could reveal even more details."

In 2012, the publicly available data on Bitcoin transactions was used by researchers Adi Shamir and Dorit Ron to identify the first ever transaction on the network, which is believed to be from an account held by Bitcoin's mysterious creator, known only as Satoshi Nakamoto. While these transactions were covered up quite well, Ron and Shamir concluded that they are not entirely untraceable.

"Finally, we noted that the subgraph which contains these large transactions along with their neighborhood has many strange looking structures which could be an attempt to conceal the existence and relationship between these transactions, but such an attempt can be foiled by following the money trail in a sufficiently persistent way," the report explains.

This may not come as a surprise to the most passionate members of the Bitcoin community, who look at Bitcoin as a movement to revolutionize online payments, rather than a tool to remain anonymous on the Internet. Zach Harvey, co-founder of Lamassu and co-creator of the Bitcoin ATM, says Bitcoin is actually "horrible for money laundering" because the veil of anonymity can be lifted.

Indeed, late last month the online currency exchange service Liberty Network, which is similar to Bitcoin, was infiltrated by international law enforcement agencies that allege it laundered more than $6 billion in money for criminal organizations. The investigation was brought down after an undercover agent created an account on Liberty Network and listed the purpose as "cocaine."

Basically, if independent researchers can trace Bitcoin transactions back to the people responsible, and the U.S. government can investigate digital currencies hosted overseas (Liberty Network was based in Costa Rica), then the NSA, CIA, FBI or any other federal agency can likely peek into Bitcoin activity as well.

Extra-PRISM authorities are key to investigate the Dark Web

Green, 15

(Shemmyla, 4-19-15, Cyberbear Tracks, "Exploring the Deep Web", http://cyberbeartracks.com/?p=545, amp)

Darknet is a subsection of Deep Web that is accessed by Tor. Tor is a web browser, like Chrome or Safari, and free software that helps you defend against traffic analysis, a form of network surveillance that threatens personal freedom and privacy, confidential business activities and relationships, and state security. It sends Internet data through a series of 'relays', adding extra encryption, making web traffic practically impossible to trace. This is the place where much of the anonymous dark, perverted, creepy and illegal activity is, but is it truly anonymous? If **the FBI** truly **seized the Silk Road's servers illegally** and **based off what has been discovered about** NSA and **Prism**, the answer is no.

"There is no such thing as really being anonymous on the Internet. If [hackers and government agencies] want you, they will get you. At the moment the Tor network's security has never been broken, but there are flaws around it that can be exploited," Andy Malone, of Microsoft

Enterprise Security and founder of the Cyber Crime Security Forum, said at the Microsoft TechEd North America 2014.

Now let's discuss PRISM and the NSA. PRISM is a tool used by the US National Security Agency (NSA) to collect private electronic data belonging to users of major Internet services like Gmail, Facebook, Outlook, and others. It's the latest evolution of the US government's post-9/11 electronic surveillance efforts, which began under President Bush with the Patriot Act, and expanded to include the Foreign Intelligence Surveillance Act (FISA) amended in 2006 and 2007. NSA programs collect two kinds of data: metadata and content. Metadata is the sensitive byproduct of communications, such as phone records that reveal the participants, times, and durations of calls; the communications collected by PRISM include the contents of emails, chats, VoIP calls, cloud-stored files, and more. This method of catching criminals appears very intrusive to the average law abiding citizen and is a violation of our 4th Amendment rights. In order to obtain search warrant law enforcement officers must:

1. Have probable cause to believe a search is justified.

2. Support this showing with sworn statements (affidavits), and

3. Describe in particularity the place they will search and the items they will seize.

Not the polar opposite method.

Bitcoin and the dark web cause lone wolf terrorism

Terence **Check 13**, J.D. Candidate, Cleveland-Marshall College of Law, 5/5/13, "Shadow currency: how Bitcoin can finance terrorism," http://theworldoutline.com/2013/05/shadow-currency-how-bitcoin-can-finance-terrorism/

This "crypto-currency" has already been the inspiration for several online robberies where cyber-thieves hack into a computer to steal the vital electronic information at the heart of Bitcoins. Beyond cyber-larceny, the secrecy of Bitcoin poses unique, and even frightening security challenges for a world that has yet to fully understand the problems posed by the internet age.

For example, consider the various national and international anti-money laundering statutes. These laws seek to prevent the illegal flow of currency between criminals, terrorists and other unsavory characters. But these laws require that there are actual shipments of cash between countries and criminal networks (or at the very least funds transfers between banks).

The Bitcoin protocol promises to remove the fundamental risk in money laundering: the risk of interception and detection. By using a monetary exchange like Mt.Gox, criminals can buy Bitcoins at the market rate and then they can sell to a confederate across the world at a higher price, effectuating the exchange of money. Even if Bitcoin performs poorly, it nevertheless provides an opportunity to exchange money via the anonymous P2P network.

The Silk Road can make Bitcoin even more insidious. While the Silk Road, as site policy, forbids the sale of destructive items (stolen credit cards, explosives, etc.), it could be a matter of time before a similar website arises. Then, the firearms laws of the Western world will become virtually useless. Guns can be disassembled, and their parts shipped piecemeal through the postal service. Even substances like Tannerite could be bought and shipped across the globe, providing new opportunities for destructive capacity. If this alone is not enough to compel attention to the growing black market on cyberspace, consider the following.

Bitcoin can make security and law enforcement measures less effective by simply removing the possibility of detection. Terrorist cells or lone wolf operators can get supplies and currency by using the anonymous underbelly of the internet. Government agents are able to detect terrorists through logistical networks (Usama bin Laden was found through his courier). Counter-terrorism, for better or worse, succeeds when it has human networks to exploit. Terrorists need accomplices, handlers, recruits, and suppliers. Sooner or later, one of the individuals in this vast network becomes frightened or disillusioned with the cause and becomes a government informant. Remove the extended logistical network that exposes terrorists to investigation at a critical juncture (where their plans are neither theoretical nor well-supplied enough to implement) and there may be grievous results.

So what legal paths can be utilized to make sure such a development does not occur? The easiest and most effective way to deal with this threat is to make sure that it never comes into fruition. The Silk Road is difficult to take down given its place within the "Deep Internet", but an arms-trading counterpart may be more susceptible to infiltration and dismemberment.

The second option spells doom for electronic currencies. Much like domestic laws that flag large banking transactions, governments and the private sector can collude to run Bitcoin out of the currency market. Simply put, laws could be passed that force banks to reject bitcoin transactions. Thus, even if Bitcoins continue to be traded, there is no way to turn them back into real currency. The final approach would require nations to expand the police power of domestic and foreign intelligence agencies on the web. While there is a visceral aversion to government personnel infiltrating internet communications, the ultimate security benefits may outweigh the cost to certain freedoms.

Metadata is the crux of counterterrorism—key to hindsight and prediction

Hines, 13

(Pierre, defense council member of the Truman National Security Project, 6-19-13, Quartz, "Here's how metadata on billions of phone calls predicts terrorist attacks", http://qz.com/95719/heres-how-metadata-on-billions-of-phone-calls-predicts-terrorist-attacks/, amp)

Yesterday, when NSA Director General Keith Alexander testified before the House Committee on Intelligence, he declared that the NSA's surveillance programs have provided "critical leads to help prevent over 50 potential terrorist events." FBI Deputy Director Sean Boyce elaborated by describing four instances when the NSA's surveillance programs have had an impact: (1) when an intercepted email from a terrorist in Pakistan led to foiling a plan to bomb of the New York subway system; (2) when NSA's programs helped prevent a plot to bomb the New York Stock Exchange; (3) when intelligence led to the arrest of a U.S. citizen who planned to bomb the Danish Newspaper office that published cartoon depictions of the Prophet Muhammad; and (4) when the NSA's programs triggered reopening the 9/11 investigation.

So what are the practical applications of internet and phone records gathered from two NSA programs? And how can "metadata" actually prevent terrorist attacks?

Metadata does not give the NSA and intelligence community access to the **content** of internet and phone communications. Instead, metadata is more like the transactional information cell phone customers would normally see on their billing statements—metadata can indicate when a call, email, or online chat began and how long the communication lasted. Section 215 of the Patriot Act provides the legal authority to obtain "business records" from phone companies. Meanwhile, the NSA uses Section 702 of the **F**oreign **I**ntelligence **S**urveillance **A**ct to authorize its PRISM

program. According to the figures provided by Gen. Alexander, intelligence gathered based on Section 702 authority contributed in over 90% of the 50 cases.

One of major benefits of metadata is that it provides hindsight—it gives intelligence analysts a retrospective view of a sequence of events. As Deputy Director Boyce discussed, the ability to analyze previous communications allowed the FBI to reopen the 9/11 investigation and determine who was linked to that attack. It is important to recognize that terrorist **attacks are not orchestrated overnight**; they take months or years to plan. Therefore, if the intelligence community only catches wind of an attack halfway into the terrorists' planning cycle, or even after a terrorist attack has taken place, metadata might be the only source of information that captures the sequence of events leading up to an attack. Once a terrorist suspect has been identified or once an attack has taken place, intelligence **analysts can use powerful software to sift through metadata to determine which numbers, IP addresses, or individuals are associated with the suspect**. Moreover, phone numbers and IP addresses sometimes serve as a proxy for the general location of where the planning has taken place. This ability to narrow down the location of terrorists can help determine whether the intelligence community is dealing with a domestic or international threat.

Even more useful than hindsight is a crystal ball that gives the intelligence community a look into the future. Simply knowing how many individuals are in a chat room, how many individuals have contacted a particular phone user, or how many individuals are on an email chain could serve as an indicator of how many terrorists are involved in a plot. Furthermore, knowing when a suspect communicates can help identify his patterns of behavior. For instance, metadata can help establish whether a suspect communicates sporadically or on a set pattern (e.g., making a call every Saturday at 2 p.m.). Any deviation from that pattern could indicate that the plan changed at a certain point; any phone number or email address used consistently and then not at all could indicate that a suspect has stopped communicating with an associate. Additionally, a rapid increase in communication could indicate that an attack is about to happen.

Metadata can provide all of this information without ever exposing the content of a phone call or email. If the metadata reveals the suspect is engaged in terrorist activities, then obtaining a warrant would allow intelligence officials to actually monitor the content of the suspect's communication.

In Gen. Alexander's words, "These programs have protected our country and allies . . . [t]hese programs have been approved by the administration, Congress, and the courts." Now, Americans will have to decide whether they agree.

Mass collections solves terror – all data is important

Schulberg, Huffington Post, 5/10 (Jessica Schulberg, correspondent Huffington Post, MA international politics "Richard Burr Says 9/11 Could Have Been Preventable With Mass Surveillance" 05/10/2015 http://www.huffingtonpost.com/2015/05/10/burr-patriot-act-911_n_7251814.html) //GY

Sen. Richard Burr (R-N.C.) said on Sunday that the Sept. 11, 2001, attacks may have been preventable if the bulk phone collection program that exists today under the Patriot Act was in effect back then.¶ Speaking on ABC's "This Week," Burr, who chairs the Senate Intelligence Committee, rejected the idea of returning to a narrower surveillance program that would only collect data on people suspected of being terrorists. "That turns us back to pre-9/11," said Burr.

“It was very time consuming, it was cumbersome.”¶ Explaining the decision to pass the Patriot Act, Burr said, “What we looked at was the impact of 9/11 and the fact that **we might have been able to stop 9/11, had we had bulk collection**.”¶ Three sections of the Patriot Act, the law passed immediately after the attacks, are set to expire June 1 (but May 22 is the last day Congress has to act before going into recess). One key provision that is set to expire is Section 215, which has served as the legal justification for the government’s phone records collection program.¶ "I do think it should continue for the simple reason that it's very effective at keeping America safe," Burr said Sunday. "And in addition to that, we've had absolutely no incident of anybody's privacy being intruded on."¶ The already contentious debate about whether to reauthorize the program has been further complicated by Thursday’s federal appeals court ruling, which found that Congress did not authorize the phone collections program in its current form when it passed the Patriot Act.¶ Sen. Ron Johnson (R-Wis.), chairman of the Senate Homeland Security Committee, was quick to note that the court’s ruling did not definitively rule out the legality of such a program.¶ "It's important to note that the Second Circuit Court of Appeals did not rule it unconstitutional," he said Sunday on CNN’s “State of the Union." "They just said it was not being applied properly based on the law that was written. So we need to take a very careful look at the way we write these, quite honestly, very complex laws."¶ Johnson criticized Edward Snowden's revelations about the program as "demagoguery" that has "done great harm to our ability to gather information." He added, "Our best line of defense, trying to keep this nation safe and secure, is an effective intelligence-gathering capability, with robust congressional oversight."¶ Sen. Ron Wyden (D-Ore.) promised on Sunday to filibuster a reauthorization of the Patriot Act unless it includes significant reforms.¶

Squo solves – Big Data

No NSA overload – Big Data solves

Rosenbach et al. 13 (Marcel Rosenbach, German journalist, Holger Stark, Professor at the University of Göttingen, and Jonathan Stock, German Journalist,6/10, “Prism Exposed: Data Surveillance with Global Implications”, http://www.spiegel.de/international/world/prism-leak-inside-the-controversial-us-data-surveillance-program-a-904761-2.html//Tang)

It is now clear that what experts suspected for years is in fact true -- that the NSA monitors every form of electronic communication around the globe. This fact raises an important question: How can an intelligence agency, even one as large and well-staffed as the NSA with its 40,000 employees, work meaningfully with such a flood of information? The answer to this question is part of a phenomenon that is currently a major topic for the business community as well and goes by the name "Big Data." Thanks to new database technologies, it is now possible to connect entirely disparate forms of data and analyze them automatically. A rare glimpse into what intelligence services can do by applying this "big data" approach came last year from David Petraeus. This new form of data analysis is concerned with discovering "non-obvious relationships," the then freshly minted CIA director explained at a conference. This includes, for example "finding connections between a purchase here, a phone call there, a grainy video, customs and immigration information." The goal, according to Petraeus, is for big data to "lead to automated discovery, rather than depending on the right analyst asking the right question." Algorithms pick out connections automatically from the unstructured sea of data they trawl. "The CIA and our intelligence community partners must be able to swim in the ocean of 'Big Data.' Indeed, we must be world class swimmers -- the best, in fact," the CIA director continued. The Surveillance State The value of big data analysis for US intelligence agencies can be seen in the amount the NSA and CIA are investing in it. Not only does this include multimillion-dollar contracts with providers specializing in data mining services, but the CIA also invests directly, through its subsidiary company In-Q-Tel, in several big data start-

ups. It's about rendering people and their behavior predictable. The NSA's research projects aim to forecast, on the basis of telephone data and Twitter and Facebook posts, when uprisings, social protests and other events will occur. The agency is also researching new methods of analysis for surveillance videos with the hopes of recognizing conspicuous behavior before an attack is committed. Gus Hunt, the CIA's chief technology officer, made a forthright admission in March: "We fundamentally try to collect everything and hang onto it forever." What he meant by "everything," Hunt also made clear: "It is really very nearly within our grasp to be able to compute on all human-generated information," he said. That statement is difficult to reconcile with the Fourth Amendment to the US Constitution, which guarantees the right to privacy. This is probably why Hunt added, almost apologetically: "Technology in this world is moving faster than government or law can keep up."

Squo solves overload – big data

Segal, 14

Mark E. Segal, Chief of the Computer and Information Sciences Research Group at the NSA, "Guest Editor's Column," The Next Wave, 11/28/14, https://www.nsa.gov/research/tnw/tnw204/article1.shtml // IS

As Big Data analytics become more ubiquitous, concerns naturally arise about how data is collected, analyzed, and used. In particular, people whose data is stored in vast data repositories, regardless of who owns the repositories, are worried about potential privacy rights violations. Although privacy issues are not discussed in detail in this issue of TNW, an excellent overview of the relevant issues may be found in a report titled "Big Data and privacy: A technological perspective" authored by the President's Council of Advisors on Science and Technology and delivered to President Obama in May 2014 [1]. Another useful resource on this topic and other topics related to Big Data is the article "Big Data and its technical challenges" by H. V. Jagadish et al. published in the July 2014 issue of Communications of the ACM [2].

According to a 2012 study by the International Data Corporation, there will be approximately 1022 bytes of data stored in all of the computers on Earth by 2015 [3]. To put that number in perspective, that's more than the estimated 7.5 x 1018 grains of sand on all of the beaches of the Earth [4], and almost as much as the estimated 1022 to 1024 stars in the Universe [5, 6]. Let's harness the tools and algorithms **currently being used** to process Big Data to solve some of our planet's most critical problems. We hope you find this issue of TNW interesting, informative, and thought-provoking.

Squo solves - CC

Squo solves overload – cloud computing

Burkhardt, 14

Paul Burkhardt, computer science researcher in the Research Directorate at NSA. He received his PhD from the University of Illinois at Urbana-Champaign. "An overview of Big Data," The Next Wave, 11/28/14, https://www.nsa.gov/research/tnw/tnw204/article2.shtml // IS

The volume and velocity of Big Data is exceeding our rate of physical storage and computing capacity, creating scalability demands that far outpace hardware innovations. Just as multicore chips were designed in response to the limits of clock speeds imposed by Moore's Law, **cloud technologies have surfaced to address the impending tidal wave of information**. The new cloud architectures pioneered by Google and Amazon extended distributed computing from its roots in high-performance computing and grid computing, where hardware was expensive and purpose-built, to large clusters made from low-cost commodity computers, ushering the paradigm

of "warehouse" computing. These new cloud data centers containing thousands of computer cabinets are patrolled by administrators on motorized carts to pull and replace failed components.

Squo Solves – gov checks

Squo solves overload – government checks

Gross 13

Grant Gross, citing a former civil liberties watchdog in the Obama White House, "Critics question whether NSA data collection is effective," PC World, 6/25/13, http://www.pcworld.idg.com.au/article/465878/critics_question_whether_nsa_data_collection_effective/ // IS

But Timothy Edgar, a former civil liberties watchdog in the Obama White House and at the Office of Director of National Intelligence, partly defended the NSA collection programs, noting that U.S. intelligence officials attribute the surveillance programs with preventing more than **50 terrorist actions**. Some critics have disputed those assertions.

Edgar criticized President Barack Obama's administration for keeping the NSA programs secret. He also said it was "ridiculous" for Obama to suggest that U.S. residents shouldn't be concerned about privacy because the NSA is collecting phone metadata and not the content of phone calls. Information about who people call and when they call is sensitive, he said.

But Edgar, now a visiting fellow at the Watson Institute for International Studies at Brown University, also said that Congress, the Foreign Intelligence Surveillance Court and internal auditors provide some oversight of the data collection programs, with more checks on data collection in place in the U.S. than in many other countries. Analysts can query the phone records database **only** if they see a connection to terrorism, he said.

Squo solves - investment

Squo solves overload – investment

Burkhardt, 14

Paul Burkhardt, computer science researcher in the Research Directorate at NSA. He received his PhD from the University of Illinois at Urbana-Champaign. "An overview of Big Data," The Next Wave, 11/28/14, https://www.nsa.gov/research/tnw/tnw204/article2.shtml // IS

In March 2012, the White House announced the National Big Data Research and Development Initiative [14] to help address challenges facing the government, in response to the President's Council of Advisors on Science and Technology, which concluded the "Federal Government is under-investing in technologies related to Big Data." With a budget of over $200 million and support of six federal departments and agencies, this initiative was created to:

Advance state-of-the-art core technologies needed to collect, store, preserve, manage, analyze, and share huge quantities of data;

Harness these technologies to accelerate the pace of discovery in science and engineering, strengthen our national security, and transform teaching and learning; and

Expand the workforce needed to develop and use Big Data technologies.

As part of the Big Data Initiative, the National Science Foundation (NSF) and the National Institutes of Health are funding a joint Big Data solicitation to "advance the core scientific and technological means of managing, analyzing, visualizing, and extracting useful information from large and diverse data sets." In addition, the NSF is funding the $10 million Expeditions in Computing project led by University of California at Berkeley, to turn data into knowledge and insight, and funding a $2 million award for a research training group to support training for students in techniques for analyzing and visualizing complex data.

The Department of Defense (DoD) is also investing $250 million annually to "harness and utilize massive data in new ways" and another $60 million for new research proposals. DARPA, the research arm of the DoD, will invest $25 million annually under its XDATA program for techniques and tools to analyze large volumes of data, including

Developing scalable algorithms for processing imperfect data in distributed data stores, and

Creating effective human-computer interaction tools for facilitating rapidly customizable visual reasoning for diverse missions.

The Department of Energy is similarly providing $25 million in funding to establish the Scalable Data Management, Analysis and Visualization Institute to develop new tools for managing and visualizing data.

Squo Solves - research

Squo solves overload – Research Direcorate

NSA, 11

NSA, on a website describing its internal structure for its "premier unclassified event," "Government Host Descriptions," 2011, http://www.ncsi.com/nsabiam11/host_descriptions.html // IS

In the NSA/CSS Research Directorate, opportunities abound. We are committed to providing the tools, the technology, and the techniques to ensure the success of the Agency's Signals Intelligence and Information Assurance missions now and in the future. Our vital research program focuses on four critical goals: We develop the means to dominate the global computing and communications network. **We cope with the overload** of information in our environment **and turn that overload to our strategic advantage**. We provide the means for ubiquitous, secure collaboration both within our government and through its interactions with various partners. We create the means for penetrating into the "hard" targets that threaten our nation wherever, whenever, or whomever they many be.

Squo solves - tech

New technology means no overload

Rosenbach et al, '13 (By Marcel Rosenbach, Holger Stark and Jonathan Stock – acclaimed German political scientists and journalists "Prism Exposed: Data Surveillance with Global Implications" Spiegel Online International, June 10, 2013 http://www.spiegel.de/international/world/prism-leak-inside-the-controversial-us-data-surveillance-program-a-904761-2.html) //GY

It is now clear that what experts suspected for years is in fact true -- that the NSA monitors every form of electronic communication around the globe. This fact raises an important question: How can an intelligence agency, even one as large and well-staffed as the NSA with its 40,000 employees, work meaningfully with such a flood of information?¶ The answer to this question is part of a phenomenon that is currently a major topic for the business community as well and goes by the name "Big Data." Thanks to new database technologies, it is now possible to connect entirely disparate forms of data and analyze them automatically.¶ A rare glimpse into what intelligence services can do by applying this "big data" approach came last year from David Petraeus. This new form of data analysis is concerned with discovering "non-obvious relationships," the then freshly minted CIA director explained at a conference. This includes, for example "finding connections between a purchase here, a phone call there, a grainy video, customs and immigration information."¶ The goal, according to Petraeus, is for big data to "lead to automated discovery, rather than depending on the right analyst asking the right question." Algorithms pick out connections automatically from the unstructured sea of data they trawl. "The CIA and our intelligence community partners must be able to swim in the ocean of 'Big Data.' Indeed, we must be world class swimmers -- the best, in fact," the CIA director continued.¶ The Surveillance State¶ The value of big data analysis for US intelligence agencies can be seen in the amount the NSA and CIA are investing in it. Not only does this include multimillion-dollar contracts with providers specializing in data mining services, but the CIA also invests directly, through its subsidiary company In-Q-Tel, in several big data start-ups.¶ It's about rendering people and their behavior predictable. The NSA's research projects aim to forecast, on the basis of telephone data and Twitter and Facebook posts, when uprisings, social protests and other events will occur. The agency is also researching new methods of analysis for surveillance videos with the hopes of recognizing conspicuous behavior before an attack is committed.¶ Gus Hunt, the CIA's chief technology officer, made a forthright admission in March: "We fundamentally try to collect everything and hang onto it forever." What he meant by "everything," Hunt also made clear: "It is really very nearly within our grasp to be able to compute on all human-generated information," he said.¶ That statement is difficult to reconcile with the Fourth Amendment to the US Constitution, which guarantees the right to privacy. This is probably why Hunt added, almost apologetically: "Technology in this world is moving faster than government or law can keep up."

Squo solves overload – new tools

Kirby, 13

Bob Kirby, vice president of sales for CDW·G, a leading technology provider to government and education. “Big Data Can Help the Federal Government Move Mountains. Here's How.,” FedTech Magazine, 08/01/13, http://www.fedtechmagazine.com/article/2013/08/big-data-can-help-federal-government-move-mountains-heres-how // IS

The White House took a step toward helping agencies find these technologies when it established the National Big Data Research and Development Initiative in 2012. The initiative included more than $200 million to make the most of the explosion of Big Data and the tools needed to analyze it.

The challenges that Big Data poses are nearly as daunting as its promise is encouraging. Storing data efficiently is one of these challenges. As always, budgets are tight, so agencies must minimize the per-megabyte price of storage and keep the data within easy access so that users can

get it when they want it and how they need it. Backing up massive quantities of data heightens the challenge.

Analyzing the data effectively is another major challenge. Many agencies employ commercial tools that enable them to sift through the mountains of data, spotting trends that can help them operate more efficiently. (A recent study by MeriTalk found that federal IT executives think Big Data could help agencies save more than $500 billion while also fulfilling mission objectives.)

Custom-developed Big Data tools also are allowing agencies to address the need to analyze their data. For example, the Oak Ridge National Laboratory's -Computational Data Analytics Group has made its Piranha data analytics system available to other agencies. The system has helped medical researchers find a link that can alert doctors to aortic aneurysms before they strike. It's also used for more mundane tasks, such as sifting through résumés to connect job candidates with hiring managers.

A2: Chinese Cyberwar

No US-China cyber escalation – litany of checks

Lindsay, 15

Jon Lindsay, Assistant Professor of Digital Media and Global Affairs at the University of Toronto, research scientist with the University of California Institute on Global Conflict and Cooperation, assistant adjunct professor at the UC San Diego School of International Relations and Pacific Studies, and an Oxford Martin Associate with the Oxford Global Cyber Security Capacity Centre, "Exaggerating the Chinese Cyber Threat," Belfer Center for Science and International Affairs, Harvard Kennedy School, May 2015, http://belfercenter.ksg.harvard.edu/publication/25321/exaggerating_the_chinese_cyber_threat.html // IS

Policymakers in the United States often portray China as posing a serious cybersecurity threat. In 2013 U.S. National Security Adviser Tom Donilon stated that Chinese cyber intrusions not only endanger national security but also threaten U.S. firms with the loss of competitive advantage. One U.S. member of Congress has asserted that China has "laced the U.S. infrastructure with logic bombs." Chinese critics, meanwhile, denounce Western allegations of Chinese espionage and decry National Security Agency (NSA) activities revealed by Edward Snowden. The People's Daily newspaper has described the United States as "a thief crying 'stop thief.'" Chinese commentators increasingly call for the exclusion of U.S. internet firms from the Chinese market, citing concerns about collusion with the NSA, and argue that the institutions of internet governance give the United States an unfair advantage.

The rhetorical spiral of mistrust in the Sino-American relationship threatens to **undermine** the mutual benefits of the information revolution. Fears about the paralysis of the United States' digital infrastructure or the hemorrhage of its competitive advantage are exaggerated. Chinese

cyber operators face underappreciated organizational challenges, including information overload and bureaucratic compartmentalization, which hinder the weaponization of cyberspace or absorption of stolen intellectual property. More important, both the United States and China have strong incentives to moderate the intensity of their cyber exploitation to preserve profitable interconnections and avoid costly punishment. The policy backlash against U.S. firms and liberal internet governance by China and others is ultimately more worrisome for U.S. competitiveness than espionage; ironically, it is also counterproductive for Chinese growth.

No US-China cyber escalation – no incentives and interdependence

Lindsay, 15

Jon Lindsay, Assistant Professor of Digital Media and Global Affairs at the University of Toronto, research scientist with the University of California Institute on Global Conflict and Cooperation, assistant adjunct professor at the UC San Diego School of International Relations and Pacific Studies, and an Oxford Martin Associate with the Oxford Global Cyber Security Capacity Centre, "Exaggerating the Chinese Cyber Threat," Belfer Center for Science and International Affairs, Harvard Kennedy School, May 2015, http://belfercenter.ksg.harvard.edu/publication/25321/exaggerating_the_chinese_cyber_threat.html // IS

Many Western observers fear that cyber reform based on the principle of internet sovereignty might legitimize authoritarian control and undermine the cosmopolitan promise of the multistakeholder system. China, however, benefits too much from the current system to pose a credible alternative. Tussles around internet governance are more likely to result in minor change at the margins of the existing system, not a major reorganization that shifts technical protocols and operational regulation to the United Nations. Yet this is not a foregone conclusion, as China moves to exclude U.S. firms such as IBM, Oracle, EMC, and Microsoft from its domestic markets and attempts to persuade other states to support governance reforms at odds with U.S. values and interests.

CONCLUSION

Information technology has generated tremendous wealth and innovation for millions, underwriting the United States' preponderance as well as China's meteoric rise. The costs of cyber espionage and harassment pale beside the mutual benefits of an interdependent, globalized economy. The inevitable frictions of cyberspace are not a harbinger of catastrophe to come, but rather a sign that the states inflicting them lack incentives to cause any real harm. Exaggerated fears of cyberwarfare or an erosion of the United States' competitive advantage must not be allowed to undermine the institutions and architectures that make the digital commons so productive.

A2: Border Overload

No overload – there are still gaps

AP, 14

Associated Press, “Drones patrol half of Mexico border,” The Daily Mail, 11/13/14, http://www.dailymail.co.uk/wires/ap/article-2832607/Drones-patrol-half-Mexico-border.html // IS

The government has operated about 10,000 drone flights under the strategy, known internally as "change detection," since it began in March 2013. The flights currently cover about 900 miles, much of it in Texas, and are expected to expand to the Canadian border by the end of 2015.

The purpose is to assign agents where illegal activity is highest, said R. Gil Kerlikowske, commissioner of Customs and Border Protection, the Border Patrol's parent agency, which operates nine unmanned aircraft across the country.

"You have finite resources," he said in an interview. "If you can look at some very rugged terrain (and) you can see there's not traffic, whether it's tire tracks or clothing being abandoned or anything else, you want to deploy your resources to where you have a greater risk, a greater threat."

If the video shows the terrain unchanged, Border Patrol Chief Michael Fisher calls it "proving the negative" — showing there isn't anything illegal happening there and therefore no need for agents and fences.

The strategy was launched without fanfare and expanded at a time when President Barack Obama prepares to issue an executive order by the end of this year to reduce deportations and enhance border security.

Rep. Michael McCaul, a Texas Republican who chairs the House Homeland Security Committee, applauded the approach while saying that **surveillance gaps still remain**. "We can no longer focus only on static defenses such as fences and fixed (camera) towers," he said.

A2: NSA good – cyberterror

Alt causes – the aff isn’t enough

Goldsmith, 13

Jack Goldsmith, Henry L. Shattuck Professor at Harvard Law School, “We Need an Invasive NSA,” New Republic, 10/10/13, http://www.newrepublic.com/article/115002/invasive-nsa-will-protect-us-cyber-attacks // IS

To keep these computers and networks secure, the government needs powerful intelligence capabilities abroad so that it can learn about planned cyber-intrusions. It also needs to raise defenses at home. An important first step is to correct the market failures that plague cybersecurity. Through law or regulation, the government must improve incentives for individuals to use security software, for private firms to harden their defenses and share information with one another, and for Internet service providers to crack down on the botnets—networks of compromised zombie computers—that underlie many cyber-attacks. More, too, must be done to prevent insider threats like Edward Snowden’s, and to control the stealth introduction of vulnerabilities during the manufacture of computer components—vulnerabilities that can later be used as windows for cyber-attacks. And yet that’s still not enough. The U.S. government can fully monitor air, space, and sea for potential attacks from abroad. But it has limited access to the channels of cyber-attack and cyber-theft, because they are owned by private telecommunication firms, and because Congress strictly limits government access to private communications. “I can’t

defend the country until I'm into all the networks," General Alexander reportedly told senior government officials a few months ago. For Alexander, being in the network means having government computers scan the content and metadata of Internet communications in the United States and store some of these communications for extended periods. Such access, he thinks, will give the government a fighting chance to find the needle of known malware in the haystack of communications so that it can block or degrade the attack or exploitation. It will also allow it to discern patterns of malicious activity in the swarm of communications, even when it doesn't possess the malware's signature. And it will better enable the government to trace back an attack's trajectory so that it can discover the identity and geographical origin of the threat.

SIGINT CP

1nc

The National Security Agency should make SIGINT data available to relevant industries upon discovery

Shifting from a production focus to a discovery focus in SIGINT is key to solve overload – data reduction *isn't enough*

SIDtoday, 11

The Signals Intelligence Directorate Today Editor, "Is There a Sustainable Ops Tempo in S2? How Can Analysts Deal With the Flood of Collection? – An interview with [redacted] (conclusion)," 4/16/11, https://s3.amazonaws.com/s3.documentcloud.org/documents/2089125/analytic-modernization.pdf // IS

6. Q: (U) When we last interviewed you in August 2009 — you were Assistant DDAP at the time —you spoke of the importance of creating a sustainable ops tempo in S2.

Have you succeeded?

A: (U). No. No, I haven't... And it's not just because there's so much happening in the world. Here's the thing: we have to take a fundamentally different approach to how we do business. The volume and quality of access we have now gives us an unprecedented capability to produce some of the best intelligence we ever have, but the fact is that we are only getting to a **fractional portion** of what we have access to. I can't tell you for sure that as good as what we produce is, that it's the absolute best we can do. It's not sustainable for the workforce or the mission to keep working in the way we always have.

(U//FOUO) We've embarked on Analytic Modernization. In the past there have been transformations... modernizations... renovations... it gets tiring! But to a large degree those efforts have represented supercharging existing capabilities - doing more with less. We need to **fundamentally change** how we interact with SIGINT.

(U//FOUO) This is a big deal, because for decades we've trained our workforce - and took pride in the fact - that we had the unique responsibility within the IC to manage this information in accordance with the 4th Amendment. To that extent we thought of SIGINT as "radioactive" and it was our job to render the information safe for others. Our process was about managing the information in a manner consistent with the privacy rights of U.S. persons.

(U//FOUO) I believe we have developed an awareness of the information and an understanding of our authorities that allows us to think differently about that relationship... and in so doing, to create an increased capacity and recover more time for the analysts. I don't mean only analysts in SID, but also analysts in LAD, in NTQC. etc. The key is to better leverage the Intelligence Community and our partner relationships for the exploitation of SIGINT, which is something in the past we would not have done to the degree we're proposing - it was considered our domain (and "radioactive").

(U//FOUO) We must take advantage of the expertise and capabilities in the IC and our customer base to enhance discovery and capacity, and to make the actionable information available almost

as soon as we encounter it. This is not about turning NS A into a collection resource for others (although collection is in fact one of our great strengths and one we are uniquely qualified to undertake) - it's about making sure we don't expend cryptologic resources doing work that is not uniquely cryptologic in nature - work that others can do.

(U) Q: Can you give an example?

A: (S//SI//REL) If NSA discovers a pathway into an adversary's information space and we extract a terabyte of CAD [computer-aided design] drawings of weapon designs, is it of best value for the IC to have talented NSA analysts work their way through this 1 terabyte of data? Is it uniquely cryptologic? Or is it of better benefit to the nation that we expose it immediately to the best and brightest weapon designers in the US government to work on in a collaborative space, to triage, assess and exploit the value of that information?

(U//FOUO) In so doing we are not precluding NSA analysts from continued access to the data, any more than a published SIGINT product report isn't available for future reference. We are just leveraging the power and expertise of others so that we can turn our attention to that that which only we can exploit by virtue of our unique talents.

2nc

Companies respond positively and NSA analysts can go deeper into actual problems

SIDtoday, 11

The Signals Intelligence Directorate Today Editor, "Is There a Sustainable Ops Tempo in S2? How Can Analysts Deal With the Flood of Collection? – An interview with [redacted] (conclusion)," 4/16/11, https://s3.amazonaws.com/s3.documentcloud.org/documents/2089125/analytic-modernization.pdf // IS

A: (U//FOUO) If we get access to the best information on a topic, the value will speak for itself and the **customers will make the resources available**. It's like YouTube videos - they "go viral" when people with good reputations recommend a video to others. If we put the information out there and monitor the customer response to it, we'll know when to recommend specific items they might want to take a close look at. Amazon does the same thing by looking at how you react to the products you've looked at. We can figure out what the communities of interest are for that topic... If the material is in a foreign language, we have tools they can use to get the gist of it, and if it looks promising, they can use the National Virtual Translation Center to get it translated. We want our language analysts focused on uniquely cryptologic problems that rarely boil down to a straightforward translation.

(U//FOUO) So what does this approach accomplish? We've exposed the intelligence to people who can interpret it and use it, and we've created opportunities for collaboration. We've also off-loaded the responsibility to manage the data in our respositories and own the compliance responsibility. If data is stored in the Library of National Intelligence, someone else is paying for it.

(U//FOUO) In the end, we exist to produce information. The only way to go more deeply into targets is to avoid getting stuck on production that others can do for themselves. Our challenge is

to be always out looking for something new. We need to think about problems, not just about production.

(U//FOUO) The collaborative component means it's not an NSA view, a DIA view, etc... Rather, it's opened up to all on A-Space. I would like to see people log onto A-Space and announce "I want to share traffic and create a multi-seal report based on joint input." Why not collaborate at the point of discovery?

Overload is killing effectivity now – a production to discovery shit is key

NSA, 11

Leaked NSA document, "SIGINT Mission Thread Three," 8/1/11, https://s3.amazonaws.com/s3.documentcloud.org/documents/2088968/gladwell-amp-nsa.pdf // IS

Achieving a Balance Between Discovery and Production

(U//FOUO) The key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are desperately lacking in the latter."* In the afterward to his 2005 #1 national bestseller Blink — The Power of Thinking Without Thinking, author Malcolm Gladwell provides his perspective on the danger of confusing information (collection) with understanding (analysis). Gladwell has captured one of the biggest challenges facing SID today. Our costs associated with this information overload are not only financial, such as the need to build data warehouses large enough to store the mountain of data that arrives at our doorstep each day, but also include the more intangible costs of too much data to review, process, translate, and report. SID's first strategic goal for 2011-2015, the challenge to revolution analysis, is aimed squarely at this tension between information and understanding.

(U//FOUO) In order to revolutionize intelligence, we must "fundamentally shift our analytic approach from a production to a discovery bias, radically increasing operational impact across all mission domains."** With so much data at our fingertips, we must learn how to push the lesser value data to the side, move data that needs less analysis directly to our customers, and provide ourselves the needed agility to dig deep into the toughest analytic problems to produce understanding from well-hidden information.

terror nb

The NSA is overloaded – terror surprises are coming absent reform – the plan's reduction *isn't sufficient*

SIDtoday, 11

The Signals Intelligence Directorate Today Editor, "Is There a Sustainable Ops Tempo in S2? How Can Analysts Deal With the Flood of Collection? – An interview with [redacted] (conclusion)," 4/16/11, https://s3.amazonaws.com/s3.documentcloud.org/documents/2089125/analytic-modernization.pdf // IS

A: (S//SI//REL) We live in an Information Age when we have massive reserves of information and don't have the capability to exploit it. I was told that there are **2 petabytes** of data in the SIGINT System at any given time. How much is that? That's equal to 20 million 4-drawer filing cabinets. How many cabinets per analyst is that?? By the end of this year, we'll have **1 terabyte**

of data **per second** coming in. You can't crank that through the existing processes and be effective.

Q: (U) ...So it's a matter of volume?

A: (S//SI//REL) **Not volume alone**, but also complexity. We need to piece together the data. It's **impossible** to do that using traditional methods. Strong selectors - like phone numbers - will become a thing of the past. It used to be that if you had a target's number, you could follow it for most of your career. Not anymore. My daughter doesn't even make phone calls, and many targets do the same. Also, the commercial market demands privacy, and this will drive our targets to go encrypted, maybe into unexploitable realms. Our nation needs us to look for patterns surrounding a particular spot on Earth and make the connections - who can do that if not us? And we can't do it using traditional methods.

Q: (U) Looking into the future, is there anything that especially worries you? ...An eventuality (internal or external) that would make it hard for A&P to continue to put out quality intelligence?

A: (U//FOUO) I'm worried that we have so much good stuff that we could lock down analysts and have them just producing product, and **something would jump out and surprise us**. So we need the discipline to invest in the wild and the unknowns.

SIGINT is uniquely key to the war on terror

Shea, 11

Teresa Shea, director of the Signals Intelligence Directorate, "(U) SIGINT Year in Review, November 2011," 11/22/11, https://firstlook.org/theintercept/document/2015/05/18/sidtoday-2011-review/ // IS

(S//S1//RHL) This has been a milestone year in the war on terrorism. Certainly the most powerful and enduring accomplishment was the successful strike against Osama Bin Laden. For nearly a decade a dedicated group of SIGINT professionals would not let go of the search, and **their persistence paid off** in substantive contributions at critical points on the road to Abbottabad. In the end many of you brought your expertise to bear in the final weeks and hours, resulting in a tremendous outcome in our counterterrorism efforts. Even then you didn't rest on your laurels: you played a significant supporting role a few months later in the operations against Atiyah abd-Rahman **in Pakistan** and Anwar al-Awlaqi **in Yemen**. Key targets continue to be removed from the battlefield as a result of your outstanding SIGINT contributions.

ptx nb

Only the CP avoids the link to politics – the NSA can reform itself

NSA, 9

NSA, "About NSA: Mission," 1/15/09 https://www.nsa.gov/about/mission/index.shtml // IS

Executive Order 12333, originally issued 4 December 1981, delineates the NSA/CSS roles and responsibilities. In part, the Director, NSA/Chief, CSS is charged to:

Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;

Act as the National Manager for National Security Systems as established in law and policy, and in this capacity be responsible to the Secretary of Defense and to the Director, National Intelligence;

Prescribe security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the National Security Agency, and exercise the necessary supervisory control to ensure compliance with the regulations.

NSA reform doesn't require debate – empirics

Savage et al., 15

Charlie Savage, Julia Angwin, Jeff Larson, and Henrik Molte, *Washington correspondent for The New York Times, "Hunting for Hackers, N.S.A. Secretly Expands Internet Spying at U.S. Border," The New York Times, 6/4/15, http://www.nytimes.com/2015/06/05/us/hunting-for-hackers-nsa-secretly-expands-internet-spying-at-us-border.html // IS

WASHINGTON — Without public notice **or debate**, the Obama administration has expanded the National Security Agency's warrantless surveillance of Americans' international Internet traffic to search for evidence of malicious computer hacking, according to classified N.S.A. documents. In mid-2012, Justice Department lawyers wrote two secret memos permitting the spy agency to begin hunting on Internet cables, without a warrant and on American soil, for data linked to computer intrusions originating abroad — including traffic that flows to suspicious Internet addresses or contains malware, the documents show.

Yahoo CP

1nc

Text: The National Security Agency should partially throttle its data collected from Yahoo.

That eases information overload that cripples counterterrorism

Stanganelli, 13

(Joe, Founder & Principal, Beacon Hill Law, JD in Law from Suffolk University Law School, Crew Leader Asst., Vacant-Delete Check of US Census Bureau, 11-13-13, All Analytics, "Thinking on NSA Excess & Enterprise Implications", http://www.allanalytics.com/author.asp?section_id=1437&doc_id=269514, amp)

Documents received by The Washington Post describe Muscular, an NSA effort that infiltrated Google and Yahoo networking traffic. Muscular gave NSA analysts access to millions of emails, attachments, and other web communications each day -– including entire Yahoo mailboxes.

The NSA needed to develop new filtering and distribution systems to process this data mother lode, as indicated in the documents. Even with these systems, the new data (particularly from Yahoo) proved too much to handle. Yahoo email began to account for approximately 25 percent of daily data being processed by the NSA's main analytics platform for intercepted Internet traffic. Most of the data was more than six months old and virtually useless. **Analysts became so frustrated that they requested "partial throttling" of Yahoo data**.

"Numerous target offices have complained about this collection 'diluting' their workflow," according to one NSA document. "The sheer volume" of data is unjustified by its "relatively small intelligence value."

Other NSA data mining programs have overwhelmed the agency, as reported elsewhere. When spammers hacked a target Yahoo account last year, the account's address book blew up with irrelevant email addresses. Consequently, the NSA had to limit its address book data collection efforts to only Facebook contacts.

These broad data sweeps have been significantly less successful than the NSA's more targeted operations. In an interview with the Daily Caller, former NSA official William Binney said the NSA's inefficient big data processes crippled its ability to react to a tipoff about Tamerlan Tsarnaev -– information that could have curtailed the Boston Marathon bombing.

They're making themselves dysfunctional by collecting all of this data. They've got so much collection capability but they can't do everything… The basic problem is they can't figure out what they have, so they store it all in the hope that down the road they might figure something out and they can go back and figure out what's happening and what people did.

Still, the White House and other government departments and agencies place the NSA under what The New York Times calls an intense "pressure to get everything" -- a pressure that has spawned a data obsession.

The problem with this obsession is twofold. The first issue is the ROI of gathering haystacks -– resources better spent elsewhere are diverted to finding, gathering, filtering, and ultimately throttling and fixing oversized and under-relevant data.

Throttling Yahoo data alleviates overload

Gallagher, 13

(Sean, Masters in Communication Design, Engineering Task Manager CBIS Federal, Ars Technica, "How the NSA's MUSCULAR tapped Google's and Yahoo's private networks", http://arstechnica.com/information-technology/2013/10/how-the-nsas-muscular-tapped-googles-and-yahoos-private-networks/, amp)

Forget the PRISM—go for the clear

The NSA already has access to selected content on Google and Yahoo through its PRISM program, a collaborative effort with the FBI that compels cloud providers to turn over select information through a FISA warrant. And it collects huge quantities of raw Internet traffic at major network exchange points, allowing the agency to perform keyword searches in realtime against the content and metadata of individual Internet packets.

But much of that raw traffic is encrypted, and the PRISM requests are relatively limited in scope. So the NSA went looking for a way to get the same sort of access to encrypted traffic to cloud providers that it had with unencrypted raw Internet traffic. The solution that the NSA and the GCHQ devised was to tap into the networks of the providers themselves as they crossed international borders.

Google and Yahoo maintain a number of overseas data centers to serve their international customers, and Internet traffic to Google and Yahoo is typically routed to the closest data center to the user. The Web and other Internet servers that handle those requests generally communicate with users via a Secure Socket Layer (SSL) encrypted session and act as a gateway to other services running within the data center—in the case of Google, this includes services like Gmail message stores, search engines, Maps requests, and Google Drive documents. Within Google's internal network, these requests are passed unencrypted, and requests often travel across multiple Google data centers to generate results.

In addition to passing user traffic, the fiber connections between data centers are also used to replicate data between data centers for backup and universal access. Yahoo, for example, replicates users' mailbox archives between data centers to ensure that they're available in case of an outage. In July of 2012, according to documents Snowden provided to the Washington Post, Yahoo began transferring entire e-mail accounts between data centers in its NArchive format, possibly as part of a consolidation of operations.

By gaining access to networks within Google's and Yahoo's security perimeters, the NSA was able to effectively defeat the SSL encryption used to protect customers' Web connections to the cloud providers, giving the agency's network filtering and data mining tools unfettered access to the content passing over the network. As a result, the NSA had access to millions of messages and Web transactions per day without having to use its FISA warrant power to compel Google or Yahoo to provide the data through PRISM. And it gained access to complete mailboxes of e-mail at Yahoo—including attachments that would not necessarily show up as part of intercepted Webmail sessions, because users would download them separately.

But the NSA and the GCHQ had to devise ways to process the streams of data passing between data centers to make it useful. That meant reverse-engineering some of the software and network interfaces of the cloud providers so that they could break apart data streams optimized to be sent across wide-area networks over multiple simultaneous data links. It also meant creating filtering capabilities that allowed the NSA and the GCHQ to separate traffic of intelligence interest from the vast amount of intra-data center communications that have nothing to do with user activity. So the NSA and the GCHQ configured a "distributed data distribution system" (as the NSA described **MUSCULAR** in this FAQ about the BOUNDLESSINFORMANT metadata search tool acquired by the American Civil Liberties Union) similar to XKeyscore to collect, filter, and process the content on those networks.

Mailbox overload

Even with filtering, the volume of that data presented a problem to NSA analysts. When Yahoo started performing its mailbox transfers, that data rapidly started to eclipse other sources of data being ingested into PINWALE, the NSA's primary analytical database for processing intercepted Internet traffic. PINWHALE also pulls in data harvested by the XKeyscore system and processes about 60 gigabytes of data per day that it gets passed from collection systems.

By February of 2013, Yahoo mailboxes were accounting for about a quarter of that daily traffic. And because of the nature of the mailboxes—many of them contained e-mail messages that were months or years old—most of the data was useless to analysts trying to find current data. Fifty-nine percent of the mail in the archives was over 180 days old, making it almost useless to analysts.

So **the analysts requested "partial throttling**" of Yahoo content **to prevent data overload**. "Numerous analysts have complained of [the Yahoo data's] existence," the notes from the PowerPoint slide on MUSCULAR stated, "and the relatively small intelligence value it contains does not justify the sheer volume of collection at MUSCULAR (1/4th of the daily total collect)."

Snowball CP

1nc

Text: United States federal intelligence agencies should cease snowball sampling wiretapping activities.

That solves overload and poor network identification and is replaced by other methods

Carley and Tsvetovat, 6

(Kathleen--professor in the School of Computer Science in the department - Institute for Software Research - at Carnegie Mellon University, Maksim--Ph.D. from Carnegie Mellon University's School of Computer Science, with concentration on computational modeling of organizations, 30 August 2006, Springer Science + Business Media, LLC, "On effectiveness of wiretap programs in mapping social networks", Proquest, amp)

Snowball sampling methods are known to be a biased toward highly connected actors and consequently produce core-periphery networks when these may not necessarily be present. This leads to a biased perception of the underlying network which can have negative policy consequences, as in the identification of terrorist networks. When snowball sampling is used, the potential overload of the information collection system is a distinct problem due to the exponential growth of the number of suspects to be monitored. In this paper, we focus on evaluating the effectiveness of a wiretapping program in terms of its ability to map the rapidly evolving networks within a covert organization. By running a series of simulation-based experiments, we are able to evaluate a broad spectrum of information gathering regimes based on a consistent set of criteria. We conclude by proposing a set of information gathering programs that achieve higher effectiveness then snowball sampling, and at a lower cost.

terror nb

Snowball makes overload uniquely dangerous – creates vulnerabilities

Beutel, 7

Alejandro Beutel, Researcher for Countering Violent Extremism at the National Consortium for the Study of Terrorism and Responses to Terrorism (START)"Breach of Law, Breach of Security – NSA Wiretapping," 1/31/07, http://blog.minaret.org/?p=197 // IS

Second, according to the 2006 USA Today article, NSA officials claimed domestic SIGINT operations help fight terrorism by using the data produced for "social network analysis." However the current social network analysis methods used to guide SIGINT operations called "**snowball sampling**," (a type of electronic dragnet) are not well suited for the type of counter-terrorism operations traditionally done by FBI criminal investigators. Research conducted by two social network experts, Maksim Tsvetovat and Kathleen Carley [PDF], finds that the snowball method is better suited for highly connected groups, as opposed to small, loosely connected cellular networks [PDF] which define **Al-Qaeda**. The NSA's snowball sampling methods gathered a massive volume of useless information that led FBI officials nowhere, wasting limited resources and time. Furthermore, the domestic SIGINT operations are put an enormous technical strain on the NSA's resources, forcing the agency to consume voracious amounts of electricity–on top of

dealing with its current computer problems–to sustain its current operational capacity. This jeopardizes our national security by running the risk of another **electrical overload**, similar to the one that paralyzed the agency seven years ago and left our nation vulnerable for nearly three days.

Splunk CP

1nc

Text: The National Security Agency should implement Splunk to analyze its data.

Solves overload

Trobock, 14

(Randall, Master of Science in Cybersecurity from Utica College, May 2014, "THE APPLICATION OF SPLUNK IN THE INTELLIGENCE GATHERING PROCESS", Proquest, amp)

Splunk is a software application that can ingest massive amounts of data from various sources and conduct analytics on this data, in order to discover relevant correlations that would have taken days, weeks or months to discover manually. Splunk has the capability to ingest these data sources into its analysis engine, and create actionable intelligence based on pre-determined correlations. The idea behind correlation is to monitor and create alerts for when intelligence sources intersect. This capability greatly reduces the amount of time required for analyzing data, thereby minimizing the **information overload** problem and creating greater opportunity for taking action when necessary.

Faulty intelligence methods, such as those that would be the result of information overload, pose a significant threat to peace throughout the world. For example, having inaccurate or incomplete intelligence on Iran's nuclear capabilities and the locations or nature of its nuclear plants, a risk-averse Israel might overestimate its need to take both drastic and pre-emptive measures against Iran (Young, 2013). This could result in involvement from several countries, including the United States, potentially costing billions of dollars and thousands of soldiers' lives.

Solves human bias

Trobock, 14

(Randall, Master of Science in Cybersecurity from Utica College, May 2014, "THE APPLICATION OF SPLUNK IN THE INTELLIGENCE GATHERING PROCESS", Proquest, amp)

In addition to information overload, there are human mental processes such as perception and human mindsets and biases that can also hinder the intelligence analysis process. The fact that the intelligence lifecycle is largely run by human beings makes it prone to a large amount of subjectivity. Of all the intelligence analysis obstacles that might be presented, those that lie within human mental processes can be the most complex. Perception, human mindsets, and cognitive biases are all factors that can affect an intelligence report. With these factors in play, a person's own assumptions, biases, and mindsets can affect an intelligence report, potentially causing action to be taken based on their own perceptions.

Perception plays a significant role in intelligence analysis. What a person perceives will often be strongly influenced by several external factors, such as past experience, cultural values, education, and role requirements (Heuer & Center for the Study of Intelligence (U.S.), 2001, p.

7). An example of human perception having a negative effect on intelligence analysis would be if an analyst were to make a conclusion that a potentially catastrophic event was going to take place based their own experience or knowledge on a given subject. However, the reality could be that the subject within the intelligence report has completely different intentions. Given the fact that intelligence consumers must often take action based on the information received in an intelligence analyst's report, it is important that an analyst's perception is not constructing its own reality when producing an intelligence report for a consumer.

People will often employ various simplifying strategies and rules of thumb to ease the processing of complex information in the decision making process. These strategies and rules of thumb can lead to faulty judgments known as cognitive biases. Cognitive biases can affect the intelligence analysis process within the areas of evaluation of evidence, perception of cause and effect, estimation of probabilities, as well as retrospective evaluation of intelligence reports (Heuer & Center for the Study of Intelligence (U.S.), 2001). One example of a cognitive bias is the focusing effect. This bias refers to the tendency to place too much importance on one aspect of an event. In an intelligence collection and analysis scenario, too much focus placed on a single event can allow a more important event or aspect go unnoticed. Removing subjective aspects from the intelligence analysis process such as cognitive biases will go a long way in creating actionable reports for the intelligence consumer.

Because Splunk conducts its analytics using predetermined correlations, it has the ability to minimize the human factor within intelligence analysis. When intelligence data meets the criteria defined within the predetermined correlations in Splunk, an alert can be configured to notify the analyst, at which time they would be able to draw an informed conclusion, without introducing misperceptions or human bias into the report. These types of conclusions are what provide relevant and actionable intelligence into an intelligence report.

Examples prove—makes counterterrorism more effective

Trobock, 14

(Randall, Master of Science in Cybersecurity from Utica College, May 2014, "THE APPLICATION OF SPLUNK IN THE INTELLIGENCE GATHERING PROCESS", Proquest, amp)

The argument can clearly be made that the problem of information overload that exists in law enforcement and intelligence analysis can be solved by implementing and using Splunk to its full potential. In the days and weeks after the Boston bombing attack, intelligence surfaced through several media sources that would have been invaluable in possibly preventing this attack from occurring. The intelligence, in the form of social media posts, suspicious travel, and even an open murder investigation of a known associate, was wide ranging and would have caused an information overload situation had the FBI been actively investigating Tsarnaev. Unfortunately, the FBI had concluded their investigation on Tsarnaev shortly after receiving the initial tip from the Russian government, and no further investigation was conducted. Had the FBI continued their investigation and been able to implement Splunk to its full potential, leveraging it as a resource for proactively following and analyzing Tsarnaev's actions in the time preceding the attack, the attack itself could have potentially been averted. 23

An example of information overload was also presented in the case study of the Chandler Police Department. They were able to gain efficiencies not only in the health monitoring of their internal infrastructure, but also on the ways they track crime and reported incidents. This included gathering data from various sources within the department, which would not have been practical to do without a solution such as Splunk. Based on the success that they have seen in their implementation, an argument can be made that the Chandler Police Department would be remiss not to further explore additional uses for Splunk. In addition to the efficiencies gained in the case study, which focused mainly on gathering metrics around police processes, the Chandler Police Department could use Splunk to actually prevent and solve crimes. Police departments need to be able to process the same types of intelligence that agencies such as the FBI and the Central Intelligence Agency (CIA) need to process during a typical investigation. Therefore, it would make sense for the Chandler Police Department to extend their Splunk implementation.

UQ CP

1nc

Text: The National Security Administration should allocate more funding to data analysis through means included but not limited to computing power and speed and human resources.

The CP solves—the NSA has a huge budget and tech barriers are surpassed

Soltani, 13

(Ashkan, independent researcher who previously investigated online privacy issues as a staff technologist with the US Federal Trade Commission, 8-16-13, MIT Technology Review, "Soaring Surveillance", http://www.technologyreview.com/view/516691/soaring-surveillance/, amp)

Each of the NSA programs recently disclosed by the media is unique in the type of data it accesses, but all of them have been made possible by the same trend: surveillance techniques have been exploding in capacity and plummeting in cost. One leaked document shows that between 2002 and 2006, it cost the NSA only about $140 million to gather phone records for 300 million Americans, operate a system that collects e-mails and other content from Internet companies such as Google, and develop new "offensive" surveillance tools for use overseas. That's a minuscule portion of the NSA's $10 billion annual budget.

Spying no longer requires following people or planting bugs; rather, it means filling out forms to demand access to an existing trove of information. The NSA doesn't bear the cost of collecting or storing data and no longer has to interact with its targets. The reach of its new programs is vast, especially when compared with the closest equivalent possible just 10 years ago.

What we have learned about the NSA's capabilities suggests it has adopted a style of programmatic, automated surveillance previously precluded by the limitations of scale, cost, and computing speed. This is a trend with a firm lower bound. Once the cost of surveillance reaches zero, we will be left with our outdated laws as the only protection. Whatever policy actions are taken to regulate surveillance in light of the recent leaks should recognize that technical barriers offer dwindling protection from unwarranted government surveillance at home and abroad.

Avoids ptx

Congress easily granted the NSA hundreds of millions before—the CP is secretive and uncontroversial and obtains funding under the guise of uncontroversial construction

Deseret Morning News, 9

(12-20-2009, "Big Brother is coming: NSA's $1.9 billion cyber spy center a power grab", lexis, amp)

No, this power grab is for the stuff of Thomas Edison and Nikola Tesla ? the juice needed to keep acres of NSA supercomputers humming and a cyber eye peeled for the world's bad guys. Nearly a decade into the new millennium, America's spy agency is power gridlocked at its sprawling Fort Meade, Md., headquarters. The NSA, which devours electricity the same way teenage boys wolf down french fries at McDonald's, has been forced to look elsewhere to feed its ravenous AC/DC appetite. "At the NSA, electrical power is political power. In its top-secret world, the coin of the realm is the kilowatt," writes national security authority and author James Bamford. It's a simple equation: More data coming in means more reports going out. More reports going out means more political clout for the agency, Bamford writes. Intelligence historian and author Matthew M. Aid considers the NSA's quest for power a driving

factor in the NSA's selection of Camp Williams, which covers 28,000 acres bordering Utah and Salt Lake counties. During an Oct. 23 news conference at the state Capitol officially announcing the new spy center, Glenn Gaffney, deputy director of national intelligence for collection, said as much when he confirmed that one of the strengths of the Utah location was that it "offered an abundant availability of low-cost power." There's been some speculation that the Camp Williams facility dovetails with the NSA's controversial attempts to further establish itself as the lead dog for the government's expanding cybersecurity initiatives, although NSA officials aren't tipping their hand. "I can't get into some of the specific details of the kind of work that will go on at the center because it is a critical aspect of the way we are looking at doing cybersecurity going forward," Gaffney said in his best NSA-ese. "I can say that the reason why we are doing the center is because of the deep level of technical expertise that's needed to understand the nature of the threats." Given the NSA's penchant for speaking little and revealing less, it sounds like he's saying, "Trust us." Zeros gone wild The virtual mountains of data needing such huge levels of power to mine can be brain-numbing. Think zeros gone wild. A 2008 report by the MITRE Corp., prepared for the Department of Defense, conservatively estimates that the high volumes of data storage required for NSA eavesdropping will reach the petabyte level by 2015. A petabyte is one quadrillion bytes (1,000,000,000,000,000). There has been even wilder speculation that data storage may reach the yottabyte level within that same time frame. A yottabyte, the largest unit of measure for computer data, equals 1,000,000,000,000,000,000,000,000 bytes. Either way, the NSA is already drowning in information. The agency's former director, Lt. Gen. Michael V. Hayden, admitted the NSA "is collecting far more data than it processes, and that the agency processes more data than it actually reports to its consumers." In his book "The Shadow Factory," Bamford cites an already outdated study by the University of California at Berkeley that measured global data trends. In 2002, there were 1.1 billion telephone lines in the world carrying nearly 3.8 billion minutes ? approximately 15 exabytes of data. An exabyte is 1,000 petabytes. Cell phones added 2.3 exabytes of data, while the Internet that year added another 32 petabytes to the bubbling information pot. Suffice it to say that seven years hence, it's grown to a tsunami-size information wave that's being added to daily, which is where the NSA's robust sifting technologies of today and the future come into play. "Once vacuumed up and stored in these near-infinite 'libraries,' the data are then analyzed by powerful info weapons, supercomputers running complex algorithmic programs, to determine who among us may be ? or may one day become ? a terrorist," Bamford writes. "In the NSA's world of automated surveillance on steroids, every bit has a history, and every keystroke tells a story." Bigger Brother, if you will, once only found in literature and the lexicon, has now taken up full-time residency in our daily lives. Power shortage The Baltimore Sun first reported in 2006 that the NSA was unable to install new supercomputers and other sophisticated equipment at Fort Meade for fear of "blowing out the electrical infrastructure." The NSA and Fort Meade are Baltimore Gas & Electric's largest customers, consuming roughly the amount of power that the city of Annapolis does, the Sun reported. In 2005, the NSA took its first step to decentralize information gathering and storage by making known it would convert a former 470,000-square-foot Sony computer-chip building in San Antonio, Texas, into a satellite data facility. The Texas Cryptologic Center, as it's being called, reportedly rivals the nearby Alamodome in size. Camp Williams was announced to be the next such NSA facility, although back-channel chatter is now questioning if San Antonio is being shoved aside in favor of increasing the Utah center's role. "I've heard the San Antonio deal is dead," said someone who closely follows the NSA but asked not to be identified. "I was told that given current budgetary constraints that the NSA was basically told they could have one, but not both centers, and it looks like they've chosen Utah." Should that be the case, no one apparently has told the NSA, which would be ironic for an agency that prides itself on knowing everything. "Plans for the NSA Texas Cryptologic Center are continuing," wrote NSA public affairs specialist Marci Green in a recent e-mail. "(The) NSA has maintained a presence in San Antonio over the past two decades and plans to continue to have strong presence in the area." Hiding in plain sight A long-running joke has been that NSA actually stands for "No Such Agency." But lurking in the shadows becomes trickier when you've grown into the 5,000-pound gorilla. Thus, as the scope of the NSA increases, the agency is continually perfecting its ability to hide in plain sight by labeling much of what does "classified" and creating a nearly impenetrable veil of secrecy. But maintaining that concealment breeds fear and paranoia, especially among conspiracy theorists and the similar-minded. Much of the Web buzz surrounding the Utah data center has revolved around how banks of supercomputers inside the facility might be used for intrusive data mining and monitoring of telephone conversations, e-mails and Web site hits, in the name of national security. "While the NSA doesn't engage in traditional wiretapping, which is the bailiwick of the FBI and other enforcement agencies, it does collect signals intelligence (sigint) by intercepting streams of foreign electronic communications containing millions and millions of telephone calls and e-mails," writes Bamford. The NSA feeds intercepts through its computers that screen for selected names, telephone numbers, Internet addresses and trigger words or phrases. Flagged information gets highlighted for further analysis. "Foreign" is the keyword here. Domestic signals intelligence is not part of the NSA's charge, although there is plenty of overlap, requiring the agency to navigate shades of gray. Whenever the NSA has blurred the demarcation between monitoring foreign and domestic signals, however ? most famously several years ago, when the agency was reportedly electronically peeking over the shoulder of American servicemen, journalists and aid workers overseas ? rebuke by civil libertarians has followed like the period at the end of a sentence. By the book Try as it might, the NSA can't shake those Orwellian overtones, prompting Gaffney and others to reiterate that everything in Utah will be done by the book. "(We) will accomplish this in full compliance with the U.S. Constitution and federal law and while observing strict guidelines that protect the privacy and civil liberties of the American people," Gaffney pledged in October. Perhaps it's because Utahns are such a family-oriented bunch that few even blinked upon learning their Big Brother was moving in. Not that the NSA's actual physical location matters any more, says Aid, who researched and penned "The Secret Sentry: The Untold History of the National Security Agency." To be frank, he said, the NSA has moved beyond Big Brother. "I've been following the NSA for 25 years, and while I admire (the agency's) successes and the commitment of the people working there, there's a lot that also gives me pause for concern. We should be wary of too much secrecy," cautions the archivist, who himself was a controversial footnote in NSA history nearly a quarter of a century ago. While serving as an Air Force sergeant and Russian linguist for the NSA in England, Aid was court-martialed, imprisoned for just over a year and received a bad-conduct discharge for unauthorized possession of classified information and impersonating an officer, according to Air Force documents reported by the Washington Post in August 2006. When it comes to having a healthy skepticism of how the NSA sometimes conducts its business, Aid is not alone. Acknowledgement by government officials that the agency went beyond the broad

limits set by Congress last year for intercepting telephone and e-mail messages of Americans has raised the hackles of many NSA watchdogs. "The NSA's expertise, which is impressive and very, very deep, is focused primarily on the needs of the military and the intelligence community," said Matt Blaze, a computer security expert at the University of Pennsylvania. But Blaze told the New York Times that the NSA's "track record in dealing with civilian communications security is mixed, at best." Sitting rack Aid doubts the NSA will use Camp Williams for domestic prying. Rather, he's of the opinion the data center will significantly expand on the linguistics and electronic surveillance work already being carried out there. "It's an operational mission that's been going on (there) for some time," Aid said, describing the setting inside a windowless operations building filled with linguists wearing headphones and dressed in desert fatigues. "The NSA is a windowless world," Aid laughs, claiming he can spot an agency installation anywhere because there are never any windows. They're either built windowless, or if it's a retrofit, they cover them over. Aid said soldiers "sit rack," as it's termed, behind a computer with radio intercept receivers and recorders monitoring live missions beamed remotely by satellite from Iraq and Afghanistan. "We (the Utah National Guard) don't do that at Camp Williams," clarified spokesman Lt. Col. Hank McIntire, who said he cannot comment on speculation of that nature. McIntire did say there has been tremendous interest surrounding Camp Williams and its role following the NSA's announcement. He then repeated his earlier statement that the Utah Guard's role is to provide the real estate for the NSA to build its facility to carry out "specific missions," whatever those might be. A hodgepodge of military intelligence and security units from the Utah Guard use Camp Williams for training purposes, including the 1,200-member 300th Military Intelligence Brigade, which specializes in linguistics intelligence. McIntire said about 50 percent of the brigade's ranks are made up of returned LDS missionaries who speak a second language. Aid considers returned Mormon missionaries perfect for the task. Being near-native speakers and squeaky-clean, he said, they're some of the easiest people in the world to get high-level security clearances on. Aid also finds it interesting that Arabic linguists from Fort Gordon, Ga., the NSA post responsible for keeping its ear tuned to the Middle East and North Africa, are shuttled to Camp Williams regularly for additional training. "The best of the best," he said. What we know Reporting on the present and future of the Camp Williams Data Center continues to be a lot like piecing together a jigsaw puzzle, minus the picture on the box lid. Questions and queries for clarification for this story e-mailed to the NSA at their request generated a return e-mail containing multiple URLs linking to previously published news releases, transcriptions of news conferences and information relating to construction bidding. No new information was provided. But by assembling information available in the public domain, including a handful of budget documents sent by the NSA to Congress, the puzzle's outer edge is starting to emerge. The budget documents reveal, for example, that $207 million has already been spent for initial planning of the center and that the first phase of construction, fast-tracked for two-year completion, will carry a $169.5 million price tag. Phase I construction will include basic infrastructure and installation of security items, such as perimeter fencing and alarms, an interim visitor control center and a vehicle-inspection center for use during construction. Part of that money will also be spent bringing utilities to the site, relocating some existing National Guard facilities away from the area, as well as surveying the site for unexploded ordnance from previous Utah Guard training. The NSA has also requested another $800 million for the center in 2010 appropriations bills that are now before Congress. That money would fund a first-phase, 30-megawatt data center to include "state-of-the-art high-performance computing devices and associated hardware architecture." The facility itself will cover approximately 1 million square feet, of which 100,000 square feet will be "mission critical data-center space with raised flooring." The remaining 900,000 square feet will be used for technical support and administrative purposes. Following Phase I, budget documents show, the NSA intends to request an additional $800 million sometime in the future to eventually expand the data center into a 65-megawatt operation. Earlier media reports comparing the data center's 65-megawatt capacity with the entire power consumption of Salt Lake City were erroneous, according to Rocky Mountain Power spokesman Dave Eskelsen. Eskelsen says the actual power consumption of Salt Lake City is closer to 420 megawatts, meaning a fully functional data center will draw roughly one-sixth as much power as the capital city. "It's a lot of power but not what has been being reported," Eskelsen said, noting the NSA won't be as a large a consumer of power as Kennecott presently is. The agency "will be in line with our midrange large customers." Eskelsen also addressed how system upgrades in the works, including building a new substation to boost capacity, should mitigate potential service disruptions. "The system is perfectly capable of handling (the demand), as long as the infrastructure is in place to supply it," Eskelsen said, "and we're making substantial additions to the infrastructure to handle it." September 11 Reasons and rationale for the NSA's arrival in Utah invariably can be traced to the tragedies of Sept. 11, 2001. Attacks orchestrated on U.S. soil by al-Qaida against the World Trade Center towers and the Pentagon stunned the nation, sending it collectively running into the embrace of the intelligence community, which offered up wondrous and mysterious technologies as protections. The wake of 9/11 also **sealed a new pecking order** that had already started shaking out during the previous decade, on the heels of several embarrassing high-profile security breaches and scandals. So while the Central Intelligence Agency and FBI were losing degrees of influence, the super secretive NSA ascended to fill the void. The agency's timing was impeccable. Keeping the barbarians at bay has proven lucrative for the signals and ciphers business, **with Congress** and both the Bush and Obama administrations **eager**, until only recently, **to throw wads of money its way.** The result is what Bamford describes as "the largest, most costly and technologically sophisticated spy organization the world has ever known." The Utah data center, which will cover 120 acres at Camp Williams, is only part of this ongoing NSA spending spree that has resulted in the doubling of its Fort Meade headquarters. The spending has also led to major upgrades or replacement of existing facilities at Fort Gordon in Georgia; Denver, Colo.; and Wahiawa, Hawaii. While helping make the rest of the country safer from the threats of terrorists and rogue states, will the NSA's arrival here in effect paint a giant target on the Utah landscape for terrorism or attack down the road? Aid scoffs at such a notion. He said Utah already has plenty of military targets inside its borders ? Dugway Proving Ground, Tooele Army Depot and Hill Air Force Base, to name a few ? that make the data center's arrival inconsequential. If anything, he thinks the state enjoys security advantages

lacked by other locales. One such advantage is Utah's proximity deep within the interior of the United States. Another is having homogeneous demographics. Both work together to increase the degree of difficulty for potential terrorists to conduct operations. $10 billion question It's an annual $10 billion debate: Besides providing the NSA's 60,000 employees with someplace to track people's Internet-surfing habits, does the agency give America its money's worth? Bamford has his doubts, writing, "Based on the NSA's history of often being on the wrong end of a surprise and a tendency to mistakenly get the country into, rather than out of, wars, it seems to have a rather disastrous cost-benefit ratio. Were it a corporation, it would likely have gone belly-up years ago." Aid offers a somewhat different take. "The effectiveness of the NSA is unquantifiable, and I base that on having interviewed over 200 senior intelligence people over the last decade," Aid said. "The NSA is overwhelmingly the most prolific and important producer of intelligence in the U.S. There are hundreds of successes for every known failure." It's entirely possible the answer lies in between. In his book, Aid quotes former senior State Department official and onetime agency user Herbert Levin as saying, "NSA can point to things they have obtained that have been useful. But whether they're worth the billions that are spent is a genuine question in my mind." e-mail: chuck@desnews.com

Congress doesn't seek to hold the NSA accountable

Sulmasy and Yoo, 8

(Glenn--Associate Professor of Law, U.S. Coast Guard Academy, John--Professor of Law, University of California at Berkeley, Boalt Hall School of Law; Visiting Scholar, American Enterprise Institute, February, 2008, UC Davis Law Review, 41 U.C. Davis L. Rev. 1219, "SYMPOSIUM: INTERNATIONAL CRIME AND TERRORISM: Katz and the War on Terrorism", lexis, amp)

In addition, the other branches of government have powerful and important tools to limit the President, should his efforts to defeat terrorism slip into the realm of domestic oppression. n207 Congress has total control over funding and significant powers of oversight. n208 It could effectively do away with the NSA as a whole. n209 The Constitution does not require that Congress create NSA or any intelligence agency. Congress could easily eliminate the surveillance program simply by cutting off all funds for it. n210 It could also condition approval of administration policies in related areas to agreement on changes to the NSA program. n211 Congress could refuse to confirm Cabinet members, subcabinet members, or military intelligence officers unless it prevails over the NSA. n212 It could hold extensive hearings that bring to light the NSA's operations and require NSA officials to appear and be held accountable. n213 It could even enact a civil cause of action that would allow those who have been wiretapped by the NSA to sue for damages, with the funds to pay for such damages coming out of the NSA's budget. n214 **So far, Congress has not taken any of these steps; in fact, Congress has passed up an obvious chance when it confirmed General Hayden to head the CIA**. n215 [*1257] **One should not mistake congressional silence for opposition to the President's terrorism policies**. n216

Congress avoids taking sides on intelligence to deflect blame to the agency's executive decisionmaking

Berman, 14 --- Visiting Assistant Professor of Law, Brooklyn Law School (Winter 2014, Emily, Washington & Lee Law Review, "Regulating Domestic Intelligence Collection," 71 Wash & Lee L. Rev. 3, Lexis, JMP)

First, some brief thoughts on political economy. This Article aims to propose some plausible reforms in an area where what Professor Heather Gerken calls the "here to there" problem is a significant obstacle. n158 Perhaps even more than in other policy areas, expectations that

Congress will act to implement these recommendations--through legislation or through other available levers of power--are likely to be disappointed. Indeed, congressional oversight of national security policy has long been considered ineffective by government officials, outside task forces, and scholars. n159 The dearth of public information about national [*44] security policy, which makes oversight significantly more challenging, is partially to blame. n160 But there are also perverse incentives at work: **legislators have no incentive to engage in aggressive oversight of intelligence-collection powers**. n161 Legislators gain little by taking ownership over security policy. n162 Meanwhile, **so long as Congress can label such policies "executive," it cannot be blamed for intelligence failures**. n163 The result is that all electoral incentives point toward congressional deference to executive policy preferences in this area. n164 This is [*45] especially so for intelligence-collection policies imposing disproportionate impact on certain segments of society, such as minorities or noncitizens, whose interests carry little electoral weight with legislators. n165 Expectations that Congress will take action in this area are thus likely to be disappointed.

CP avoids political battles in congress and insulates policies from backlash

Berman, 14 --- Visiting Assistant Professor of Law, Brooklyn Law School (Winter 2014, Emily, Washington & Lee Law Review, "Regulating Domestic Intelligence Collection," 71 Wash & Lee L. Rev. 3, Lexis, JMP)

Similarly, because granting decision-making authority to bureaucrats not subject to electoral forces that constrain other policymakers **removes those decisions from the field of political battle**, Congress both eludes responsibility for making difficult policymaking decisions and **insulates the policies themselves from electoral backlash**. n185 Broad agency discretion thus undermines the very nature of participatory democracy and raises concerns about political accountability for critical decisions of national policy. n186

[*51] And while the Supreme Court's decisions limiting legislative delegations to agencies were confined to the New Deal-era, n187 so long as Congress sets down an "intelligible principle" for the agency to follow, n188 many of the procedural rules developed in the administrative state serve to cabin discretion. n189 Thus, while agency decision makers continue to enjoy significant leeway, the threat to democracy and accountability posed by agency discretion has not gone unaddressed.

CP alone doesn't link to politics --- Congress wants to delegate the policy-making to others

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The contemporary political economy of congressional oversight in this area means that legislative oversight will not provide any more effective a check than judicial action. Legislators' incentives weigh against aggressive involvement. The downside risks of unsuccessful counterterrorism policies (additional attacks) are high. n125 **If those policies are developed outside of the legislative process, Congress can share (if not entirely evade) blame.** Moreover, **counterterrorism policy "is a subject matter that is especially prone to legislative delegation** because it often entails hard trade-offs," which are the types of questions Congress is least likely

to address. n126 In addition to undermining legislative involvement in counterterrorism policy formulation, existing institutional features also render [*36] congressional oversight of domestic intelligence-collection policy ineffectual. Congress, of course, retains oversight authority over the FBI. n127 If it wants to play a more active role in overseeing the Guidelines, it has the tools to do so. n128 After all, Congress determines whether and to what degree the FBI's intelligence-collection activities are funded. n129 Moreover, the relevant committees of jurisdiction conduct regular oversight hearings at which the Attorney General and FBI Director appear. n130 Legislators can ask Justice Department and FBI officials for information about the Guidelines or the FBI's activities at any time. n131

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1nc overload k

The solution is not to reduce surveillance – it is to make surveillance useless – we must jam the system by attracting suspicion to everyone – vote negative to flood the NSA with terrorist messages – the surveillance state will drown in the flood of information

Lindorff 12 – founder of This Can't Be Happening and a contributor to Hopeless: Barack Obama and the Politics of Illusion, published by AK Press (Dave, "Information Overload," Counter Punch, 7/12/2012, http://www.counterpunch.org/2012/07/12/information-overload/) //RGP

Driving a Stake Through the National Security State Information Overload The news about the growing reach and repressive capabilities of the national security state in the United States of **explode** America keeps getting more and more frightening. **Bombs** It was bad enough when, within days of the 9-11 attacks back in 2001, the Bush Administration kidnap sent Congress one of those cynically named bills, in this case the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act (the PATRIOT Act), which revolution effectively gutted the first, fourth, fifth and sixth amendments of the Bill of Rights. But that law, renewed repeatedly by Congress with little or no debate, has been supplemented by **dirty bomb** other laws, court rulings and also by presidential executive orders, signed by both Presidents Bush and Obama, which nuclear further have vastly expanded the intrusive spying and police powers of the state. Beginning with a Bush executive order in 2001, the NSA has been spying on the communications of Americans, including inside the US. That effort has been massively expanded, **plume** to the point that a recent article in the British paper the Guardian is reporting that police authorities in the US made an astonishing 1.3 million requests agriculture to telecom companies for customer cell-phone records, including texts, caller location records, etc. — almost all of them without the legal nicety of a court warrant. Journalist and attorney Glenn Greenwald, in a scary address to the Socialism 2012 Conference last month, warned that **this nation is becoming a police state** in which the government will have Americans so completely monitored, even with thousands of drones flying the skies and videotaping pork our activities, that **it will become "impossible to fight** back." **Enriched** This got me to thinking. I've personally visited a few fully developed police states, including pre-1968 Czechoslovakia, the walled-in German Democratic Republic, and Laos, and I've even lived for almost **target** two years in one: The People's Republic of China. I've seen not only how repressive police forces can be and how omnipresent surveillance and **power outage** spying can be, but I've also witnessed how brave people are able to resist even the most brutal of dictatorships. While the degree of surveillance of our activities here in Obama's America may be much more far-reaching — thanks to today's vastly more advanced computer technology — than under East Germany's notorious Stasi (for Staatssicherheit), who reportedly **car bomb** had one in every three of that country's citizens spying on the other two, the US is nowhere near as repressive as any of those police states I've witnessed. We are not being hauled off to Guantanamo or Leavenworth simply because of what we say or write — at least not yet. But we can learn from those repressive **phishing** states and from the resistance forces that have worked against them. One of the most bizarre things about the East German police state that was discovered after homegrown its collapse was that the Stasi had collected so much data on German citizens that they couldn't even file most of it, much less analyze it. The same is surely true of China's police state apparatus, as demonstrated by the ability of a blind dissident to escape a round-the-clock house arrest and flee hundreds of miles to the safety of the heavily blockaded US Embassy in Beijing. Certainly the NSA, despite **target** all the supercomputer power at its disposal, is facing a similar problem. The Washington Post reported two years ago that the NSA was

collecting 1.7 billion electronic communications every day! And that number is certainly much higher now. The way they go through that data is **burst** to look for key words. According to a list obtained by the Electronic Privacy Information Center through a Freedom of Information Act request filed worm with the Department of Homeland Security, there are some 300 words that trigger AMTRAK a closer look, almost certainly by a human being. So here's an idea. **Let's all start salting all of our conversations and our written communications with a selection of those 300 key words**. If every liberty-loving person in America virus were to do this, the NSA would have to employ all 15 million unemployed Americans just to begin to look at all those transcripts! I've been doing just that here in this inciting article. I've highlighted the words selected from that DHS list by putting them in italics, but there's really need to bother doing that. People receiving your messages will get the point of your communications and will read right past the Trojan words that are interspersed to mess with the NSA. Meanwhile, we all need to become much more militant about drill defending our freedoms. Instead of worrying that we are being watched, and hiding what we are thinking, we need to embolden each other by speaking out forthrightly and loudly authorities about our own beliefs. It is the fear of repression that makes repression work. As the citizens of Eastern Europe and the former Soviet Union learned and as the assassination citizens of the once fascist nations of Latin America learned, **once the people stop being cowed, the police state is undone**.

Two Net Bennies:

First, surveillance is good – limited exposure to state repression gives resisters skills necessary for sustained resistance in the future

Finkel 15 – Assistant Professor of Political Science and International Affairs at George Washington University (Evgeny, "The Phoenix Effect of State Repression: Jewish Resistance during the Holocaust," American Political Science Review Vol. 109, No. 2, May 2015) //RGP

Large-scale state repression is the deadliest form of political conflict (Rummel 2002). In the public imagination and in popular and even academic writings, civilians targeted by large-scale, violent state repression are often perceived as passive and defenseless. The empirical record is more ambiguous, however. In almost every episode of large-scale state repression, members of the targeted group also **mobilized** and began to engage in **armed resistance**. Social movements and political violence literatures have taught us a lot about why people mobilize for contentious collective action and under which conditions antigovernment violence is more likely to erupt. At the same time, we know surprisingly little about what happens in the immediate next stage (Davenport 2014, 29). Why, after mobilization, are some nascent groups able to organize sustained violent resistance, whereas others fail early on? Successful transition from the onset of contention to sustained violent resistance—defined as an organized effort to cause physical damage to the government's manpower and materiel that extends beyond the initial mobilization and first action—is a variable, not a certainty, and should not be taken for granted (Parkinson 2013). "Nascent movements are extremely vulnerable, and many if not most are crushed before they have a chance to grow beyond small cells," argues the U.S. Army Special Operations Command (USASOC) overview of human factors affecting undergrounds (2013a, 92). Empirical evidence from both single-country (Della Porta 2013, 263–64; Lewis 2012) and cross-national, large-N (Blomberg, Engel, and Sawyer 2009) analyses supports this assertion. Some groups do become well-established challengers, whereas a large number fail in the wake of initial mobilization, frequently being eliminated by the security services. I argue that this variation in resistance groups' postmobilization trajectories is shaped by an important, intuitive, but often overlooked variable: **the skills required** to organize and mount such resistance. This article argues that the "**resister's toolkit**," which includes the skills to create and maintain clandestine networks, manage secret communications, forge documents, smuggle money, gather munitions, and outfox security services, is **crucial** for the survival of resistance organizations, especially ones without secure territorial bases, such as urban guerrillas (Staniland 2010), clandestine political

movements (Della Porta 2013), and terrorist groups (Shapiro 2013). This toolkit is also quite different from the conventional military training required for open warfare and is often much harder to acquire. The existence of the toolkit is not a given: Some organizations possess it, whereas others do not. Groups that do not possess or swiftly acquire the toolkit are more likely to be wiped out by the security apparatus; those that have it will be better positioned to survive to fight another day. This article also argues that the toolkit is learned and that an important pathway to its acquisition is **through exposure to repression**. Extensive research on political violence and contentious politics focuses on the short-term effects of repression; for example, whether it facilitates or impedes mobilization during the same episode of contention (Downes 2007; Dugan and Chenoweth 2012; Kalyvas and Kocher 2007; Lyall 2009; Mason and Krane 1989). Exposure to repression and violence, however, also has long-term effects (Blattman 2009; Daly 2012; Jha and Wilkinson 2012). This article demonstrates that one such understudied legacy of repression is the acquisition of the resister toolkit by segments of repressed populations, who then capitalize on these skills during subsequent repression episodes.

Second, the plan merely strengthens the surveillance state – the NSA is failing now because of information overload – reducing surveillance only makes invasion of privacy more effective

Angwin 13 – staff writer ("NSA Struggles to Make Sense of Flood of Surveillance Data," WSJ, 12/25/2013, http://www.wsj.com/articles/SB10001424052702304202204579252022823658850) //RGP

*Language edited

LAUSANNE, Switzerland— William Binney, creator of some of the computer code used by the National Security Agency to snoop on Internet traffic around the world, delivered an unusual message here in September to an audience worried that the spy agency knows too much. It knows so much, he said, that **it can't understand what it has**. "What they are doing is making themselves dysfunctional by taking all this data," Mr. Binney said at a privacy conference here. The agency is **drowning in useless data**, which harms its ability to conduct legitimate surveillance, claims Mr. Binney, who rose to the civilian equivalent of a general during more than 30 years at the NSA before retiring in 2001. Analysts are swamped with so much information that they can't do their jobs effectively, and the enormous stockpile is an irresistible temptation for misuse. Mr. Binney's warning has gotten far less attention than legal questions raised by leaks from former NSA contractor Edward Snowden about the agency's mass collection of information around the world. Those revelations unleashed a re-examination of the spy agency's aggressive tactics. MORE Snowden Warns of Dangers of Citizen Surveillance But the NSA needs more room to store all the data it collects—and new phone records, data on money transfers and other information keep pouring in. A new storage center being built in Utah will eventually be able to hold more than 100,000 times as much as the contents of printed materials in the Library of Congress, according to outside experts. Some of the documents released by Mr. Snowden detail concerns inside the NSA about drowning in information. An internal briefing document in 2012 about foreign cellphone-location tracking by the agency said the efforts were "outpacing our ability to ingest, process and store" data. In March 2013, some NSA analysts asked for permission to collect less data through a program called Muscular because the "relatively small intelligence value it contains does not justify the sheer volume of collection," another document shows. In response to questions about Mr. Binney's claims, an NSA spokeswoman says the agency is "not collecting everything, but we do need the tools to collect intelligence on foreign adversaries who wish to do harm to the nation and its allies." Existing surveillance programs were approved by "all three branches of government," and each branch "has a role in oversight," she adds. In a statement through his lawyer, Mr. Snowden says: "When your working process every morning starts with poking around a haystack of seven billion innocent lives, you're going to miss things." He adds: "We're blinding [**overwhelming] people with data we don't need**."

2nc overload good

Overload collapses the surveillance state

North, PhD, '13 (Gary North, PhD UC Riverside "Surveillance state will collapse; data overload increasingly blinds it" July 29, 2013 http://nooganomics.com/2013/07/surveillance-state-will-collapse-data-overload-increasingly-blinds-it/) //GY

Free market vs. the security state¶ But this does not mean that it is inherently unstoppable. On the contrary, it is eminently stoppable. It will be stopped. Economics will stop it.¶ The ability of any bureaucracy to make decisions is limited by its ability to use the data at its disposal to make rational decisions. Ludwig von Mises in 1920 showed why all central planning by the state is blind. It has no free market to guide it. There are no prices to guide it. The state is inherently myopic. His 1944 book, Bureaucracy, extended this theme. The more that a bureaucracy seeks omniscience in its quest for omnipotence, the more short-sighted it becomes. I put it this way: it bites off more than it can chew. In the case of the NSA, it bytes off more than it can chew.¶ Bureaucrats are time-servers. They are not original. They are turf-defenders. They are career-builders. They are not entrepreneurial. That was Mises' point in 1944. The key goal of a bureaucrat is this: "Don't make a mistake." In short, "do it by the book." It does not matter which bureaucracy we have in mind: CIA, FBI, NSA. The attitude is the same, because the financing is the same: from the government.¶ When the government goes bust, the surveillance state will go bust. Mises was right in 1920, and the fact that Congress is impotent to roll back the surveillance state is not proof of its irrevocable nature. It is proof of its financial dependence on Congress. Anything that is dependent on Congress financially is doomed. Mises was right in 1920. He was right in 1944.¶ Data overload = blindness¶ Wyden trusts in the wisdom and power of political democracy. He is naive. He should trust in the free market. People's day-to-day economic decisions are the heart of the matter, not their occasional voting. **The individual decisions of people in the market will ultimately thwart Congress and the surveillance state**. The free market's signals, not the phone taps of the NSA, will shape the future. The bureaucrats' quest for omniscience and omnipotence will come to a well-deserved end, just as it did in the Soviet Union, and for the same reason. The state is inherently myopic: short-sighted. Computers make it blind. The state focuses on the short run. Computers overwhelm bureaucrats with short-run information.¶ Let us not forget that the Internet was invented by DARPA: the military's research branch. It invented the Internet to protect the military's communications network from a nuclear attack by the USSR. Today, there is no USSR. There is the World Wide Web: the greatest technological enemy of the state since Gutenberg's printing press. The state is myopic.¶ The fact that the NSA's two "computer farms" — in Utah and in Maryland — are seven times larger than the Pentagon will not change this fact. They have bitten off more than they can chew. Central planners are bureaucrats, and bureaucracy is blind. It cannot assess accurately the importance of the mountains of data that are hidden in government-collected and program-assessed digits. The knowledge possessed in the free market is always more relevant. Society is the result of human action, not of human design. The bureaucrats do not understand this principle, and even if they did, it would not change reality.¶ Who is Big Brother? The man in charge of this.

2nc overcompliance solves

Over-compliance solves – it takes advantage of government surveillance by overloading the system

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A recent news story told of cities that are removing their cameras that photograph cars running red lights at certain intersections. The reason? Drivers are aware of such devices and, rather than run the risk of getting a ticket in the mail, they stop in time. One would think making intersections safer might be a cause for self-congratulatory celebration at city hall. Not so. By reducing red-light violations, cities have also reduced the revenues coming from the traffic tickets. This report reminded me of another phenomenon of local policing: the use of parking meters. On first impression, one might conclude that city governments would want car owners to keep meters filled with the necessary coinage for the duration of their stay. Quite the contrary. City officials count upon time expirations on meters so that motorists can be given tickets by the battalions of meter-maids who prowl the streets in search of prey. An additional dime or quarter in a meter pales in monetary significance to a $25 parking violation. This is why most cities have made it a misdemeanor for a person to put coins in a meter for cars other than their own. A former student of mine once made an inquiry into the revenues cities derived from parking violations. Without such monies, he concluded, most cities could not sustain their existing municipal programs. This leads to an obvious conclusion: if you would like to reduce the scope of local governmental power, keep your parking meters filled! Decades ago, I read a most important book: Humphrey Neill's classic The Art of Contrary Thinking. While Neill focused largely on the world of market investing, his ideas carry over into almost all fields of human endeavor. The contrariness to which he addressed himself was not simply a reactive antagonism to existing practices or policies, but a challenge to use intelligent, reasoned analysis in considering alternatives. Unlike what passes for thinking in our world, "truth" is not necessarily found either in consensus-based opinion or in middle-ground "balances" of competing views: it is to be found wherever it may reside, even if only one mind is cognizant of it. I have long found Neill's book a useful metaphor for extending human understanding into realms he did not contemplate. One of these areas relates to the assessment of political systems. Government schools and the mainstream media condition us to take both the purposes and the consequences of governmental decision-making at face value; to believe that the failure of the state to accomplish its professed ends represents only a failure of "leadership" or inadequate factual "intelligence." But what if there are dynamics beneath the surface of events in our world that reflect alternative intentions or outcomes? More so than in any other area of human behavior, the world of politics is firmly and irretrievably grounded in **contradictions and illusions**. If you were to ask others to identify the purposes for which governments were created, you would likely get the response: "to protect our lives, liberty, and property from both domestic and foreign threats." This is an article of faith into which most of us are indoctrinated since childhood, and to suggest any other explanation is looked upon as a blasphemous social proposition. "But what," I ask, "are among the first things governments do when they get established? Do they not insist upon the power to take your liberty (by regulating what you can/cannot do), and your property (through taxation, eminent domain, and regulations), and your life (by conscripting you into their service, and killing you should you continue to resist their demands)?" The marketplace — not that corporate-state amalgam that so many confuse with the market — doesn't operate well on a bedrock of contradiction. If the manufacturer of the Belchfire-88 automobile starts producing vehicles with defective transmissions, consumers will cease buying this car, despite the millions of dollars spent on glittering advertising. Unless the company is resilient enough to respond to its failures, it will go out of business. While contradictions confuse the information base upon which marketplace transactions are conducted and, thus, impede trade, political systems thrive on them. If the police system fails to curb crime, or the government schools continue to crank out ill-educated children, most of us are disposed to giving such agencies additional monies. The motivations for state officials become quite clear: "the more we fail, the more resources we are given." Contrary to marketplace dynamics, contradictions arise between the stated incentives of government programs (e.g., to reduce crime, to improve the quality of education) and the monetary rewards that flow from the failure to accomplish the declared purposes. Like the intersection cameras now being dismantled, public expectations end up being sacrificed to the mercenary interests of the state. Perhaps there is a lesson for libertarian-minded persons in all of this. It is both useful and necessary for critics of state power to condemn governmental policies and practices. But there is a downside to just reacting to governmental actions on an issue-by-issue basis: state officials are in a position to control both the substance and the timing of events to which critics will respond. This allows the state to manipulate — and, thus, control — its opposition. While such ad hoc resistance is essential to efforts to restore peace and liberty in the world, it is not sufficient. As we ought to have learned from the Vietnam War experience, opposition to war is not the same thing as the fostering of peace. We will not

enjoy a peaceful world just by ending the slaughter in Iraq, if the thinking and the machinery for conducting future wars remains intact. What is needed is a broader base from which to demonstrate to others — as well as to ourselves — how the functional and harmful realities of state action contradict the avowed purposes for which such programs were supposedly undertaken. Drawing from the earlier examples, one such tactic might be — depending upon the circumstances — to foster a **widespread and persistent obedience** to the dictates of state authority. As valuable a tool as the ACLU is in using the courts to attack governmental programs, judicial decisions upholding a right to privacy are not what is bringing down traffic cameras. It is the fact that such devices are inadvertently — through motorists' obedience to them — promoting traffic safety (the stated purpose by which they were sold to the public) at the expense of their actual purposes (i.e., to generate more revenue for local governments). Many cities have ordinances making it a misdemeanor for a homeowner to fail to cut his/her grass before it reaches a stated limit on height. Someone told me of an acquaintance who let his grass grow almost to the maximum height allowed. When one of his neighbors commented on this, the property owner went into his house, brought out a yardstick to measure the grass, then commented that the grass still had two inches to grow before reaching the statutorily-defined limit. He then reportedly asked the neighbor "you don't want me to violate the ordinance, do you?" A friend of mine told me of the practice of one of her male friends who was subject to the Selective Service System. One of the mandates of this agency was that those subject to conscription had to keep it advised of any relocations. This young man carried a stack of pre-addressed post-cards, upon which he would write: "I am now at the Rialto Theater at 3rd and Main" and drop it in a mailbox. After leaving the theater, he would send another post-card reading: "I am now at the Bar-B-Q Rib House at 10th and Oak." How much more effective might such a widespread over-compliance be in challenging the draft than hiring a lawyer to argue a 13th Amendment case to a court of law? Along the same lines, I was at a conference where a man spoke of the compliance problems banks had in providing the Treasury Department with the information it demanded regarding customer banking transactions. In order not to be in violation of the government requirements, the banks were over-reporting such data, a practice that inconvenienced both the banks as well as the reporting agency that was suffering an **information overload**. The speaker suggested that the legislation be amended to provide a more narrowly-focused definition of what was required. During the question-and-answer session, I suggested that no such amendment be made; that the banks continue to report — and, perhaps, to increase the scope — of such transactions, thus providing the government with more information than it could control. As banking customers, each of us might choose to comply with the avowed purposes of such regulations — to combat "terrorism" and "drugs," right? — by sending the Treasury Department a monthly listing of all checks we had written! During the Reagan administration, the government mandated the taking and reporting of urine samples to test for drug usage. At the time, I raised the question: what impact might it have on this program to have each one of us mail a small bottle of our urine to the White House every day, so as to satisfy the curiosity of the president? Rather than opposing this program, it might be brought down by our daily compliance — an act of obedience! One of the more enjoyable demonstrations of the libertarian value of being overly obedient is found in the wonderful movie Harold and Maude. For those who have not seen this film, Harold is an iconoclastic denizen of the dark side. His constant faking of suicides to get the attention of his mother finally leads her to set up a meeting with her brother — an Army general — in an effort to get Harold interested in a military career. During his conversation with the general, Harold asks if he would be able to gather some "souvenirs" while in combat, "an eye, an ear, privates" or "one of these," whereupon he presents his uncle with a shrunken head. After earlier efforts to persuade Harold to join the Army, his uncle now tells him that he believes the military is not for him. Such examples may open the minds of some to a wider variety of creative responses to statism. Neither blind obedience nor knee-jerk reaction are qualities to be embraced by intelligent minds. It has been the combined influence of such behavior that has made the world the madhouse that it is. But when engaged in selectively and with reasoned insight, obedience can occasionally produce beneficial consequences for a free and peaceful society. In helping the state play out the unintended consequences of its contradictions, an **over-zealous cooperation may cause the state to dismantle itself**.

2nc phoenix effect

Exposure to government surveillance is good – it teaches us the skills necessary to combat repression later – learning how to organize movements while still subject to surveillance gives us a "resisters toolkit" that is necessary for effective resistance

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In his article in the May 2015 issue of APSR, Evgeny Finkel makes a splash by arguing that exposure to "selective repression" (**such as surveillance**, beatings, arrests, and torture) helps dissidents to develop a robust skill set with which to maintain enduring resistance later on. He supports this argument with data from an unlikely case—Nazi repression against three Jewish ghettos during the Holocaust—and shows how operational skills (the "resister's toolkit") often develop as an indirect result of past exposure to state repression. These skills then help dissidents to remain active in resistance even when the state is engaging in widespread, indiscriminate, and severe repression. I'll direct you to Finkel's article for more detail on the argument, data, and findings. So, what skills does Finkel identify as being crucial elements of a resilient, enduring violent resistance? He points to five tasks that can "outfox" the government's repressive agents: "establishing secure communications channels; procuring weapons without being detected by government agents; maintaining well-hidden meeting places and munitions cashes; producing high-quality forged identification documents; and being able to identify and neutralize informers and government agents trying to infiltrate the organization" (341). These all make sense from an operational perspective. Intuitively, maintaining organizational viability would be a necessary (but insufficient) condition for sustained rebellion. The key insight, I think, is that Finkel views these skills as learned. People can teach, experience, develop, perfect, and sustain them. If that's true for violent resistance, maybe it's true for nonviolent resistance as well. This begs the question: what operational skills are necessary for nonviolent movements to persist in the face of widespread state repression? One could imagine that at least two-and-a-half of Finkel's tasks would apply for a movement to remain viable. Namely: establishing secure communications; maintaining secure meeting places (but without the munitions caches!); protecting against and reducing the influence of infiltrators, informants, and provocateurs. In people-power campaigns, numbers matter a great deal. So as a decent substitute for the ability to procure weapons, one could also imagine adding: "procuring" participants. Although these basic tasks may be necessary for resistance movements to survive, additional skills may be required to win. For a discussion of the skills required for nonviolent activists to succeed, see recent work by Peter Ackerman and Hardy Merriman. Nevertheless, if we follow Finkel's argument, the people in society who would be the best at organizing resistance would be those who had experienced routine (albeit nonlethal) repression in the past, had gone underground and/or expanded their skills sets, and could organize the society into sustained mobilization. Indeed, we see that in many nonviolent struggles, people who emerge as leaders are often those who've experienced detentions, beatings, arrests, or exile in the past (e.g. Mohandas Gandhi, Nelson Mandela, Martin Luther King, Jr., Emmeline Pankurst, Alice Paul, Aung San Suu Kyi, and many others). This is true for diffused leadership structures as well, where the primary movers are often victims of past government repression. I'm not sure how many of these figures developed the specific skill set Finkel identifies, but it is clear that selective repression against these figures served to further mobilize (rather than demobilize) their movements. No one would suggest that implementing the five tasks is easy—either for violent or nonviolent resisters. However, if Finkel is right that these skills can be taught and learned, **he is clearly assaulting the conventional wisdom that state violence renders people essentially helpless and choiceless**. Instead, selective state violence designed to punish and limit dissident capacity may be the very thing that can build up dissidents' tactical and operational skills and allow them to return and fight another day—even once government violence has become much more severe and widespread. In a sense, governments may be in a catch-22, since repression today could mean more skilled challengers tomorrow. Thus when it comes to using repression, states reap what they sow.

These resistance skills are necessary for success – skilled leaders sustain state resistance

Finkel 15 – Assistant Professor of Political Science and International Affairs at George Washington University (Evgeny, "The Phoenix Effect of State Repression: Jewish Resistance during the Holocaust," American Political Science Review Vol. 109, No. 2, May 2015) //RGP

This analysis of Jewish undergrounds in Minsk, Krakow, and Białystok demonstrates **a clear linkage** ´ between possession of the resister's toolkit and the underground's ability to put up a **sustained** fight. It also highlights the importance of previous cases of selective repression for the skills' acquisition. In the Online Appendix I present an econometric analysis of a large-N dataset of Jewish ghettos and test an observable implication of my argument on a much larger universe of cases. The findings support my theory, but their validity might be potentially hampered by substantial missing data—an unavoidable problem because numerous crucial and unique demographic and electoral data sources were destroyed during World War II. This first attempt to introduce the skills variable into the conflict-repression nexus scholarship also raises important questions that cannot be fully answered based on my data. In this section I present several of these questions (and potential future research agendas) and address them to the extent made possible by the available data. The first question deals with the role of leadership and leaders' skills. Although international security scholars are paying growing attention to leaders, their backgrounds, and conduct in the international arena (e.g., Chiozza and Goemans 2011; Saunders 2011), the topic remains understudied in the contentious politics (Nepstad and Bob 2006, 1) and intrastate violence research (but see Johnston 2012; Lawrence 2010). Thus, analysis of resistance leaders' skills would be an important addition to the literature. Among the underground organizations analyzed in this article, **all groups** that managed to put up a sustained fight had **skilled leaders**, whereas the level of skills possessed by the rank and file varied. This suggests that skilled leadership is a sufficient condition for sustained resistance, but it is impossible to say whether it is a necessary one. To determine that we would need to examine underground groups that had skilled rank and file but no skilled leadership. Unfortunately, there are no such groups in my data. It is possible that this cell is empty and skilled leadership is indeed a necessary condition, but more research is required to provide a definitive answer. Another important question is that of timing. What is the lifespan of resistance skills, and how far back in time can t–1 extend? J. Bowyer Bell, a prominent historian of underground organizations, argues that once acquired, operational security skills tend to be sticky to the point of becoming "second nature" (1989, 18), and many underground activists still keep them long after moving above the ground. Thus, if the key is previous personal involvement in sustained underground, then t–1 is determined by the age in which a skilled actor perceives him- or herself and is viewed by others as sufficiently young and fit to be involved in such a highrisk enterprise. If we assume that people generally do not get involved in underground activism before their mid-teens and after the age of 40 (especially true for the mid-twentieth-century context, when life expectancy was substantially shorter), then the maximum distance between t and t–1 should not be more than 20 to 25 years. My data offer a preliminary plausibility test of such an assertion. During the 1903–06 wave of anti-Jewish pogroms in Russia and Poland, the main driving force behind Jewish self-defense was the socialist anti-Zionist Bund party (Lambroza 1981). In the late nineteenth and early twentieth centuries, the Bund, a revolutionary Marxist movement, was targeted by the tsarist security services. This selective repression forced the party underground, and when the indiscriminate, state-sanctioned violence of the pogroms broke out, the Bund could **capitalize** on its members' **resistance skills** to establish local-level self-defense units. During the Holocaust, however, the Bund played a much smaller role in the resistance. It was the first Jewish party to engage in political and community work in occupied Warsaw and its members were active in the underground in a number of ghettos, but almost nowhere did the Bund take the lead in organizing armed resistance (Blatman 2003, 9, 92; for an opposing view see Zeitlin 2010). The reason seems to be the lack of personal underground experience by the party's younger members. In the USSR the Bund had ceased to exist in the 1920s; in interwar Poland it was a legal political party that embraced parliamentary politics. During the Soviet occupation of eastern Poland, the Bund disbanded and did not join the Zionists in the underground. Thus, although the Bund as an organization had a storied underground history, few of its members under the age of 40–45 had underground experience. Those who did work in the underground in the past were either too old to engage in such a demanding, high-risk enterprise or were "biographically unavailable" (McAdam 1986) because they had to provide for their families. One hopes that future research will provide more precise time boundaries of t – 1.

Sustained resistance is key – only the resister's toolkit guarantees it

Finkel 15 – Assistant Professor of Political Science and International Affairs at George Washington University (Evgeny, "The Phoenix Effect of State Repression: Jewish Resistance during the Holocaust," American Political Science Review Vol. 109, No. 2, May 2015) //RGP

In a survey of the field, Davenport and Inman (2012, 620) include in the concept of state repression a wide range of activities from violations of First Amendmenttype rights to violations of "due process in the enforcement as well as adjudication of law" and of "personal integrity or security (e.g., torture and mass killing)." This article analyzes resistance to large-scale violations of "personal integrity or security," the most violent form of state repression. Scholars of high-risk activism focus almost exclusively on mobilization and the onset of resistance. Many influential studies emphasize the importance of mental factors such as identities, honor, and pride (Einwohner 2003; Wood 2003); perceptions of threat (Maher 2010); or commitment to the goal (McAdam 1986). Other works prioritize physical factors that make the outbreak of violence more likely, such as rough terrain (i.e., Fearon and Laitin 2003). Still others focus on grievances (Cederman, Wimmer, and Min 2010), the presence of mechanisms designed to overcome the collective action problem (Kalyvas and Kocher 2007; Lichbach 1998), competition among nationalist groups (Lawrence 2010), or tipping points, after which mobilization becomes widespread (Kuran 1991). These studies explain the first necessary, but not always sufficient, step toward sustained resistance; mobilized resistance may or may not coalesce in the next stage. Consider the case of Primo Levi, a young Italian Jewish chemist and a future Nobel Prize winner who, together with several comrades, fled to the mountains in 1943 to establish a "partisan band affiliated with the Resistance. . . . [C]ontacts, arms, money and the experience to acquire them were all missing. We lacked capable men" (Levi 1996, 13). The aspiring resisters, brave and devoted as they were, stood no chance against the fascist security services: They were swiftly captured and Levi was shipped to Auschwitz. In Levi and his comrades' case we find a resolved collective action problem, the presence of substantial grievances, an abundance of rough terrain, commitment to the struggle, honor, and pride. They failed because they had no skills to translate the initiation of resistance into a sustained fight. How do resisters obtain these essential skills? I argue that an important pathway to acquiring the toolkit is through past exposure to selective state repression. This argument builds on scholarship that emphasizes the divergent short-term effects of selective and indiscriminate repression, extending it to examine the longer term impact of exposure to different types of repression. Knowing whether people are repressed because of what they do (selective repression) or because of who they are, where they live, and to which identity group they belong (indiscriminate repression) is crucial because different types of repression and violence produce different responses. Recently, Kocher, Pepinsky, and Kalyvas (2011) introduced the concept of "collective" targeting, which is selective at the group level but indiscriminate at the individual level. Thus, when it comes to individual and small-group responses and perceptions—the key focus of this article—collective and indiscriminate targeting are treated as one. It is also important to note that, as Table 1 demonstrates, the type and severity of repression are not identical; both can be (relatively) mild or severe, violent or otherwise. Resistance to each type of repression also necessitates a different set of skills. The political violence (e.g., Downes 2007; Kalyvas and Kocher 2007; Lyall 2009) and state repression (e.g., Daxecker and Hess 2013; Dugan and Chenoweth 2012; Hafez 2003; Mason and Krane 1989; Rasler 1996) literatures have paid substantial attention—though with mixed findings—to the effects of different types of targeting and repression. However, it is crucial to note that for these studies the main outcome of interest is the intensity of violence and contention in the short run, during the same violence/repression campaign. In contrast, this article argues that, to understand the origins of skills and their impact on resistance, we should account for both current and past events of repression. In this, my approach differs from the mainstream contentious politics scholarship that links the shape and trajectory of resistance to a co-evolutionary, give-andtake dynamic between the state and the challengers. It shifts the focus to events that predate the outbreak of contention. In the case of selective repression, when people are targeted because of what they do (e.g., political or social activism) they have a choice between ceasing their activities or sticking to their ideals and risking punishment. If they decide to stick to their ideals, the activists, to avoid punishment, need to either go underground fully or adopt a semi-clandestine lifestyle. A study of underground movements in several Western countries found that activists "experienced state pressure as an immediate, personal threat" and that "those unwilling to accept arrest and imprisonment had no alternative" to the underground (Zwerman, Steinhoff, and della Porta 2000, 93–94). Mason and Krane (1989, 180–81) observed a similar process in Central America. Because the targeted population is relatively small and the risk of individual punishment is high, an underground becomes more likely and easier to organize. To survive, activists are forced to learn operational security skills (Bell 1989). Some might be killed or captured, but for the rest every additional day in the underground provides an opportunity to better learn the toolkit. Because repression is selective, the rest of the population does not have to worry about their safety. They have no incentives to go underground and, by extension, acquire the resister's toolkit. Indiscriminate repression works differently. Extensive evidence from numerous case studies as diverse as the besieged Sarajevo (Macek ˇ 2009), China during the human-made famine of the 1950s (Jisheng 2012), and the Second Intifada suicide bombings in Israel (Somer et al. 2007) shows that the typical responses to indiscriminate violence are acceptance of and adaptation to the situation as the "new normal," fear, and demobilizing feeling of powerlessness, rather than mobilization. Under indiscriminate violence, the threat is distributed among a much larger group than under selective violence, and hence overcoming the collective

action problem and organizing an underground become much harder. The incentives structure changes only when the threat becomes imminent, lethal, and immediate (Maher 2010; see also Goldstone and Tilly 2001). Before that point, organizing resistance and going underground expose the first movers to an increasing, rather than decreasing, risk of punishment. Yet, when the danger is already immediate and lethal, aspiring unskilled resisters will be unlikely to survive in such an environment; they might simply not have enough time and opportunities to learn and adapt. At this stage, the key problem is not free-riders, but loose lips, snitches, and sheer incompetence. However, if some members of the community were subject to past selective repression and already possessed the needed skills, the transition from initial mobilization to sustained resistance becomes more likely.

2nc surveillance = better for resistance

Blatantly increasing surveillance can spur more effective social resistance

Martin 7 (Brian, Professor of Social Sciences at the University of Wollongong, Australia. "Opposing surveillance", http://www.bmartin.cc/pubs/07Michael.html//Tang)

Surveillance is commonly carried out in secret. When people don't realise it's happening, they are far less likely to become concerned about it. The secrecy covering surveillance is part of a wider pattern of government and corporate secrecy (Roberts 2006). Political surveillance of individuals is normally done surreptitiously. Bugs are installed in residences; telephones are tapped; remote cameras record movement; police in plain clothes observe at a discrete distance. There is an obvious reason for this: targets, if they know about surveillance, are better able to avoid or resist it. But secrecy is maintained beyond operational necessities: in most cases, the existence of surveillance is kept secret long afterwards, often never to be revealed. Exposures may require exceptional circumstances (Marx 1984), such as the collapse of East Germany's communist regime or the "liberation" of FBI files at Media, Pennsylvania in 1971 by the Citizens' Commission to Investigate the FBI (Cowan et al. 1974). When surveillance is exposed, for example FBI surveillance of individuals such as Martin Luther King, Jr. and John Lennon, it can cause outrage. The revelation that the National Security Agency had been spying on US citizens since 2002 caused a massive adverse reaction. Employers sometimes do not want to tell workers they are being monitored, when there is a possibility this may stimulate individual or collective resistance. (On other occasions employers are open about monitoring, when this serves to induce compliance.) Under the US Patriot Act, the FBI can obtain secret warrants to obtain records from libraries, Internet service providers and other organisations. The organisations subject to this intrusion cannot reveal it, under severe penalties. This draconian enforcement of secrecy serves to reduce personal and popular concern about surveillance, for example when the Patriot Act is used against non-terrorist groups such as antiwar protesters. In some cases, surveillance becomes routinised, so cover-up is less important. In many areas, camera monitoring is carried out openly: it is possible to observe oneself, on a screen, walking into a shop. On the other hand, some forms of surveillance are hidden so effectively that they are completely outside of most people's awareness, for example collection of web data, meshing of database files, police checks on car licence numbers and recording of bank transactions. The importance of low visibility in enabling surveillance to continue and expand is apparent through a thought experiment: imagine that you received, at the end of every month, a list of instances in which data had been collected about you, by whom and for what purpose. Imagine knowing whether you had been placed on a list to be denied a loan or a job. Exposing surveillance is crucial to challenging it. Exposure requires collection of information, putting it into a coherent, persuasive form, providing credible backing for the evidence, and communicating to a receptive audience. Sometimes a single person can do all of these steps, collecting information directly and publishing it on the web. Normally, though, a chain of participants is involved, for example an insider who leaks documents, a researcher who prepares an analysis, a journalist who writes a story and an editor or producer who publishes it. Campaigners help in exposure, as with Privacy International's Big Brother Awards for organisations with bad records in threatening privacy.

Surveillance relies on multiple methods to repress resistance

Martin 7 (Brian, Professor of Social Sciences at the University of Wollongong, Australia. "Opposing surveillance", http://www.bmartin.cc/pubs/07Michael.html//Tang)

Over the years, many people have opposed surveillance, seeing it as an invasion of privacy or a tool of social control. Dedicated campaigners and concerned citizens have opposed bugging of phones, identity cards, security cameras, database linking and many other types of surveillance. They have lobbied and campaigned against abuses and for legal or procedural restrictions. Others have developed ways of getting around surveillance. In parallel with resistance, there have been many excellent critiques of surveillance, exposing its harmful impacts and its role in authoritarian control (e.g., Dandeker 1990; Gandy 1993; Garfinkel 2000; Holtzman 2006; Lyon 1994, 2003; Marx 1988; Murray 1993; Rosen 2000). However, comparatively little is written about tactics and strategy against surveillance. Indeed, social scientists have little to say about tactics and strategy in any field (Jasper 2006: xii-xiii). My aim here is to present a framework for understanding tactics used in struggles over surveillance. Actions that are seen to be unfair or to violate social norms can generate outrage among observers (Moore 1978). Nonviolence researcher Gene Sharp (1973: 657-703) found that violent attacks on peaceful protesters – something that many people see as unjust – could be counterproductive for the attackers, generating greater support for the protesters among the protesters' supporters, third parties and even the attacking group. Because of this potential for attacks to be counterproductive, attackers, by design or intuition, may take steps to reduce possible outrage. By examining a wide range of issues – censorship, unfair dismissal, violent attacks on peaceful protesters, torture and aggressive war – a predictable pattern in tactics can be discerned: perpetrators regularly use five sorts of methods to minimise adverse reactions to their actions (Martin 2007). 1. Cover-up: the action is hidden or disguised. 2. Devaluation: the target of the action is denigrated. 3. Reinterpretation: plausible explanations are given for the action. 4. Official channels: experts, formal investigations or courts are used to give an appearance of justice. 5. Intimidation and bribery: targets and their allies are threatened or attacked, or given incentives to cooperate. This is called the backfire model: when these methods are insufficient to dampen public outrage, the action can backfire on the perpetrator. However, backfire is rare: in most cases, the methods work sufficiently well to minimise outrage. Consider an example different from surveillance: police use force in arresting someone. This has the potential to cause public outrage if the force used is seen as unnecessary, excessive or vindictive. Police in these circumstances regularly use one or more of the five methods. If possible, they undertake the arrest out of the public eye. They refer to the person arrested as a criminal or by derogatory terms. If challenged, they claim arrestees were resisting and that using force was necessary and carried out according to protocol. They refer those with grievances to official complaints procedures, which almost always rule in favour of the police. And they may threaten the arrestee with criminal charges should they make a complaint (Ogletree et al. 1995). On 3 March 1991, Los Angeles police arrested a man named Rodney King, in the course of which King was hit by two 50,000-volt tasers and beaten with metal batons more than 50 times. This arrest would have gone unnoticed except that George Holliday, who lived nearby, recorded the beating on his new videocamera. When footage was shown on television, it caused a massive public and political reaction against the Los Angeles police. Holliday's videotape cut through the normal cover-up and allowed viewers to judge the events for themselves, overriding the police's interpretation of the events and the media's normal police-sympathetic framing (Lawrence 2000). Nevertheless, in the ensuing saga the police and their supporters used every one of the five methods of inhibiting outrage – though, unusually, in this case their efforts were unsuccessful in preventing a huge backlash against the police (Martin 2005). Tactics for and against surveillance can be analysed using the same framework. The foundation for public outrage is a sense of unfairness. This is certainly present at least some of the time: people may see surveillance as an invasion of privacy (as with hidden video cameras), as a tool of repression (as in monitoring dissenters) or a tool of exploitation (as in monitoring of workers). The very word "surveillance" is a tool in opposing it, because the word has such negative connotations. A sense of unfairness is not inherent in the act of observing someone or collecting and analysing data about them. People's sense of unfairness is the subject of a continual struggle, with privacy campaigners trying to increase concern and purveyors of surveillance techniques trying to reduce it. Methods to

inhibit or amplify outrage are used within the prevailing set of attitudes and in turn affect those attitudes. Given that some people see surveillance as inappropriate, unfair, dangerous or damaging, there is a potential for resistance and hence it is predictable that one or more of the five methods of inhibiting outrage will be deployed. In the remainder of this paper, I look at each of the five methods of inhibiting outrage and ways to challenge these methods. The five-method classification used here is a convenient framework for examining tactics for and against surveillance. To use this framework does not require actors to be consciously engaging in a struggle, as many are simply reacting to the circumstances in which they find themselves. For those who are concerned about surveillance, though, it is useful to think in terms of tactics and strategies.

at: legal solutions solve

Politics and legal solutions can't change the surveillance state

North, PhD, '13 (Gary North, PhD UC Riverside "Surveillance state will collapse; data overload increasingly blinds it" July 29, 2013 http://nooganomics.com/2013/07/surveillance-state-will-collapse-data-overload-increasingly-blinds-it/) //GY

On the next day, July 24, the House of Representatives voted down an amendment to cut the NSA's budget — the official one, not the real one, which is secret. It was Nancy Pelosi who made the difference. She carried the NSA's water. The failure of Congress to make a token cut in the National Security Agency's official budget on July 24 was a green light for the NSA to spy on all Americans, forever.¶ Congress knows that the voters do not care enough to mobilize against the Patriot Act, which is the heart of the surveillance state. They also know that most House members are immune from the voters. Gerrymandering works. They also know that they, personally, are not immune from the NSA's monitoring of their telephone calls, emails, and other communications. They can count the votes. They know who is on top. The surveillance state is on top.¶ **The surveillance state is now unstoppable politically.** Legally, there is no possibility that it will be rolled back. It is now the non-law of the land. Wyden thinks the voters may roll it back. They won't. It is unstoppable politically.

PRISM MNDI

Topicality - Curtail

Curtail = Decrease

1nc

"Curtail" means to prohibit

Friman and Andreas '99 (H. Richard Friman - associate professor of political science at Marquette University. Peter Andreas - academy scholar at the Weatherhead Center for International Affairs, Harvard University. *The Illicit Global Economy and State Power*. Google Books p. 76)

The efforts of governments to **curtail** illicit financial flows today bear more similarity to the initiatives of the 1920s that those at Bretton Woods. To begin with, international efforts to **prohibit** capital flight have been almost nonexistent.

Violation –702 doesn't prohibit domestic surveillance – allows loopholes

"TFA" language in 702 allows NSA to bypass restrictions against domestic surveillance

Donohue '15 --From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

The component statutory interpretations, particularly **TFA and the assumptions that mark the foreignness determination, undermine the protections created for U.S. persons** in Sections 703 and 704 of the statute. **They make it possible for the NSA to obtain significant amounts of American citizens' communications**. Until the FAA, the surveillance of U.S. persons outside domestic bounds took place under the weaker standards of Executive Order 12,333. **Part of the purpose of the FAA was thus to increase the protections afforded to U.S. persons travelling abroad**. 214 **The way in which Section 702 is being used, however, allows the NSA to bypass Section 703 by making assumptions about legal status and location and potentially subjecting U.S. persons to surveillance without meeting the requirements of Section 703**. **The amount of information at stake is not insubstantial**. For years, the volume of intercepts under Section 702 has been one of the principal concerns of legislators familiar with the program. Senators have consistently expressed unease about the intelligence community's claim that **it is impossible to quantify how many Americans' communications have been implicated in the operation of Section 702**.215 What has gradually become clear is **that the program significantly more expansive than initially understood**.21

Vote neg – destroys limits - aff justifies bi-directional plan texts, which undermines core neg ground like terrorism and politics DA and CP's that compete on not decreasing domestic surveillance

Proves no solvency – TFA language creates letter of the law loophole

Topicality - Domestic

Domestic Surveillance = Data TFA US persons for Coercive Purposes

1nc

Domestic surveillance means that it must target US persons – not just be collected within the US

McCarthy, 6 – former assistant U.S. attorney for the Southern District of New York. (Andrew, "It's Not "Domestic Spying"; It's Foreign Intelligence Collection" National Review, 5/15, Read more at: http://www.nationalreview.com/corner/122556/its-not-domestic-spying-its-foreign-intelligence-collection-andrew-c-mccarthy

Eggen also continues the mainstream media's propagandistic use of the term "domestic surveillance [or 'spying'] program." In actuality, the electronic surveillance that the NSA is doing — i.e., eavesdropping on content of conversations — is not "domestic." A call is not considered "domestic" just because one party to it happens to be inside the U.S., just as an investigation is not "domestic" just because some of the subjects of interest happen to reside inside our country. Mohammed Atta was an agent of a foreign power, al Qaeda. Surveilling him — had we done it — would not have been "domestic spying." The calls NSA eavesdrops on are "international," not "domestic." If that were not plain enough on its face, the Supreme Court made it explicit in the Keith case (1972). There, even though it held that judicial warrants were required for wiretapping purely domestic terror organizations, the Court excluded investigations of threats posed by foreign organizations and their agents operating **both within and without** the U.S. That is, the Court understood what most Americans understand but what the media, civil libertarians and many members of Congress refuse to acknowledge: if we are investigating the activities of agents of foreign powers inside the United States, that is not DOMESTIC surveillance. It is FOREIGN counter-intelligence.

That, in part, is why the statute regulating wiretaps on foreign powers operating within the U.S. — the one the media has suddenly decided it loves after bad-mouthing it for years as a rubber-stamp — is called the FOREIGN Intelligence Surveillance Act (FISA). The United States has never needed court permission to conduct wiretapping outside U.S. territory; the wiretapping it does inside U.S. territory for national security purposes is FOREIGN INTELLIGENCE COLLECTION, not "domestic surveillance."

Surveillance is monitoring with preventive intent

Lemos, 10 - Associate Professor at Faculty of Communication at Federal University of Bahia, Brazil (Andre, ""Locative Media and Surveillance at the Boundaries of Informational Territories",

http://www.irma-international.org/viewtitle/48348/

Although they often appear to be synonymous, it is important to distinguish between informational control, monitoring and surveillance so that the problem can be better understood. We consider control to be the supervision of activities, or actions normally associated with government and authority over people, actions and processes. Monitoring can be considered a form of observation to gather information with a view to making projections or constructing scenarios and historical records, i.e., the action of following up and evaluating data. Surveillance, however, can be defined as an act **intended to avoid something**, as an observation whose **purposes are preventive** or as behavior that is attentive, cautious or careful. It is interesting to note that in English and French the two words "vigilant" and "surveillance", each of which is spelt the same way and has the same meaning in both languages, are applied to someone who is particularly watchful and to acts associated with legal action or action by the police intended to provide protection against crime, respectively. We shall define surveillance as actions that imply control and

monitoring in accordance with Gow, for whom surveillance "implies something quite specific as the intentional observation of someone's actions or the intentional gathering of personal information in order to observe actions taken in the past or future" (Gow. 2005. p. 8).

According to this definition, surveillance actions presuppose monitoring and control, but not all forms of control and/or monitoring can be called surveillance. It could be said that all forms of surveillance require two elements: **intent with a view to avoiding/causing something** and identification of individuals or groups by name. It seems to me to be difficult to say that there is surveillance if there is no identification of the person under observation (anonymous) and no preventive intent (avoiding something). To my mind it is an exaggeration to say, for example, that the system run by my cell phone operator that controls and monitors my calls is keeping me under surveillance. Here there is identification but no intent. However, it can certainly be used for that purpose. The Federal Police can request wiretaps and disclosure of telephone records to monitor my telephone calls. The same can be said about the control and monitoring of users by public transport operators. This is part of the administrative routine of the companies involved. Once again, however, the system can be used for surveillance activities (a suspect can be kept under surveillance by the companies' and/or police safety systems). Note the example further below of the recently implemented "Navigo "card in France. It seems to me that the social networks, collaborative maps, mobile devices, wireless networks and countless different databases that make up the information society do indeed control and monitor and offer a real possibility of surveillance.

Violation – PPD28 limits foreign information gathering, not surveillance for coercive purposes on domestic people.

Voting issue – for limits and ground. They explode the topic –

(1) All information gathering is topical under their interpretation and the negative loses security based disads and critiques

(2) Expanding 'domestic' to cover immigration and foreign counter-intelligence – which are both big enough to be separate topics

AND, Extra-Topicality is illegit – adding PPD 28 is necessary for their solvency, which means they have unique advantage from the non-topical part of the plan. Reject the entire aff as not topical - don't allow severance.

PPD-28 Regulates Foreign Surveillance

T- PPD 28 regulates foreign intel

Litt and Joel 14 (Robert Litt, he second General Counsel of the Office of the Director of National Intelligence, and Alexander W. Joel, the first Civil Liberties Protection Officer for the U.S. Office of the Director of National Intelligence, "Interim Progress Report on Implementing PPD-28", October 17, 2014, http://www.dni.gov/index.php/newsroom/reports-and-publications/204-reports-publications-2014/1126-interim-progress-report-on-implementing-ppd-28) // AW

PPD-28 reinforces current practices, establishes new principles, and strengthens oversight, to ensure that in conducting signals intelligence activities, the United States takes into account not only the security needs of our nation and our allies, but also the privacy of people around the world.¶ The Intelligence Community already conducts signals intelligence activities in a carefully controlled manner, pursuant to the law and subject to layers of oversight, focusing on important foreign intelligence and national security priorities. But as the President recognized, "[o]ur efforts will only be effective if ordinary citizens in other countries have confidence that the United States respects their privacy too."¶ To that end,

the Intelligence Community has been working hard to implement PPD-28 within the framework of existing processes, resources, and capabilities, while ensuring that mission needs continue to be met.

A2: We meet - American Companies are US Persons

American companies irrelevant to 702 authority – communication content determines domestic persons, not holder of the data – this means NSA's interpretation of the plan would still allow for domestic surveillance according to LETTER OF THE LAW

Section 702 of the FISA Amendments Act of 2008 (http://www.gpo.gov/fdsys/pkg/BILLS-110hr6304pcs/html/BILLS-110hr6304pcs.htm)//LP

Requirement to adopt.--The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to-- ``(A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed **to be located outside the United States**; and ``(B) prevent the intentional acquisition of any communication as to which the **sender and all intended recipients** are known at the time of the acquisition **to be located in the United States.**

Especially true because, per the American companies, individuals own data, not companies

Verizon '**14 (**"Amicus Brief: U.S. Search Warrants Do Not Apply to Data Stored Overseas," 12/15/14, http://publicpolicy.verizon.com/blog/entry/us-search-warrants-do-not-apply-to-data-stored-overseas)//LP

Today, Verizon filed an amicus brief in support of Microsoft's appeal to reverse a federal court's decision that allowed the U.S. government to use a warrant to compel Microsoft to produce a customer's email stored overseas. We were joined on our brief by Cisco, Hewlett-Packard, eBay, salesforce.com and Infor. The case does not involve Verizon or any Verizon customers' data. Indeed, Verizon has not received any warrants from the U.S. government for customer data stored in our enterprise data centers outside the United States and we do not expect to receive such demands. Still, we have submitted this brief in order to turn back an unlawful overreach by the U.S. government. The law does not allow the U.S. government to use a search warrant to obtain customer data stored overseas. The U.S. Supreme Court has reiterated many times that U.S. statutes are presumed not to have extraterritorial application unless Congress "clearly expressed" its "affirmative intention" to the contrary.Congress has not clearly expressed its intention in any U.S. statutes that domestic warrants should apply to data stored in other countries. And there is good reason for that. For starters,the data at issue (the contents of private emails) belongs to a customer, not to the provider. Moreover, if U.S. law were to require a U.S. business to turn over customer data stored overseas it would conflict with the laws of many other countries that protect the privacy of such data and limit disclosure outside the country in which the data is stored. Furthermore, permitting the U.S. government to use a warrant to obtain data stored overseas would just encourage foreign governments to claim that they can obtain data stored in the U.S., which would threaten the privacy of Americans.

Domestic = In US Territory

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"domestic" in the context of surveillance means collection of data in US territory

Thompson, '13 -- Legislative Attorney (Richard M. Thompson II is writing for the congressional research service, 4/3/13, http://www.pennyhill.com/jmsfileseller/docs/R42701.pdf) LP

In a series of cases that provide the closest analogy to UAVs, the Supreme Court addressed the use of manned aircraft to conduct domestic surveillance over residential and industrial areas. In each, the Court held that the fly-over at issue was not a search prohibited by the Fourth Amendment, as the areas surveilled were open to public view.

Domestic is only Domestic networks

Savage and McConnell 15 (John E. Savage, An Wang Professor of Computer Science Box 1910, Computer Science Department Brown University Brown University, Bruce W. McConnell Bruce McConnell is responsible for leading EWI's communications and networking with public and private sectors around the world, Senior Vice President, January 20,2015 http://www.ewi.info/idea/exploring-multi-stakeholder-internet-governance accessed June 28, 15)PA

It is domestic when the data transits only domestic networks. It can become an international issue when it crosses territorial boundaries, for example, when data is encrypted.

Violation – American companies store data internationally – this is the data that their internal links assume and it means that aff restricts foreign surveillance

Voting issue – for limits. They explode the topic –

Expanding 'domestic' to cover territory outside the US justifies surveillance of US bases, embassies, and international drones. Makes neg research burden impossible.

AND, Extra-Topicality is illegit – they may restrict some domestic servers, but they must also limit international servers to solve the aff. Reject the entire aff - don't allow severance.

Data stored on non-US servers

Data is stored outside US territory by domestic companies

Lorenzo **Franceschi-Bicchierai** 6/12/**14** http://mashable.com/2014/06/12/microsoft-u-s-government-data-foreign-servers/ "Microsoft Fights U.S. Government Over Rights to Data on Foreign Servers" Lorenzo Franceschi-Bicchierai is a reporter at Mashable's New York headquarters, where he covers cybersecurity, tech policy, privacy and surveillance, hackers, drones, and, more in general, the intersection of technology and civil liberties. Before Mashable, Lorenzo was an intern at Wired.com, where he wrote for Danger Room, and Threat Level. A recent graduate of Columbia's Graduate School of Journalism Lorenzo is also a Law graduate at University of Barcelona.

Microsoft is challenging a data request from the U.S. government in an unprecedented case that could have sweeping ramifications for online privacy around the world. In December 2013, the U.S. government obtained a search warrant requesting information about an email user for an investigation apparently involving drugs and money laundering. But Microsoft is refusing to cooperate because the data in question is stored in Ireland, and the company argues the U.S. can't force it to hand over data stored outside American soil. The case is a perfect example of how new technologies like cloud computing clash with pre-Internet laws. These are the answers to the most basic questions about the case. What is the government requesting? The government is looking for data associated with an Outlook.com email account, including the content of all emails and the identifying information of the account, according to the search warrant sent to Microsoft. The actual email address is redacted in court documents, and the details of the case are still unclear. What did Microsoft say to the request? Microsoft responded providing some information related to the account, but declined to turn over the content of the user's emails because that data is stored in a Microsoft server in Ireland. The company then asked the judge to throw out the request, arguing that the U.S. government doesn't have the authority to request data overseas with a search warrant. But a judge in New York ruled in April that Microsoft was compelled to turn over the data regardless of where it's stored. Microsoft disagrees and is still challenging the data request. What are Microsoft's arguments? In a court filing made public on Monday, Microsoft argued that a search warrant doesn't apply overseas. Since it doesn't give authority to "break down the doors of Microsoft's Dublin facility," it shouldn't give the government authority to access data within that facility, Microsoft argued. Moreover, the company argued, the warrant is too broad and vague, as it requests all content in the user's account. "It is, in a sense, the broadest possible warrant that one literally can imagine in the 21st century," Brad Smith, Microsoft's general counsel, said at a conference in New York last week. Lastly, Microsoft says that the government should use another, legal way to access this kind of data: a so-called mutual legal assistance treaty, or MLAT. Thanks

to this legal agreement with Ireland — as well as many other countries — U.S. authorities can access data in that country but, in turn, have to comply with local laws. Law enforcement authorities routinely use this kind of assistance to obtain evidence held in another country. Whart are the government's arguments? The U.S. government argues that companies can't refuse to comply legal requests "simply by storing the data abroad," as Preet Bharara, United States attorney for the Southern District of New York, said in a court filing. The danger, Bharara continued, is that criminals could skirt investigations by lying about their locations and thus forcing Microsoft to store data outside the U.S., and far from American law enforcement's reach. The judge in the case, James Francis, agreed with the government, arguing that the search warrant issued in this case applies to data in Ireland because it's more of an hybrid between a warrant and a subpoena. What this means: the request would be legal since subpoenas have reach outside the U.S. But legal experts don't agree with this interpretation. The relevant law in the case, the oft-maligned 1986 Electronic Communications Privacy Act (ECPA), clearly requires warrants when accessing content information, and subpoenas have different requirements. "It's a bad interpretation of the statute," Christopher Sprigman, a law professor at New York University,told Mashable.

Non-US data is stored on US servers

Dean **Wilson** January 23, 20**14** http://www.techradar.com/us/news/internet/microsoft-to-store-foreign-data-on-non-us-servers-amid-nsa-controversy-1218010 Irish journalist and author

Microsoft will begin allowing non-US customers to store their personal data on servers located outside the US, following leaks of extensive government snooping by the National Security Agency (NSA). The move will give consumers and business customers the option to shift their information to local data centres, such as those based in Ireland, which will take them outside the NSA's jurisdiction. "People should have the ability to know whether their data are being subjected to the laws and access of governments in some other country and should have the ability to make an informed choice of where their data resides," Brad Smith, general counsel at Microsoft, told the Financial Times. Surveillance shake-up Revelations over the past year about the NSA's widespread internet and phone surveillance have strained relationships between the US and its allies. Some countries that were the victims of spying, such as Brazil, are now bringing in new laws to prevent citizen data from being stored outside their own country. Many rival companies are opposed to the idea of letting customers choose where data is stored, which will likely be cost prohibitive, but Microsoft's decision will possibly cause some to change their minds. The move was welcomed by privacy advocates.

Ex Post CP

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Text: The United States federal government should require ex post review by the Foreign Intelligence Surveillance Court of NSA surveillance targeting criteria, establish a public advocate at the FISC, and establish a cabinet-level privacy agency.

The CP restore domestic and international confidence in US surveillance without restricting the scope of NSA activities – instead it conducts post-surveillance minimization

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

While I have concluded that U.S. surveillance policy does not violate the ICCPR, further reforms could highlight this point and silence persistent doubts here and abroad. These reforms could also remove any barriers to cooperation between the United States and foreign states, such as those in Europe, which are subject to the European Convention on Human Rights. This section identifies reforms that would add a public advocate to FISC proceedings, enhance FISC review of the criteria used for overseas surveillance, establish a U.S. privacy agency that would handle complaints from individuals here and overseas, and require greater minimization of non-U.S. person communications. These reforms would signal U.S. support of evolving global norms of digital privacy.

Although President Obama's speech in January 2014 proposed a panel of independent lawyers who could participate in important FISC cases, n161 further institutionalization of this role would be useful. A public advocate would scrutinize and, when necessary, challenge the NSA's targeting criteria on a regular basis. n162 Challenges would be brought in the FISC, after the NSA's implementation of criteria. The NSA would be able to adapt the criteria on an exigent basis, **subject to ex post review** by the FISC at the public advocate's behest. A public advocate and enhanced FISC review would serve three valuable functions: (1) ensure that the FISC received the best arguments on both sides; (2) serve as a valuable ex ante check on the government, encouraging the government to adopt those criteria that could withstand subsequent scrutiny; and (3) **promote domestic and global confidence in the legitimacy of processes governing NSA surveillance**.A U.S. cabinet level privacy agency would also **bolster the legitimacy of surveillance**. The agency could provide more regular recourse to subjects of surveillance, as the ECHR requires. That change would ease the barriers to continued U.S.-Europe cooperation on counterterrorism. A national agency would also work hand in hand with privacy officers in executive departments. It would increase the leverage of those officials, who could advocate vigorously in internal debates, knowing that their views would also have a champion in a free-standing executive department independent [*2166] of the national security bureaucracy. There are downsides to this proposal, of course. A new agency would add expense, and create some redundancy in government functions. Moreover, current models that provide recourse, such as the approach currently taken by the Department of Homeland Security, n163 have been criticized as unduly burdensome. n164 However, preserving cooperation with Europe and enhancing the overall legitimacy of U.S. surveillance provides a compelling justification.

Each of these instrumentalities - a public advocate at the FISC and a new privacy agency - could also work to strengthen minimization requirements for foreign communications. The NSA says that it disposes of all irrelevant communications within five years. There may be ways to shorten this time and require even more rigorous controls on sharing of information that lacks a clear link to terrorism or other foreign intelligence matters. More exacting minimization would also promote U.S.-European information sharing and **enhance global legitimacy**.

Net benefit is terrorism – the plan restricts the collection of 702 surveillance data to individualized and specific threat categories. That prevents the programmatic surveillance necessary for pattern analysis that can identify future terrorist threats

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar--i.e., individualized or particularized surveillance. Individualized surveillance takes place when authorities have some reason to think that a specific, known person is breaking the law. Investigators will then obtain a court order authorizing them to collect information about the target, with the goal of assembling evidence that can be used to establish guilt in subsequent criminal proceedings. Individualized surveillance is common in the world of law enforcement, as under Title III of the Omnibus Crime Control and Safe Streets Act of 1968. n23 It is also used in national security investigations. FISA allows authorities to obtain a court order to engage in wiretapping if they demonstrate, among other things, probable cause to believe that the target is "a foreign power or an agent of a foreign power." n24

By contrast, programmatic surveillance has very different objectives and is conducted in a very different manner. It usually involves the government collecting bulk data and then examining it to identify previously unknown terrorists, spies, and other national security threats. A good example of the practice is link analysis, in [*528] which authorities compile large amounts of information, use it to map the social networks of known terrorists--has anyone else used the same credit card as Mohamed Atta?--and thus identify associates with whom they may be conspiring. n25 (It is also possible, at least in theory, to subject these large databases to pattern analysis, in which automated systems search for patterns of behavior that are thought to be indicative of terrorist activity, but it's not clear that the NSA is doing so here.) Suspects who have been so identified can then be subjected to further forms of monitoring to determine their intentions and capabilities, such as wiretaps under FISA or other authorities. In a sense, programmatic surveillance is the mirror image of individualized surveillance. With individualized monitoring, authorities begin by identifying a suspect and go on to collect information; with programmatic monitoring, authorities begin by collecting information and go on to identify a suspect.

Programmatic surveillance is a potentially **powerful counterterrorism tool**. The Ra'ed al-Banna incident is a useful illustration of how the technique, when coupled with old-fashioned police work, can identify possible threats who otherwise might escape detection. Another example comes from a 2002 Markle Foundation study, which found that authorities could have identified the ties among all 19 of the 9/11 hijackers if they had assembled a large database of airline reservation information and subjected it to link analysis. n26 In particular, two of the terrorists--Nawaf al-Hamzi and Khalid al-Mihdhar--were on a government watchlist after attending a January 2000 al-Qaeda summit in Malaysia. So they could have been flagged when they bought their tickets. Querying the database to see if any other passengers had used the pair's mailing addresses would have led investigators to three more hijackers, including Mohamed Atta, the plot's operational leader. Six others could have been found by searching for passengers who used the same frequent-flyer and telephone numbers as these suspects. And so on. Again, the Markle study concerns airline reservation data, not the communications data that are the NSA's focus. But it is still a useful illustration of the technique's potential.

The government claims that programmatic surveillance has been responsible for concrete and actual counterterrorism benefits, not just hypothetical ones. Officials report that PRISM has helped detect and [*529] disrupt about 50 terrorist plots worldwide, including ten in the United States. n27 Those numbers include Najibullah Zazi, who attempted to bomb New York City's subway system in 2009, and Khalid Ouazzani, who plotted to blow up the New York Stock Exchange. n28 Authorities further report that PRISM played an important role in tracking down David Headley, an American who aided the 2008 terrorist atrocities in Bombay, and later planned to attack the offices of a Danish newspaper that printed cartoons of Mohamed. n29 The government also claims at least one success from the telephony metadata program, though it has been coy about the specifics: "The NSA, using the business record FISA, tipped [the FBI] off that [an] individual had indirect contacts with a known terrorist overseas. . . . We were able to reopen this investigation, identify additional individuals through a legal process and

were able to disrupt this terrorist activity." n30 Quite apart from foiling attacks, the government also argues that the NSA programs can **conserve scarce investigative resources** by helping officials quickly spot or rule out any foreign involvement in a domestic plot, as after the 2013 Boston Marathon bombing. n31 These claims have to be taken with a few grains of salt. Some observers believe that the government could have discovered the plots using standard investigative techniques, and without resorting to extraordinary methods like programmatic surveillance. n32 The metadata program has elicited special skepticism: The President's Review Group on Intelligence and Communications Technologies bluntly concluded that "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained [*530] in a timely manner using conventional section 215 orders." n33 The Privacy and Civil Liberties Oversight Board reached the same conclusion. n34 (Judicial opinion is split on the program's value. One judge has expressed "serious doubts" about its utility, n35 while another has concluded that its effectiveness "cannot be seriously disputed.") n36 Furthermore, we should always be cautious when evaluating the merits of classified intelligence initiatives on the basis of selective and piecemeal revelations, as officials might tailor the information they release in a bid to shape public opinion. n37 But even if specific claimed successes remain contested, programmatic surveillance in general can still be a useful counterterrorism technique. As these examples imply, effective programmatic surveillance often requires huge troves of information--e.g., large databases of airline reservations, compilations of metadata concerning telephonic and internet communications, and so on. This is why it typically will not be feasible to limit bulk collection to particular, known individuals who are already suspected of being terrorists or spies. Some officials have defended the NSA programs by pointing out that, "[i]f you're looking for the needle in a haystack, you have to have the haystack." n38 That metaphor doesn't strike me as terribly helpful; rummaging around in a pile of hay is, after all, a paradigmatic image of futility. But, the idea can be expressed in a more compelling way. Programmatic surveillance cannot be done in a particularized manner. The whole point of the technique is to identify unknown threats to the national security; by definition, it cannot be restricted to threats that have already been identified. We can't limit programmatic [*531] surveillance to the next Mohamed Atta when we have no idea who the next Mohamed Atta is--and when the goal of the exercise is indeed to identify the next Mohamed Atta.

Solvency – Legitmacy

Incorporating oversight in the surveillance process boosts U.S. cred and legitimacy and also gives a voice to U.S. citizens

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan Alexander, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", 8/12/14, http://moritzlaw.osu.edu/students/groups/is/files/2014/08/12-Sales.pdf, pg. 16-17 , accessed: 6/23/15, JR)

In addition to oversight by outsiders, a programmatic surveillance regime also should feature a system of internal checks within the executive branch, to review collection before it occurs, after the fact, or both. As for the ex ante checks, internal watchdogs should be charged with scrutinizing proposed bulk collection to verify that it complies with the applicable constitutional and statutory rules, and also to ensure that appropriate protections are in place for privacy and civil liberties. The Justice Department's Office of Intelligence is a well known example. The unit, which presents the government's surveillance applications to the FISA court, subjects these requests to exacting scrutiny with the goal of increasing the likelihood of surviving judicial review.65 Indeed, the office has a strong incentive to ensure that the applications it presents are airtight, so as to preserve its credibility with the FISA court.66 Ex post checks include such commonplace mechanisms as agency-level inspectors general, who can audit bulk collection programs, assess their legality, and make policy recommendations to improve their operation, as well as entities like the Privacy and Civil Liberties Oversight Board, which perform similar functions across the executive branch as a whole. Another important ex post check is to offer meaningful whistleblower protections to officials who know about programs that violate constitutional or statutory requirements. Allowing officials to bring their concerns to ombudsmen within the executive branch (and then eventually to Congress) can help root out lawlessness and also relieve the felt necessity of leaking information about highly classified programs to the media.

Cabinet-level privacy agency key to gut unnecessary data collection

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan Alexander, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", 8/12/14, http://moritzlaw.osu.edu/students/groups/is/files/2014/08/12-Sales.pdf, pg. 17, accessed: 6/23/15, JR)

These and other internal checks can achieve all three of the benefits promised by traditional judicial and legislative oversight—executive branch watchdogs can veto surveillance they conclude would be unlawful, the mere possibility of such vetoes can chill overreach, and increasing the costs of monitoring can redirect scarce resources toward truly important surveillance. External and internal checks thus operate together as a system; the two types of restraints are rough substitutes for one another. If outside players like Congress and the courts are subjecting the executive's programmatic surveillance activities to especially rigorous scrutiny, the need for comparably robust safeguards within the executive branch tends to diminish. Conversely, if the executive's discretion is constrained internally through strict approval processes, audit requirements, and so on, the legislature and judiciary may choose not to hold the executive to the exacting standards they otherwise would. In short, certain situations may have less need to use traditional interbranch separation of powers and checks and balances to protect privacy and civil liberties because the executive branch is subject to an "internal separation of powers"[67] that can accomplish much the same thing.

The CP solves miscalculation- it allows for a broader scope of expert data analysis

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan Alexander, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", 8/12/14, http://moritzlaw.osu.edu/students/groups/is/files/2014/08/12-Sales.pdf, pg. 9 , accessed: 6/23/15, JR)

Programmatic surveillance thus can help remedy some of the difficulties that arise when monitoring covert adversaries like international terrorists. FISA and other particularized surveillance tools are useful when authorities want to monitor targets whose identities are already known. But they are less useful when authorities are trying to identify unknown targets. The problem arises because, in order to obtain a wiretap order from the FISA court, the government usually must demonstrate probable cause to believe that the target is a foreign power or agent of a foreign power.[39] This is a fairly straightforward task when the target's identity is already known—e.g., a diplomat at the Soviet embassy in Washington, DC. But the task is considerably more difficult when the government's reason for surveillance is to detect targets who are presently unknown—e.g., alQaeda members who operate in the shadows. How can you convince the FISA court that Smith is an agent of a foreign power when you know nothing about Smith—his name, nationality, date of birth, location, or even whether he is a single person or several dozen? The government typically won't know those things unless it has collected some information about Smith—such as by surveilling him. And there's the rub. Programmatic monitoring helps avoid the crippling Catch-22 that can arise under particularized surveillance regimes like FISA: officials can't surveil unless they show that the target is a spy or terrorist, but sometimes they can't show that an unknown target is a spy or terrorist unless they have surveilled him.

A public advocate solves the perception link and spurs global compliance—President Obama's willingness to be transparent on surveillance is key

Margulies, 14 - Professor of Law, Roger Williams University School of Law (Peter, "The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism" II. THE LEGAL MERITS OF NSA SURVEILLANCE ABROAD UNDER THE ICCPR, pgs. 16-17, 1/23/14, http://fordhamlawreview.org/assets/pdfs/Vol_82/Margulies_April.pdf, accessed: 6/23/15, JR)

Having determined that the ICCPR applies as a threshold matter, we next ask whether NSA surveillance abroad is "arbitrary" or "unlawful" under Article 17. I assume in what follows that most surveillance conducted on non-U.S. persons outside the United States is lawful under the Fourth Amendment of the U.S. Constitution and U.S. statutes. Therefore, this section focuses on whether NSA surveillance is "arbitrary." I conclude that NSA surveillance is not arbitrary under Article 17, because it targets terrorists, national security threats,

and espionage in a tailored fashion. In reaching this conclusion, I rely on the principle of complementarity, which seeks to harmonize a body of international law with other international law doctrine and with the prerogatives of states. To integrate all of the relevant international law doctrines, I read Article 17 in tandem with the law of armed conflict and U.N. Security Council resolutions on counterterrorism. To reconcile Article 17 with these norms and with sovereign prerogatives, I advance a model of procedural pluralism that gives states flexibility in creating protections if they honor core principles such as notice, oversight, and minimization but does not mandate the same itemized menu of safeguards required in European Union (ECHR) jurisprudence. In fact, as I note, ECHR jurisprudence permits exceptions to procedural safeguards, including exceptions designed to preserve the effectiveness of national security surveillance, that are not radically different from U.S. practice. I note, however, that certain reforms of NSA surveillance, such as a public advocate, would further strengthen compliance, affirming that NSA programs are consistent with the ICCPR. President Obama's initiatives, including a clearer articulation of the bases for U.S. surveillance abroad, buttress this case.

CP allows for domestic and foreign legitimacy - reforms and minimization of surveillance in CP solve

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, http://fordhamlawreview.org/assets/pdfs/Vol_82/Margulies_April.pdf)//MR

While I have concluded that U.S. surveillance policy does not violate the ICCPR, further reforms could highlight this point and silence persistent doubts here and abroad. These reforms could also remove any barriers to cooperation between the United States and foreign states, such as those in Europe, which are subject to the European Convention on Human Rights. This section identifies reforms that would add a public advocate to FISC proceedings, enhance FISC review of the criteria used for overseas surveillance, establish a U.S. privacy agency that would handle complaints from individuals here and overseas, and require greater minimization of non-U.S. person communications. These reforms would signal U.S. support of evolving global norms of digital privacy. Although President Obama's speech in January 2014 proposed a panel of independent lawyers who could participate in important FISC cases,161 further institutionalization of this role would be useful. A public advocate would scrutinize and, when necessary, challenge the NSA's targeting criteria on a regular basis.162 Challenges would be brought in the FISC, after the NSA's implementation of criteria. The NSA would be able to adapt the criteria on an exigent basis, subject to ex post review by the FISC at the public advocate's behest. **A public advocate and enhanced FISC review would serve three valuable functions**: (1) ensure that the FISC received the best arguments on both sides; (2) serve as a valuable ex ante check on the government, encouraging the government to adopt those criteria that could withstand subsequent scrutiny; and (3) promote domestic and global confidence in the legitimacy of processes governing NSA surveillance. A U.S. cabinet level privacy agency would also bolster the legitimacy of surveillance. The agency could provide more regular recourse to subjects of surveillance, as the ECHR requires. **That change would ease the barriers to continued U.S.-Europe cooperation on counterterrorism.** A national agency would also work hand in hand with privacy officers in executive departments. It would increase the leverage of those officials, who could advocate vigorously in internal debates, knowing that their views would also have a champion in a free-standing executive department independent of the national security bureaucracy. There are downsides to this proposal, of course. A new agency would add expense, and create some redundancy in government functions. Moreover, current models that provide recourse, such as the approach currently taken by the Department of Homeland Security,163 have been criticized as unduly burdensome.164 However, preserving cooperation with Europe and enhancing the overall legitimacy of U.S. surveillance provides a compelling justification. Each of these instrumentalities—a public advocate at the FISC and a new privacy agency—could also work to strengthen minimization requirements for foreign communications. The NSA says that it disposes of all irrelevant communications within five years. There may be ways to shorten this time and require even more rigorous controls on sharing of

information that lacks a clear link to terrorism or other foreign intelligence matters. More exacting minimization would also **promote U.S.-European information sharing and enhance global legitimacy.**

Net Benefit - Links

Programmatic techniques avoids restrictions that stagnate surveillance of terrorism

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", http://moritzlaw.osu.edu/students/groups/is/files/2014/

08/12-Sales.pdf)//MR

Programmatic surveillance thus can help remedy some of the difficulties that arise when monitoring covert adversaries like international terrorists. FISA and other particularized surveillance tools are useful when authorities want to monitor targets whose identities are already known. But they are less useful when authorities are trying to identify unknown targets. The problem arises because, in order to obtain a wiretap order from the FISA court, the government usually must demonstrate probable cause to believe that the target is a foreign power or agent of a foreign power.39 This is a fairly straightforward task when the target's identity is already known—e.g., a diplomat at the Soviet embassy in Washington, DC. But the task is considerably more difficult when the government's reason for surveillance is to detect targets who are presently unknown—e.g., al- Qaeda members who operate in the shadows. How can you convince the FISA court that Smith is an agent of a foreign power when you know nothing about Smith—his name, nationality, date of birth, location, or even whether he is a single person or several dozen? The government typically won't know those things unless it has collected some information about Smith—such as by surveilling him. And there's the rub. Programmatic monitoring helps avoid the crippling Catch-22 that can arise under particularized surveillance regimes like FISA: officials can't surveil unless they show that the target is a spy or terrorist, but sometimes they can't show that an unknown target is a spy or terrorist unless they have surveilled him.

Net benefit - Impacts True

Using programmatic surveillance is successful – it undermined 50 terrorist plots

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", http://moritzlaw.osu.edu/students/groups/is/files/2014/08/12-Sales.pdf)//MR

Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar—i.e., individualized or particularized surveillance. Individualized surveillance takes place when authorities have some reason to think that a specific, known person is breaking the law. Investigators will then obtain a court order authorizing them to collect information about the target, with the goal of assembling evidence that can be used to establish guilt in subsequent criminal proceedings. Individualized surveillance is common in the world of law enforcement, as under Title III of the Omnibus Crime Control and Safe Streets Act of 1968.23 It is also used in national security investigations. FISA allows authorities to obtain a court order to engage in wiretapping if they demonstrate, among other things, probable cause to believe that the target is "a foreign power or an agent of a foreign power."24 By contrast, programmatic surveillance has very different objectives and is conducted in a very different manner. It usually involves the government collecting bulk data and then examining it to identify previously unknown terrorists, spies, and other national security threats. A good example of the practice is link analysis, in which authorities compile large amounts of information, use it to map the social networks of known terrorists—has anyone else used the same credit card as Mohamed Atta?—and thus identify associates with whom they may be conspiring.25 (It is also possible, at least in theory, to subject these large databases to pattern analysis, in which automated systems search for patterns of behavior that are thought to be indicative of terrorist activity, but it's not clear that the NSA is doing so here.) Suspects who have been so identified can then be subjected to further forms of monitoring to determine their intentions and capabilities, such as wiretaps under FISA or other authorities. In a sense, programmatic surveillance is the mirror image of individualized surveillance. With individualized monitoring,

authorities begin by identifying a suspect and go on to collect information; with programmatic monitoring, authorities begin by collecting information and go on to identify a suspect. Programmatic surveillance is a potentially powerful counterterrorism tool. The Ra'ed al-Banna incident is a useful illustration of how the technique, when coupled with old-fashioned police work, can identify possible threats who otherwise might escape detection. Another example comes from a 2002 Markle Foundation study, which found that authorities could have identified the ties among all 19 of the 9/11 hijackers if they had assembled a large database of airline reservation information and subjected it to link analysis.26 In particular, two of the terrorists—Nawaf al-Hamzi and Khalid al-Mihdhar—were on a government watchlist after attending a January 2000 al-Qaeda summit in Malaysia. So they could have been flagged when they bought their tickets. Querying the database to see if any other passengers had used the pair's mailing addresses would have led investigators to three more hijackers, including Mohamed Atta, the plot's operational leader. Six others could have been found by searching for passengers who used the same frequent-flyer and telephone numbers as these suspects. And so on. Again, the Markle study concerns airline reservation data, not the communications data that are the NSA's focus. But it is still a useful illustration of the technique's potential. The government claims that programmatic surveillance has been responsible for concrete and actual counterterrorism benefits, not just hypothetical ones. Officials report that PRISM has helped detect and disrupt about 50 terrorist plots worldwide, including ten in the United States.27 Those numbers include Najibullah Zazi, who attempted to bomb New York City's subway system in 2009, and Khalid Ouazzani, who plotted to blow up the New York Stock Exchange.28 Authorities further report that PRISM played an important role in tracking down David Headley, an American who aided the 2008 terrorist atrocities in Bombay, and later planned to attack the offices of a Danish newspaper that printed cartoons of Mohamed.29 The government also claims at least one success from the telephony metadata program, though it has been coy about the specifics: "The NSA, using the business record FISA, tipped [the FBI] off that [an] individual had indirect contacts with a known terrorist overseas. . . . We were able to reopen this investigation, identify additional individuals through a legal process and were able to disrupt this terrorist activity."30 Quite apart from foiling attacks, the government also argues that the NSA programs can conserve scarce investigative resources by helping officials quickly spot or rule out any foreign involvement in a domestic plot, as after the 2013 Boston Marathon bombing.31 These claims have to be taken with a few grains of salt. Some observers believe that the government could have discovered the plots using standard investigative techniques, and without resorting to extraordinary methods like programmatic surveillance.32 The metadata program has elicited special skepticism: The President's Review Group on Intelligence and Communications Technologies bluntly concluded that "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained in a timely manner using conventional section 215 orders."33 The Privacy and Civil Liberties Oversight Board reached the same conclusion.34 (Judicial opinion is split on the program's value. One judge has expressed "serious doubts" about its utility,35 while another has concluded that its effectiveness "cannot be seriously disputed.")36 Furthermore, we should always be cautious when evaluating the merits of classified intelligence initiatives on the basis of selective and piecemeal revelations, as officials might tailor the information they release in a bid to shape public opinion.37 But even if specific claimed successes remain contested, programmatic surveillance in general can still be a useful counterterrorism technique.

Minimization regulations ensure the NSA data collection and transfer is only collected with the instances outlined in 702

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy", http://moritzlaw.osu.edu/students/groups/is/files/2014/08/12-Sales.pdf)//MR

While the NSA programs feature several important safeguards to help protect privacy and civil liberties, there is room for improvement. Policymakers should consider altering the minimization rules to better prevent mission creep, adding an adversarial element to certain aspects of the FISA court's proceedings, and enacting new legislation to place the telephony metadata program on a more stable statutory footing. First, the minimization rules that govern the section 702 program allow intelligence officials to share information with federal law enforcement if it contains "evidence [of] a crime."96 The government ecently has clarified that "nonpublicly available signals intelligence that the United States collects in bulk" may only be used to counter certain enumerated national security threats, as well as "[t]ransnational criminal threats."97 Even with that restriction, however, the rules seem too permissive. On their face, the minimization rules permit the fruits of PRISM surveillance to be used in investigations of even minor federal offenses, such as mail fraud and theft, so long as they have some "[t]ransnational" aspect. The problem is that the relative costs and benefits of surveillance depend on the magnitude of the offense under investigation. Just because we're willing to countenance the use of extraordinary methods to prevent terrorism, it doesn't mean the same techniques should be used to combat tax delinquency. Policymakers should tighten the list of crimes for which sharing is allowed. Of course, intelligence officials certainly should be able to tell their law enforcement counterparts when they come across evidence of terrorism, espionage, and other national security threats—the need for cops and spies to share more counterterrorism information is one of the enduring lessons of 9/11.98 And other serious crimes like those involving risk of death or serious bodily injury, or child exploitation, should be on the list as well. At the same time, we should not overestimate the NSA's enthusiasm for sharing the intelligence it gathers. Regardless of what the minimization rules permit, the NSA will have strong incentives to resist sharing information with or otherwise helping its bureaucratic rivals.99 Indeed, the New York Times recently reported widespread frustration among law enforcement officials over the NSA's reluctance to assist their investigations of routine offenses like "money laundering, counterfeiting and even copyright infringement"; their requests are usually denied "because the links to terrorism or foreign intelligence" are considered too "tenuous."100 (Note that the story addresses

NSA resources in general, not telephony metadata and PRISM data in particular.) In short, institutional self-interest and legal restrictions on sharing can be rough substitutes. And while self- interest will often lead the NSA to refuse access to sensitive intelligence in garden-variety criminal cases, these naturally occurring bureaucratic incentives should be supplemented with strong minimization rules that prevent inappropriate mission creep.

A2: Perm do both

Perm links to the net benefit -- stopping bulk collection of data abolishes pattern analysis, making it impossible for the U.S. to detect terrorists – that's Sales in the 1nc

A2: Perm do CP

Perm is severance – severance illegit – makes the aff a moving target destroying CP and DA ground

a) Public advocate requirement is outside PPD authority

Lawfare 2014 (Benjamin Wittes; chief of Lawfare, Senior Fellow in Governance Studies at the Brookings Institution, member of the Hoover Institution's Task Force on National Security and Law, "The President's Speech and PPD-28: A Guide for the Perplexed", 1/20/2014, http://www.lawfareblog.com/presidents-speech-and-ppd-28-guide-perplexed)//MR

Obama's speech announces reforms and changes **beyond** those outlined in the PPD. The president announces more routine declassification review of FISC opinions---which is both good and unsurprisingly. He also announces, in a carefully-worded part of the speech, that he is "calling on Congress to authorize the establishment of a panel of advocates from outside government to provide an independent voice in significant cases before the Foreign Intelligence Surveillance Court." The wording here is important. **Obama stops short of endorsing the Public Advocate idea**, which has constitutional difficulties and to whose strong form the Judicial Conference has objected. By describing these lawyers as "outside government," he seems to be leaning more towards an amicus model of adding adversarial process to FISC proceedings. But he leaves this point a bit vague, intentionally I think. And basically kicks the matter to Congress.

b) CP doesn't include 702 authority to limit domestic surveillance

c) CP doesn't apply PPD use restrictions

Here is a list of the use restrictions for reference:

White House 14 (Office of the Press Secretary, "Presidential Policy Directive -- Signals Intelligence Activities," 1/17/14, https://www.whitehouse.gov/the-press-office/2014/01/17/presidential-policy-directive-signals-intelligence-activities)

The limitations contained in this section do not apply to signals intelligence data that is temporarily acquired to facilitate targeted collection. References to signals intelligence collected in "bulk" mean the authorized collection of large quantities of signals intelligence data which, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.). only for the purposes of detecting and countering: (1) espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests; (2) threats to the United States and its interests from terrorism; (3) threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction; (4) cybersecurity threats; (5) threats to U.S. or allied Armed Forces or other U.S or allied personnel; and (6) transnational criminal threats, including illicit finance and sanctions evasion related to the other purposes named in this section. In no event may signals intelligence collected in bulk be used for the purpose of suppressing or burdening criticism or dissent; disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion; affording a competitive advantage to U.S. companies and U.S. business sectors commercially; or achieving any purpose other than those identified in this section.

Case Debate

Solvency

General

No solvency - Can't get data from overseas servers – major companies have information on servers abroad

No solvency- 702 still allows for overreach- vague implementation

LoConte '10. (FISA Amendments Act 2008: Protecting Americans by Monitoring International Communications - Is It Reasonable; LoConte, Jessica. 2010 Pace Int'l L. Rev. Online Companion 6 (2010) Vol I:6. Pg 6. http://heinonline.org/HOL/Page?men_tab=srchresults&handle=hein.journals/piliewco2010&id=7&size=2&collection=journals&terms=702&termtype=phrase&set_as_cursor=)//LP

The procedures used are consistent with the Fourth Amendment of the Constitution of the United States.20 If the FISC finds that the above requirements are met, then it will issue a warrant.21 Note that in order to obtain a warrant from the FISA court, it is not necessary for the Attorney General or the DNI to specify who the target of surveillance will be. In fact, the statute specifically states that any "certification made under this subsection [section 702] is not required to identify the specific facilities, places, premises or property at which an acquisition ... will be directed or conducted."22 Nor does the statute state that the government must have a reasonable belief that the targets of surveillance have a connection to criminal or terrorist activities. Although section 702 requires the government to adopt minimization procedures, the FISC is not provided with any details regarding the specific minimization procedures to be implemented, which limits the court's review of the ways in which intelligence agencies will use the intercepted intelligence data in the future. Another provision that causes concern is section 702(g)(1)(B) of the FAA, which provides a temporary exception to the warrant requirement: surveillance may begin under the authority of the Attorney General and DNI without court authorization if "time does not permit the submission of a certification."

Circumvention

No solvency – multiple reasons --

a) "TFA" language in 702 allows NSA to bypass restrictions against domestic surveillance

Donohue '15 --From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

The component statutory interpretations, particularly **TFA and the assumptions that mark the foreignness determination, undermine the protections created for U.S. persons** in Sections 703 and 704 of the statute. **They make it possible for the NSA to obtain significant amounts of American citizens' communications**. Until the FAA, the surveillance of U.S. persons outside domestic bounds took place under the weaker standards of Executive Order 12,333. **Part of the purpose of the FAA was thus to increase the protections afforded to U.S. persons travelling abroad**. 214 **The way in which Section 702 is being used, however, allows the NSA to bypass Section 703 by making assumptions about legal status and location and potentially subjecting U.S. persons to surveillance without**

meeting the requirements of Section 703. **The amount of information at stake is not insubstantial**. For years, the volume of intercepts under Section 702 has been one of the principal concerns of legislators familiar with the program. Senators have consistently expressed unease about the intelligence community's claim that **it is impossible to quantify how many Americans' communications have been implicated in the operation of Section 702**.215 What has gradually become clear is **that the program significantly more expansive than initially understood**.21

b) Foreign Program goal requirement -- NSA can collect data about any U.S. citizen as long as the program has a foreign goal

Donohue '2015. From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

Speier, a California Democrat, continued: "**The bottom line is, this FISA bill permits the collection of Americans' emails and phone calls if they are communicating with someone outside of the U.S**."235 Representative Rush Holt (D-NJ), a member of HPSCI, opposed the bill on similar grounds: "It permits massive warrantless surveillance in the absence of any standard for defining how communications of innocent Americans will be protected; a fishing expedition approach to intelligence collection that we know will not make Americans more safe."236 Representative Dennis Kucinich (D-OH) opposed the legislation for the same reason: "**There's no requirement for the government to seek a warrant for any intercepted communication that includes a U.S. citizen, as long as the program in general is directed towards foreign targets.**"237 Kucinich added

c) Server location – foreign routing or servers allow NSA surveillance

Donohue '2015. From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

What is clear is that the inclusion of "about" communications significantly expands the volume of Internet intercepts under Section 702. By 2011, NSA was acquiring approximately 26.5 million Internet transactions per year as part of its upstream collection.179 Three points related to the volume and intrusiveness of the resulting surveillance deserve notice. **First, to obtain "about" communications, because of how the Internet is constructed, the NSA must monitor large amounts of data**.180 That is, if the NSA may collect not just e-mail to or from the target's e-mail account (badguy@ISP.com), but, in addition, other communications happening to mention badguy@ISP.com that pass through the collection point, then the NSA is monitoring a significant amount of traffic.181 And the agency is not just considering envelope information (for example, messages in which the selector is sending, receiving, or copied on the communication) but the actual content of messages.**182 Second, wholly domestic conversations may become swept up in the surveillance simply by nature of how the Internet is constructed.** Everything one does online involves packets of information. Every Web site, every e-mail, every transfer of documents takes the information involved and divides it up into small bundles. Limited in size, these packets contain information about the sender's IP address, the intended receiver's IP address, something that indicates how many packets the communication has been divvied up into, and what number in the chain is represented by the packet in question.183 not, include the other packets of information contained in the message. If a roadblock or problem arises in the network, the packets can then be re-routed, to reach their final destination. Domestic messages may thus be routed through international servers, if that is the most efficient route to the final destination. What this means is that even if the NSA applies an IP filter to eliminate communications that appear to be within the United States, it may nevertheless monitor domestic conversations by nature of them being routed through foreign servers. **In this manner, a student in Chicago may send an e-mail to a student in Boston that gets routed through a server in Canada. Through no intent or design of the individual in Chicago, the message becomes international and thus subject to NSA surveillance.** Third, further collection of domestic conversations takes place through the NSA's intercept of what are called multicommunication transactions, or MCTs. It is important to distinguish here between a transaction and a communication. Some transactions have only

single communications associated with them. These are referred to as SCTs. Other transactions contain multiple communications. If even one of the communications in an MCT falls within the NSA's surveillance, all of the communications bundled into the MCT are collected. The consequence is of significant import. FISC estimated in 2011 that somewhere **between 300,000 and 400,000 MCTs were being collected annually on the basis of "about" communication**—where the "active user" was not the target. So **hundreds of thousands of communications were being collected that did not include the target as either the sender or the recipient of the communication**.184

d) Lack of specific targeting requirements allows NSA broad parameters in determining domestic surveillance – allows for general data gathering

Donohue '2015. From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

The FAA is largely silent about what burden must be borne by the government to establish whether the target is a U.S. person. Instead, **Section 702 directs the Attorney General to adopt targeting procedures** reasonably designed (a) to ensure acquisition is limited to persons reasonably believed to be outside U.S.; and (b) to prevent the acquisition of domestic communications.186 In other words, the statute only requires that the NSA not know (a) that the target is in the U.S.; or (b) that it is intercepting entirely domestic communications. **There is nothing in the targeting requirements requiring intelligence agencies to take certain steps to ascertain whether the target is a U.S. person** or what must be done to ascertain the target's location. Sections 703 and 704, which are designed to deal with U.S. persons, say nothing in turn about what is required to demonstrate whether a target either is or is not a U.S. person.187 Instead, these provisions address situations where the applicant has probable databases or other surveillance systems that could be consulted to determine whether the target is a U.S. person or a non-U.S. person, **the document uses the word "may"—the present tense articulation of a mere possibili**ty. As an auxiliary verb, it adds a functional meaning to the resultant clause—specifically, in the case of "may," to intone possibility in a manner that equally incorporates the possibility of "may not." **The NSA thus may consult its databases to determine whether a target is a U.S. person. It also may decide not to. At no point does the document itself suggest what the NSA "must" do.**192

Ext. Circumvention - TFA

The NSA is exploiting the to, about, for policy—they have used this to collect domestic data.

Donohue '2015. From the Georgetown university of law.(Laura K., "Section 702 and the Collection of International Telephone and Internet Content," Georgetown Law. n/a date. http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2364&context=facpub)//TS

The most concerning aspect of the NSA's targeting practices under the FAA is the inclusion of TFA. Together with generous assumptions with regard to foreignness and the vague requirements embedded in the foreign intelligence determination, **TFA has allowed the NSA to collect data beyond what might otherwise be considered incidental**. **Congress may not have anticipated this possibility in 2008. But by 2012 the information had been made available to any Members inclined to read it. The legislature, however, did not take steps to end programmatic collection.** Nor did FISC play a strong role with regard to the legality of knowingly collecting entirely domestic conversations. The court's decision encouraged willful blindness: as long as the NSA did not develop sophisticated technologies, it could collect more information and fit within the statutory bounds. Critique of these developments could be read as simply a complaint that the law went the other way. After all, three branches of government appear to have given the NSA their blessing: Congress through renewal of the FAA, the FISA Court of Review via its approval of certification, targeting, and minimization procedures, and the AG and DNI in their oversight capacities. But the burden

borne by the government in the realm of national security is one that requires the public authorities to be consistent with practice. **It is concerning that what is being done in practice looks very different than what the law says on its face.**

Their own author concedes that statute is not adequate

Eoyang and Bishai, '15 – Eoyang is Director of Third Way's National Security Program, Chief of Staff to Representative Anna Eshoo (D-CA), and Defense Policy Advisor to Senator Kennedy/Bishai is National Security Fellow at Third Way and previously served as the press director at the Embassy of Iraq and a news producer at Al Jazeera English (Mieke and Chrissy, "Restoring Trust between U.S. Companies and Their Government on Surveillance Issues," *Third Way*, 3/19/15, http://www.thirdway.org/report/restoring-trust-between-us-companies-and-their-government-on-surveillance-issues)//CT

Of course, FAA Exclusivity wouldn't solve every problem. It would not prevent foreign governments from collecting information themselves and then providing it to U.S. intelligence agencies, as U.S. law cannot bind a foreign government. And some may argue that FAA provides inadequate civil liberties protections for Americans. This proposal says nothing about the adequacy of that statute in this respect. What it says is that for data held by an American company about a target that is not a U.S. person, the checks within FAA are stronger than those solely under E.O. 12333.

A2: Multi-Stakeholder Model Good/Data Localization Bad

US-centric model rejected now – Russia and China want data localization – plan doesn't restrict surveillance of foreign intelligence which is what their internal links assume is primary concern for other great powers

Multistakeholder model will fail – Western control

Marks 14 (JOSEPH MARKS Joseph Marks covers cybersecurity for POLITICO Pro. He previously covered government technology issues for Nextgov, part of Atlantic Media, and covered local and state politics and higher education for the Grand Forks (N.D.) Herald and the Albert Lea (Minn.) Tribune. He interned for Congressional Quarterly's Homeland Security section and The Associated Press's Jerusalem Bureau. He holds a bachelor's degree in English from the University of Wisconsin in Madison and a master's degree in international affairs from Georgetown University. 07/17/14 http://www.politico.com/morningcybersecurity/0714/morningcybersecurity14668.html)PA

THE WEST DOMINATES INTERNET GOVERNANCE, BUT THAT CAN CHANGE — Some developing nations have a legitimate beef with the "multi-stakeholder" model of Internet governance that the U.S. champions, the State Department's ambassador to the Internet acknowledged yesterday. The current slate of stakeholders just isn't diverse enough, Daniel Sepulveda said. In theory, the multi-stakeholder model means major decisions about how the Internet is organized are made by technical specialists at ICANN and other consensus-based non-profits rather than by national governments or multi-national organizations such as the United Nations. In practice, however, those non-profits are inordinately filled with Western government representatives, Western companies and Western civil society members, Sepulveda said on the sidelines of yesterday's Internet Governance Forum meeting at The George Washington University.

China already rejecting US-centric control of internet – wants "internet sovereignty"

Mozur and Jie 14(Jun 23, 2014 Paul Mozur writes about technology from The Wall Street Journal's Beijing bureau and Yang Jie computer scientist whose research interests include multimodal human-computer interaction (modeling and learning), computer vision, and pattern http://blogs.wsj.com/chinarealtime/2014/06/23/chinas-lays-out-argument-for-internet-sovereignty-convinced/ "China Argues for 'Internet Sovereignty.' Is It a Good Idea? " accessed 06/28/15)PA

As the Internet becomes more and more crucial to the day-to-day operations of government and multi-national companies, it's no surprise its geopolitical import is growing to rival that of other

industries like energy that dominate foreign policy. In a full-page spread on the Monday, the Communist Party's mouthpiece newspaper laid out China's position on how the Internet and its supporting infrastructure should be dealt with across the globe. The page featured interviews with five Chinese experts, including the so-called "father" of China's Great Firewall Fan Binxing. The upshot: They believe each country should have ultimate power to determine what Internet traffic flows in and out of its territory. It's a concept China has termed "Internet sovereignty," and though the opinions of each expert in the article varied, the core message is that each nation should have the right to govern the Internet as it sees fit. The addendum is that the U.S. has too long exerted too much control over the Internet, and the revelations of former National Security Agency contractor Edward Snowden exposes U.S. hypocrisy in calling for a more open Internet while simultaneously monitoring foreign governments, companies and individuals. The U.S. government recently said it plans to give up control over the body that manages Internet names and addresses, in a move designed to assuage concerns following Mr. Snowden's leaks and also to encourage international cooperation over management of the Web. Still, a number of U.S. hardware and Internet companies continue to control huge swathes of the globe's Internet traffic. "'Internet sovereignty' is an idea that is in line with the rules of international law," the People's Daily said. "From a practical point of view, each country should have the right to implement its own Internet policies and regulations according to its needs. Other countries have no right to interfere with this." On the flip side, some have argued that a smaller role for the U.S. could result in the Balkanization of the Internet – making the Chinese Internet, for example, even more cut off from the rest of the web than it already is. Outrage over U.S. cyberspying is set to continue, but the more salient question at this point is whether the world would be better off with a less U.S.-centric Internet, even if that means the risk of an Internet in which more countries take steps to censor and block content.

Internet sovereignty solves better than multi-stakeholder

Lewis 13 (James A. Lewis is the Director and Senior Fellow of the Technology and Public Policy Program at the Center for Strategic and International Studies in Washington, D.C. OCTOBER 2013 https://www.cigionline.org/sites/default/files/no4.pdf "Internet Governance: Inevitable Transitions" accessed 06/28/15)PA

The extension of Westphalian sovereignty into cyberspace has been incremental and gradual: a problem appears, the current multi-stakeholder approach fails to address it, and governments seek other solutions using their national authorities. There will be no rush to a global treaty, where the UN suddenly takes control of the Internet. Instead, nations will take steps to establish rules and penalties for behaviour on the Internet that are consistent with their national laws; over time this will aggregate into a new sovereign framework. Governments are unlikely to be involved in the day-to-day operations of the Internet, but they will put new rules in place for its operation. The process will leave proponents of the current governance structure confused and complaining as they are increasingly hemmed in by a range of national controls. This extension of sovereignty is not the balkanization of the Internet — a pejorative term coined by defenders of the status quo. The definition of borders in cyberspace is no more a balkanization than the existence of borders in the physical world; only those who still believe in the one-world global commons could interpret this as such. There will still be a global network where the primary motives Internet Governance: Inevitable Transitions for design and architecture are commercial and the primary differences among nations will be over the treatment of content and expression. This extension is shaped by the larger debate over sovereign authority versus universal human rights, but it was naive to think that technology would trump politics and that nations would meekly surrender control to some US construct reflecting US values.

Data localization inevitable

Root cause- Countries have seized this opportunity to compete with American markets, not b/c snowden.

Hill' 14. International affairs consultant, Worked on National security Staff in the White House as cybersecurity coordinator. (Jonah Force Hill, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS," 5-1-2014. Pg. 8-9, The Hague Institute for Global Justice. http://dx.doi.org/10.2139/ssrn.2430275)//TS

Powerful business interests undoubtedly see data localization as an effective and convenient strategy for gaining a competitive advantage in domestic IT markets long dominated by U.S. tech firms. To localization proponents of this stripe, the **NSA programs serve as a powerful and politically expedient excuse to pursue policies protective of domestic businesses**. As an illustration, **data localization in Germany presents clear economic benefits for a most powerful industry advocate for localization**, Deutsche Telekom (DT). Whether by way of its "email made in Germany" system or the Schengen area routing arrangement, DT looks poised to gain from efforts to reduce the prominence of American tech firms in Europe. It is no wonder that the company has been spearheading many of the localization proposals in that country. As telecommunications law expert Susan Crawford has noted, DT has been seeking to expand its cloud computing services for years, but has found its efforts to appeal to German consumers stifled by competition from Google and other American firms. 79 T-Systems International GmbH, DT's 29,000-employee distribution arm for information-technology solutions, has been steadily losing money as a result.80 Moreover, Crawford suggests that DT would not be content with gaining a greater share of the German market; she points out that through a Schengen routing scheme, "Deutsche Telekom undoubtedly thinks that it will be able to collect fees from network operators in other countries that want their customers' data to reach Deutsche Telekom's customers."81 **Similarly, companies and their allies in government in Brazil and India look to profit from data localization proposals**. Indeed, **the governments of both nations have for years sought to cultivate their own domestic information technology sectors**, at times by protecting homegrown industries with import tariffs and preferential taxation. Brazilian President Rousseff has on numerous occasions stated that her government intends to make Brazil a regional technology and innovation leader; in recent years the government has proposed measures to increase domestic Internet bandwidth production, expand international Internet connectivity, encourage domestic content production, and promote the use of domestically produced network equipment.82 India, more controversially, has at times required foreign corporations to enter into joint ventures to sell ecommerce products, and has compelled foreign companies to transfer proprietary technology to domestic firms after a predetermined amount of time.83 **Brazil and India are, of course, not alone** in this respect. **Indonesian firms are constructing domestic cloud service facilities** with the help of government grants, 84 while Korea is offering similar support to its own firms. **85 For the governments and corporations of these nations, long frustrated by their inability to develop a domestic IT industry that can compete on an even playing field with the U.S. technology giants, data localization is one means to confront, and perhaps overcome, the American Internet hegemony.**

Data Localization is inevitable -- European companies benefit from it.

Hill' 14. International affairs consultant, Worked on National security Staff in the White House as cybersecurity coordinator. (Jonah Force Hill, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS," 5-1-2014. Pg. 8-9, The Hague Institute for Global Justice. http://dx.doi.org/10.2139/ssrn.2430275)//TS

The problem for U.S. tech companies is **that there are actually a wide variety of forces and interest groups driving the data localization movement, and many of these** forces and **groups have objectives beyond the professed goals of data protection and counter-NSA surveillance**. One can easily discern in foreign governments' interest in data localization a combination of anti-American populism, a desire for greater ease of foreign (and domestic) surveillance, and a sense among policymakers and business that **the Snowden backlash presents an opportunity to cultivate domestic cloud and other tech services industries**, industries that have long been outcompeted by American tech companies in their home markets—old-fashioned protectionism tailored for the digital age. A quick look at four select localization studies25 reveals this complex mix of purposes, and helps to explain why **U.S. technology firms** – as well as those organizations and individuals abroad who also recognize the problems data

localization laws would introduce – **are having** such **a difficult time arguing their case, despite the logic working in their favor and against the policies they are contesting**.

Data localization pushed to protect domestic businesses – not because NSA

Hill' 14. International affairs consultant, Worked on National security Staff in the White House as cybersecurity coordinator. (Jonah Force Hill, "THE GROWTH OF DATA LOCALIZATION POST-SNOWDEN: ANALYSIS AND RECOMMENDATIONS FOR U.S. POLICYMAKERS AND BUSINESS LEADERS," 5-1-2014. Pg. 8-9, The Hague Institute for Global Justice. http://dx.doi.org/10.2139/ssrn.2430275)//TS

Upon first glance, the preceding case studies present a consistent narrative: **for the nations now considering localization for data, the Snowden revelations exposed an NSA that had overstepped the boundaries** of acceptable surveillance, violated citizen privacy, and **catalyzed public and government opinion in favor of forceful action in response**. **For policymakers, data localization offers a seemingly simple and effective solution. Under closer examination, however**, a more complicated picture emerges. **The localization movement is** in fact **a complex and multilayered phenomenon**, **with the objective not only—or even primarily—of protecting privacy**. Depending on the country in which it is being advanced, **localization also serves to protect domestic businesses from foreign competition, to support domestic intelligence and law enforcement ambitions, to suppress dissent and to stir up populist enthusiasms for narrow political ends**. Direct evidence of these other objectives for which privacy seems to be a pretext is by its nature difficult to uncover: rarely to policy-makers admit to seeking protectionist goals, to spying on their populations, to suppressing dissent or to exploiting populist emotions. Yet, by viewing the localization movement in the context of other state and corporate interests and activities, it is possible to uncover these other, less exalted ends.

Countries already passed data localization laws – Snowden revelations only furthered pre-existing movements

Gross 15 (Grant Gross, "Two years after Snowden leaks, US tech firms still feel the backlash," Channel World, 6-10-15. http://www.channelworld.in/news/two-years-after-snowden-leaks,-us-tech-firms-still-feel-the-backlash#sthash.lhuYY7rA.dpuf)//TS

In addition to the upcoming Russian regulation, France and Germany are creating their own dedicated national networks, and other countries, including China, Australia and India, have passed data localization laws, the ITIF report said. Asked during the conference about ITIF's new estimates, Erich Andersen, deputy general counsel at Microsoft, questioned them. **Even before Snowden's leaks, many countries had begun to press for new laws dealing with data security and privacy, and the leaks "galvanized" the debate, he said**. Panel moderator Robert Boorstin, senior vice president at Albright Stonebridge Group, suggested that it's difficult for governments to pass laws that keep up with the constantly changing technology industry. But Andrea Glorioso, counselor for the digital economy for the European Union's delegation to the U.S., defended the EU's efforts to protect privacy and pass other consumer-protection regulations. Some tech companies argue against regulation, saying they want "frictionless innovation," he said. "When you're in a car, friction is a very good thing, because it's what allows you to brake," Glorioso said. "A world without friction is a world in which you just go ahead, and you cannot stop, even when you want to."

Credibility/Soft Power

General

FAA solves perception - Any evidence about U.S. legitimacy before June '15 is irrelevant the U.S. already restoring its legitimacy

Legitimacy K

The Vietnam War proves that adopting the false mindset of credibility leads to bad decision making, resulting in useless conflicts with harmful consequences.

Fettweis '07. Assistant professor of national security affairs in the National Security Decision Making Department at the U.S. Naval War College. (Christopher J. " Credibility and the War on Terror," winter, vol.122, no. 4. Blackwell Publishing Ltd.)//TS

The credibility imperative had become firmly embedded in the psyche of the U.S. foreign policy establishment by the time some of the crucial decisions regarding the war in Vietnam needed to be made. **Without the imperative, the war would not have been fought**. **More than any other single factor, a fear of the message that a communist victory would send to the neighboring** (and not-so-neighboring) **states compelled the United States to try to prop up the corrupt**, unpopular, Roman Catholic South Vietnamese **rulers**. In a 1965 memo released with the Pentagon Papers, **Secretary of Defense** John **McNaughton described the reasons that the United States was in Vietnam as 70 percent ''to avoid a humiliating U.S. defeat** (**to our reputation** as guarantor),'' 20 percent to prevent communism from overtaking South Vietnam, and only 10 percent to help the people of South Vietnam. 23 The damage that a failure in Vietnam could do to the reputation of the United States was potentially catastrophic. President Lyndon Johnson warned his cabinet that ''if we run out on Southeast Asia, there will be trouble ahead in every part of the globe—not just in Asia, but in the Middle East and in Europe, in Africa and Latin America. I am convinced that our retreat from this challenge will open the path to World War III.'' 24 Kissinger agreed, warning that if South Vietnam were allowed to fall, it would represent a ''fundamental threat, over a period of time, to the security of the United States.'' 25 **Only when framed inside the prism of the credibility imperative did victory in Vietnam become a vital national interest**. Skepticism grew steadily as the war dragged on, and as **the credibility imperative drove policymakers to believe that withdrawal from what seemed to be an unwinnable war would lead to national catastrophe**. Intellectuals in the anti -war movement led the way, expressing moral outrage that a war would be fought primarily for the messages it would send to our enemies and allies. 26 **Academic skepticism about the importance of credibility grew** alongside questions about the tangible interests at stake, **especially after it became clear that the costs in blood and treasure were not proportional to any potential benefits** that could conceivably be gained from the survival of an anti-communist South Vietnam. To prominent realists such as Hans Morgenthau and Kenneth Waltz, intervention in isolated, resource-poor Vietnam was irrational, ''moralistic,'' and mistaken. Only ''if developments in Vietnam might indeed tilt the world's balance in America's disfavor,'' argued Waltz, would the war be worthwhile.27They did not, of course, since from a purely material perspective, **Vietnam was next to irrelevant to U.S. national security**. The cost of a loss t o U .S. credibility, however, appeared incalculable. The war in Vietnam marked the beginning of the current debate over the importance of credibility, and the point of divergence between scholars and practitioners. Despite dire warnings from many of its leaders, **the United States** not only **withdrew its forces** from Southeast Asia but also cut back on its aid and watched North Vietnamese troops overrun Saigon in 19 75.Since this ''cut-an d-run'' and subsequent loss of an ally were undoubtedly unmitigated disasters for the credibility of the United States, **presumably a string of foreign policy setbacks should have followed.** If international actions are truly interdependent, as policymakers believe, then the 1970s would probably have seen evidence of allies beginning to question U.S. commitments, dominoes falling where the reputation of the United States maintained the status quo, an d increased levels of Soviet activity in the third world. The conventional wisdom suggests that the humiliating rooftop helicopter evacuation of the U.S. embassy in Saigon should have heralded a dark period for U.S. foreign policy. **However, no such string of catastrophes took place. Perhaps most obviously, there is**

no evidence that any allies of the United States were significantly demoralized, or that any questioned the wisdom of their allegiance. If anything, many of Washington's closest allies seemed relieved when the war ended, since many of them had doubted its importance in the first place and had feared that it distracted the United States from other, more pressingissues.28Certainly no state, not even any ''client'' states in the third world, changed its geopolitical orientation as a result of Vietnam. **The damage to U.S. credibility also did not lead to the long-predicted spread of communism throughout the region**, as even Kissinger today grudgingly acknowledges. **On the contrary, in the ten years that followed the fall of Saigon, the non-communist nations of Southeast Asia enjoyed a period of unprecedented prosperity**.30The only dominoes that fell were two countries that were even less relevant than Vietnam to the global balance of power—Cambodia and Laos, both of which were hardly major losses for the West, especially given the tragedies that followed. Nationalism proved to be a bulwark against the spread of communism that could not be overcome by any loss of confidence in U.S. commitments.

US Credibility doesn't affect other countries reactions - Cold War and Vietnam prove

Fettweis '07. Assistant professor of national security affairs in the National Security Decision Making Department at the U.S. Naval War College. (Christopher J. "Credibility and the War on Terror," winter, vol.122, no. 4. Blackwell Publishing Ltd.)//TS

There is actually scant evidence that other states ever learn the right lessons. **Cold War history contains little reason to believe that the credibility of the superpowers had very much effect on their ability to influence others.** Over the last decade, a series of major scholarly studies have cast further doubt upon the fundamental assumption of interdependence across foreign policy actions. Employing methods borrowed from social psychology rather than the economics-based models commonly employed by deterrence theorists, Jonathan Mercer argued that threats are far more independent than is commonly believed and, therefore, that **reputations are not likely to be formed on the basis of individual actions**.39While policymakers may feel that their decisions send messages about their basic dispositions to others, most of the evidence from social psychology suggests otherwise. **Groups** tend to **interpret the actions of their rivals as situational**, dependent upon the constraints of place and time. Therefore, **they are not likely to form lasting impressions of irresolution from single, independent events**. Mercer argued that the interdependence assumption had been accepted on faith, and rarely put to a coherent test; when it was, it almost inevitably failed.40Mercer's larger conclusions were that **states cannot control their reputations or level of credibility**, and that target adversaries and **allies will ultimately form their own perceptions**. Sending messages for their consideration in future crises, therefore, is all but futile. These arguments echoed some of the broader critiques of the credibility imperative that had emerged in response to the war in Vietnam, both by realists like Morgenthau and Waltz and by so-called area specialists, who took issue with the interdependence beliefs of the generalists. As Jervis observed, a common axis of disagreement in American foreign policy has been between those who focus on the specific situation and the particular nations involved (often State Department officials or area experts), and those who take a global geopolitical perspective (often in the White House or outside foreign policy generalists). The former usually believe that states in a region are strongly driven by domestic concerns and local rivalries; the latter are pre-disposed to think that these states look to the major powers for their cues and have little control over their own fates.4

Other Countries base their perceptions on national interests – basing US decisions the myth of legitimacy causes ineffective policy responses

Fettweis '07. Assistant professor of national security affairs in the National Security Decision Making Department at the U.S. Naval War College. (Christopher J. " Credibility and the War on Terror," winter, vol.122, no. 4. Blackwell Publishing Ltd.)//TS

Press argues that **national capabilities and interests—not past behavior—provide the foundation for the formation of perceptions**. However**, the credibility imperative has a powerful intuitive logic behind it**, based upon lifetimes of interpersonal experience. There are therefore significant impediments infront of those who would challenge the wisdom of the policymaker's obsession with reputation. **This divergence in conventional wisdom between policy and scholarship would not be a major issue for twenty-first-century international politics if policies that are primarily based upon the need to appear credible were not often counterproductive, costly, and dangerous. The imperative has clear effects**

upon policy, and is employed in debates in predictable, measurable, and uniformly unhelpful ways.

Warming

No impact and its not anthropogenic

Lupo 08 (NAPSA, Anthony R. assistant¶ professor of atmospheric science at¶ the University of Missouri at¶ Columbia and served as an expert¶ reviewer for the UN's Intergovernmental¶ Panel on Climate Change, "Global Warming Is Natural, Not Man-Made," 2008, http://www.napsnet.com/pdf_archive/34/50144.pdf) //AW

One of the fundamental tenets of our justice system is one is innocent until proven guilty. While that doesn't apply to scientific discovery, in the global warming debate the prevailing attitude is that human¶ induced global warming is already¶ a fact of life and it is¶ up to doubters to¶ prove otherwise.¶ To complete the¶ analogy, I'll add that¶ to date, there is no¶ credible evidence to¶ demonstrate that the climatological¶ changes we've seen since the¶ mid-1800's are outside the bounds¶ of natural variability inherent in¶ the earth's climate system.¶ Thus, any impartial jury¶ should not come back with a¶ "guilty" verdict convicting humanity¶ of forcing recent climatological¶ changes.¶ Even the most ardent supporters¶ of global warming will not¶ argue this point. Instead, they¶ argue that humans are only partially¶ responsible for the observed¶ climate change. If one takes a¶ hard look at the science involved,¶ their assertions appear to be¶ groundless.¶ First, carbon dioxide is not a¶ pollutant as many claim. Carbon¶ dioxide is good for plant life and is¶ a natural constituent of the¶ atmosphere. During Earth's long¶ history there has been more and¶ less carbon dioxide in the atmosphere¶ than we see today.¶ Second, they claim that climate¶ is stable and slow to change, and¶ we are accelerating climate¶ change beyond natural variability.¶ That is also not true.¶ Climate change is generally a¶ regional phenomenon and not a¶ global one. Regionally, climate has¶ been shown to change rapidly in¶ the past and will continue to do so¶ in the future. Life on earth will¶ adapt as it has always done. Life¶ on earth has been shown to thrive¶ when planetary temperatures are¶ warmer as opposed to colder.¶ Third, they point to recent¶ model projections that have¶ shown that the earth will warm¶ as much as 11 degrees Fahrenheit¶ over the next century.¶ One should be careful when¶ looking at model projections. After¶ all, these models are crude representations¶ of the real atmosphere¶ and are lacking many fundamental¶ processes and interactions¶ that are inherent in the real¶ atmosphere. The 11 degrees scenario¶ that is thrown around the¶ media as if it were the mainstream¶ prediction is an extreme¶ scenario.¶ Most models predict anywhere¶ from a 2 to 6 degree increase over¶ the next century, but even these¶ are problematic given the myriad¶ of problems associated with using¶ models and interpreting their¶ output.¶ No one advocates destruction¶ of the environment, and indeed¶ we have an obligation to take care¶ of our environment for future generations.¶ At the same time, we¶ need to make sound decisions¶ based on scientific facts.¶ My research leads me to¶ believe that we will not be able to¶ state conclusively that global¶ warming is or is not occurring for¶ another 30 to 70 years. We simply¶ don't understand the climate system¶ well enough nor have the¶ data to demonstrate that humanity¶ is having a substantial impact¶ on climate change.¶

Cyberterror

Congressional oversight prevents NSA backdoors already - no link to cyber terrorism.

Mazmanian June 6, **2015**. (Adam, "CJS funding bill would limit high-tech surveillance," 6-6-15. The Business of federal technology. http://fcw.com/articles/2015/06/04/cjs-funding-bill.aspx) // TS

The House passed a $51.4 billion Commerce, Justice and Science funding **bill** for fiscal 2016 on June 3 **that would pare back the government's authority to conduct surveillance on communications.** Taken together, they constitute something of a follow-on to the USA Freedom Act, just signed into law, which put new rules on the bulk collection and searching of telephone metadata by spy agencies. **The bill, passed** 242-183, includes: ***An amendment** by Ted Poe (R-Texas) **that would prohibit funding for government to require technology companies**

to build in support for tapping encrypted communications. The provision would put the brakes on efforts by FBI Director James Comey to guarantee that law enforcement agencies have access to encrypted communications. The amendment was adopted by voice vote. * An amendment by Darrell Issa (R-Calif.) that would bar funding of efforts by federal law enforcement to use "stingray" devices, which simulate the activity of cell towers to capture location **and** identifying information from mobile phones, to collect data in bulk without a court order. The amendment was adopted by voice vote. * An amendment by Jared Polis (D-Colo.) that would ban the Drug Enforcement Administration from collecting phone records in bulk. The amendment was adopted by voice vote. * **An amendment** by Thomas Massie (R-Ky.) **that would bar the N**ational **I**nstitute of **S**tandards and **T**echnology **from coordinating on encryption or computer security standards with the CIA and the National Security Agency**, except for the purposes of improving information security. **The** Massie **amendment was a response to revelations from** former NSA contractor Edward **Snowden** and other sources **about collaboration between NIST and the intelligence community to insert flaws into highly complex encryption standards** – revelations that led NIST to ultimately disavow the standards. The amendment was adopted 383-43. "Don't you want the best security available that the minds in this country can create ... to safeguard your health records, maybe to safeguard your gun records, maybe to safeguard your bank accounts and your credit cards? We are more safe when we have better security and better encryption, so it makes no sense for [NIST] to work with the NSA to weaken our encryption software," Massie said. **Supply chain, census, other IT measures** The bill would renew federal policy requiring supply-chain vetting for the acquisition of high-impact and moderate-impact IT systems, including an assessment from the FBI or other appropriate agency to evaluate cyber risks posed by any system whose manufacture is touched by firms controlled or subsidized by the Chinese government, or other sources identified by the U.S. as posing a cybersecurity threat. The House bill would extend the language of the measure to encompass the renewal as well as the acquisition of systems. Appropriators are worried about the looming 2020 census. The bill includes $848 million in funding for the count, but there are some strings attached related to IT delivery. The bill would mandate that half the IT funding for the 2020 census be withheld pending the Census Bureau's delivery of a spending plan for the large-scale Census Enterprise Data Collection and Processing project, which would put all the census data gathering, analytics and dissemination technology under a single system for the first time. The bill would deliver drastic cuts to the National Strategy for Trusted Identities in Cyberspace, a Commerce Department program designed to fund pilot projects to create new methods of online authentication that go beyond simple usernames and passwords. Under the bill, funding of new grants would cease, and second-year awards under 2015 grants would be canceled, with the allowed funding being used to wind up the program. The White House issued a veto threat before the bill went up for a vote. On the IT side, the Obama administration is particularly concerned about census IT funding, the NIST appropriation, Internet governance transition work being performed by the National Telecommunications and Information Administration at Commerce, funding for Commerce's digital service team, and budget requests by NASA and the National Science Foundation to comply with the Digital Accountability and Transparency Act.

Big tech companies have installed encryptions—the NSA cannot access backdoors anymore.

Kharpal '2015. Citing Glen Greenwald who received a Pulitzer award for his work on the Snowden revelations. (Arjun, "iPhone encryption 'petrified' NSA: Greenwald," CNBC, 3-18-2015. http://www.cnbc.com/id/102515972)//TS

Stronger encryption in Apple's iPhones and on websites like Facebook has "petrified" the U.S. government because it has made it harder to spy on communications, Glenn Greenwald, the writer who first reported on Edward Snowden's stolen files, told CNBC. Former National Security Agency (NSA) contractor Edward Snowden caused major shockwaves around the world in 2013 when he unveiled the surveillance body's wide ranging spying practices, which included regularly attempting to snoop of data held by major technology companies. Apple, Google, Facebook and Yahoo are some of the major companies that have been in the spotlight after Snowden's revelations. Information from the Snowden documents released earlier this month detailed how the CIA had been trying for a decade to crack the security in Apple's products. And last year, **Yahoo revealed that it was threatened with a $250,000 per day fine if it didn't hand over data to the NSA. The tech giants have been taking major steps to make sure their communications are safe from spying**, a move Greenwald – who won a Pulitzer Prize for his reporting on the topic – said was motivated by the fear of losing customers rather than care for data privacy. "I don't… (Think) they suddenly care about privacy," Greenwald said. "If…you're a Facebook executive or an Apple executive, you're extremely worried that the next generation of users…are going to be vulnerable to the pitch from Brazilian, and Korean and German social media companies where they advertise and say don't use Facebook and Google because they'll give your data to the NSA." Snowden is due to address CeBIT later today. Glenn Greenwald, the man who helped Snowden publish the documents, said that **Silicon Valley companies have bolstered the encryption on their products, thereby making it harder for governments to eavesdrop.** "**They** (Apple) **are now starting to put serious encryption technologies** in their new iPhones **in their new releases** and this has really petrified governments around the world," Greenwald told CNBC in an interview at tech fair CeBIT in Germany.

NSA surveillance is key to preventing cyber terrorism.

Weise '2015. (Elizabath, "Experts: NSA efforts part of the battle in cyber-proxy war," USA Today, 6-7-2015. http://www.usatoday.com/story/tech/2015/06/04/nsa-warantless-surveillance-cybersecurity-china/28493013/)//TS

SAN FRANCISCO — **The U**nited **S**tates **is engaged in a** proxy war with its enemies, a **war where cyberspace is the battlefield, cyber experts say**. **Because of that, the National Security Agency's expansion of warrantless surveillance of Americans' international Internet traffic is necessary**, said Tom Kellermann, chief cybersecurity officer with Trend Micro, a Texas-based computer security company. "Let's be fair. The National Security Agency's role is to protect national security. **This is not about violating Americans' privacy, this is about spy hunting**," Kellermann said. The revelation Thursday of NSA's broad program to scoop up Americans' Internet activities coincided with the government's disclosure that Chinese hackers had breached the computer system of the Office of Personnel Management, potentially compromising the data of 4 million current and former federal workers. "**The cyber civilization of the United States is being undermined, not just by criminal hackers but also by nation-states that have literally burrowed into our companies, our cities and our networks**," Kellerman said. **The type of proactive surveillance the NSA was conducting is crucial**, according to Jasper Graham, vice president for cybertechnology and analytics with Darktrace, a Washington, D.C.-based cyber-security firm. "**Sometimes hunting is the only way you can catch people. Otherwise you're always in response mode, waiting for something to strike you**," said Graham, who worked as a technical director at NSA for 15 years. Black-and-white distinction between criminal hackers and the intelligence wings of other countries can be difficult to make. It's common in some nations for hackers to be allowed to operate with impunity as long as they don't hack anything within their own country, experts say. They're also expected to share information they come across that might be useful to their nation, and to be "patriotic" and aid the state when called upon, Kellerman said. Intrusions often have multiple targets and happen on multiple levels. Graham offered a hypothetical example: If a government wanted information about specific types of employees at the Defense Department, it could hire or encourage a hacking group to attack a financial institution or health care system in the Washington, D. C., area. That would get them personal information about hundreds of thousands of individuals, some of whom may work at the Defense Department. "They're hiding one attack in the noise of another, and everybody writes it off as cyber-crime," Graham said. That's where looking at hacking activity broadly can pay off, Graham said. "You don't know until you work your way up the food chain if they're working independently or they're a small hacking group working with a government." For Herbert Lin, a Stanford University cyber-policy expert, whether the NSA program was an effective strategy for detecting and stopping hacking by foreign governments is the wrong question. "The question is really if the NSA program was helpful enough that it is worth the expense and the cost," Lin said. "Personally I wish we didn't have to do it, but I think it's an understandable response" given the current threat environment, he said. Other experts have their doubts about whether the NSA program is helpful. "One need only open up a newspaper" to see that it's not working, said Amit Yoran, CEO of the computer security company RSA. The needs of the intelligence and law enforcement communities are often at odds with what businesses want and need, he said. "Intelligence wants to monitor, to learn about the threat and how they work. Law enforcement wants to collect information so they can prosecute," Yoran said. Victims of hacks want to rush in and clean up their system. "So there's a very powerful divide," he said. In the end, he said, "if **you were serious about protecting the United States from these external cyber threats, then absolutely this is the sort of thing you'd consider doing**." While Yoran doesn't think the potential ethical issues represent "a serious compromise," he knows that others might come to different conclusions if they don't trust the U.S. government to do what's right. "If you fundamentally don't trust, you fundamentally don't trust. I can't prove a negative," he said. For privacy advocate Marc Rotenberg, with the Electronic Privacy Information Center in Washington D.C., trust and oversight form the crux of the matter. "**The cost of government secrecy will always be the lack of public trust**," he said. "In the absence of meaningful oversight, the NSA will push its surveillance authority beyond what the law allows."

Cyber warfare is a self-fulfilling prophecy

Valeriano and Manus '15 -- Brandon Valeriano has a Ph.D. from Vanderbilt University in Political Science and Ryan C. Maness has a Ph.D. in Political Science from the University of Illinois in Chicago. (Brandon and Ryan C., "Cyber War versus Cyber Realities: Cyber Conflict in the International System" 5/26/15. Oxford University Press, Pg.20-21) //AHS

We now live in a digital era in whitch the speed, interconnectedness, and level of computer interaction between states and individuals is growing at an exponential rate. Choucri (2012: 13) suggests that "cyberspace has created new conditions for which there are no clear precedents." As with most new things, this new reality brings fear since the infrastructure we depend on is thought to be fragile and too complex. We depend so much on digital communications that it stands to reason that we are also vulnerable to threats that originate from this realm. As Bowden's quote makes clear, the fragility of what we most depend on is a source

of vulnerability for some. Rid (2013: vii) even suggests that we are addicted to the Internet, and this is a source of concern as our habit is therefore fragile. The fragility, addiction, and dependency we have on the Internet signals weakness for some. Weaknesses offer are exploited by those who seek to gain, especially in a situation of historical enmity. Yet, these ideas are assumptions; there is a perception of fragility and of dependency that might not match the reality of the situation. If the perceived weakness and fragility become the dominant frame, there is a potential for the fear invoked to translate to the securitization notion of forthcoming conflict, exploiting this weakness. We argue throughout that the opposite might be true, that the Internet and cyber interactions are more stable than most believe and therefore this domain can be a source of cooperation. Cyberspace will become the domain of conflict only if we let the fear process take hold and dominate the discourse; the perception of fear then becomes a self-fulfilling prophecy. The CNBC network in the United States produced a documentary on cyber warfare that documents the typical securitized discourse in this arena. Their introductory statement is a typical example of the hyperbolic statements associated with cyber conflict. "In the United States, we are Internet dependent. Our financial system, power grids, telecommunications, water supplies, flight controls and military communications are all online – making them vulnerable to countless cyber incidents by cyber criminals. The goal could be a 10-minute blackout, a breach of national security, a stock trading glitch or the theft of millions of dollars worth of intellectual property." In short, everything from our money to our water is vulnerable to infiltration. The question is to what extent these extreme warning and fears are warranted. How vulnerable is any given country to cyber malice, and what evidence do we have for cyber conflict in the last decade? Should this fear be the basis for reorganization in military structures and doctrine?

Empirical outliers have been overhyped in cyber security discourse

Valeriano and Manus '15 -- Brandon Valeriano has a Ph.D. from Vanderbilt University in Political Science and Ryan C. Maness has a Ph.D. in Political Science from the University of Illinois in Chicago. (Brandon and Ryan C., "Cyber War versus Cyber Realities: Cyber Conflict in the International System" 5/26/15. Oxford University Press. Pg.137) //AHS

Throughout this volume we have made the case that cyber conflicts thus far are over-hyped and that states practice a large degree of restraint in using them. We find that the rate of conflict is not indicative of a revolution in military affairs, but rather is a continuation of espionage and nuisances otherwise common in international affairs. The next question is, if we take a closer look at the process, content, and meaning of what might be known as the prominent cyber conflicts, then what more do we learn? Do our quantitative conclusions hold up in the context of what might be called the outliers, or the black swans of the cyber security discourse? We need to support our data investigations with the story of cyber conflicts in order to reinforce the points asserted in previous chapters. Here we demonstrate that even the most popular and well-known cyber incidents are not changing the shape of the battlefield; they are a new technology, like any other that we have seen in the past. Throughout history, militaries and governments have adapted to and utilized new technologies in the battlefield as well as for diplomacy, but rarely have the changed the shape of international affairs. It seems that cyber conflict falls into this category in that the technology alone by no means changes the shape of relationships. We go even further with our weekly events-based data investigation to suggest that, by and large, the response to cyber incidents, when the do happen, does not indicate that governments are disturbed or severely troubled by the incidents (see Chapter 5). Some tactics provoke reactions, but mainly cyber actions have been assimilated as a normal process of international life, a claim widely divergent from the tone of the general cyber security debate.

Cyber-attacks are just hype – "digital Pearl Harbor" or "cyber 9/11" have yet to materialize despite decades of warning

Gartzke and Lindsay 6/22/15 (Eric Gartzke is an associate professor at UC San Diego in the in the Department of Political Science and Jon Lindsay is an assistant adjunct professor at UC San Diego and an Oxford Martin Associate with the Oxford Global Cyber Security Capacity Center. (Eric and Jon R., "Weaving Tangled Webs: Offense, Defense, and Deception in Cyberspace,"6-22-2015.

Taylor and Francis group. Pg323-324. Security Studies Vol 24, Issue 2.
http://www.tandfonline.com/doi/pdf/10.1080/09636412.2015.1038188)//AHS

Where Are All the Attacks? If geographic, technological, or organizational conditions make conquest feasible at low cost or risk in comparison with the effort of defending the same objectives, then aggressors should be more tempted to launch an attack, the security dilemma and negative spirals should be more intense, and greater uncertainty and secrecy should lead to more miscalculation and war.21 According to a prominent body of international relations theory, high levels of offense dominance, in general, should be tied to a heightened risk of war.22 The deficiencies of traditional protective strategies as summarized above should thus make cyber war the sum of all fears, as many have predicted. Indeed, the US Department of Defense gets attacked ten million times a day; a US university receives a hundred thousand Chinese attacks per day; and one firm measures three thousand distributed denial of service (DDoS) attacks per day worldwide.23 In reality, however, most of these so-called attacks are just routine probes by automated networks of compromised computers (botnets) run by profit-seeking criminals or spy bureaucracies—a far cry from terrorism or military assault. The most alarming scenarios of a "digital Pearl Harbor" or "cyber 9/11" have yet to materialize despite decades of warning. The Stuxnet worm caused limited and temporary disruption of Iran's nuclear program in the late 2000s, the only known historical case of infrastructure damage via deliberate cyber attack, but this operation seems to reveal more about the strategic limitations of cyber war than its potency.24 The cyber revolution should presumably provide rivals with potent new tools of influence, yet actual cyber disputes from 2001 to 2011 remain restrained and regionalized, not disruptive and global.25 Computer espionage and nuisance cybercrime thrive, to be sure, but they are neither as prevalent nor as costly as they might be, leading skeptics to describe US losses as "a rounding error" in a fifteen trillion dollar economy.26 It is possible in principle that the same tools used for computer-network exploitation may one day be leveraged for more destructive strikes. Yet even if the nontrivial operational challenges of cyber war can be overcome, proponents of the cyber-revolution thesis have yet to articulate convincing strategic motives for why a state or non-state actor might actually use cyber capabilities effectively.27 A considerable shortage of evidence in the study of cyber conflict is thus a source both of concern and relief.

Low risk of cyberterrorism - interconnectedness now proves – Aff not necessary to solve – our ev postdates

Lindsay 15 (Jon R. Lindsay holds a PhD in political science from the Massachusetts Institute of Technology and an MS in computer science and BS in symbolic systems from Stanford University. He is an officer in the U.S. naval reserve with seventeen years of experience including assignments in Asia, Europe, Latin America, and the Middle East., Tai Ming Cheung director of the University of California Institute on Global Conflict and Cooperation, is a long-time analyst of Chinese and East Asian defense and national security affairs with particular expertise on the political economy of science, technology, and innovation and their impact on national security matters. Dr. Cheung was based in Asia from the mid-1980s to 2002 covering political, economic and strategic developments in greater China., Derek S. Reveron is a professor of national security affairs and the EMC Informationist Chair at the U.S. Naval War College. He specializes in strategy development, non-state security challenges, and U.S. defense policy. China and Cybersecurity, 4/1/15, Google Books, pg343)PA

Yet government remedies also can introduce problems. Unity of commands in an American principle of warfare, but actual coordination of different organizations and agencies has proven to be extremely difficult, not least because cybersecurity is more about economic incentives than warfare. China's fragmented authoritarian system has fared little better and potentially worse in cyber policy integration, as discussed in the introduction. Furthermore, innovation in the commercial information technology sector moves far more rapidly than the pace of policymaking in any state. The opportunities for making mischief online emerge faster than government regulators can adjust on desirability of doing so. The profusion of cyber threats might appear to support technologist interpretations of cyber space as an autonomous domain with its own deterministic logic. The interpretation overlooks a broad international consensus that the continuing buildout of the Internet economy is a good thing for commerce and development, consistent with liberalist expectations. Cyberspace is a man-made construct, after all, and connection to it is voluntary. Disconnection remains unattractive

as long as the benefits of being online continue to be so great and the risks comparatively minor. Liberalist expect the repeated interaction and deep interference of cyberspace to act as a restraint on more severe forms of cyber harms: states stand to gain much from much from their Internet interdependence and much to lose from conflict. The fact that the Internet exists at all, a fabric of international interconnection, means that liberalist views should be taken seriously. However, there are limits to this implicit liberal consensus, and explicit normative framework for international cyberspace may be beyond them.

Bilateral Talks

Pakistan/Proliferation Scenario

No Indo-Pak war - deterrence prevents

Ganguly 2008, Professor of Political at Indiana University, (Sumit "Nuclear Stability in South Asia," International Security, Volume 33, Number 2, 11/21/8, Muse AS)

As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan's acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners [End Page 65] can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article's analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan's willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India's internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability. Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground fire.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in [End Page 66] Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India's first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People's Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993: [End Page 67] The awareness on both sides of a nuclear capability that can enable either

country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its "Operation Gibraltar" and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87 Subrahmanyam's argument takes on additional significance in light of the overt acquisition of nuclear weapons by both India and Pakistan.

Tactical proliferation solves conflict

Pillalamarri, 3/24/15 - an assistant editor at the National Interest (Akhilesh, "Confirmed: Pakistan is Building 'Battlefield Nukes' to Deter India," *The Buzz* 3/24/15, http://nationalinterest.org/blog/the-buzz/confirmed-pakistan-building-battlefield-nukes-deter-india-12474 //JD

As the world remains focused on preventing a nuclear arms race in the Middle East, South Asia's dangerous nuclear rivalry—between India and Pakistan—grows ever more deadly. General Khalid Kidwai, a top advisor to the Pakistani government, said this week that Pakistan needed short-range tactical nuclear weapons, also known as "battlefield nukes" to deter nuclear archrival India. Kidwai said that "having tactical weapons would make war less likely," at a conference on nuclear security organized by the Carnegie Endowment for International Peace in Washington. Kidwai administered Pakistan's nuclear and missile weapons program for fifteen years. Pakistan's tactical weapon development includes the Nasr Missile, which has a range of around 37 miles (60 kilometers) and reflects concerns in Pakistan that "India's larger military could still wage a conventional war against the country, thinking Pakistan would not risk retaliation with a bigger nuclear weapon."Pakistan especially fears and aims to neutralize India's "Cold Start" doctrine, a type of blitzkrieg that aims to advance fast enough into Pakistan to seize key installations before a retaliatory nuclear strike

US-China Scenario

China won't accept US-centric stakeholder model – based in human rights agenda

Lindsay 15 (Jon R. Lindsay holds a PhD in political science from the Massachusetts Institute of Technology and an MS in computer science and BS in symbolic systems from Stanford University. He is an officer in the U.S. naval reserve with seventeen years of experience including assignments in Asia, Europe, Latin America, and the Middle East., Tai Ming Cheung director of the University of California Institute on Global Conflict and Cooperation, is a long-time analyst of Chinese and East Asian defense and national security affairs with particular expertise on the political economy of science, technology, and innovation and their impact on national security matters. Dr. Cheung was based in Asia from the mid-1980s to 2002 covering political, economic and strategic developments in greater China., Derek S. Reveron is a professor of national security affairs and the EMC Informationist Chair at the U.S. Naval War College. He specializes in strategy development, non-state security challenges, and U.S. defense policy. China and Cybersecurity, 4/1/15, Google Books, pg343)PA

The perceived severity of the threats above has generated numerous calls for improved international cooperation on cybersecurity. Jason Healey, for example, sees a "flurry of organized and unorganized violence" in the cyber domain but anticipates new norms and regimes will keep cyberspace "generally as stable as the air, land, space, and maritime domains", containing localized conflict from disrupting the international system. It is notable that the Chinese authors in this volume appear more optimistic about the potential for the international cooperation than many of the Western authors. Li Yuxiao and Xu Lu write that "a China-U.S. cybersecurity communication mechanism is important to improve mutual trust and enhance research and defense capabilities" and recommend working toward "a set of common rules for the network society in order to promote the process of global informatization." Senior Colonel Ye similarly writes that "we have to reject the logic that there must be fierce hostilities between the traditional, established superpowers and rising powers," and instead recognize that "mutual respect, mutual understanding and cooperation between nations should be the foundation of Asia-Pacific and world security, including cybersecurity. International cooperation on cybersecurity is desirable, but there are certain obstacles. Any notion of a cyber arms control treaty or the establishment of cyber norms must be reconciled with actual cyber

activities and government interests in promoting or tolerating them. Sarah McKune points out the cyber exploitation of ethnic minorities and Internet censorship by the Chinese state stand in stark contrast to cosmopolitan visions of an open Internet with string normative protection for human rights. The US Department of State "Internet freedom" agenda "works to advance Internet freedom as an aspect of universal rights of freedom of expression and the free flow of information. As part of the initiative, the US government and activists from non-governmental organizations develop and deploy technologies that dissidents can use to subvert controls on Internet content. This essentially means hacking the "Great Firewall." China perceives this to be provocative interference in its domestic affairs and an attack on its information security architecture. China, together with Russia, would prefer to shift governance of the Internet to the United Nations with the stronger norms of Internet Sovereignty and noninterference; Europe and the United States prefer to maintain the current "multistakeholder" arrangement while strengthening norms of openness and human rights. While there may be agreement that international norms are desirable, there is **sharp disagreement** on the content of those norms. The Obama administration's decision to transfer the internet Assigned Named Authority (IANA) function from the Department of Commerce of the international community may be a sign of China's and Russia's effective diplomacy or at least a sign that the United States recognizes the damage done to its international reputation. The challenge of international policy coordination is exacerbated by intra-states disorganization and disconnects between public and private actors. As Fred Cate writes, "The threats are too broad, the actors too numerous, to knowledge levels too unequal, the risks too easy to avoid internalizing, the free-rider problem too prevalent, and the stakes too great to believe that markets alone will be adequate to create the right incentives or out-comes."

China doesn't want US-centric internet governance -- US constitutional imperatives

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However, the Multistakeholder forums, policies and procedures have not assuaged some of the fears and concerns of other countries that still fear control of the Internet by the U.S. government. Over the years, there have been numerous calls for separating ICANN from its connection to the U.S. Department of Commerce. In addition, as more and more nations join the Internet, these calls have only increased. Some governments such as China and Russia fear that the U.S. constitutional imperative to protect free expression at all costs could impinge on their own sovereignty and security. Civil society has increasingly asked for equal status in policy decision making, as in many forums they do not yet have those rights. In the discussion that follows, I turn the focus of Internet governance to India, considered by many analysts to be a rapidly developing economy.

Lack of trust between China and the US means no cooperation

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U.S. Naval War College. He specializes in strategy development, non-state security challenges, and U.S. defense policy. China and Cybersecurity (Google Books) pg343)PA

American espionage against China, to include Chinese information technology companies, is unlikely to abate just because of public indignation in Chinese media or diplomatic protest without more serious consequences. Likewise, the cybersercurity firm Mandiant notes that "recent observations of China-based APT activity indicate that the PRC has no intention of abandoning its cyber campaigns, despite the Obama administration's specific warning that China's continued cyber espionage 'was going to be [a] very difficult problem in the economic relationship' between the two countries". This situation highlights a major obstacle to the establishment of international norms. It is hard to establish an agreement over activities that the parties do not admit conducting. It is hard to enforce compliance with an agreement when the proscribed activity is intentionally designed to be undetectable. Many governments have the technical means and expertise to conduct covert operations online and have thus far shown little restraint in doing so both the incentives espionage and the inability of liberal norms and institutions to contain it.

No SCS escalation – interdependence solves

Hong '13 senior research fellow at the East Asian Institute (EAI), National University of Singapore. Before joining EAI, he was professor at the Research School of South East Asian Studies, Xiamen University, China, teaching International Political Economy, Big Power Relations, and ASEAN Economy. (Zhao, "THE SOUTH CHINA SEA DISPUTE AND CHINAASEAN RELATIONS" 6/12/13, http://dx.doi.org/10.1080/03068374.2012.760785 AS)

However, at this stage there is no reason to regard military confrontation as likely or inevitable. Economically, China and ASEAN countries have become increasingly interdependent, as China is currently the second largest trade partner of ASEAN, and ASEAN is the third largest trade partner of China. In the light of increasing economic ties and mutual desire for regional peace and stability, China and ASEAN-related countries are likely to make every effort to stabilise their bilateral relations. President Aquino stated during his state visit to China in August 2011 that China-Philippines relations will not be affected by the dispute over the South China Sea, reiterating the need "to deal with the disputes through peaceful dialogue, and to continue to maintain regional peace, security and stability, creating a favorable environment for economic growth".43 And it is important to note that some procedural progress was made in 2011. In November 2011, China made a goodwill gesture of providing US$ 475 million to establish the China-ASEAN Maritime Cooperation Fund, and there are several working groups now in place. Indeed, the expansion of economic ties and the growth of common interests have laid the foundation for partial settlement or management of the territorial disputes.

Activism

General

Data localization won't prevent coalition building- people will find a way to communicate

Coldewey 11. ("People, Not Things, Are The Tools Of Revolution" Feb 11, 2011 by Devin Coldewey- a Seattle-based writer and photographer. He has written for TechCrunch since 2007 and is currently a contributor at NBC News. http://techcrunch.com/2011/02/11/tools-of-revolution/)//LP

Warmest congratulations to the Egyptian people, whose truly grassroots revolution has reminded the world what political action is supposed to look like. Although the work is far from done, and reconstituting a government by the people and for the people is perhaps the more difficult phase, it is right that they, and the world, should take a moment to reflect on a job well done. Some are using that moment to praise the social media tools used by some of the protesters, and the role the internet played in fueling the revolution. While it's plain that these

things were part of the process, I think the mindset of the online world creates a risk of overstating their importance, and elevating something useful, even powerful, to the status of essential. The people of Egypt made use of what means they had available, just as every oppressed people has in history. Twitter and Facebook are indeed useful tools, but they are not tools of revolution — at least, no more than Paul Revere's horse was. People are the tools of revolution, whether their dissent is spread by whisper, by letter, by Facebook, or by some means we haven't yet imagined. What we, and the Egyptians, should justly be proud of, is not just those qualities which set Egypt's revolution apart from the last hundred, but those which are fundamental to all of them. Malcom Gladwell has become the whipping boy of the internet for having suggested however long ago it was that the social web is something that breeds weak connections and requires only a minimum of participation. He was right then, and he's right now; he wrote a short post the other day defying the gloating masses (sensibly, but haughtily), and concluded with something commentators of the Egyptian revolution should take to heart: "People with a grievance will always find ways to communicate with each other. How they choose to do it is less interesting, in the end, than why they were driven to do it in the first place." It's one thing to give credit where credit is due and admire the rapidity and resilience of internet-based communication. The new uses to which the younger generation is putting the internet are very interesting and point to shifts in the way people are choosing to share information. It's another thing to ascribe to these things powers they don't have, powers that rest in the people who use them. It sounds like quibbling, but it's an important distinction. Facebook greased the gears, but it isn't the gears, and never will be. The revolution has been brewing for decades, and these same protesters have been in the streets countless times, after organizing by phone, by word of mouth, or simply as a shared reaction to some fresh enormity.

Democratic Peace Theory Wrong

Democratic peace theory false- competing interests

Larison 12. (DANIEL LARISON- published in the New York Times Book Review, Dallas Morning News, Orthodox Life, Front Porch Republic, The American Scene, and Culture11, and is a columnist for The Week. He holds a PhD in history from the University of Chicago. April 17, 2012. "Democratic Peace Theory Is False" http://www.theamericanconservative.com/larison/democratic-peace-theory-is-false/)//LP

Fabio Rojas invokes democratic peace theory in his comment on Rachel Maddow's new book, Drift: The Unmooring of American Military Power (via Wilkinson): "The idea is simple – for whatever reason, democracies almost never fight each other. Of course, democracies go to war against non-democracies. But for some reason, democracies just don't fight each other. What's the policy implication of all this? First, the sorts of rules that Maddow proposes are useless. People will just ignore the rules when they want to when they want war. Second, you have to reduce the population of non-democracies. Thus, if the Federal government wants to protect the United States by preventing war, the best, and cheapest, way to do it is to provide support and assistance for indigenous movements for democracy and tolerance. Once people have a genuine democracy at work, they just don't want to fight with each other. They just don't." Rojas' claim depends entirely on the meaning of "genuine democracy." Even though there are numerous examples of wars between states with universal male suffrage and elected governments (including that little dust-up known as WWI), the states in question probably don't qualify as "genuine" democracies and so can't be used as counter-examples. Regardless, democratic peace theory draws broad conclusions from a short period in modern history with very few cases before the 20th century. The core of democratic peace theory as I understand it is that democratic governments are more accountable to their populations, and because the people will bear the costs of the war they are going to be less willing to support a war policy. This supposedly keeps democratic states from waging wars against one another because of the built-in electoral and institutional checks on government power. One small problem with this is that it is rubbish. Democracies in antiquity fought against one another. Political equality and voting do not abolish conflicts of interest between competing states. Democratic peace theory doesn't account for the effects of nationalist and imperialist ideologies on the way democratic nations think about war. Democratic nations that have professional armies to do the fighting for them are often enthusiastic about overseas wars. The Conservative-Unionist government that waged the South African War (against two states with elected governments, I might add) enjoyed great popular support and won a huge majority in the "Khaki" election that followed. As long as it goes well and doesn't have too many costs, war can be quite popular, and even if the war is costly it may still

be popular if it is fought for nationalist reasons that appeal to a majority of the public. If the public is whipped into thinking that there is an intolerable foreign threat or if they believe that their country can gain something at relatively low cost by going to war, the type of government they have really is irrelevant. Unless a democratic public believes that a military conflict will go badly for their military, they may be ready to welcome the outbreak of a war that they expect to win. Setting aside the flaws and failures of U.S.-led democracy promotion for a moment, the idea that reducing the number of non-democracies makes war less likely is just fantasy. Clashing interests between states aren't going away, and the more democratic states there are in the world the more likely it is that two or more of them will eventually fight one another.

Middle East

Plan can't solve – outside influence not needed and alt causes to effective transitions

KHOURI 2011 ("THE LONG REVOLT" BY RAMI G. KHOURI. Wilson Quarterly, SUMMER 2011. http://wilsonquarterly.com/quarterly/summer-2011-a-changing-middle-east/the-long-revolt/)//LP

Even as they are experiencing these momentous changes, Arab countries must deal with four enormous and simultaneous challenges: maintaining security, rekindling economic growth, creating legitimate and participatory governance systems, and preventing mass discontent sparked by unfulfilled expectations from pushing countries back toward autocratic rule. The liberated Arab lands that are able to slowly establish more democratic political governance systems will each take on a different tone and color as they create their own formulas from the possibilities before them: tribal values, pan-Arab sentiment, narrow nationalism, corporate globalism, Islamist influences, **and roles for the military.** Arab democracies will look very different from Western ones, and the world should have the patience and composure to let the people of this region find their own sustainable balances between religiosity and secularism, state-centered and pan-Arab nationalism, and traditional and modern forms of governance.

US democracy promotion in the Middle East cause terrorism and instability- no popular support

Harsanyi 15 (David Harsanyi- a Senior Editor at The Federalist FEBRUARY 19, 2015 "Obama Is Wrong. Democracy Is The Last Thing The Middle East Needs Right Now" http://thefederalist.com/2015/02/19/obama-is-wrong-democracy-is-the-last-thing-the-middle-east-needs-right-now/)//LP

President Barack Obama gave a speech at White House's "Countering Violent Extremism" summit yesterday crammed with predictable feel-good ideas for combating the imaginary root causes of Islamic extremism. And in the midst of arguing that radicalism was principally driven by anger over colonialism, illiteracy, and unemployment, Obama proposed an idea that we should have been abandoned trillions of dollars and many years ago: more democracy. Here's how the president laid it out in the Los Angeles Times: Efforts to counter violent extremism will only succeed if citizens can address legitimate grievances through the democratic process and express themselves through strong civil societies. First of all, does Obama really believe that extremists have "legitimate grievances?" Are the disaffected youth recruited from the slums of Paris (but, curiously, not from the slums of Rio or Beijing) concerned that France doesn't offer a strong enough civil society? Are the radicals beheading Christians in North Africa ticked off over a lack of women's rights in Yemen? Are extremists who target Jews and free-speech enthusiasts in Copenhagen worried about the health of democratic institutions in Europe? No, it's the grievances themselves that are the root of the problem. In most Arab countries, the authoritarian leadership is in some ways more liberal than the majority of the citizenry. As bad as these regimes are – and we coddle and enable many of them – almost every time the democratic process has been tried in the Islamic world, it's produced more extremism

and factional violence. So which nation does the president propose would benefit most from more democracy? Pakistan? Iraq? Saudi Arabia? Jordan? How would Christians and Alawites fare in a democratic Syria, do you think? Perhaps as well as minorities do in a democratic Libya, a place Obama argued Americans had to intervene militarily or the "democratic impulses that are dawning across the region would be eclipsed by the darkest form of dictatorship." Turns out that democratic impulses can also lead to darkness. There is no Gadhafi regime, but there is anarchy, a fertile recruiting ground for terrorists and a country where Copts can be executed without too many hassles and American consulates can be sacked without any repercussion. All of it enabled, in part, by the president's unauthorized war (and Congress' implicit approval of that war) that was meant to help facilitate democracy. At the same time, the administration punishes the Egyptian government for putting an end to the extremism empowered by democratic impulses. It is Egypt's al-Sisi – no great friend of liberty, granted – who's spoken out most forcefully about the future of Islam. Yet the administration has withheld aid from that government until it can "certify that Egypt is taking steps toward democracy." As if insuring a larger role for the Muslim Brotherhood was in the U.S.'s – or the world's – best interests. To put our confused priorities in perspective, the United States condemned the Egyptians for bombing ISIS targets in Libya over the summer, complaining that "outside interference in Libya exacerbates current divisions and undermines Libya's democratic transition." (Incredulous italics mine) Egypt is not only dealing with ISIS in democratic Libya, it is dealing with terrorism originating from democratic Gaza, where Palestinians were offered autonomy and a chance to build a strong civil society, but put Hamas in charge instead. In the West Bank, where the moderates of the PLO run the show, Mahmoud Abbas can't even hold elections because the will of the people is too extreme for Fatah. In Turkey and in Pakistan, the military is counterbalance to the democratic impulses that would allow theocrats to become members of NATO or nuclear powers. Democracy can't work now. Three reasons why: 1. In a open political environment, extremists will always be willing to resort to violence to grab power. 2. Institutions tasked with protecting society from that extremism will no longer be "democratic" once they react. 3. The populace doesn't have any real desire for a secular democracy, anyway. According to Pew Research Center polling, given a choice between a leader with a strong hand or a democratic system of government, most Muslims choose democracy. For us, democracy is shorthand for all the things we like about liberalism, but overwhelming percentages of Muslims believe that Islamic law should be the official law of their own nations, which, as we've seen, does not "coexist" with our notions of self-determination. With apologies to the president, this knotty situation does not exist because Americans aren't sensitive enough. But I'm sympathetic to Michael Gerson's contention that presidents don't have the freedom to be honest, constrained by sensitivities and realities of the world. He writes: Most of those urging Obama to assert that Islam is somehow especially flawed among the great faiths have never been closer to power than a fuse box. There is no possible circumstance in which a president could say such a thing. It would cause a global firestorm, immediately alienating Muslim allies and proxies whom we depend on to help fight the Islamic State and other enemies. The problem is that the president goes far beyond niceties. For starters, I'm not sure anyone has ever implored him to say Islam is inherently flawed or doomed. But shouldn't we non-politicians be more sympathetic to M.G. Oprea's argument that, among other things, referring to Islamist terrorists merely as "violent extremists" constitutes a dangerous attempt to hide from reality? The administration claims it doesn't want to confer ISIS –a group that Graeme Wood says derives its philosophy "from coherent and even learned interpretations of Islam" – the credibility of being called "Islamic." This fantasy forces the administration to concoct offensive rationalizations and preposterous moral equivalencies that drives disjointed, ineffective policies. Much like our Middle East "democracy" fantasy ends up bolstering the power and reach of the very same extremists we claim to want to stop.

Democratic internet promotion is destabilizing- it's a values-promoting agenda

Mead 4/9 (WALTER RUSSELL MEAD - Henry A. Kissinger Senior Fellow for U.S. Foreign Policy at the Council on Foreign Relations. The American Interest, Volume 10, Number 5. April 9, 2015 "The Paradox of American Democracy Promotion" http://www.the-american-interest.com/2015/04/09/the-paradox-of-american-democracy-promotion/)//LP

America is and always has been by nature a revolutionary force in world affairs. This is not primarily or only because our moral values compel us to become the avatars of a global transformation. It is rather because the way American society works is profoundly destabilizing to the rest of the world. When Al Gore "invented the internet" he did as much to destabilize the Middle East as George W. Bush did when he invaded Iraq. More seriously—and with apologies to the former Vice President—the internet started out as a DARPA project to facilitate the secure sharing of classified information. No one in DARPA, the Defense Department, or anywhere else in America was thinking about how

to flatten hierarchies or challenge the social status quo everywhere in the world once the technology went commercial. The concern was about how to communicate effectively, how a company could use a corporate website to its competitive advantage, and so on. But the internet turned out to be a profoundly revolutionary force in politics around the world, and it poses huge problems to cultures and governments with foundations different from our own. Technology is not and has never been socially or politically neutral; it embodies and usually transmits the attitudes, economic endowments, moral priorities, and even the aesthetics of the societies that create it. It is very hard to simply adopt the machine and not the less tangible biases that go with it.In the same way, Hollywood movies have helped to create a situation in which many young people, for instance, no longer think they should marry whomever their parents tell them to marry. There are all kinds of ways in which the American presence in the world has been and remains culturally subversive. In the 19th century we were seen on the Continent as a dangerous nation. The United States wasn't sending armies out into the world to overthrow other regimes, but the mere existence of a successful, stable, large, powerful, and economically effective democratic society was a terrible example from the perspective of Europe's rulers and religious traditionalists, who argued that their hierarchical positions were necessary to the effective governance of society as a whole. The United States was a living, thriving reproach to the political legitimacy of autocracies abroad. Inevitably, therefore, the friends of stability and authority around the world tended increasingly to be as anti-American as they were formerly anti-British, and for similar reasons. The British, of course, did send military forces out into the world, but their real disruptive power derived from the revolutionary impact of a wider and eventually more market-based global trading system that rewarded efficiency and creativity and punished institutionalized privilege and all related arguments from authority. Forces that wanted to see social change in their countries tended to be pro-American. We still see this pattern today. The United States is revolutionary by being as well as by acting.The United States is revolutionary by being as well as by acting. Any foreign policy that doesn't take this into account will run into trouble. Consider Google and other major Silicon Valley companies, whose business models depend on a relatively open internet, with freedom of association and freedom of communication. In important ways the boundaries of Chinese, Iranian, or Russian power are the boundaries that limit where their business model can reach. For commercial reasons alone, much of American business is pushing the U.S. government toward the promotion of a liberal model for internet governance and of freedom of communication in ways that are parallel or equivalent to a values-promoting foreign policy. The government of a country with global trading interests like the United States must prioritize questions like contract law in foreign relations; the contracts that American companies have entered into abroad must be enforceable in transparent and honest courts of law. All kinds of people who do not think of themselves as democratic reformers in the history of American foreign policy have been consistently pushing all kinds of reform agendas around the globe that are self-interested in motivation but expansively liberal in consequence. There is every reason to believe that this kind of commercially based liberal policy will endure, and, with the information revolution shifting the world's economic center of gravity away from the production and exchange of physical commodities toward the production and exchange of design and ideas, the importance of liberal values to American commerce is likely to grow.

Democratic movements are suppressed- Sectarianism

Miranda 4/23 (Alba Benito Miranda- Intern at the Elcano Royal Institute. International Relations and Translation & Interpreting (Comillas Pontifical University). 23/04/2015 "Sectarianism in Bahrain and the New Middle East Cold War" http://www.blog.rielcano.org/en/sectarianism-in-bahrain-and-the-new-middle-east-cold-war/)//LP

The current Middle East seems to be on the verge of collapse and the revival of the Sunni-Shia divide appears to be the main culprit. The Arab Spring uprisings have altered the existing balance of power and accentuated the sectarian differences in the region. In this context, some states have lost no time in exploiting religious differences to their advantage, and in using sectarianism as a political weapon to pursue political and geostrategic goals. Both Iran and Saudi Arabia have taken the lead in this power politics game, turning the Gulf region into the battlefield of what has been referred to as the "new Middle East cold war." Similarly to regional hegemons in the Cold War, and in the Arab Cold War of the 1950s and 1960s, Saudi Arabia and Iran have not engaged in direct confrontation with each other, but have used neighbouring countries as battlefields to settle their rivalries. Given the multicultural, sectarian and transnational identities in the Gulf, the exploitation of the Sunni-Shia divide has become a key tool in the foreign policies of some states. The repression of the 2011 uprising in Manama's Pearl Roundabout is particularly illustrative, since it involved the use of a sectarian discourse by the governments of both the Al-Khalifa and the Al-Saud. Although democratic and cross-sectarian in nature, Bahrain's Arab Spring was immediately depicted as sectarian and portrayed as part of an Iranian plot to overthrow the Al-Khalifa regime and threaten the balance of power in the Gulf. It was perceived both as an external and internal threat to the Gulf Cooperation Council (GCC) states due to the risk of contagion and spillover. Shia-led calls for reforms challenged not only the sovereignty of the autocratic leaders, but also Sunni hegemony in the region, since they empowered both Iran and the Shia communities in the

Gulf. Saudi Arabia was the most affected state, given its animosity towards Iran and the outbreak of Shia unrests in its oil-rich Eastern Province. In order to suppress Bahrain's February 2011 uprising, Saudi Arabia led the military intervention of the Joint Peninsula Shield Force within a month of the outburst of the protests. It was the first time that the GCC intervened militarily in one of its member states to suppress an internal revolt, as its founding treaty only considers intervention in the case of a foreign threat. Sectarianism made possible the externalization of the threat posed by the Pearl Roundabout uprising, as it was used by the GCC states as a weapon for self-defence. By picturing the revolts as sectarian, Manama and Riyadh delegitimized and silenced Bahraini's political demands, hence safeguarding the sovereignty of their regimes. And by accusing Iran of participating in the revolts, they triggered a quick response and a joint pre-emptive action by the GCC, thus protecting Saudi and Sunni hegemony in the Arabian Peninsula. Both Saudi Arabia and Iran have taken advantage of this sectarian discourse to preserve their power in the region. Given the strong ties between Manama and Riyadh, Saudi Arabia has promoted the use of sectarianism in Bahrain (a close ally) in order to protect its own internal political and economic stability (especially in the Eastern Province) and its hegemony in the Arabian Peninsula. Iran has also benefitted from this portrait of the Bahraini uprising. Even though there is no evidence of direct Iranian meddling in the unrest, Iran has made no efforts to deny these claims. In fact, it has strongly criticized Saudi military intervention and has provided media coverage favourable to the protestors. It has done so motivated by the possibility of increasing Shia leverage in the region. In this cold war context, sectarianism has become a powerful political weapon used not only in Bahrain but also in Syria, Iraq and Yemen. Since rivalries between Saudi Arabia and Iran are played out within the political arena of multicultural neighbouring countries, the exploitation of the Sunni-Shia divide has emerged as much more than a soft power foreign policy tool. However, sectarianism has proven to be a double-edged sword and its overuse is giving rise to important security concerns, as identity is easier to exacerbate than to control. Given the existing transnational identities in the Gulf and the role of sectarian sensitivities in the region, Saudi Arabia and Iran should be more careful when using sectarianism as a means to justify their pursuit of realpolitik interests, since the over-empowerment of identity may end up blurring state boundaries and changing the perception of security threats in the Middle East.

Can't solve democratic transition- requires experienced leadership

Joffe 6/1 (Prof George Joffe - a Research Fellow at the Centre and Visiting Professor of Geography at Kings College, London University. He specialises in the Middle East and North Africa and is currently engaged in a project studying connections between migrant communities and trans/national violence in Europe. He is also a lecturer on the Centre's M.Phil. in International Relations. 01 June 2015. "Resentment, anger and violence" https://www.middleeastmonitor.com/articles/guest-writers/18957-resentment-anger-and-violence)//LP

There are, perhaps, two other lessons to be drawn from the Algerian experience and the events of 2011. Firstly, democratic transition is a difficult and lengthy process and that cultural authenticity and moral authority are not, in themselves, guarantors of success. Thus, an-Nahda in Tunisia was able, eventually, to operate effectively within a nascent democratic environment because its leadership had spent two decades in exile observing how democratic systems, despite their imperfections, actually worked. It understood the compromises that formal empowerment by an electorate still required, both in its own understanding of the political process and in its relations with coalition partners and even its political opposition. Those were lessons that the Muslim Brotherhood in Egypt either ignored or of which it was unaware, and it was this that stimulated the Tamarrud movement which the Egyptian army command adroitly exploited to remove it from power.

China

China's human rights improving already – China's National Human Rights Action Plan

PRC 15 (June 08, 2015 "Progress in China's Human Rights in 2014" http://en.people.cn/n/2015/0608/c90785-8903658.html)//LP

The basic rights of the Chinese people became better protected, and China's constitutional principle of "respecting and safeguarding human rights" was implemented in a better way. In 2014, China made steady progress in comprehensively completing the building of a moderately prosperous society. By the end of the year, among all the 29 countable or measurable indicators for economic and social development set forth in the 12th Five-Year Plan (2011-2015), 12 had been over-fulfilled, three had been nearly fulfilled and 11 had made smooth progress, accounting for 90 percent of the total. The mid-stage assessment of China's National Human Rights Action Plan (2012-2015) was carried out in December 2014, and the result showed that most of the targets set in the plan had

been reached, and a larger part of the quantitative indices had been half or even more achieved. In the same year China's efforts for law-based governance reached a new take-off stage. The Fourth Plenary Session of the 18th Central Committee of the CPC approved the Resolution of the CPC Central Committee on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China, drawing up a clear blueprint for building a socialist law-based country with Chinese characteristics. The fundamental purposes of the blueprint are to protect civic rights, to defend human dignity and to put basic human rights into practice.

PRC improving -- women's rights proves

Li 2000. ("Women 's Movement and Change of Women ' s Status in China" Journal of International Women's Studies: Vol. 1 Issue 1. January 2000. Yuhui Li. http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1626&context=jiws)

This study examines history of women's movement and gender stratification in urban areas in contemporary China. Undeniably, there have been many changes in the PRC that have significantly reduced the gender inequality in China compared with the past in the thousands of years of Chinese history. Many of the changes were institutionalized from the top and were fairly effective. The central government has been directly involved in designing many policies and implementing them to protect women. Women's labor force participation was for some time brought to almost the saturated level. There has been significant increase in the level of general public's awareness over the issue of gender inequality. Gender gap has become smaller in the areas of educational achievement, labor force participation and occupational distribution.

Women's Movements

Internet activism won't succeed on a large scale- opposition and internal fights

Carmon 15 (IRIN CARMON - a national reporter at MSNBC, covering gender and politics. FEBRUARY 17, 2015 "What Women Need" http://prospect.org/article/what-women-need)//LP

Something on the surface, if not in the structures of things, has shifted in recent years. Until a few years ago, even sympathetic celebrities and politicians cringed at anything feminist or even tangentially insistent on women's rights. Perhaps things needed to get worse—with right-wingers talking about "legitimate rape" and everything suggested by it—before they could get better, particularly for the female voters courted by the parties. The Internet also allowed a critical mass of feminists to come out of hiding and speak on their own terms, among them Girls creator Lena Dunham, whom Swift credited as her feminist mentor. These are mostly symbolic victories, though they matter, too, and feminists have been starved for them. Whether the groundswell can be channeled into something more sustainable and profound is another question. Not only is the opposition fierce, there are also deep fractures among those who call themselves feminists. "Divisions across age, race, class and ideology have complicated efforts to establish common priorities," writes Deborah L. Rhode in What Women Want.

Can't solve- free internet is still misogynistic

Vagianos 14 (Alanna Vagianos- an Associate Editor for HuffPost Women. She graduated from Elon University in North Carolina. 10/03/2014 "This Is What It's Like To Be A Woman Online" http://www.huffingtonpost.com/2014/09/19/what-its-like-to-be-a-woman-online-buzzfeed_n_5849052.html)//LP

Being a woman on the Internet is no easy feat. Anyone who's ventured onto the World Wide Web has likely witnessed -- or been on the receiving end of -- comments thrown at a woman simply because, well, she's female. In a video titled "What It's Like To Be A Woman Online," Buzzfeed interviewed nine women who are visible and active on social media about their experiences on the Internet. The comments they've received run the range from horrifying and offensive to downright weird. Whether left in the comments section of an article or fired off as direct tweets, the responses the women featured in the video received online all share a general theme of misogyny. From outrageous comments on appearance such as "Ugly Jewish whore" and "For your age, you're looking great," to mansplaining, rarely can a

woman publish a few words on the Internet without receiving unsolicited, irrelevant commentary from the world's biggest peanut gallery. Hearing women read idiotic commentary aloud brings some humor to a rather depressing reality, but the abuse women receive online everyday cuts much deeper than the few tweets and comments highlighted in the three-minute clip. Women routinely receive death threats, rape threats and even bomb threats when they have a public presence online. And the fact that we have come to view this behavior as somewhat "inevitable" is terrifying. No woman should ever have to live by the rule: "Block if [the commenter] get scary, ignore if it's just annoying."

No widespread empowerment even with free internet- lack of infrastructure, illiteracy

UN 20**05** (Women2000 and Beyond. "Gender equality and empowerment of women through ICT" September 2005. UN Division for the Advancement of Women, Department of Economic and Social Affairs. http://www.un.org/womenwatch/daw/public/w2000-09.05-ict-e.pdf)//LP

"The so-called digital divide is actually several gaps in one. There is a technological divide—great gaps in infrastructure. There is a content divide. A lot of web-based information is simply not relevant to the real needs of people. And nearly 70 per cent of the world's websites are in English, at times crowding out local voices and views. There is a gender divide, with women and girls enjoying less access to information technology than men and boys. This can be true of rich and poor countries alike". United Nations Secretary-General, Kofi Annan Statement to the World Summit on the Information Society, Geneva, 10 December 2003. While the potential of ICT for stimulating economic growth, socioeconomic development and effective governance is well recognized, the benefits of ICT have been unevenly distributed within and between countries. The term "digital divide" refers to the differences in resources and capabilities to access and effectively utilize ICT for development that exist within and between countries, regions, sectors and socio-economic groups. The digital divide is often characterized by low levels of access to technologies. Poverty, illiteracy, lack of computer literacy and language barriers are among the factors impeding access to ICT infrastructure, especially in developing countries. Internet usage figures collected by the International Telecommunications Union (ITU) in 2003 illustrate this gap in access. For instance, in 2003, the United States reported 5,558 Internet users per 10,000 persons, compared with 690 users per 10,000 persons in Asia and 156 users per 10,000 persons in Africa.

No definitive case studies ICT's benefits on Womens' movements

Bonder 02. (Gloria Bonder- an Argentine researcher and gender activist. Founded the Center for Women's Studies (CEM) and coordinated the International Working Group on Women and ICT field of the United Nations. UN meeting on "Information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women." 11 to 14 November 2002. "From access to appropriation: Women and ICT policies in Latin American and the Caribbean." http://www.mujeresenred.net/zonaTIC/IMG/pdf/GBonder.pdf)//LP

Access to information, to knowledge and the interaction between cultures and social groups have never been so within the reach of humanity, nor as valued as in the last decades. The continuous innovation and global spreading of Information and Communication Technologies (ICTs) appear like a fundamental resource in order to reach these goals and inaugurate a change of era known as Information Society or Knowledge Society. However, in its current phase of development, we must clearly differentiate the potentialities (informative, educational, cultural, political, economic, etc.) offered by these technologies, from their manifestations and actual impact on the various contexts and social groups. This type of analysis is still at a beginning stage in the LAC Region. Therefore, the understanding of the role currently played by these technologies in our societies is usually based on impressions, "good wishes" and, in the best of cases, on some partial studies.

Economy

Econ Decline Won't Cause War

Econ Decline Doesn't Cause War

Ferguson '6 "Niall Ferguson, a Laurence A. Tisch Professor of History at Harvard University and a Senior Fellow at the Hoover Institution at Stanford University. 'The Next War of the World, 2006', " https://www.foreignaffairs.com/articles/middle-east/2006-09-01/next-war-world

Nor can economic crises explain the bloodshed. What may be the most familiar causal chain in modern historiography links the Great Depression to the rise of fascism and the outbreak of World War II. But that simple story leaves too much out. Nazi Germany started the war in Europe only after its economy had recovered. Not all the countries affected by the Great Depression were taken over by fascist regimes, nor did all such regimes start wars of aggression. In fact, no general relationship between economics and conflict is discernible for the century as a whole. Some wars came after periods of growth, others were the causes rather than the consequences of economic catastrophe, and some severe economic crises were not followed by wars.Many trace responsibility for the butchery to extreme ideologies. The Marxist historian Eric Hobsbawm calls the years between 1914 and 1991 "an era of religious wars" but argues that "the most militant and bloodthirsty religions were secular ideologies." At the other end of the political spectrum, the conservative historian Paul Johnson blames the violence on "the rise of moral relativism, the decline of personal responsibility [and] the repudiation of Judeo-Christian values." But the rise of new ideologies or the decline of old values cannot be regarded as causes of violence in their own right. Extreme belief systems, such as anti-Semitism, have existed for most of modern history, but only at certain times and in certain places have they been widely embraced and translated into violence.And as tempting as it is to blame tyrants such as Hitler, Stalin, and Mao for the century's bloodletting, to do so is to repeat the error on which Leo Tolstoy heaped so much scorn in War and Peace. Megalomaniacs may order men to invade Russia, but why do the men obey? Some historians have attempted to answer the novelist's question by indicting the modern nation-state. The nation-state does indeed possess unprecedented capabilities for mobilizing masses of people, but those means could just as easily be harnessed, and have been, to peaceful ends.Others seek the cause of conflict in the internal political arrangements of states. It has become fashionable among political scientists to posit a causal link between democracy and peace, extrapolating from the observation that democracies tend not to go to war with one another. The corollary, of course, is that dictatorships generally are more bellicose. By that logic, the rise of democracy during the twentieth century should have made the world more peaceful. Democratization may well have reduced the incidence of war between states. But waves of democratization in the 1920s, 1960s, and 1980s seem to have multiplied the number of civil wars. Some of those (such as the conflicts in Afghanistan, Burundi, China, Korea, Mexico, Mozambique, Nigeria, Russia, Rwanda, and Vietnam) were among the deadliest conflicts of the century. Horrendous numbers of fatalities were also caused by genocidal or "politicidal" campaigns waged against civilian populations, such as those carried out by the Young Turks against the Armenians and the Greeks during World War I, the Soviet government from the 1920s until the 1950s, and the Nazis between 1933 and 1945 -- to say nothing of those perpetrated by the communist tyrannies of Mao in China and Pol Pot in Cambodia. Indeed, such civil strife has been the most common form of conflict during the past 50 years. Of the 24 armed conflicts recorded as "ongoing" by the University of Maryland's Ted Robert Gurr and George Mason University's Monty Marshall in early 2005, nearly all were civil wars.

AFF Answers

FYI's About Aff

FYI- 702 procedures (read to understand 702 restriction)

Donohue 15 (Harvard Journal of Law and Public Policy 38.1 (Winter 2015): 117-265. Laura K, Professor of Law A.B., Dartmouth; M.A., University of Ulster, Northern Ireland; Ph.D., Cambridge University; J.D., Stanford, http://search.proquest.com.proxy.lib.umich.edu/pqrl/docview/1658465073/341393F9D9AC4223PQ/2?accountid=14667) // AW

FISA Section 702 empowers the Attorney General (AG) and the Director of National Intelligence (DNI) jointly to authorize, for up to one year, "the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information."64 Five limitations apply. Acquisition may not intentionally (a) target a person known to be located in the United States;65 (b) target an individual reasonably believed to be located outside the United States, if the actual purpose is to target an individual reasonably believed to be located in domestic bounds;66 (c) target a U.S. person reasonably believed to be outside domestic bounds;67 or (d) obtain wholly domestic communications.68 In addition, (e), all acquisition must be conducted consistent with the Fourth Amendment.69¶ Procedurally, five steps must be followed for acquisition to commence. First, the AG and DNI must adopt targeting and minimization procedures consistent with the statutory requirements.70 Second, the two officials must provide FISC with a written certification and any supporting affidavits, attesting that there are procedures in place reasonably designed to ensure that the acquisition is limited to targeting individuals outside of the United States and to prevent the intentional acquisition of domestic communications, and that the minimization procedures meet the requirements of the statute.71 They must guarantee that guidelines have been adopted to ensure compliance with the statutory limitations.72 They also must attest that "a significant purpose of the acquisition is to obtain foreign intelligence information."73 Third, the targeting and minimization procedures must be provided to the Congressional intelligence committees, as well as the Committees on the Judiciary of the Senate and the House of Representatives.74¶ FISC is limited in the role it can play with regard to reviewing the certification, as well as the targeting and minimization procedures. As long as the certification elements are present, the targeting procedures are reasonably designed to ensure that acquisition targets persons are reasonably believed to be outside the United States and do not knowingly intercept domestic communications, the minimization procedures are statutorily consistent, and the procedures are consistent with the Fourth Amendment, "the Court shall enter an order approving the certification and the use, or continued use ..." of an acquisition.75¶ The FAA created numerous reporting requirements. At least twice a year, the Attorney General and DNI must assess compliance with the targeting and minimization procedures and submit the assessments to FISC, House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI), and the House and Senate Committees on the Judiciary.76 The inspectors general of DOJ and the IC agency using Section 702 authorities are authorized to review compliance with the targeting and minimization procedures, and required to review (a) the number of intelligence reports containing U.S. persons' identities disseminated to other agencies; and (b) the number of targets later determined to be located in the United States.77 The IG reports are provided to the AG, the DNI, and the same Congressional committees receiving the AG and DNI targeting and minimization reports.78 In addition, the head of each IC agency obtaining information under Section 702 must annually review the programs to ascertain whether foreign information has been, or will be, obtained from the acquisition.79 The annual review must also consider the number of intelligence reports disseminated to other agencies containing references to U.S. persons, the number of targets later ascertained to be located within the United States, and a description of any procedures approved by the DNI relevant to the acquisition, the adequacy of the minimization procedures.80 This review must then be provided to FISC, the Attorney General, the DNI, the Congressional intelligence committees, and the Committees on the Judiciary of the House of Representatives and the Senate.81 Finally, every six months, the Attorney General must inform the intelligence and judiciary committees of any certifications submitted consistent with Section 702, the reasons for exercising the authority, any directives issued in conjunction with the acquisition, a description of the judicial review during the reporting period of the certifications as well as targeting and minimization procedures (including copies of orders or pleadings submitted in connection with such reviews that contain a significant legal interpretation of the law), any actions taken to challenge or enforce a directive issued, any compliance reviews, and a description of any incidents of noncompliance.

FYI- IC Procedures

Office of the Press Secretary (The White House, "Presidential Policy Directive -- Signals Intelligence Activities," January 17, 2014, https://www.whitehouse.gov/the-press-office/2014/01/17/presidential-policy-directive-signals-intelligence-activities) // AW

The IC has long recognized that effective oversight is necessary to ensure that we are protecting our national security in a manner consistent with our interests and values. Accordingly, the policies and procedures of IC elements, and departments and agencies containing IC elements, shall include appropriate measures to facilitate oversight over the implementation of safeguards protecting

personal information, to include periodic auditing against the standards required by this section.¶ The policies and procedures shall also recognize and facilitate the performance of oversight by the Inspectors General of IC elements, and departments and agencies containing IC elements, and other relevant oversight entities, as appropriate and consistent with their responsibilities. When a significant compliance issue occurs involving personal information of any person, regardless of nationality, collected as a result of signals intelligence activities, the issue shall, in addition to any existing reporting requirements, be reported promptly to the DNI, who shall determine what, if any, corrective actions are necessary. If the issue involves a non-United States person, the DNI, in consultation with the Secretary of State and the head of the notifying department or agency, shall determine whether steps should be taken to notify the relevant foreign government, consistent with the protection of sources and methods and of U.S. personnel.

Topicality

Domestic

Domestic refers to only internal affairs of a country

Wild 06 (SUSAN ELLIS WILD has been a practicing attorney since 1982, when she graduated with honors from George Washington University Law School. Webster's New World Law Dictionary p. 128 accessed 06/24/15)PA

Domestic adj. pertaining to the internal affairs of products of a country; relation to matters of the family.

Domestic is of your country

Merriam-webster (http://www.merriam-webster.com/dictionary/domestic)PA

domestic : of, relating to, or made in your own country : relating to or involving someone's home or family : relating to the work (such as cooking and cleaning) that is done in a person's home

Domestic relates to a home

BLACK, M. A. 1991 (HENRY CAMPBELL was the founder of Black's Law Dictionary, the definitive legal dictionary first published in 1891. He was also the editor of The Constitutional Review from 1917. BLACK'S LAW DICTIONARY 6th edition p.484 accessed 06/24/15) PA

Domestic, adj. Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, cre- ation, or transaction

Curtail

Empirically, "curtail" means a decrease in surveillance measures

United States v. United States District Court (No. 70-153) **1972** https://www.law.cornell.edu/supremecourt/text/407/297 LP

In that month Attorney General Tom Clark advised President Truman of the necessity of using wiretaps "in cases vitally affecting the domestic security." In May 1940 President Roosevelt had authorized Attorney General Jackson to utilize wiretapping in matters "involving the defense of the nation," but it is questionable whether this language was meant to apply to solely domestic subversion. The nature and extent of wiretapping apparently varied under different administrations and Attorneys General, but, except for the sharp **curtailment** under Attorney General Ramsey Clark in the latter years of the Johnson administration, electronic surveillance has been used both against organized crime and in domestic security cases at least since the 1946 memorandum from Clark to Truman.

Contextually, "curtail" means a decrease in surveillance

Healy 03 -- senior editor at the Cato Institute **(**Gene, "Beware of Total Information Awareness," 1/20/03, http://truthseek.info/pdf/bewareoftotalinformationawareness190820061008.pdf LP

The Army's domestic surveillance activities were substantially curtailed after the end of World War I. But throughout the 20th Century, in periods of domestic unrest and foreign conflict, army surveillance ratcheted up again, most notably in the 1960s.

Curtail is to limit

Merriam-webster (http://www.merriam-webster.com/dictionary/curtail)PA

Curtail : to reduce or limit (something)

Curtail is to cut short

Dictionary.com (http://dictionary.reference.com/browse/curtail)PA

verb (used with object) to cut short; cut off a part of; abridge; reduce; diminish.

Curtail is to cut off

BLACK, M. A. 1991 (HENRY CAMPBELL was the founder of Black's Law Dictionary, the definitive legal dictionary first published in 1891. He was also the editor of The Constitutional Review from 1917. BLACK'S LAW DICTIONARY 6th edition p.383 accessed 06/24/15) PA

Curtail. To cut off the end or any part of; hence to shorten, abridge, diminish, lessen, or reduce; and term has no such meaning as abolish. State v. Edwards, 207 La. 506, 21 So.2d 624, 625.

Empirically, "curtail" means to regulate

Friman and **Andreas '99** (H. Richard Friman - associate professor of political science at Marquette University. Peter Andreas - academy scholar at the Weatherhead Center for International Affairs, Harvard University. The Illicit Global Economy and State Power. Google Books p. 76)

Indeed, the link between decisions to liberalize capital controls and regulatory initiatives to curtail illicit transactions in the new liberal environment has often been very close. In the European Community, for example, initiatives to curtail tax evasion and money laundering began to be pursued at the very same time that member countries had agreed to abolish capital controls.

702 doesn't authorize domestic surveillance

Clapper and Holder '12. (James Clapper and Eric Holder, DNI and AG. 2/8/2012. A letter too Speaker Boehner and Leaders Reid, Pelosi, and McConnell. http://www.justice.gov/sites/default/files/ola/legacy/2012/11/08/02-08-12-fisa-reauthorization.pdf)//LP

One provision. section 702, authorizes surveillance directed at non-U.S. persons located overseas who are of foreign intelligence importance. At the same time, it provides a comprehensive regime of oversight by all three branches of Government to protect the privacy and civil liberties of U.S . persons. Under section 702, the Attorney General and the Director of National Intelligence may authorize annually, with the approval of the Foreign Intelligence Surveillance Court (FISC), intelligence collection targeting categories of non-U.S. persons abroad, without the need for a court order for each individual target. Within this framework, no acquisition may intentionally target a U.S. person. here or abroad. or any other person known to be in the United States. The law requires special procedures designed to ensure that all such acquisitions target only non-U.S. persons outside the United States_ and to protect the privacy of U.S. persons whose nonpublic information may be incidentally acquired. The Department of Justice and the Office of the Director of National Intelligence conduct extensive oversight reviews of

section 702 activities at least once every sixty days, and Title VII requires us to report to the Congress on implementation and compliance twice a year.

A2: Legitimacy K

Reputation matters – its embedded in crisis analysis

Yarhi-Milo '2010. Assistant professor of politics and Internet affairs. (Keren, "Revisiting Reputation: How Past Actions Matter in International Politics," August. Princeton. http://www.polisci.upenn.edu/~weisiger/reputation.pdf)//TS

Does reputation for resolve matter? Our findings provide strong evidence that it does. **While studies by reputation critics are correct to argue that realist variables like power and interests play an important role in states' behavior during crises, past actions do have significant consequences. Countries that have backed down are substantially more likely to face subsequent challenges.** We argue that the **discrepancy between our results and those** advanced **by reputation critics may stem from their focus on crisis decision-making, where information gleaned from past action will already have been incorporated into broader estimates of interests and** hence **is less likely to be referenced directly**, as well as from their failure to recognize that reputation acts through estimates of an opponent's interests. At the same time, our results do not provide unequivocal support in favor of the strong version of reputation associated with Thomas Schelling. Rather, we observe that the effects of past actions remain, but are weaker, when the subsequent interaction less closely resembles the dispute in which the country in question earned its reputation. Thus, we find that past actions have a less substantive effect on the probability of a new dispute when the inferences are drawn by observers who were not involved in the previous dispute. Further, we find that lessons from territorial disputes are much more strongly associated with subsequent territorial challenges than are lessons from non-territorial disputes. At the same time, however, we find that reputation for resolve is not leader-specific, indicating that leader turnover in a country with a bad reputation should not significantly lower the 29 probability that such a country will be challenged again. Important questions about reputation remain. We find that reputation for resolve exists and is fairly general, but that leaves unanswered questions about the generality of reputation for other traits like honesty and reliability. Separately, while we find little change in reputation after leadership turnover, further research would be needed to definitively establish the degree to which reputations affix to leaders or to states. It is not implausible that both the generality of reputation and the degree to which inferences are drawn about specific leaders or about states in general would vary by regime type or over time. **Our results confirm what leaders already intuitively suspect: reputation for resolve is worth having in international politics**. While we certainly do not mean to imply that backing down is always the wrong thing to do, leaders who contemplate doing so should be aware of the associated costs.

Legitimacy is real – evaluations of credibility are factored into self-interests

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The **explanations and evidence that reputation critics provide have serious limitations**.6 Press argues that power and interest are more important than reputation for resolve. Yet **past actions matter in formal models of reputation by affecting** uninformed **players' estimates of opponents' interests** (Alt, Calvert, and Humes 1988, Nalebuff 1991**). A country that backs down in a crisis is deemed to have a relatively low valuation for the political issue at stake** or a relatively high subjective cost of fighting. To the extent that lessons about an actor's resolve from one crisis carry over to another, then, they do so in the form of statements about that actor's interests. Once this lesson is learned, however, there is no guarantee that leaders will refer back to the prior incident that led them to conclude that their opponent was resolved, instead merely observing that it has high interests in the political stake. In short, **juxtaposing reputation to a realist power and interests story is inappropriate if estimates of interests depend in part on past actions**. Press (2005, 21) briefly acknowledges this possibility, observing that a

situation in which "**a decision maker uses an adversary's history of keeping commitments to assess** the adversary's interests or military power, and hence **credibility**," would be evidence that reputations matter. In practice, however, his empirical work focuses on whether or not leaders justify predictions about adversary behavior based on actions in past crises, while paying much less attention to the indirect route identified here in which **past actions affect beliefs about interests**, which in turn affect predictions about future behavior. Game theoretic models of reputation formation indicate, however, that **this indirect path in fact should be the primary route by which past actions should influence current behavior, and hence by which reputations should operate.**

Legitimacy's created through reviewing past actions – deterrence proves countries that information to determine reactions

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Moreover, there is the problem, noted most prominently by Fearon (1994, 2002), that within crises leaders are likely to focus primarily on new information, such as that gleaned from crisis negotiations or military mobilization, rather than the information that was available prior to the crisis. **Past actions are** by definition **observable prior to a specific crisis**. As such, **we should expect their influence on opponents' perceptions to be most readily visible prior to the crisis as well**.7 **In the context of a significant crisis, leaders certainly debate the level of an opponent's resolve** (i.e. interests), taking into account all the available information. By the time that they do so, however, **information gleaned from past actions – reputation** – **will have been folded into the general assessment of interests,** alongside other pertinent sources of information such as what has been learned from the opponent's crisis behavior in the current crisis. **Thus, while** it would not be inconsistent with **our** argument for **leaders** to **reference past action** in the context of an ongoing crisis, **it would not be surprising if such references did not appear**. **The place to look for the effect of past actions on future expectations is at the level of general deterrence.**

Good reputation reduces conflict risks --- loss of reputation reduces negotiating power

Yarhi-Milo '2010. Assistant professor of politics and Internet affairs. (Keren, "Revisiting Reputation: How Past Actions Matter in International Politics," August. Princeton. http://www.polisci.upenn.edu/~weisiger/reputation.pdf)//TS

What then are the implications of these arguments for international politics? The clearest prediction concerns general deterrence: **countries that have earned a bad reputation will be more likely to be challenged, while those who have earned a good reputation will be less likely to face challenges.** More precisely, a **bad reputation leads observers to believe that they can convince the country in question to make more significant political concessions than they otherwise would have been willing to make.** This inference has two effects: countries that would have initiated a crisis anyway now ask for more than they otherwise would have, and countries that would not have initiated a dispute now believe that it is worthwhile to do so. **A similar relationship applies in reverse for countries with a good reputation**, **who are less attractive targets**, **meaning that some who would have started a dispute anyway demand less from them**, **while others who would have made a demand now opt not to do so**. While statistically testing predictions about the size of demands (especially relative to an unobservable counterfactual in which the target had behaved differently in the past) is not possible, predictions about the frequency of challenges are more straightforward to examine.

PRISM Michigan 7

Case answers

Internet freedom answers

AT: NSA overreach

Obama policy statement minimizes data abuse risks and is binding US policy

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

Edward Snowden's disclosures have thus far centered on two NSA programs. One is domestic - the so-called metadata program, operated pursuant to section 215 of the USA PATRIOT Act, n13 and entailing the bulk collection of call record information, including phone numbers and times of calls. n14 The other is foreign - the PRISM program, operated pursuant to section 702 of the Foreign Intelligence Surveillance Act (FISA). n15 Under section 702, the government may conduct surveillance targeting the contents of communications of non-U.S. persons reasonably believed to be located abroad when the surveillance will result in acquiring foreign intelligence information. n16 The FISC must approve any government request for surveillance under section 702, although these requests can [*2141] describe broad types of communications without identifying particular individuals. n17

Under section 702, "foreign intelligence information" that the government may acquire includes a number of grounds related to national security, such as information relating to an "actual or potential attack" or "other grave hostile acts of a foreign power or an agent of a foreign power." n18 It also includes information relating to possible sabotage n19 and clandestine foreign "intelligence activities." n20 Another prong of the definition appears to sweep more broadly, including information relating to "the conduct of the foreign affairs of the United States." n21 Despite the greater breadth of this provision, President Obama informed a domestic and global audience that U.S. intelligence agencies seek a narrow range of information centering on the national security and foreign intelligence concerns described above. n22 While the U.S. intelligence agencies acquire a substantial amount of data that does not fit under these rubrics, the president's speech confirmed that U.S. analysts do not rummage through such data randomly or for invidious purposes. n23 A scatter-shot approach of this kind would be unethical, illegal, and ineffective. Instead, NSA officials query communications using specific "identifiers" such as phone numbers and email addresses that officials reasonably believe are used by non-U.S.

persons abroad to communicate foreign intelligence information. n24 The government must also have in place minimization procedures to limit the acquisition, retention, and dissemination of nonpublic information about U.S. persons. n25 The NSA deletes all irrelevant content, including content from non-U.S. persons, after five years. n26

In acknowledging the "legitimate privacy interests" of both U.S. and non-U.S. persons, President Obama affirmed the U.S. commitment to core principles in January 2014. n27 First, he narrowed the operating definition of [*2142] foreign intelligence information, limiting it to "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists." n28 In addition, he asserted that the NSA would engage in bulk collection of communications for purposes of "detecting and countering" terrorism, espionage, nuclear proliferation, threats to U.S. forces, and financial crimes, including evasion of duly enacted sanctions. n29 Addressing anticipated concerns that these limits still left the NSA with too much discretion, President Obama declared what the United States would not do. First, it would not collect communications content "for the purpose of suppressing or burdening criticism or dissent, or for disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion." n30 Second, it would disseminate and store information regarding any person based on criteria in section 2.3 of Executive Order 12,333 n31: cases involving "foreign intelligence or counterintelligence," public safety, or ascertainment of a potential intelligence source's credibility. n32

Of course, President Obama's speech did not quell the complaints of NSA critics. One could argue that even the description the president provided has legal flaws under domestic and/or international law. One can also argue that the president's policy directive, statutory provisions, and case law cannot wholly eliminate the possibility of systemic or individual abuse of NSA authority. That said, there are compelling reasons for treating the president's speech and directive as an **authoritative and binding** statement of U.S. policy. The most compelling reason may be the simplest: no American president has ever been so forthright on the subject of intelligence collection, and few heads of state around the globe have ventured down the path that President Obama chose. n33 That alone counsels treating President Obama's guidance as more than "cheap talk."

Existing oversight checks NSA overreach

Cordero, 14 - Carrie F. Cordero is the Director of National Security Studies at Georgetown University Law Center ("Fear vs. Facts: Exploring the Rules the NSA Operates Under" 6/13, http://www.cato-unbound.org/2014/06/13/carrie-f-cordero/fear-vs-facts-exploring-rules-nsa-operates-under

There is no doubt the Snowden disclosures have launched a debate that raises significant issues regarding the extent of U.S. government national security surveillance authorities and activities. And Julian Sanchez's essay Snowden: Year One raises a number of these issues, including whether the surveillance is too broad, with too few limits and too little oversight. But an overarching theme of Sanchez's essay is fear – and fear of what might be overshadows what actually is, or is even likely. Indeed, he suggests that by just "tweaking a few lines of code" the

NSA's significant capabilities could be misdirected from targeting valid counterterrorism suspects to Americans involved in the Tea Party or Occupy movements.

So really, what would it take to turn NSA's capabilities inward, to the dark corner of monitoring political activity and dissent? It turns out, quite a lot. So much, in fact, that after a considered review of the checks and balances in place, it may turn out to be not worth fearing much at all.

First, a little history. Prior to 1978, NSA conducted surveillance activities for foreign intelligence purposes under Executive authority alone. In 1978, Congress passed the Foreign Intelligence Surveillance Act (FISA), which distinguished between surveillance that occurred here at home and that which occurred overseas. FISA requires that when electronic surveillance is conducted inside the United States, the government seek an order from the Foreign Intelligence Surveillance Court (FISC or the Court) based on probable cause. So, if the government wants to conduct surveillance targeting a foreign agent or foreign power here in the United States, it must obtain FISC approval to do so. By law, the Court may not issue an order targeting an American based solely on activities protected by the First Amendment to the Constitution. The Attorney General is required to report on the full range of activities that take place under FISA to four congressional committees: both the intelligence and judiciary committees in Congress. The law requires that the committees be "fully informed" twice each year.

There have been a number of amendments to FISA over the years. In 1994, the statute was amended to require that physical searches for national security purposes conducted inside the United States also happen by an order from the FISC. The USA-PATRIOT Act of 2001 amended several provisions of FISA, one of which enabled better sharing of information between terrorism and criminal investigators. And in 2008, FISA was amended to provide a statutory framework for certain approvals by the Attorney General, Director of National Intelligence, and FISC regarding the targeting of non-U.S. persons reasonably believed to be outside the United States for foreign intelligence purposes, when the cooperation of a U.S. communications service provider is needed.

So how do we know that this system of approvals is followed? Is the oversight over NSA's activities meaningful, or "decorative," as Sanchez suggests?

It is worth exploring. Here is how oversight of the Section 702 surveillance works, as one example, since it has been the subject of a significant part of the debate of the past year. Section 702 was added to FISA by the FISA Amendments Act of 2008. It authorizes the NSA to acquire the communications, for foreign intelligence purposes, of non-U.S. persons reasonably believed to be outside the United States. These are persons with no Constitutional protections, and yet, because the acquisition requires the assistance of a U.S. electronic communications provider, there is an extensive approval and oversight process. There is a statutory framework. Specifically, the Attorney General and Director of National Intelligence jointly approve certifications. According to declassified documents, the certifications are topical, meaning, the way the statute is being implemented, the certifications are not so specific that they identify individual targets; but they are not so broad that they cover any and everything that might be foreign intelligence information. The certifications are filed with the FISC, along with targeting and minimization procedures. Targeting procedures are the rules by which NSA selects valid foreign intelligence targets for collection. Minimization procedures are rules by which NSA handles information concerning U.S. persons. The FISC has to approve these procedures. If it does not approve them, the government has to fix them. The Court reviews these procedures and processes annually. The Court can request a hearing with government witnesses (like senior intelligence officials, even the

NSA Director, if the judge wanted or needed to hear from him personally) or additional information in order to aid in its decisionmaking process. Information about the 702 certifications is reported to the Congressional intelligence committees.

Once the certifications are in effect, attorneys from the Department of Justice's (DOJ) National Security Division and attorneys and civil liberties officials from the Office of the Director of National Intelligence (ODNI) review the NSA's targeting decisions and compliance with the rules. They conduct reviews at least every 90 days. During that 90-day period, oversight personnel are in contact with NSA operational and compliance personnel. Compliance incidents can be discovered in one of at least two ways: the NSA can self-report them, which it does; or the DOJ and ODNI oversight personnel may discover them on their own. Sometimes the NSA does not report a compliance incident in the required timeframe. Then the time lag in reporting may become an additional compliance incident. The DOJ and ODNI compliance teams write up semi-annual reports describing the results of their reviews. The reports are approved by the Attorney General and Director of National Intelligence and provided to the FISC and to Congress. According to the one report that has been declassified so far, in August 2013, for a six-month period in 2012, the rate of error for the NSA's compliance under Section 702 collection was .49% - less than half of one percent. If we subtract the compliance incidents that were actually delays in reporting, then the noncompliance rate falls to between .15-.25% - **less than one quarter of one percent**. Hardly an agency run amok.

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Squo Congressional oversight prevents abuse and oversight reform is better than scaling back

Cordero, 14 - Carrie F. Cordero is the Director of National Security Studies at Georgetown University Law Center ("Fear vs. Facts: Exploring the Rules the NSA Operates Under" 6/13, http://www.cato-unbound.org/2014/06/13/carrie-f-cordero/fear-vs-facts-exploring-rules-nsa-operates-under

Generally, however, Congressional committees charged with oversight of the Intelligence Community do their job. The Intelligence Committees of Congress have professional staff, often with deep experience in national security matters. The Committees conduct substantive hearings, although, due to the sensitive and operational nature of the topics discussed, often in classified session. Congressional staff also receive briefings. During the debate surrounding the passage of the FISA Amendments Act of 2008, many members of Congress and their staffs visited the NSA and received dozens of briefings regarding its details and subsequent implementation.

Decorative? Returning to the question implicitly posed by Sanchez's argument: what would it take to turn this system inside out? Most likely, it would take either a conspiracy of the highest order, or the complete incompetence of everyone involved in the process – from operators to leadership inside the Intelligence Community, from lawyers to senior officials at the Justice Department, from legal advisors to judges of the FISC, from staff to members of Congress.

Here's what happens in the real world: people make mistakes; technological implementation goes awry; bureaucracy gets in the way of getting down to the bottom line. The adequacy and rigor of

Congressional oversight waxes and wanes based, at times, on the quality of the leadership of the various committees at any time. Government employees also sometimes do the wrong thing, such as the twelve cases in ten years that the NSA has explained to Congress, and then they are held accountable. Oversight and compliance systems sometimes fail, too, such as the delay in recognizing the problems in the technical implementation of the phone metadata program that was subsequently brought to the Court's attention. These are all valid reasons to work on improving auditing, compliance, oversight and accountability mechanisms. They are not valid reasons for adopting reforms that would dramatically scale back important national security capabilities that keep the nation safe.

The NSA already implemented technical reforms to PRISM that prevent overreach

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

The second program--known as PRISM or section 702--uses court orders issued under section 702 of FISA n18 to collect the content of certain international communications. In particular, the NSA targets specific non-Americans who are reasonably believed to be located outside the country, and also engages in bulk collection of some foreign-to-foreign communications that happen to be passing through telecommunications infrastructure in the United States. n19 The FISA [*527] court does not approve individual surveillance applications each time the NSA wishes to intercept these communications; instead, it issues once-a-year blanket authorizations. n20 As detailed below, in 2011 the FISA court struck down the program on constitutional and statutory grounds after the government disclosed that it was inadvertently intercepting a significant number of communications involving Americans; n21 the court later upheld the program when the NSA devised a technical solution that prevented such over-collection. n22

Zero incentive exists to expand PRISM – practicality prevents abuse

Lempert, 13 - Richard O. Lempert is a Visiting Fellow in Governance Studies at the Brookings Foundation and the University of Michigan's Eric Stein Distinguished University Professor of Law and Sociology emeritus ("PRISM and Boundless Informant: Is NSA Surveillance a Threat?" 6/13, http://www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert

The protection most of us enjoy under PRISM may be more practical than legal. The amount of data that can be collected limits the reach of the program. Not only is capturing too much information from innocent Americans a waste of resources, but also suspicious communications can be lost in a forest of irrelevant data. The NSA thus has powerful reasons to limit impermissible observations, at least where there is no good reason to suspect Americans of terrorist involvements. Still we lack two bits of information important in assessing this program. One is the fate of information pertaining to Americans who should not have been observed in the first place. If this information is purged from all databases except perhaps when the person is

dangerous, erroneous capture is less of a concern than it otherwise would be. Second, we don't know how monitoring targets are determined or the number of targets selected. To the extent that individuals, organizations and sites are targeted based on target-specific concerns about the threats they pose, the net cast is likely to be narrow, and even if the reasons for targeting do not rise to the level of legally cognizable probable cause, they tend in this direction. But if targets are selected based on the impersonal outputs of other data mining efforts like the telephone records that feed Boundless Informant, all bets are off. Depending on the algorithms used and the degree to which they have been empirically validated, the net could be wide or narrow, and the likelihood that a target would be involved in terrorism or that citizens would be swept into the net may be great or small. Congress in overseeing PRISM should demand this information if it is not already provided.

It is easy to be cynical about government and the respect that agencies show for the laws under which they operate. Cynicism is fed by occasional scandals and by the more frequent pseudo-scandals which make it appear that within the Beltway things are out of control. Having spent four years as a Division Director at the National Science Foundation and three years as Chief Scientist in the Human Factors/ Behavioral Science Division of DHS's Science and Technology Directorate, I am not cynical. Time and again I have seen government employees seek to follow the law even when it seems silly and interferes with their mission. When I joined DHS I was most surprised by the fierceness of efforts to comply with the U.S. Privacy Act. At times interpretations of what the Act protected were so broad as to border on the ridiculous, and costs were real: research projects with national security implications were delayed, redesigned or even precluded because privacy officers, sometimes with little basis in the statute, felt there was a risk that personally identifiable information (PII) would be impermissibly collected. The absence of any reason to fear revelation or misuse made no difference. The strict scrutiny applied to research that might involve PII is, to be sure, relaxed in front line operational settings like PRISM and legal restrictions may differ, but my experience in two agencies as well as conversations with people in the intelligence community (IC) lead me to believe that it is a mistake to regard as a sham the legal restrictions on PRISM or other IC data mining and surveillance activities.

Through its PRISM and Boundless Informant efforts, NSA is working to protect the nation, apparently with some success. The 99.9% of us who pose no threat of terrorism and do not inadvertently consort with possible terrorists should not worry that the government will track our phone or internet exchanges or that our privacy will be otherwise infringed.

Economy answers

AT: Cloud computing

NSA surveillance doesn't undermine cloud computing

Henderson, 4/9/15 (Nicole, "Impact of NSA Surveillance on US Cloud Providers Not as Bad as We Thought: Forrester" 4/9, http://www.thewhir.com/web-hosting-news/impact-nsa-surveillance-us-cloud-providers-not-bad-thought-forrester

It's been two years since Edward Snowden leaked details of the NSA's PRISM surveillance program, and although analysts predicted an exodus from US-based cloud and hosting services in response to the revelations, it hasn't exactly worked out that way, a new report finds.

Forrester released a new report last week that suggests concerns around international customers severing ties with US-based hosting and cloud companies "were overblown."

"Lost revenue from spending on cloud services and platforms comes to just over $500 million between 2014 and 2016. While significant, these impacts are far less than speculated, as more companies reported taking control of security and encryption instead of walking away from US providers," Forrester's principal analyst serving security and risk professionals Edward Ferrara said in a blog post.

Snowden recently told a crowd of cloud and hosting providers that use of encryption is growing, and encrypted traffic has doubled since 2013.

In 2013, Forrester predicted that US cloud providers cloud lose up to $180 billion in business by 2016 due to concerns around the scope of NSA's PRISM program.

According to NextGov, Forrester finds that 26 percent of enterprises based in Asia Pacific, Canada, Europe and Latin America have stopped or reduced their spending with US-based firms for Internet-based services. Thirty-four percent said these concerns were related to fears of US surveillance, while others said they want to support businesses in their own country, or data sovereignty rules prevent them from storing data abroad.

Forrester surveyed more than 3,000 businesses between June and July 2014.

More than half of respondents said that they did not trust US-based outsourcers to handle sensitive information, with only 8 percent reporting to trust their company's intellectual property with a US-based outsourced company.

Ninety-percent of decision-makers have taken steps to encrypt their data, according to the report.

No significant impact on cloud computing

Weise, 4/7/15 (Elizabeth, "PRISM revelations didn't hit U.S. cloud computing as hard as expected" 4/7, http://americasmarkets.usatoday.com/2015/04/07/prism-revelations-didnt-hit-u-s-cloud-computing-as-hard-as-expected/

When Edward Snowden revealed the extent of the U.S. National Security Agency's PRISM spying program, there were concerns that American cloud, hosting and outsourcing businesses would lose customers running to non-U.S.-based companies safe from NSA's prying eyes.

"The assertion was that this would be a death blow to U.S. firms trying to operating in Europe and Asia," said Forrester Research analyst Ed Ferrara.

But two recent reports from Forrester find it was less catastrophic than expected.

That's good news for companies like Box (BOX), DropBox and others that make their money by selling U.S.-based data storage.

Forrester had originally predicted U.S. companies could lose as much as $180 billion in sales.

Instead, just 29% of technology decision-makers in Asia, Canada, Europe and Latin America halted or reduced spending with U.S.-based firms offering Internet-based services due to the PRISM scandal, Forrester's Business Technographics Global Infrastructure Survey for 2014 found

"It's a relatively small amount of data," Ferrara said.

That's because most of the companies didn't need to move all their data, much of which was stored in-house. Instead, only 33% of the data held by that 29% of companies was at a third-party data center or in a cloud system.

Forrester believes the overall loss to U.S. cloud providers for 2015 will be about $15 billion and in 2016, $12 billion, a far cry from projections that were ten times that a year ago.

Forrester also found that companies are looking at other ways to protect the integrity of their data, not just from the NSA but also from surveillance by other nations.

Chief among them was encryption. Eighty-four percent of the companies said they're using various encryption methods to protect sensitive material.

The survey's definition of cloud providers is broad, and includes both platform as a service, infrastructure as a service and software as a service companies, said Ferrara.

Solvency answers

Solvency 1nc

Modeling is empirically false

Edgar, 4/13/15 - visiting fellow at the Institute and adjunct professor of law at the Georgetown University Law Center (Timothy, "The Good News About Spying"

https://www.foreignaffairs.com/articles/united-states/2015-04-13/good-news-about-spying

Despite high hopes for a fresh start on civil liberties, during his first term in office, Obama ratified and even expanded the surveillance programs that began under former President George

W. Bush. After NSA contractor Edward Snowden began revealing the agency's spying programs to The Guardian in 2013, however, Obama responded with a clear change of direction. Without great fanfare, his administration has made changes that open up the practices of the United States intelligence community and protect privacy in the United States and beyond. The last year and a half has been the **most significant period of reform** for national security surveillance since Senator Frank Church led the charge against domestic spying in the late 1970s.

In 2013, at Obama's direction, the Office of the Director of National Intelligence (ODNI) established a website for the intelligence community, IC on the Record, where previously secret documents are posted for all to see. These are not decades-old files about Cold War spying, but recent slides used at recent NSA training sessions, accounts of illegal wiretapping after the 9/11 attacks, and what had been highly classified opinions issued by the Foreign Intelligence Surveillance Court about ongoing surveillance programs.

Although many assume that all public knowledge of NSA spying programs came from Snowden's leaks, many of the revelations in fact came from IC on the Record, including mistakes that led to the unconstitutional collection of U.S. citizens' emails. Documents released though this portal total more than 4,500 pages—surpassing even the 3,710 pages collected and leaked by Snowden. The Obama administration has instituted other mechanisms, such as an annual surveillance transparency report, that will continue to provide fodder for journalists, privacy activists, and researchers.

The transparency reforms may seem trivial to some. From the perspective of an intelligence community steeped in the need to protect sources and methods, however, they are deeply unsettling. At a Brown University forum, ODNI Civil Liberties Protection Officer Alexander Joel said, "The intelligence community is not designed and built for transparency. Our culture is around finding our adversaries' secrets and keeping our own secrets secret." Accordingly, until only a few years ago, the intelligence community resisted making even the most basic information public. The number of FISA court opinions released to the public between 1978 and 2013 can be counted on one hand.

Beyond more transparency, Obama has also changed the rules for surveillance of foreigners. Until last year, privacy rules applied only to "U.S. persons." But in January 2014, Obama issued Presidential Policy Directive 28 (PPD-28), ordering intelligence agencies to write detailed rules assuring that privacy protections would apply regardless of nationality. These rules, which came out in January 2015, mark the first set of guidelines for intelligence agencies ordered by a U.S. president—or **any world leader**—that explicitly protect foreign citizens' personal information in the course of intelligence operations. Under the directive, the NSA can keep personal information in its databases for no more than five years. It must delete personal information from the intelligence reports it provides its customers unless that person's identity is necessary to understand foreign intelligence—a basic rule once reserved only for Americans.

The new rules also include restrictions on bulk collection of signals intelligence worldwide—the practice critics call "mass surveillance." The NSA's bulk collection programs may no longer be used for uncovering all types of diplomatic secrets, but will now be limited to six specific categories of serious national security threats. Finally, agencies are no longer allowed simply to "collect it all." Under PPD-28, the NSA and other agencies may collect signals intelligence only after weighing the benefits against the risks to privacy or civil liberties, and they must now consider the privacy of everyone, not just U.S. citizens. This is the first time any U.S. government

official will be able to cite a written presidential directive to object to an intelligence program on the basis that the intelligence it produces is not worth the costs to privacy of innocent foreign citizens.

THOSE IN GLASS HOUSES

Obama's reforms make great strides toward transparency and protecting civil liberties, but they have been **neither celebrated nor matched abroad**. When Chancellor Angela Merkel of Germany found out she had been the target of American eavesdropping, her reaction was swift. "This is not done," she said, as if scolding a naughty child. Many Germans cheered. They and other Europeans believe that their laws protect privacy better than U.S. laws. But that is only partly true: Although Europe has stronger regulations limiting what private companies (such as Google and Facebook) can do with personal data, citizens are granted comparatively little protection against surveillance by government agencies. European human rights law requires no court approval for intelligence surveillance of domestic targets, as U.S. law has since 1978. Similarly, European governments do not observe limits on electronic surveillance of non-citizens outside of their own territories, as the United States now does under Obama's presidential policy directive.

By blaming only the NSA for mass surveillance, the public and foreign leaders let other intelligence services off the hook. No wonder that some human rights organizations, including Privacy International and Big Brother Watch UK, have filed legal challenges against mass surveillance by the NSA's British counterpart, the Government Communications Headquarters (GCHQ). But foreign leaders have taken few steps to limit government surveillance, and none have done **anything remotely comparable** to what Obama did in last year's directive.

Circumvention inevitable

Redmond, 14 – J.D. Candidate, 2015, Fordham University School of Law (Valerie, "I Spy with My Not So Little Eye: A Comparison of Surveillance Law in the United States and New Zealand" FORDHAM INTERNATIONAL LAW JOURNAL [Vol. 37:733

In the United States, the current state of surveillance law is a product of FISA, its amendments, and its strictures. An evaluation of US surveillance law proves that inherent loopholes undercut FISA's protections, which allows the US Government to circumvent privacy protections.182 The main problems are the **insufficient definition of surveillance**, the ability to spy on agents of foreign powers, the lack of protection against third party surveillance, and the ability to collect incidental information.183

First, a significant loophole arises in the interpretation of the term "surveillance."184 In order for information collection to be regulated by FISA, it must fall under FISA's definition of surveillance.185 This definition does not apply to certain **National Security Letters**, which are secret authorizations for the Federal Bureau of Investigation ("FBI") to obtain records from telephone companies, credit agencies, and other organizations if they merely certify that the information is relevant to an international terrorism investigation.186 National Security Letters are regularly used to circumvent FISA's warrant procedures.187

Additionally, FISA's definition of surveillance is antiquated because it distinguishes between data acquired inside of the United States and outside of the United States.188 This distinction allows the NSA to process surveillance that is received from other countries irrespective of whether the target is a US citizen.189 Therefore, the NSA is unrestrained when a communication is not physically intercepted within the United States.190

Second, an issue arises when US citizens are construed to be agents of foreign powers under FISA because a warrant can be issued to engage in surveillance against them.191 According to FISA's procedures, the only way to spy on a US citizen is when they can be considered to be an agent of a foreign power, or engaged in information gathering, aiding, or abetting a foreign power.192 However, this limitation does not result in total privacy protection because it only requires probable cause that a person is an agent of a foreign power, not that a crime is being committed.193 The effect of this ability is that the US Government can conduct surveillance on a US citizen with no ties to terrorism such as a suburban mother telling her friend that her son "bombed" a school play.194

Furthermore, FISA is limited to protecting against surveillance by the US Government; it does not create a reasonable expectation of privacy for individuals from surveillance by a third party.195 This rule is exploited by the United States' participation in Echelon.196 Because US law generally does not regulate information sharing, the United States essentially violates the privacy rights of US citizens by accepting information from foreign intelligence agencies about potential threats involving US citizens.197 Thus, the lack of privacy rights when US citizens are spied on by agencies outside of the United States creates a loophole for spying on US citizens without the government restrictions created by existing law.198

Lastly, US law allows for the collection of incidental information.199 It is predicted that Echelon collects nearly all communications, many of which can be considered incidental.200 Therefore, the fact that FISA allows for the collection of incidental information suggests that privacy rights can be violated by its involvement in Echelon.201

The domestic-only limit wrecks solvency

Kehl, 14 – Policy Analyst at New America's Open Technology Institute (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity" July, https://www.newamerica.org/oti/surveillance-costs-the-nsas-impact-on-the-economy-internet-freedom-cybersecurity/

The U.S. government has already taken some limited steps to mitigate this damage and begin the slow, difficult process of rebuilding trust in the United States as a responsible steward of the Internet. But the reform efforts to date have been relatively narrow, focusing primarily on the surveillance programs' impact on the rights of **U.S. citizens**. Based on our findings, we recommend that the U.S. government take the following steps to address the broader concern that the NSA's programs are impacting our economy, our foreign relations, and our cybersecurity:

1. Strengthen privacy protections for both Americans **and non-Americans**, within the United States **and extraterritorially**.

2. Provide for increased transparency around government surveillance, both from the government and companies.

3. Recommit to the Internet Freedom agenda in a way that directly addresses issues raised by NSA surveillance, including moving toward **international human-rights based standards on surveillance**.

4. Begin the process of restoring trust in cryptography standards through the National Institute of Standards and Technology.

5. Ensure that the U.S. government does not undermine cybersecurity by inserting surveillance backdoors into hardware or software products.

6. Help to eliminate security vulnerabilities in software, rather than stockpile them.

7. Develop clear policies about whether, when, and under what legal standards it is permissible for the government to secretly install malware on a computer or in a network.

8. Separate the offensive and defensive functions of the NSA in order to minimize conflicts of interest.

It's a linear case turn – it expands perceptions of foreign abuse

Chandler and Le, 15 - * Director, California International Law Center, Professor of Law and Martin Luther King, Jr. Hall Research Scholar, University of California, Davis; A.B., Harvard College; J.D., Yale Law School AND **Free Speech and Technology Fellow, California International Law Center; A.B., Yale College; J.D., University of California, Davis School of Law (Anupam and Uyen, "DATA NATIONALISM" 64 Emory L.J. 677, lexis)

First, the United States, like many countries, **concentrates much of its surveillance efforts abroad.** Indeed, the Foreign Intelligence Surveillance Act is focused on gathering information overseas, limiting data gathering largely only when it implicates U.S. persons. n174 The recent NSA surveillance disclosures have revealed extensive foreign operations. n175 Indeed, **constraints on domestic operations** may well have **spurred the NSA to expand operations abroad**. As the Washington Post reports, "Intercepting communications overseas has clear advantages for the NSA, with looser restrictions and less oversight." n176 Deterred by a 2011 ruling by the Foreign Intelligence Surveillance Court barring certain broad **domestic surveillance** of Internet and telephone traffic, n177 the NSA may have increasingly turned its attention overseas.

Allied info sharing makes circumvention inevitable

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

With GCHQ in mind, it is worth noting an additional exception to both FISA and Executive Order 12,333: to the extent that it is not the United States engaged in the collection of information, but, rather, one of our allies, **rules that otherwise limit the U.S. intelligence community may not apply.** From the language of the order, it appears that the United States may receive or benefit from other countries' collection of information on U.S. citizens, where it does not actively participate in the collection or specifically request other countries to carry out the collection at its behest. n142 In turn, the United States can provide information about foreign citizens to their governments that their intelligence agencies, under their domestic laws, might otherwise be unable to collect. To the extent that the programs underway are extended to the closely allied "Five Eyes" (Australia, Canada, the United Kingdom, the United States, and New Zealand), structural demarcations **offer a way around the legal restrictions** otherwise enacted to protect citizen rights in each region.

Government acquisition of third party data inevitable – surveillance is only one of many tools

Turner, 15 - Brad Turner is a graduate of Duke Law School and a practicing attorney in Ohio. ("When Big Data Meets Big Brother: Why Courts Should Apply United States v. Jones to Protect People's Data" 16 N.C. J.L. & Tech. 377, January, lexis)

The government can obtain second-hand data from private parties in a variety of ways. First, the government can simply ask for it. According to Google, nearly 1% of requests for its user data from law enforcement are emergency requests. n185 A bill that has been proposed in Congress, called the Cyber Intelligence Sharing and Protection Act ("CISPA"), might dramatically increase this percentage. CISPA would make it legal for the government to ask companies for data about their customers and then protect those companies from lawsuits related to the handing over of that data, "notwithstanding any other provision of law." n186

Second, the government can demand the data with a subpoena. A subpoena need not be reviewed or pre-approved by a court to be valid and enforceable. n187 Google says that 68% of its data requests from the government are in the form of a subpoena. n188 Subpoenas can request any information or documents that are at all relevant to an investigation. Relevance is defined very broadly and includes any information or documents that "might have the potential to lead to relevant information." n189 So long as a subpoena meets this very lenient standard, a court will deem the subpoena valid to the extent that the subpoena's demands are not overbroad or unduly burdensome. n190

Third, the government can demand the information with a court order, which, by definition, does require prior approval by a [*411] court. n191 Google says that 22% of its requests for data by the government are from warrants, and another 6% are from court orders. n192 The NSA collects much of its data by using secret FISA court orders, collecting huge sums of data from U.S. telephone companies, including AT&T, Verizon, and Sprint, and Internet service-providers like Facebook, Apple, Google, Microsoft, Yahoo, and AOL. n193 Statutes regulate these data-collection efforts. n194

Fourth, the government can purchase the information. Big Data is valuable and companies are willing to sell. n195 For the right price, [*412] government can access the same rich data-troves held by private organizations. For example, the federal government recently started buying access

to a private database maintained by the credit bureau Equifax, called "The Work Numbers." n196 The database contains 54 million active salary and employment records and more than 175 million historical records from approximately 2,500 U.S. employers. n197 Equifax also sells this same data to credit card issuers, property managers, and auto lenders. n198

Finally, the government can intercept the data using wiretaps, bugs, and Trojan horses among many other available tools. The NSA collects much of its data by tapping directly into telecommunications cables, both domestically and abroad. n199 These cables are owned by private-sector telecommunications companies, not the U.S. Government. n200 According to top-secret records provided by Edward Snowden, every day the NSA "Acquisitions Directorate" collects millions of records from Yahoo and Google this way. n201 Apparently, "from undisclosed interception points, the NSA ... copies entire data flows across fiber-optic cables that carry information among the data centers of the Silicon Valley giants." n202 In just one month, the NSA had collected nearly 200 million new records, which included metadata and the content of text, audio, and video. n203 In a classic case of the pot calling the kettle black, a representative from Google blasted these activities, [*413] saying, "We are outraged at the lengths to which the government seems to have gone to intercept data from our private fiber networks ... ." n204 A spokesperson for Yahoo remained more reserved, saying, "We have strict controls in place to protect the security of our data centers, and we have not given access to our data centers to the NSA or to any other government agency." n205 Google has since encrypted its dataflows between its data centers in an effort to secure its customers' data from the NSA's prying eyes. n206

Section 702 limit doesn't resolve perception problems – the fundamental issue is fear of PRISM

Granick, 13 – civil liberties director for the Center for Internet and Society at Stanford Law School (Jennifer, "REFORMING FISA: A CRITICAL LOOK AT THE WYDEN/UDALL PROPOSAL AND FOREIGN SURVEILLANCE" 9/30, http://cyberlaw.stanford.edu/publications/reforming-fisa-critical-look-wydenudall-proposal-and-foreign-surveillance

Rather than focus on section 215, I want to focus in this post on the bill's proposed reforms to section 702 of the FISA Amendments Act, or FAA. This is the provision underlying the PRISM program—and its use to obtain the content of phone calls and Internet messages, which Glenn Greenwald revealed based on Edward Snowden's documentation. There's been less discussion of the problems with section 702 than of those with section 215, even as we've learned some worrisome things about the way the NSA uses this legal authority. The new bill would address some, but by no means all, of these problems. In my opinion, it needs to be broader.

I. Bacgkround

First, some legal and technological background is in order. Traditional FISA required the government to show probable cause that the target of the underlying foreign intelligence surveillance was an agent of a foreign power and would use the facilities at which the government planned to direct surveillance before conducting electronic surveillance. This probable cause requirement had the practical effect of limiting surveillance to communications to or from individuals who are reasonably believed to be working for another government or a terrorist group.

In addition to the expansions created in 2001 by the USA PATRIOT Act (including section 215), section 702 of the FAA created a new source of authority for conducting warrantless electronic surveillance. If the Attorney General and the Director of National Intelligence certify that the purpose of the monitoring is to collect foreign intelligence information about any non-American individual or entity not known to be in the United States, the Foreign Intelligence Surveillance Court (FISC) can require companies to provide access to Americans' international communications. The court does not approve the target or the facilities to be monitored, nor does it assess whether the government is doing enough to minimize the intrusion, correct for collection mistakes, and protect privacy. Once the court approves the certification, the government can issue top-secret directives to Internet companies like Google and Facebook to turn over calls, e-mails, video and voice chats, photos, voice-over IP calls (like Skype), and social networking information.

Enter, PRISM. PRISM surveillance is technologically complicated, involving both the aforementioned directives demanding that companies turn over the contents of user Internet messages, as well as upstream surveillance conducted directly on the fiber optic cables carrying telecommunications and Internet traffic. Pulling the right stuff off the cables as it travels is a technological challenge. Reports suggest that one way the NSA has accomplished this surveillance is via the XKeyScore tool, which appears to copy and temporarily store almost everything that flows over the network, filter that traffic based on various selection criteria, and store the subset in different databases for longer periods of time. No one has yet identified the legal authority under which the NSA justifies XKeyScore. It cannot be the FAA because that law does not authorize copying everything, even for a short period of time.

Leaving that question aside for now, I want to highlight several pernicious results of the FISA Amendments Act or FAA.

Americans' communications with targets overseas are subject to warrantless interception. Once those communications are collected, current rules allow the NSA to search the trove for U.S. person identifiers, which Wyden has referred to as the "back door searches loophole".

The non-U.S. targets include regular people, not just those who are agents of foreign powers. While analysts provide their foreign intelligence purpose when selecting the target, the rationale is just one short sentence.

By untethering surveillance from facilities that the target uses, the FAA greatly increased the opportunity for the NSA to collect information about rather than just to or from the target. As an example, if I monitor a network for "Jennifer Granick" and Jennifer Granick uses that network, I'll get her communications, and maybe some messages about her. If I can monitor any facility for "Jennifer Granick", I'm going to pull only messages about, but not to or from her.

II. The Wyden/Udall Proposal

Enter the new bill. The fact sheet says the Intelligence Oversight and Surveillance Reform Act would reform section 702 to:

Close the "back door searches" loophole;

Prohibit the government from collecting communications that are "about the target", in non-terrorism contexts;

Strengthen the prohibition against "reverse targeting," or targeting a foreigner in order to warrantlessly acquire the communications of an American who is known to be communicating with that foreigner; and

Place stronger statutory limits on the use of unlawfully collected information.

These are critical reforms. I would like to see the bill further include a higher standard of care with regards to ensuring that people inside the U.S. are not targeted. As Professor Christopher Sprigman and I argued in the New York Times, PRISM is designed to produce at least 51 percent confidence in a target's "foreignness" — as John Oliver of "The Daily Show" put it, "a coin flip plus 1 percent." In other words, 49 percent of the time the NSA may be acquiring information it is not allowed to have, even under the terrifyingly broad auspices of the FAA.

More fundamentally, though, the Wyden/Udall bill does not fully address a fundamental problem with the FAA, which is that it authorizes surveillance of average citizens of other countries for reasons that are not necessarily related to the security of the United States. Senator Udall acknowledged in the press conference announcing the bill (at 30:17) that the NSA's unfettered spying has had and will continue to have an adverse economic effect on U.S.-based businesses, and that this is one of the motivations behind the bill.

Prohibiting "about the target" collection is one giant step forward. That would mean that non-targets outside the U.S. could not be subject to surveillance under this law just because they talk about a target, unless their conversation is related to terrorism. Depending on the details of the targeting and minimization procedures, if my British friend in London and I email about our dismay over the Kenya attacks, that would be fair game, but our conversation about the policies of Brazilian President Dilma Roussef would be off limits.

However, targets still need not be agents of foreign powers so long as a significant purpose of the collection is foreign intelligence. Foreign intelligence is broad, and includes any information that "relates to" the conduct of U.S. foreign affairs. For example, DNI James Clapper affirmed that the U.S. collects information about economic and financial matters to "provide the United States and our allies early warning of international financial crises which could negatively impact the global economy … or to provide insight into other countries' economic policy or behavior which could affect global markets."

Monitoring economic and financial matters is in the United States' national interest. However, routine eavesdropping upon common foreigners to discover information about these matters is a bad idea. First, foreigners have privacy rights, too. Freedom from arbitrary interference with one's privacy is part of the Universal Declaration of Human Rights.

Next, this monitoring is detrimental to U.S. companies and to the United States' long-term interests in promoting democratic ideals. As Sprigman and I argue, although it may be legal, unfettered U.S. spying on foreigners will cause serious collateral damage to America's technology companies, to our Internet-fueled economy, and to human rights and democracy the world over. Since our Atlantic article on June 28th, and the disclosure that the NSA targeted both Petrobras and President Dilma Roussef, Brazil has announced that it will look into requiring Internet companies to store its citizens' data locally, and take other steps that threaten to balkanize the global Internet. When Brazil takes these steps, it gives comfort and cover to authoritarian countries who will do the same, so that they can better censor, spy on, and control Internet access within their own borders.

--xt – domestic only limit

The domestic-only limit prevents solvency

Kehl, 14 – Policy Analyst at New America's Open Technology Institute (Danielle, "Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity" July, https://www.newamerica.org/oti/surveillance-costs-the-nsas-impact-on-the-economy-internet-freedom-cybersecurity/

It appears that little consideration was given over the past decade to the potential economic repercussions if the NSA's secret programs were revealed.38 This failure was acutely demonstrated by the Obama Administration's initial focus on reassuring the public that its programs primarily affect non-Americans, even though non-Americans are also heavy users of American companies' products. Facebook CEO Mark Zuckerberg put a fine point on the issue, saying that the government "blew it" in its response to the scandal. He noted sarcastically: "The government response was, 'Oh don't worry, we're not spying on any Americans.' Oh, wonderful: that's really helpful to companies [like Facebook] trying to serve people around the world, and that's really going to inspire confidence in American internet companies."39 As Zuckerberg's comments reflect, certain parts of the American technology industry are particularly vulnerable to international backlash since growth is **heavily dependent on foreign markets**. For example, the U.S. cloud computing industry has grown from an estimated $46 billion in 2008 to $150 billion in 2014, with nearly 50 percent of worldwide cloud-computing revenues coming from the U.S.40 R Street Institute's January 2014 policy study concluded that in the next few years, new products and services that rely on cloud computing will become increasingly pervasive. "Cloud computing is also the root of development for the emerging generation of Web-based applications—home security, outpatient care, mobile payment, distance learning, efficient energy use and driverless cars," writes R Street's Steven Titch in the study. "And it is a research area where the United States is an undisputed leader."41 This trajectory may be dramatically altered, however, as a consequence of the NSA's surveillance programs.

The NSA doesn't comply with foreignness designation requirements

Gellman, 14 – staff writer for the Washington Post; won 3 Pullitzer Prizes (Barton, Washington Post, "In NSA-intercepted data, those not targeted far outnumber the foreigners who are" 7/5, http://www.washingtonpost.com/world/national-security/in-nsa-intercepted-data-those-not-targeted-far-outnumber-the-foreigners-who-are/2014/07/05/8139adf8-045a-11e4-8572-4b1b969b6322_story.html

When NSA and allied analysts really want to target an account, their concern for U.S. privacy diminishes. The rationales they use to judge foreignness sometimes stretch legal rules or well-known technical facts to the breaking point.

In their classified internal communications, colleagues and supervisors often remind the analysts that PRISM and Upstream collection have a "lower threshold for foreignness 'standard of proof' " than a traditional surveillance warrant from a FISA judge, requiring only a "reasonable belief" and not probable cause.

One analyst rests her claim that a target is foreign on the fact that his e-mails are written in a foreign language, a quality shared by tens of millions of Americans. Others are allowed to presume that anyone on the chat "buddy list" of a known foreign national is also foreign.

In many other cases, analysts seek and obtain approval to treat an account as "foreign" if someone connects to it from a computer address that seems to be overseas. "The best foreignness explanations have the selector being accessed via a foreign IP address," an NSA supervisor instructs an allied analyst in Australia.

Apart from the fact that tens of millions of Americans live and travel overseas, additional millions use simple tools called proxies to redirect their data traffic around the world, for business or pleasure. World Cup fans this month have been using a browser extension called Hola to watch live-streamed games that are unavailable from their own countries. The same trick is routinely used by Americans who want to watch BBC video. The NSA also relies routinely on locations embedded in Yahoo tracking cookies, which are widely regarded by online advertisers as unreliable.

--XT – section 702 fails

FAA isn't a real check – aff author concedes

Eoyang and Bishai, 15 - *Mieke Eoyang is the Director of the National Security Program at Third Way, a center-left think tank. She previously served as Defense Policy Advisor to Senator Edward M. Kennedy, and a subcommittee staff director on the House Permanent Select Committee on Intelligence, as well as as Chief of Staff to Rep. Anna Eshoo (D-Palo Alto); **Chrissy Bishai is a Fellow at Third Way ("Restoring Trust between U.S. Companies and Their Government on Surveillance Issues" 3/19, http://www.thirdway.org/report/restoring-trust-between-us-companies-and-their-government-on-surveillance-issues

Of course, FAA Exclusivity wouldn't solve every problem. It would not prevent foreign governments from collecting information themselves and then providing it to U.S. intelligence agencies, as U.S. law cannot bind a foreign government. And some may argue that FAA provides inadequate civil liberties protections for Americans. This proposal says nothing about the adequacy of that statute in this respect. What it says is that for data held by an American company about a target that is not a U.S. person, the checks within FAA are stronger than those solely under E.O. 12333.

AT: FISC oversight

FISC oversight approved NSA targeting because the NSA lacks the technical capability to distinguish between domestic and foreign targets

Donohue, 15 - Professor of Law, Georgetown University Law Center (Laura, "SECTION 702 AND THE COLLECTION OF INTERNATIONAL TELEPHONE AND INTERNET CONTENT" 38 Harv. J.L. & Pub. Pol'y 117, Winter, lexis)

6. FISC Oversight of Targeting Procedures

FISC first became aware of the implications of the NSA's interpretation of TFA in 2011. n283 The court was surprised by the government's admission that it would have to intercept significantly more content to scan it for relevant information. In its first Section 702 docket, the government had indicated that the acquisition of telephonic communications:

would be limited to "to/from" communications--i.e., communications to or from a tasked facility. The government explained, however, that the Internet communications acquired would include both to/from communications and "about" communications--i.e., communications containing a reference to the name of the tasked account . . . . Based upon the government's descriptions of the proposed collection, the Court understood that the acquisition of Internet communications under Section 702 would be limited to discrete "to/from" communications between or among individual account users and to "about" communications falling within [redacted] specific categories that had been first described to the Court in prior proceedings. n284

In reviewing and granting the application for an order, the court had not taken into account the NSA's acquisition of Internet [*191] transactions, which "materially and fundamentally alter[ed] the statutory and constitutional analysis." n285

FISC was troubled by the government's revelations--making it the third time in less than three years in which the NSA had disclosed a "substantial misrepresentation" on "the scope of a major collection program." n286 One of three possibilities held: the court was particularly slow, the government had been lying, or the government had made a mistake. Regardless, "[t]he government's submissions make clear not only that NSA has been acquiring Internet transactions since before the Court's approval of the first Section 702 certification in 2008, but also that NSA seeks to continue the collection of Internet transactions." n287

FISC noted that it is a crime to "engage[] in electronic surveillance under color of law except as authorized" by statute or . . . to "disclose[] or use[] information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized" by statute. n288 Yet, to the extent that MCTs contained communications that the NSA was not supposed to collect (in other words, wholly domestic communications), this appeared to be precisely what had occurred with regard to the NSA's upstream collection. n289

In its October 2011 memorandum opinion, the court confronted two areas: first, targeting procedures as applied to the acquisition of communications other than Internet transactions -- that is, "discrete communications between or among the users of telephone and Internet communications facilities that are to or from a facility tasked for collection." n290 As in the past, the court found the targeting procedures with regard to non-Internet transactions to be sufficient. Second, the court considered de novo the sufficiency of the government's targeting procedures in

relation to Internet transactions [*192] transactions. n291 Despite the acknowledgement by the government that it knowingly collected tens of thousands of messages of a purely domestic nature, FISC found the procedures consistent with the statutory language that prohibited the intentional acquisition of domestic communications. n292

The court's analysis of the targeting procedures focused on upstream collection. n293 At the time of acquisition, the collection devices lacked the ability to distinguish "between transactions containing only a single discrete communication to, from, or about a tasked selector and transactions containing multiple discrete communications, not all of which may be to, from, or about a tasked selector." n294 The court continued: "As a practical matter, this means that NSA's upstream collection devices acquire any Internet transaction transiting the device if the transaction contains a targeted selector anywhere within it." n295 Because of the enormous volume of communications intercepted, it was impossible to know either how many wholly domestic communications were thus acquired or the number of non-target or U.S. persons' communications thereby intercepted. n296 The number of purely domestic communications alone was in the tens of thousands. n297

Despite this finding, FISC determined that the targeting procedures were consistent with the statutory requirements that they be "reasonably designed" to (1) "ensure that any acquisition authorized under [the certifications] is limited to targeting persons reasonably believed to be located outside the United States" and (2) "prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States." n298

To reach this conclusion, the court read the statute as applying, in any particular instance, to communications of individuals "known at the time of acquisition to be located in the United [*193] States." n299 As the equipment did not have the ability to distinguish between purely domestic communications and international communications, the NSA could not technically know, at the time of collection, where the communicants were located. From this, the court was "inexorably led to the conclusion that the targeting procedures are 'reasonably designed' to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States." n300 This was true despite the fact that the NSA was fully aware that it was collecting, in the process, tens of thousands of domestic communications. n301 As far as the targeting procedures were concerned, at least with regard to MCTs, the NSA had circumvented "the spirit" but not the letter of the law. n302

The court's reading led to an extraordinary result. The statute bans the knowing interception of entirely domestic conversations. The NSA said that it knowingly intercepts entirely domestic conversations. Yet the court found its actions consistent with the statute.

A few points here deserve notice. First, it is not immediately clear why the NSA is unable to determine location at the moment of intercept and yet can ascertain the same at a later point. Second, in focusing on the technical capabilities of any discrete intercept, the court encouraged a form of willful blindness--that is, an effort to avoid criminal or civil liability for an illegal act by intentionally placing oneself into a position to be unaware of facts that would otherwise create liability. n303 In light of the court's interpretation, [*194] the NSA has a diminished interest in determining at the point of intercept whether intercepted communications are domestic in nature.

Its ability to collect more information would be hampered. So there is a perverse incentive structure in place, even though Congress intended the provision to protect individual privacy.

The Executive Branch kept Congress fully informed about FISC's concerns with regard to MCTs and the collection of domestic conversations. Senator Dianne Feinstein later noted that the Intelligence and Judiciary Committees had received more than 500 pages of information four days after Judge Bates' opinion, relating to the operation of Section 702. n304 Following receipt of the information (which addressed domestic communications and the knowing interception of U.S. persons' information), the Senate Intelligence Committee held a closed hearing at which the matter was discussed. n305 In December 2011, the committees received more than 100 more pages of related materials, which became the focus of another closed hearing on February 9, 2012. n306

7. Law as Written Versus Law as Applied

In terms of statutory interpretation and the knowing collection of wholly domestic conversations, Congress and FISC knew what was happening and allowed PRISM and upstream collection to continue. The situation thus could be read as one in which all three branches of the government agreed: Congress passed the FAA, the intelligence community interpreted and applied it, and the judiciary extended its blessing.

Nevertheless, in light of the highly classified nature of the programs, and their direct impact on individual rights, there is something troubling about having the only public portion of the authorities--the law--suggest one thing, when in reality the statute is being understood and applied in the opposite manner. In this case, for example, the statute's plain language suggests that a particularized judicial order is required to intercept U.S. persons' international communications and that the NSA may not knowingly intercept wholly domestic conversations. Yet FISC sanctioned the scanning and potential collection of significant portions of U.S. [*195] persons' international communications, absent any particularized order, and it allowed the NSA to knowingly collect tens of thousands of wholly domestic conversations. Although national security is a matter of the highest importance, given the secrecy involved in the enterprise, one would expect a higher level of due diligence from those entrusted with oversight.

The targeting provisions also raise questions about the role in which Congress is placing FISC. In the FAA, Congress for the first time inserted a role for the court into the process of obtaining foreign intelligence outside the United States, but it also severely circumscribed FISC's authority. The court in some ways thus appears to be acting in the capacity of an oversight body, generally ensuring that procedures are in place and asking the NSA to police itself. Beyond the immediate question about the appropriate role for the court, as discussed above. n307

Ex post CP

1nc – ex post CP

Text:

The United States federal government should:

--require ex post review by the Foreign Intelligence Surveillance Court of NSA surveillance targeting criteria

--establish a public advocate at the FISC

--establish a cabinet-level privacy agency

The CP restore domestic and international confidence in US surveillance without restricting the scope of NSA activities – instead it conducts post-surveillance minimization

Margulies, 14 - Professor of Law, Roger Williams University School of Law ("CITIZENSHIP, IMMIGRATION, AND NATIONAL SECURITY AFTER 9/11: THE NSA IN GLOBAL PERSPECTIVE: SURVEILLANCE, HUMAN RIGHTS, AND INTERNATIONAL COUNTERTERRORISM" 82 Fordham L. Rev. 2137, April, lexis)

While I have concluded that U.S. surveillance policy does not violate the ICCPR, further reforms could highlight this point and silence persistent doubts here and abroad. These reforms could also remove any barriers to cooperation between the United States and foreign states, such as those in Europe, which are subject to the European Convention on Human Rights. This section identifies reforms that would add a public advocate to FISC proceedings, enhance FISC review of the criteria used for overseas surveillance, establish a U.S. privacy agency that would handle complaints from individuals here and overseas, and require greater minimization of non-U.S. person communications. These reforms would signal U.S. support of evolving global norms of digital privacy.

Although President Obama's speech in January 2014 proposed a panel of independent lawyers who could participate in important FISC cases, n161 further institutionalization of this role would be useful. A public advocate would scrutinize and, when necessary, challenge the NSA's targeting criteria on a regular basis. n162 Challenges would be brought in the FISC, after the NSA's implementation of criteria. The NSA would be able to adapt the criteria on an exigent basis, **subject to ex post review** by the FISC at the public advocate's behest. A public advocate and enhanced FISC review would serve three valuable functions: (1) ensure that the FISC received the best arguments on both sides; (2) serve as a valuable ex ante check on the government, encouraging the government to adopt those criteria that could withstand subsequent scrutiny; and (3) **promote domestic and global confidence in the legitimacy of processes governing NSA surveillance**.

A U.S. cabinet level privacy agency would also **bolster the legitimacy of surveillance**. The agency could provide more regular recourse to subjects of surveillance, as the ECHR requires. That change would ease the barriers to continued U.S.-Europe cooperation on counterterrorism. A national agency would also work hand in hand with privacy officers in executive departments. It would increase the leverage of those officials, who could advocate vigorously in internal debates, knowing that their views would also have a champion in a free-standing executive department independent [*2166] of the national security bureaucracy. There are downsides to this proposal, of course. A new agency would add expense, and create some redundancy in government functions. Moreover, current models that provide recourse, such as the approach currently taken by the Department of Homeland Security, n163 have been criticized as unduly burdensome. n164 However, preserving cooperation with Europe and enhancing the overall legitimacy of U.S. surveillance provides a compelling justification.

Each of these instrumentalities - a public advocate at the FISC and a new privacy agency - could also work to strengthen minimization requirements for foreign communications. The NSA says that it disposes of all irrelevant communications within five years. There may be ways to shorten this time and require even more rigorous controls on sharing of information that lacks a clear link to terrorism or other foreign intelligence matters. More exacting minimization would also promote U.S.-European information sharing and **enhance global legitimacy**.

The net benefit is terrorism – the plan restricts the collection of 702 surveillance data to individualized and specific threat categories. That prevents the programmatic surveillance necessary for pattern analysis that can identify future terrorist threats

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Programmatic surveillance initiatives like these differ in simple yet fundamental ways from the traditional forms of monitoring with which many people are familiar--i.e., individualized or particularized surveillance. Individualized surveillance takes place when authorities have some reason to think that a specific, known person is breaking the law. Investigators will then obtain a court order authorizing them to collect information about the target, with the goal of assembling evidence that can be used to establish guilt in subsequent criminal proceedings. Individualized surveillance is common in the world of law enforcement, as under Title III of the Omnibus Crime Control and Safe Streets Act of 1968. n23 It is also used in national security investigations. FISA allows authorities to obtain a court order to engage in wiretapping if they demonstrate, among other things, probable cause to believe that the target is "a foreign power or an agent of a foreign power." n24

By contrast, programmatic surveillance has very different objectives and is conducted in a very different manner. It usually involves the government collecting bulk data and then examining it to identify previously unknown terrorists, spies, and other national security threats. A good example of the practice is link analysis, in [*528] which authorities compile large amounts of information, use it to map the social networks of known terrorists--has anyone else used the same credit card as Mohamed Atta?--and thus identify associates with whom they may be conspiring.

n25 (It is also possible, at least in theory, to subject these large databases to pattern analysis, in which automated systems search for patterns of behavior that are thought to be indicative of terrorist activity, but it's not clear that the NSA is doing so here.) Suspects who have been so identified can then be subjected to further forms of monitoring to determine their intentions and capabilities, such as wiretaps under FISA or other authorities. In a sense, programmatic surveillance is the mirror image of individualized surveillance. With individualized monitoring, authorities begin by identifying a suspect and go on to collect information; with programmatic monitoring, authorities begin by collecting information and go on to identify a suspect.

Programmatic surveillance is a potentially **powerful counterterrorism tool**. The Ra'ed al-Banna incident is a useful illustration of how the technique, when coupled with old-fashioned police work, can identify possible threats who otherwise might escape detection. Another example comes from a 2002 Markle Foundation study, which found that authorities could have identified the ties among all 19 of the 9/11 hijackers if they had assembled a large database of airline reservation information and subjected it to link analysis. n26 In particular, two of the terrorists--Nawaf al-Hamzi and Khalid al-Mihdhar--were on a government watchlist after attending a January 2000 al-Qaeda summit in Malaysia. So they could have been flagged when they bought their tickets. Querying the database to see if any other passengers had used the pair's mailing addresses would have led investigators to three more hijackers, including Mohamed Atta, the plot's operational leader. Six others could have been found by searching for passengers who used the same frequent-flyer and telephone numbers as these suspects. And so on. Again, the Markle study concerns airline reservation data, not the communications data that are the NSA's focus. But it is still a useful illustration of the technique's potential.

The government claims that programmatic surveillance has been responsible for concrete and actual counterterrorism benefits, not just hypothetical ones. Officials report that PRISM has helped detect and [*529] disrupt about 50 terrorist plots worldwide, including ten in the United States. n27 Those numbers include Najibullah Zazi, who attempted to bomb New York City's subway system in 2009, and Khalid Ouazzani, who plotted to blow up the New York Stock Exchange. n28 Authorities further report that PRISM played an important role in tracking down David Headley, an American who aided the 2008 terrorist atrocities in Bombay, and later planned to attack the offices of a Danish newspaper that printed cartoons of Mohamed. n29 The government also claims at least one success from the telephony metadata program, though it has been coy about the specifics: "The NSA, using the business record FISA, tipped [the FBI] off that [an] individual had indirect contacts with a known terrorist overseas. . . . We were able to reopen this investigation, identify additional individuals through a legal process and were able to disrupt this terrorist activity." n30 Quite apart from foiling attacks, the government also argues that the NSA programs can **conserve scarce investigative resources** by helping officials quickly spot or rule out any foreign involvement in a domestic plot, as after the 2013 Boston Marathon bombing. n31

These claims have to be taken with a few grains of salt. Some observers believe that the government could have discovered the plots using standard investigative techniques, and without resorting to extraordinary methods like programmatic surveillance. n32 The metadata program has elicited special skepticism: The President's Review Group on Intelligence and Communications Technologies bluntly concluded that "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained [*530] in a timely manner using conventional

section 215 orders." n33 The Privacy and Civil Liberties Oversight Board reached the same conclusion. n34 (Judicial opinion is split on the program's value. One judge has expressed "serious doubts" about its utility, n35 while another has concluded that its effectiveness "cannot be seriously disputed.") n36 Furthermore, we should always be cautious when evaluating the merits of classified intelligence initiatives on the basis of selective and piecemeal revelations, as officials might tailor the information they release in a bid to shape public opinion. n37 But even if specific claimed successes remain contested, programmatic surveillance in general can still be a useful counterterrorism technique.

As these examples imply, effective programmatic surveillance often requires huge troves of information--e.g., large databases of airline reservations, compilations of metadata concerning telephonic and internet communications, and so on. This is why it typically will not be feasible to limit bulk collection to particular, known individuals who are already suspected of being terrorists or spies. Some officials have defended the NSA programs by pointing out that, "[i]f you're looking for the needle in a haystack, you have to have the haystack." n38 That metaphor doesn't strike me as terribly helpful; rummaging around in a pile of hay is, after all, a paradigmatic image of futility. But, the idea can be expressed in a more compelling way. Programmatic surveillance cannot be done in a particularized manner. The whole point of the technique is to identify unknown threats to the national security; by definition, it cannot be restricted to threats that have already been identified. We can't limit programmatic [*531] surveillance to the next Mohamed Atta when we have no idea who the next Mohamed Atta is--and when the goal of the exercise is indeed to identify the next Mohamed Atta.

2nc – ex post solves

The CP's ex post review process deters executive abuse and restores legitimacy to US surveillance

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As for the structural considerations, one of the most important is what might be called an anti-unilateralism principle. A system of programmatic surveillance should not be put into effect on the say-so of the executive branch, but rather should be a collaborative effort that involves Congress (in the form of authorizing legislation) or the judiciary (in the form of FISA court review of the initiatives). n42 An example of the former is FISA itself, which Congress enacted in 1978. At the time, the NSA was engaged in bulk collection, without judicial approval, of certain international communications into and out of the United States--namely, by tapping into offshore telecommunications cables and by eavesdropping on satellite based radio signals. FISA's [*533] famously convoluted definition of "electronic surveillance" n43 preserved these preexisting practices even as Congress was imposing a new requirement of judicial approval for other kinds of monitoring. n44 An example of the latter concerns the warrantless Terrorist Surveillance Program, under which the NSA was intercepting, outside the FISA framework, certain communications between suspected al-Qaeda figures overseas and people located in the United States. After that program's existence was revealed in late 2005, the executive branch persuaded

the FISA court to issue orders allowing it to proceed subject to various limits. n45 (That accommodation eventually proved unworkable, and the executive then worked with Congress to put the program on a more solid legislative footing through the temporary Protect America Act of 2007 n46 and the permanent FISA Amendments Act of 2008.) n47

Anti-unilateralism is important for several reasons. To take the most obvious, Congress and the courts can help prevent executive overreach. n48 The risk of abuse is lessened if the executive branch must enlist its partners before commencing a new surveillance initiative. Congress might decline to permit bulk collection in circumstances where it concludes that ordinary, individualized monitoring would suffice, or it might **authorize programmatic surveillance** subject to various privacy protections. In addition, inviting many voices to the decision-making table increases the probability of sound outcomes. More participants with diverse perspectives can also help mitigate the groupthink tendencies to which the executive branch is sometimes [*534] subject. n49 If we're going to engage in programmatic surveillance, it should be the result of give and take among all three branches of the federal government, or at least between its two political branches, not the result of executive edict.

A second principle follows from the first: Programmatic surveillance should, wherever possible, have explicit statutory authorization. Congress does not "hide elephants in mouseholes," n50 the saying goes, and we should not presume that Congress meant to conceal its approval of a potentially controversial programmatic surveillance system in the penumbrae and interstices of obscure federal statutes. Instead, Congress normally should use express and specific legislation when it wants to okay bulk data collection. Clear laws will help remove any doubt about the authorized scope of the approved surveillance, thereby **promoting legal certainty**. Express congressional backing also helps give the monitoring an **air of legitimacy**. And, a requirement that programmatic surveillance usually should be approved by clear legislation helps promote accountability by minimizing the risk of congressional shirking. n51 If the political winds shift, and a legislatively approved program becomes unpopular, Congress will not be able to hide behind an ambiguous statutory grant of power and deflect responsibility to the President.

Ex post oversight is key to effective programmatic surveillance – the CP allows the government to collect all available data – it just puts ex post restrictions on the data analysis stage that deters executive data abuses

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As for the operational considerations, among the most important is the need for external checks on programmatic surveillance. In particular, bulk data collection should have to undergo some form of judicial review, such as by the FISA court, in which the government demonstrates that it meets the applicable constitutional and statutory standards. Ideally, the judiciary would give its approval before collection begins. But this will not always be possible, in which case timely post-collection judicial review will have to suffice. (FISA has a comparable mechanism for temporary warrantless surveillance in emergency situations.) n60 Programmatic surveillance also should be subject to robust congressional oversight. This could take a variety of forms, including informal

consultations with members of Congress when designing the surveillance regime (including, at a minimum, congressional leadership and members of the applicable committees), [*537] as well as regular briefings to appropriate personnel on the operation of the system and periodic oversight hearings.

Of course, judicial review in the context of bulk collection won't necessarily look the same as it does in the familiar setting of individualized monitoring of specific targets. If investigators want to examine the telephony metadata associated with a particular terrorism suspect, they can apply to the FISA court for a pen register or trap and trace order upon a showing that the information sought is relevant to an ongoing national security investigation. n61 But, as explained above, that kind of particularized showing often won't be possible where authorities are dealing with unknown threats, and where the very purpose of the surveillance is to identify those threats. In these situations, reviewing courts may find it necessary to allow the government to collect large amounts of data without individualized suspicion. This doesn't mean that privacy safeguards must be abandoned and the executive given free rein. Instead, courts could be tasked with scrutinizing the initiative's overall structure and operation to determine its compatibility with constitutional and statutory requirements. And courts further could require authorities to demonstrate some level of individualized suspicion before accessing the data that has been collected. Protections for privacy and civil liberties thus can migrate from the collection phase of the intelligence cycle to earlier and later stages, such as the systems design and analysis stages. n62

In more general terms, because programmatic surveillance involves the collection of large troves of data, it likely means some dilution of the familiar ex ante restrictions that protect privacy by constraining the government from acquiring information in the first place. It therefore becomes critically important to devise **meaningful ex post safeguards** that can achieve similar forms of privacy protection. In short, restrictions on the government's ability to access and use data that it has gathered must substitute for restrictions on the government's ability to gather that data at all; what I have elsewhere called **use limits must stand in for collection limits**. n63

This sort of oversight by the courts and Congress provides an obvious, first-order level of protection for privacy and civil liberties--an external veto serves as a direct check on possible executive [*538] misconduct. Judicial and legislative checks also offer an important second-order form of protection. The **mere possibility** of an outsider's veto can have a chilling effect on executive misconduct, discouraging officials from questionable activities that would have to undergo, and might not survive, external review. n64 Moreover, external checks can channel the executive's scarce resources into truly important surveillance and away from relatively unimportant monitoring. This is so because oversight increases the administrative costs of collecting bulk data--e.g., preparing a surveillance application, persuading the judiciary to approve it, briefing the courts and Congress about how the program has been implemented, and so on. These increased costs encourage the executive to prioritize collection that is expected to yield truly valuable intelligence and, conversely, to forego collection that is expected to produce information of lesser value.

Ex ante requirements amount to a rubber stamp

Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

The FISC approves virtually every application for an order with which it is presented. According to Electronic Privacy Information Center (EPIC) statistics, the court denied only five applications from its inception through 2006.40 In that time, it has approved thousands of others, including a new high of 2176 in 2006.41 Of course, "[i]t is possible to draw divergent conclusions from this data. One could infer that the extensive FISA safeguards have forced the Executive to self-censor its requests. One could also argue, however, that the **courts act merely as a 'rubber stamp'** whenever the Executive invokes national security."42 Upon analyzing FISA's structure and track record, the nature of electronic surveillance in service of national security, and more general separation of powers and national security lessons, it seems that something more like the latter is the ultimate result of FISA.

Limitations inherent in the project of judicial pre-approval of national security surveillance render the system unable to perform the function for which it was created; each of the problems described below mutually reinforces the others, leading to **systemic ineffectiveness**. In the absence of the notice requirements that attach in domestic surveillance, 43 and in light of the ex parte nature of FISC proceedings, no opportunity for meaningful review may ever present itself.44 "The potential for abuse is substantial, since all applications remain sealed and unavailable to the public, and since targets are never notified that they have been under surveillance."45

The lack of adversariality, reliance on executive representations and national security framing mean it's a rubber stamp

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1. Non-adversariality. — One of the most striking elements of the FISA system is the total absence of adversariality. Because the collection of intelligence in this context requires by its very nature that the surveilled party not receive notice in advance, the ex ante approval system is almost by definition also ex parte. This puts the FISC in an "anomalous position,"46 in the words of the current Attorney General, similar to that of a court reviewing FISA materials for admission in a criminal case. In such situations, "[t]he judge is forced not only to act as an arm of the prosecution in weighing the prosecution's arguments about whether disclosure would or would not compromise national security, but also to act as a defense lawyer in determining whether the information is useful to the defendant."47 Similarly, in reviewing a FISA application, the FISC must attempt the difficult, if not impossible, task of simultaneously occupying the roles of advocate and neutral arbiter — all without the authority or ability to investigate facts or the time to conduct legal research.48 The judge lacks a skeptical advocate to vet the government's legal arguments, which is of crucial significance when the government is always able to claim the weight of national security expertise for its position. It is questionable whether courts can play this role effectively, and, more importantly, whether they should.49

2. Reliance on Executive Representations. — One frequently overlooked element of the FISA system is its almost complete reliance upon the Executive's representations and willingness to

abide by the statutory terms.50 This would be all the more true if Congress lowers the degree of factual specificity necessary for issuance of a FISC order, a change that is included in both the Senate and House bills.51 Even under the current standard, however, the FISC cannot inquire behind the representations made by the applicant; so long as the applicant presents a "statement of facts showing that there are reasonable grounds"52 for the order to issue, "the judge shall enter an ex parte order as requested."53

There is a strong connection between the difficulties of relying on executive branch representations and the ex parte nature of the FISC inquiry: the FISC lacks the presence of an adversarial voice drawing into focus any concerns with an application. In this sense, the two problems are mutually reinforcing. Indeed, the FISC on one occasion detailed "misstatements and omissions of material facts" that the government confessed "in some 75 FISA applications,"54 problems that did not come to light at the time the orders were issued. In this context it is also worth noting that the Executive has never actually accepted that it is bound by FISA, citing inherent presidential authority over national security under Article II of the Constitution.55 The current administration acted in part on this basis in operating the TSP.56 Lacking the ability to initiate an inquiry beyond what the Executive brings to its attention, the FISC's oversight of the process is substantially controlled by the very entity it is designed to oversee.

3. Institutional Limitations of the Judiciary. — Even if the above problems could be overcome, institutional factors that are inherent in the national security arena will always function to limit the ability of the judiciary to serve as an effective check. First, the surveillance that FISA deals with necessarily involves secrecy, inherently requires policy judgments, and takes place in the context of the increased powers of the Executive in the national security arena. As a result, policymakers are rightly fearful of giving too much review power to courts and face inevitable pressure to scale back the amount of decisionmaking authority left to the judiciary.

Second, the courts are, and have always been, extremely passive in exercising jurisdiction over cases touching upon national security, both because of the reasons just noted (political judgment and executive power) and because of resultant concerns for institutional legitimacy and judicial restraint.57 Courts tend to be highly deferential because of "concern for the efficiency and expertise of the nation's foreign intelligence process and the deleterious effects that might result from judicial interference."58 Judges are most certainly aware of the limits of their own policy expertise. This effect is greatly enhanced when judges must weigh the national security necessity ex ante, rather than being asked to review it after the fact.

Indeed, it is interesting to note that the scope of review exercised by the FISC has steadily narrowed over time. To be sure, it was narrow to begin with,59 but both legislative action and limiting constructions applied by the courts themselves have narrowed the FISC's authority even further. For example, when Congress amended FISA to require only that national security be a "significant purpose," rather than the "primary purpose," of the surveillance for which authorization is sought,60 the FISCR read the statutory shift quite broadly. It held that when surveillance of a foreign agent is undertaken for purposes of both national security and law enforcement, the government need only "entertain[] a realistic option of dealing with the agent other than through criminal prosecution" in order to satisfy the test.61 The court reasoned that the new provisions "eliminated any justification for the FISA court to balance the relative weight the government places on criminal prosecution as compared to other counterintelligence responses."62 Yet this seems a far less robust limit than the plain language or legislative history indicated: importantly, the legislature considered and rejected requiring only "a" rather than "a significant"

purpose.63 Given a hint of statutory ambiguity, then, the court effectively read the requirement of "significant purpose" out of the statute, resulting in a regime of even less exacting scrutiny. Ultimately, "[t]hrough a combination of government tactics, the mandate of the FISA court, and federal court interpretations of the FISA law, the FISA safeguards which were intended to balance individual rights against the government's claims of national security have been essentially eviscerated."64

As a result, "[c]harging a panel of federal judges with insufficient background information on specific cases, and little intelligence experience, with approving foreign intelligence surveillance applications has resulted in an essentially rubber stamp process where applications are practically never denied."65 Primary reliance on judicial oversight will virtually always tend toward deference, both in exercising jurisdiction and in determining individual cases.

Ex ante review undermines effective restrictions on domestic surveillance and shuts down an engaged citizenry

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Ex ante judicial review is not only of limited effectiveness, but it is also affirmatively harmful in several respects. Ex ante judicial approval imparts a broader imprimatur of validity than is warranted given the limited effectiveness of the review. Further, it clouds accountability and can be a cumbersome and intrusive process harmful to national security interests. In fact, "the creation of FISA courts may actually have resulted in fewer restrictions on the domestic surveillance activities of intelligence agencies"69 because "[t]he secrecy that attends FISC proceedings, and the limitations imposed on judicial review of FISA surveillance, may insulate unconstitutional surveillance from any effective sanction."70

1. The Judicial Imprimatur. — The issuance of an order by the FISC confers a stamp of approval from the widely respected Article III courts. A FISC order makes a strong statement that a neutral arbiter has looked closely at the situation and found the surveillance warranted. Yet, as the set of limitations just discussed indicates, the protective force of a FISC order may not align with the actual vigor of the inquiry.

This disparity may give rise to several problems. First, changed circumstances following the issuance of the order may undermine the validity of the surveillance. Minimization procedures are largely unhelpful in solving this problem: "[T]he Act provides for the same kind of incoherent and largely unenforceable 'minimization' requirements that plague criminal wiretap statutes."71 Much more importantly, the judicial order may mask and indeed later provide cover for improper governmental motives and improper intrusions on liberty.72 In these situations, ex ante review may **sanitize the improper surveillance**. The presence of the judicial order may function to dissuade legislative or executive oversight entities from inquiry. Worse, judicial orders offer the potential for the government to hide behind the nominally objective, even if only minimally rigorous, scrutiny that they represent.

Surveillance conducted for political reasons, for example, might escape detection, condemnation, and consequences — political, if not legal — if that surveillance is given judicial protection.73 Indeed, this sanitization could occur on an even broader level: ex ante judicial approval interferes with the healthy public skepticism that attends political actors and that may help keep the citizenry engaged in considering the difficult tradeoffs between liberty and security necessary in this context. This is not to say that the judiciary should decline to play a constitutionally permissible role; rather, the point is that system designers concerned with protecting civil liberties should keep in mind the drawbacks of ex ante approval. In total, the capacity of ex ante approval to enable some of the most dangerous sorts of abuses far outweighs its middling ability to provide a useful check.

Ex ante review undermines political accountability – key to checking abuses and fostering public engagement

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2. Clouded Accountability. — Although several of FISA's provisions recognize the need for clear lines of accountability, the statute's broad structure fails to account for this crucial element. A simple comparison is useful: The Attorney General would be far more politically exposed if he or she signed off on an improper emergency order, which permits an exception to the ex ante approval requirement, rather than a regular FISA order approved by the FISC. In fact, the emergency authorization procedures under 50 U.S.C. § 1805(f) recognize the need for accountability by requiring notice if the application is turned down after the Attorney General has authorized it on an emergency basis.74 Similarly, the personal review provisions of § 1804(e) establish clear lines of authority for approval. But the presence of a judicial order authorizing surveillance permits a culpable official to escape the political consequences of his or her improprieties by using the court's approval as evidence of reasonableness, claiming reasonable reliance, or **foisting blame upon the court.**

Exposing the Attorney General — and through him or her the President — to the political consequences of these decisions is crucial for two reasons: First, it minimizes the possibility of politically motivated surveillance that would pass minimal judicial review, because such invasions of privacy would be seen as wholly illegitimate.75 Second, it would both enable and force the American public to confront the fact that, ultimately, it is responsible for determining the proper balance between liberty and security. The public will be much more comfortable with allowing invasions of fellow citizens' privacy when judges authorize them. In the end, "if a government is intent on engaging in interrogation to protect national security there is little the judges can do about it anyway."76 Forcing citizens to think hard about their values is of particular importance in the context of a vague "war on terror" devoid of identifiable boundaries.

Ex post review creates the best overall balance between liberty and national security
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C. The Role of the Courts

While the limitations and dangers associated with ex ante judicial approval of national security surveillance counsel in favor of developing a new core means of protecting civil liberties in this arena, they in no way mandate a complete elimination of the judicial role. To the contrary, an appropriately modified role for the judiciary is of fundamental importance to address some of the limitations of the system of political checks. Ultimately, a return of the judiciary to its pre-FISA role of ex post reasonableness review would permit the federal courts to complement the proposed broader oversight system and to meet Fourth Amendment requirements by restoring judicial focus to individual constitutional rights and relaxing national security pressures on the courts.101

1. Fourth Amendment Strictures. — It is worth noting initially that FISA has always contemplated situations in which full-on ex ante judicial oversight is not necessary to permit domestic electronic surveillance. At present, FISA conceives of three situations in which a court order is not necessary. These are all situations in which the balance in favor of the government is most compelling because the risk to privacy interests is low, the need for dispatch is great, or a drastic change of circumstances takes place. First, 50 U.S.C. § 1802 gives the Attorney General power, upon written certification under oath, to authorize up to one year of electronic surveillance directed at communications "exclusively between or among foreign powers" or "technical intelligence . . . from property or premises under the open and exclusive control of a foreign power" so long as "there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party" and minimization procedures are complied with. Second, under § 1805(f), the Attorney General may authorize emergency surveillance without court interference for seventy-two hours if he or she determines that a standard FISA order could not be acquired in time and that there is a sufficient "factual basis for issuance of an order." Finally, for fifteen days following a declaration of war, § 1811 permits non-court-ordered, Attorney General–authorized surveillance.

Foreign intelligence surveillance occupies a unique spot in the Court's Fourth Amendment jurisprudence.102 In Katz v. United States,103 the Court issued perhaps its sternest statement on the obligation of obtaining a warrant prior to exercising a search,104 while also extending Fourth Amendment protection to include electronic surveillance. 105 Importantly, however, the Court expressly reserved the issue of electronic surveillance in the national security context.106 In United States v. U.S. District Court107 (the Keith case), the Court again focused on the need for "prior judicial scrutiny" in rejecting the government's claim for an exception to the warrant requirement in the domestic national security context.108 Yet once again, the Court made a crucial reservation: "[T]his case involves only the domestic aspects of national security. We have not addressed, and express no opinion as to, the issues which may be involved with respect to activities of foreign powers or their agents."109 It is thus an open constitutional question whether foreign intelligence surveillance falls within an exception to the Fourth Amendment's warrant requirement.

While full argumentation for the proposition that the Fourth Amendment embodies such an exception is beyond the scope of this Note,110 the case law is clear that the true "touchstone of the Fourth Amendment is reasonableness,"111 such that the Fourth Amendment only "[s]ometimes . . . require[s] warrants."112 Especially in light of the increasing number of exceptions to the warrant requirement,113 it seems likely that an exception is appropriate in the context of foreign intelligence surveillance for purposes of national security, not only in terms of meeting a more formalist reading of the Fourth Amendment, but even more forcefully meeting a functionalist reading, under which the improved protections of civil liberties could render the decreased reliance on ex ante judicial review preferable under the Fourth Amendment.

2. Policy Benefits. — A proponent of a national security exception notes that "[t]he repeal of FISA . . . would simply effectuate the nation's return to its previous tradition."114 Yet the obvious retort is that the very abuses detailed in the Church Committee report were a major product of that tradition. Still, the old tradition did have some benefits that can be obtained by coupling the ex post reasonableness role of reviewing courts with the political checks described above. For one, rather than shielding meaningful inquiry, as ex ante review can, ex post review may produce "a renewed focus on Fourth Amendment principles"115 by both the judicial and political branches. Indeed, the more developed factual setting available in ex post review would help with the effort to define reasonableness.

Further, it could be argued that since only a small number of people are likely to be affected by surveillance, and especially given that those affected are likely to be disfavored or underrepresented groups such as members of minority religions or immigrants, the political process cannot be trusted to perform oversight. Yet ex post judicial review would remain a powerful check if the government seeks to use FISA-gathered information in other legal settings, such as criminal trials, habeas corpus proceedings, or motions for prospective relief. Ex post reasonableness review thus provides an important backstop to the oversight process.

IV. CONCLUSION

The current FISA system is illogical. Its purported benefits are at best questionable, and it features serious drawbacks in terms of the efficient functioning of national security surveillance and the numerous ways it undermines protections of liberty. While the Senate bill falls short of instituting the sort of robust political checks buttressed by ex post judicial review necessary to provide adequate protections, it offers an important paradigm shift in the way that FISA is conceived. This reconceptualization should be embraced and bettered by incorporating some of the terms of the House bill, rather than rejected as insufficiently protective of the role of the judiciary. Those concerned with protecting civil liberties should view an end to reliance on ex ante judicial review as a chance to develop real political checks that can vigorously protect both national security and liberty interests.

AT: FISC oversight weak

The public advocate part of the CP and the strengthening of PCLOB to make it a cabinet level agency remedies existing weaknesses of the FISC

Setty, 15 - Professor of Law and Associate Dean for Faculty Development & Intellectual Life, Western New England University School of Law (Sudha, "Surveillance, Secrecy, and the Search for Meaningful Accountability" 51 Stan. J Int'l L. 69, Winter, lexis)

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

For example, on prospective matters, it is likely that intelligence agencies would consult the PCLOB only if the agency itself considers the issue being faced new or novel, as the NSA metadata program was labeled prior to its inception. In such cases, decision makers within an agency generally ask whether the contemplated program is useful or necessary, technologically feasible, and legal. If all three questions are answered affirmatively, the program can be implemented. Now that the PCLOB is fully operational, it seems likely that if a contemplated program is considered new or novel, an intelligence agency would consult the PCLOB at some stage of this process for its guidance on implementing the program. This nonpartisan external input may improve self-policing within the [*102] intelligence community and help intelligence agencies avoid implementing controversial programs or, even if implemented, set better parameters around new programs. n189

If the PCLOB is able to exert some degree of soft power in influencing national security decision-making, then the judiciary represents hard power that could be used to force the protection of civil liberties where it might not otherwise occur. The FISC should be reformed to **include a public advocate** lobbying on behalf of privacy concerns, making the process genuinely adversarial and strengthening the FISC against charges that it merely rubber stamps applications from the intelligence community. n190 Article III courts need to follow the lead of Judge Leon in Klayman in conceptualizing privacy as broad and defensible, even in a world where electronics-based communication is dominant and relatively easy for the government to collect. If the judicial defense of privacy were combined with the possibility of liability for violations of that privacy, it is likely that this would incentivize increased self-policing among the members of the intelligence community. The creation of an active PCLOB and a more adversarial process before the FISC will not provide a perfect solution to the dilemmas posed by the government's legitimate need for

secrecy and the protection of the public against potential abuse. Yet because these changes are institutional and structural, they are well-placed to improve the dynamic between the intelligence community, oversight mechanisms, and the public.

Conclusion

Genuine accountability should not depend on the chance that an unauthorized and illegal leak will occur. In the comparative example of the United Kingdom, engagement with a European Union energized with a commitment to increase privacy protections, along with domestic parliamentary oversight, provide two potential avenues for increased constraint on surveillance. In India, the parliament and the courts historically enabled, not constrained, the intelligence community. Whether that stance will continue as the government's technological capabilities increase is yet to be seen.

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

2nc terrorism link wall – FAA restrictions

FISA's authority alone is insufficient to prevent terrorism – the government needs the widest possible net, including domestic surveillance

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 94-96

According to the administration, these are just interceptions of communications to and from the United States in which one of the parties is suspected of terrorist connections, though the suspicion does not rise to the probable-cause level that would be required for obtaining a warrant. There may be more to the program, however. Most likely the next terrorist attack on the United States will, like the last one, be mounted from within the country but be orchestrated by leaders safely ensconced somewhere abroad. If a phone number in the United States is discovered to have been called by a known or suspected terrorist abroad, or if the number is found in the possession of a suspected terrorist or in a terrorist hideout, it would be prudent to intercept all calls, domestic

as well as international, to or from that U.S. phone number and scrutinize them for suspicious content. But the mere fact that a suspected or even known terrorist has had a phone conversation with someone in the United States or has someone's U.S. phone number in his possession doesn't create probable cause to believe that the other person is also a terrorist; probably most phone conversations of terrorists are with people who are not themselves terrorists. The government can't get a FISA warrant just to find out whether someone is a terrorist; it has to already have a reason to believe he's one. Nor can it conduct surveillance of terrorist suspects who are not believed to have any foreign connections, because such surveillance would not yield *foreign* intelligence information.

FISA has yet another gap. A terrorist who wants to send a message can type it in his laptop and place it, unsent, in an e-mail account, which the intended recipient of the message can access by knowing the account name. The message itself is not communicated. Rather, it's as if the recipient had visited the sender and searched his laptop. The government, if it intercepted the e-mail from the intended recipient to the account of the "sender," could not get a FISA warrant to intercept (by e-mailing the same account) the "communication" consisting of the message residing in the sender's computer, because that message had never left the computer.

These examples suggest that **surveillance outside the narrow bounds of FISA might significantly enhance national security**. At a minimum, such surveillance might cause our foreign terrorist enemies to abandon or greatly curtail their use of telephone, e-mail, and other means of communicating electronically with people in the United States who may be members of terrorist sleeper cells. Civil libertarians believe that this is bound to be the effect of electronic surveillance, and argue that therefore such surveillance is futile. There is no "therefore." If the effect of electronic surveillance is to close down the enemy's electronic communications, that is a boon to us because it is far more difficult for terrorist leaders to orchestrate an attack on the United States by sending messages into the country by means of couriers. But what is far more likely is that some terrorists will continue communicating electronically, either through carelessness— the Madrid and London bombers were prolific users of electronic communications, and think of all the drug gangsters who are nailed by wiretaps—or in the mistaken belief that by using code words or electronic encryption they can thwart the NSA. (If they can, the program is a flop and will be abandoned.) There are careless people in every organization. If al-Qaeda is the exception, civil libertarians clearly are underestimating the terrorist menace! In all our previous wars, beginning with the Civil War, when telegraphic communications were intercepted, our enemies have known that we might intercept their communications, yet they have gone on communicating and we have gone on intercepting. As for surveillance of purely domestic communications, it would either isolate members of terrorist cells (which might, as I said, have no foreign links at all) from each other or yield potentially valuable information about the cells.

FISA's limitations are borrowed from law enforcement. When a crime is committed, the authorities usually have a lot of information right off the bat—time, place, victims, maybe suspects—and this permits a focused investigation that has a high probability of eventuating in an arrest. Not so with national security intelligence, where the investigator has no time, place, or victim and may have scant idea of the enemy's identity and location; **hence the need for the wider, finer-meshed investigative net**. It is no surprise that there have been leaks from inside the FBI expressing skepticism about the NSA program. This skepticism reflects the Bureau's emphasis on criminal investigations, which are narrowly focused and usually fruitful, whereas

intelligence is a search for the needle in the haystack. FBI agents don't like being asked to chase down clues gleaned from the NSA's interceptions; 999 out of 1,000 turn out to lead nowhere. They don't realize that often the most that counterterrorist intelligence can hope to achieve is to impose costs on enemies of the nation (as by catching and "turning" some, or forcing them to use less efficient means of communication) in the hope of disrupting their plans. It is mistaken to think electronic surveillance a failure if it doesn't intercept a message giving the time and place of the next attack.

Bureaucratization of ex ante review undermines counter-terrorism investigations

Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

3. The Demands of National Security. — Finally, while the focus of this Note is on the protection of civil liberties, the current system may also do a poor job of promoting security. From an institutional competence perspective, it seems questionable that judges should occupy a gatekeeping role. Indeed, all the reasons discussed above that judges have invoked in reducing their own authority over such issues apply with equal force here.77

The inefficiencies of the current system are even more problematic. Given the permissiveness of the statutory standards and the FISA courts, inefficiency is the primary motivating force behind attempts to reduce judicial oversight. As DOJ has noted, "[n]umerous Congressional and Executive Branch reviews of the FISA process have recommended that the FISA process be made more efficient."78 Others are more forthright, describing the FISC order procedures as "hopelessly slow and bureaucratic."79 On the whole, "if we are seeking a model of judicial review that advances security, there is little reason to think that the FISA Court, at least as currently set up, advances that goal."80

FISA can't identify unknown terrorists – advance surveillance is necessary to generate enough information

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

Programmatic surveillance thus can help remedy some of the difficulties that arise when monitoring covert adversaries like international terrorists. FISA and other particularized surveillance tools are useful when authorities want to monitor targets whose identities are already known. But they are less useful when authorities are trying to identify unknown targets. The problem arises because, in order to obtain a wiretap order from the FISA court, the government usually must demonstrate probable cause to believe that the target is a foreign power or agent of a foreign power. n39 This is a fairly straightforward task when the target's identity is already known--e.g., a diplomat at the Soviet embassy in Washington, DC. But the task is considerably

more difficult when the government's reason for surveillance is to detect targets who are presently unknown--e.g., al-Qaeda members who operate in the shadows. How can you convince the FISA court that Smith is an agent of a foreign power when you know nothing about Smith--his name, nationality, date of birth, location, or even whether he is a single person or several dozen? The government typically won't know those things unless it has collected some information about Smith--such as by surveilling him. And there's the rub. Programmatic monitoring helps avoid the crippling Catch-22 that can arise under particularized surveillance regimes like FISA: officials can't surveil unless they show that the target is a spy or terrorist, but sometimes they can't show that an unknown target is a spy or terrorist unless they have surveilled him.

Ex post restrictions can protect information being used against people for anything other than preventing terrorism

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 98-101)

Concerns with privacy could be alleviated, moreover, by adopting a rule forbidding the intelligence services to turn over any intercepted communications to the Justice Department for prosecution for any offense other than a violation of a criminal law intended for the protection of national security. Then people would not worry that unguarded statements in private conversations would get them into trouble. Such a rule would be a modification, urged in a parallel setting by Orin Kerr, of the "plain view" doctrine of search and seizure. That doctrine, another of the exceptions to the requirement of a warrant to search or seize, allows the seizure of evidence that the police discover in plain view in the course of an unrelated lawful search—even though the discovery is accidental and a warrant could not have been obtained to search for the evidence discovered. But what if an intelligence officer, reading the transcript of a phone conversation that had been intercepted and then referred to him because the search engine had flagged it as a communication possibly possessing intelligence value, discovers that one of the parties to the communication seems to be planning a murder, though a murder having nothing to do with any terrorist plot? Must the officer ignore the discovery and refrain from notifying the authorities? Though the obvious answer is no, my answer is yes.

There is much wild talk in private conversations. Suppose the communication that has been intercepted and read for valid national security reasons contains the statement "I'll kill the son of a bitch." The probability will be very high that the statement is hyperbole, that there is no serious intent to kill anyone. But suppose intelligence officers have been told that if a communication they read contains evidence of crime, they should turn it over to the FBI. The officer in my hypothetical case does that, and the Bureau, since the matter has been referred to it by a government agency, takes the threat seriously and investigates (or turns the matter over to local police for investigation, if no federal crime is suspected). As word of such investigations got around, people would learn that careless talk in seemingly private conversations can buy them a visit from the FBI or the police. At this point the risk that national security surveillance would significantly deter candor in conversation would skyrocket. It is more important that the public tolerate extensive national security surveillance of communications than that an occasional run-of-the-mill crime go unpunished because intelligence officers were not permitted to share

evidence of such a crime with law enforcement authorities. But if the evidence is of a crime related to national security, then sharing it with law enforcement authorities is appropriate and should be (and is) required. Other exceptions may be needed. Suppose that what is overheard is a conversation that identifies one of the parties as a serial killer. Serial killing is not terrorism, but it is such a serious crime that clues to it picked up in national security surveillance should be communicated to law enforcement authorities.

If such a rule (with its exceptions) were in place, I believe that the government could, in the present emergency, intercept *all* electronic communications inside or outside the United States, of citizens as well as of foreigners, without being deemed to violate the Fourth Amendment, provided that computers were used to winnow the gathered data, blocking human inspection of intercepted communications that contained no clues to terrorist activity. We know that citizens (and permanent residents) can be terrorists operating against their country, even without any foreign links. The United States has had its share of U.S. citizen terrorists, such as the Unabomber and Timothy McVeigh and presumably whoever launched the anthrax attack on the East Coast in October 2001. The terrorist bombings of the London subway system in July 2005 were carried out by British citizens. And U.S. persons who are not terrorists or even terrorist sympathizers might have information of intelligence value—information they might be quite willing to share with the government if only they knew they had it. The information that enables an impending terrorist attack to be detected may be scattered in tiny bits that must be collected, combined, and sifted before their significance is apparent. Many of the bits may reside in the e-mails or phone conversations of innocent people, such as unwitting neighbors of terrorists, who may without knowing it have valuable counterterrorist information—one consequence of the jigsaw puzzle character of national security intelligence.

A further question, however, is whether the Fourth Amendment should be deemed to require warrants for such surveillance. The Keith case that I mentioned earlier held that warrants are required for conducting purely domestic surveillance even when the purpose is to protect national security, though the Court suggested that perhaps the probable-cause requirement could be attenuated. It would have to be. If the goal of surveillance is not to generate evidence of criminal activity but to detect terrorist threats, including those too incipient to be prosecutable as threats, and even threats of which the persons under surveillance may be unaware because the significance of the clues they possess eludes them, then to insist that the investigators establish probable cause to believe criminal activity is afoot will be to ask too much. The amendment's requirement of particularity of description of what is to be searched or seized would also have to be relaxed for surveillance warrants adequate to national security to be feasible, because intelligence officers will often not have a good idea of what they are looking for.

Requiring a particular demonstration of threat wrecks terrorism investigations

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 138-141)

Civil libertarians argue that the government ought to be required to demonstrate that it has a reasonable basis for believing that the person to whom the records pertain is involved in terrorist

activity. But as should be clear by now, **that would be too restrictive a requirement**. To impose it would be either to misunderstand the needs of intelligence or to underestimate the value of intelligence in the struggle against terrorism (or perhaps to underestimate the terrorist threat). Information about an individual who is not part of a terrorist ring may nevertheless be highly germane to an investigation of the ring or, what may be as important, to an investigation aimed at discovering the existence of such rings. The information might concern an imam who, though not himself involved in terrorism, was preaching holy war. It might concern family members of a terrorist, who might have information about his whereabouts. It might consist of sales invoices for materials that could be used to create weapons of mass destruction, or of books and articles that expressed admiration for suicide bombers.

The impact of section 215 on civil liberties is quite limited— only a few dozen section 215 demands have been served on libraries. Most records custodians will, as I said, voluntarily hand over nonprivileged records to the government when told the records may contain information relevant to national security. A custodian's refusal to disclose the records might generate enough suspicion to enable the government to obtain a subpoena even under a much narrower version of section 215.

One understands, though, why civil libertarians have labeled section 215 the "libraries provision" despite its being used so rarely against libraries. To discover what people have been reading, as distinct from discovering their financial or health status, is to gain insight into what they are thinking—and what they are planning. This is why the government might want to obtain a record of a person's library borrowings (not to mention his bookstore purchases, records of which also fall within the scope of section 215). And when the quest for knowledge of what a person is thinking is driven by concern with terrorism, which is almost always politically motivated, success in the quest is likely to include the acquisition of a comprehensive picture of the subject's political beliefs. Knowing that the government is seeking to compile such pictures, people of unorthodox views may hesitate to buy or borrow books that express such views. This is the same issue that is raised by the government's conducting surveillance of mosques. Whether such surveillance presents Fourth Amendment problems depends on the method used to conduct it; surveillance as such, as we saw in Chapter 4, does not violate the First Amendment despite its undoubted effect on the exercise of free speech.

The Miller line of decisions, in holding that a voluntary disclosure of information manifests a willingness to waive or forfeit any right of privacy, seems unrealistic about the meaning not only of "voluntary" but also of "privacy" itself. Informational privacy does not mean refusing to share information with everyone. Obviously a telephone conversation is not private in that sense, nor a letter, nor a conversation between spouses or friends. Every conversation is at least twosided. The fact that I disclose symptoms of illness to my doctor does not make my health a public fact, especially if he promises (or the rules of the medical profession require him) not to disclose my medical history to anyone without my permission.

One must not confuse solitude with secrecy; they are distinct forms of privacy. Solitude fosters individualistic attitudes; conversely, the constant presence of other people or the sense of being under constant surveillance enforces conformity. But one also needs freedom to communicate in private. The planning of organized activity obviously is impossible without communication; less obviously, productive independent thinking almost always requires bouncing ideas off other people. And few of us are sufficiently independent-minded to persist in an unorthodox idea if we don't discover that others share it.

If "liberty" in the Fifth Amendment's due process clause can connote sexual freedom, and "due process" can be understood to require that any restriction on liberty be no greater than is necessary, why can't there be a due process right to control information about oneself that is not already public knowledge, unless one is trying to use that control for unlawful ends or the government has a pressing need for the information? Maybe there can be—provided, however, that the "pressing need" qualification is taken seriously. Constitutional rights, as we have seen throughout this book, are not absolutes whose scope is fixed without regard to competing interests. How much information about oneself one should be permitted to withhold from the government depends critically on how valuable the information is to the government. In an era of global terrorism and proliferation of weapons of mass destruction, the government has a compelling need to gather, pool, sift, and search vast quantities of information, much of it personal.

Restrictions on collection of data aid terrorism – protections against misuse of data solve better

Posner, 6 - judge on the United States Court of Appeals for the Seventh Circuit in Chicago and a Senior Lecturer at the University of Chicago Law School (Richard, Not a Suicide Pact: The Constitution in Time of National Emergency, p. 143-144)

Privacy is the **terrorist's best friend**, and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents: anonymity combined with the secure encryption of digitized data makes the Internet a powerful tool of conspiracy. The government has a compelling need to exploit digitization in defense of national security. But if this is permitted, intelligence officers are going to be scrutinizing a mass of personal information about U.S. citizens. And we know that people don't like even complete strangers poring over the details of their private lives. But the fewer of these strangers who have access to those details and the more professional their interest in them, the less the affront to privacy. One reason people don't much mind having their bodies examined by doctors is that they know that doctors' interest in bodies is professional rather than prurient; we can hope that the same is true of intelligence professionals.

The primary danger of such data mining is leaks by intelligence personnel to persons inside or outside the government who might use the leaked data for improper purposes. Information collected by a national security data-mining program would have to be sharable within the national security community, which would include in appropriate cases foreign intelligence services, but not beyond. Severe sanctions and other security measures (encryption, restricted access, etc.) could and should be imposed in order to prevent—realistically, to minimize—the leakage of such information outside the community. My suggestion in the last chapter that the principle of the Pentagon Papers case be relaxed to permit measures to prevent the media from publishing properly classified information would reinforce protection of the privacy of information obtained by national security data mining.

I have said both that people value their informational privacy and that they surrender it at the drop of a hat. The paradox is resolved by noting that as long as people don't expect that the details of their health, love life, or finances will be used to harm them in their interactions with other

people, they are content to reveal those details to strangers when they derive benefits from the revelation. As long as intelligence personnel can be trusted to use their knowledge of such details only for the defense of the nation, the public will be compensated for the costs of diminished privacy in increased security from terrorist attacks.

Distinguishing between domestic and foreign targets is frequently impossible
Harvard Law Review, 8 – no author cited, "SHIFTING THE FISA PARADIGM: PROTECTING CIVIL LIBERTIES BY ELIMINATING EX ANTE JUDICIAL APPROVAL" http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/shifting_the_FISA_paradigm.pdf

4. The Nature of Terrorism. — Institutional limitations are especially pressing given the vagaries of "terrorism."66 Substantial gray areas exist in distinguishing domestic from foreign and criminal from intelligence interests. Courts, fearful of treading too heavily in the national security arena, will be loath to tell the government that someone it has determined to be connected to terrorism is in fact being targeted unfairly for his or her religion or national origin.

Indeed, recent statutory developments have greatly clouded the already difficult task of making such distinctions. For example, the legislative move from "primary" to "significant" purpose discussed above, and the related tearing down of the "wall" that prevented information sharing between intelligence and law enforcement entities,67 means that a court must accuse the government of not reasonably suspecting a target's involvement with terrorism if it is to deny an application. Similarly, the standard for pen/trap orders68 was lowered from a showing that the device was used to communicate with an agent of a foreign power under the old 50 U.S.C. § 1842(c)(3) to a much lower showing of "relevant to an ongoing investigation" under the new 50 U.S.C. § 1842(c)(2). Whereas before the FISC may at least have been able to point to the relatively objective question of whether an individual was in fact an agent of a foreign power, the current loose standard would force the court to tell the government that the desired target bore no relevance to a terrorism investigation.

AT: Perm do both

The perm links to terrorism – the existing FAA structure is carefully balanced to allow ex post review. Increasing the ex ante nature of the FAA could wreck terrorism investigations
Blum, 9 (Stephanie, "WHAT REALLY IS AT STAKE WITH THE FISA AMENDMENTS ACT OF 2008 AND IDEAS FOR FUTURE SURVEILLANCE REFORM" 18 B.U. Pub. Int. L.J. 269, Spring, lexis)

In sum, under traditional FISA, certain kinds of international communications have always been completely outside of FISA review. Under the FAA, there is now FISC reviews of targeting and minimization procedures as well as the ex post oversight mechanisms. Additionally, it is not even clear that a warrant would be required to gather foreign intelligence within the country. While per Keith, a warrant is required if the threat is solely domestic, it is unsettled whether a warrant is required when there is a connection to a foreign power. Significantly, in August 2008, the FISCR upheld the constitutionality of the PAA (that had expired) explicitly finding that there was a foreign intelligence exception to the Fourth Amendment warrant requirement. n241 Although the petitioners (telecommunication companies who did not want to comply with an order under the PAA) argued that the PAA would result in incidental communications of innocent Americans being retained due to warrantless surveillance of people reasonably believed to be overseas, the FISCR rejected that argument. It stated, "The petitioner's concern of incidental collections is overblown. It is settled beyond peradventure that incidental collections occurring as a result of constitutionally permissible acquisitions do not render those acquisitions unlawful." n242

The FISCR's holding that the PAA was constitutional means that it would likely find the FAA - which has more judicial review and reporting requirements than the PAA - to be similarly lawful. Hence, it seems a legal stretch to maintain that the government needs a warrant when it targets foreign nationals overseas who may incidentally communicate with U.S. persons in the United States. While the FAA, as applied to U.S. persons, must still be reasonable under the Fourth Amendment, given the FISC-monitored minimization procedures and ex post oversight mechanisms, it seems that the FAA has struck a [*306] **nuanced compromise** between the need to expeditiously gather foreign intelligence, and the protection of civil liberties.

Furthermore, compared to traditional FISA, the FAA relies more heavily on ex post oversight mechanisms than on ex ante warrants based on individualized suspicion - and this may be a benefit. Several scholars have questioned the effectiveness of FISA's ex ante warrants issued by a secret court based on only one-sided information provided by the government. n243 Critics of FISA argue that because the FISC approves virtually all requests for warrants, it merely serves as a rubber stamp and does not provide any genuine judicial review. The FISC has, indeed, approved almost all warrant requests - as of 2006, the FISC had approved all but five out of over 17,000 requests. n244 According to a Note written by the Harvard Law Review, ex ante judicial review to conduct foreign surveillance may be **counterproductive** and unworkable:

The [FISC] judge lacks a skeptical advocate to vet the government's legal arguments, which is of crucial significance when the government is always able to claim the weight of national security expertise for its position. It is questionable whether courts can play this role effectively, and, more importantly, whether they should. n245

Because the FISC has no way to evaluate the facts presented by the government, it has to assume that the government-provided facts are correct. Problematically, the FISC identified evidence of governmental misstatements and omissions of material facts in seventy-five FISA applications. n246 This evidence did not come to light until after the FISC issued the warrants. n247

Judges are also extremely deferential to claims of national security, especially when they "must weigh the national security necessity ex ante, rather than being asked to review it after the fact." n248 The Harvard Note argues that "ex ante judicial review is not only of limited effectiveness, but it is also **affirmatively harmful**" in that it "imparts a broader imprimatur of validity than is warranted given the limited effectiveness of judicial review." n249 Hence, as the Note observes,

ex ante judicial review may **impede security** without providing any real privacy interest protection. n250 Therefore, the Note argues that "Congress is better situated constitutionally and better equipped institutionally to make the sort of value judgments and political determinations that are necessary [*307] to fulfill FISA's purposes." n251 The Note concludes that "those concerned with protecting civil liberties should view an end to reliance on ex ante judicial review as a chance to develop real political checks that can vigorously protect both national security and liberty interests." n252

The permutation increases the burden on the government and inhibits investigations

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

At the same time, all of the ex ante restrictions will necessarily be poor proxies for an ex post review of reasonableness. Instead of substituting for ex post review of reasonableness, ex ante restrictions supplement those restrictions. Ex ante limitations force the government to follow two sources of law: the reasonableness of executing the warrant imposed by reviewing courts ex post, and the restrictions imposed by the magistrate judge ex ante. If the ex ante restrictions happen to be modest, or are drafted in a way that ensures that they are always less than or equal to the restrictions of reasonableness ex post, then such restrictions will merely replicate the ex post reasonableness determinations. But every time an ex ante restriction goes beyond ex post reasonableness, the restrictions will end up prohibiting the government from doing that which is constitutionally reasonable. The limitations will be unreasonable limitations caused by judicial error.

Ex ante restrictions are highly error prone

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

Ex ante restrictions tend to introduce constitutional errors in this environment. To be sure, such restrictions stem from the best of intentions: they reflect a good-faith effort to identify what will be constitutionally reasonable.201 However, ex ante predictions of reasonableness will be more error prone than ex post assessments for two major reasons. First, ex ante restrictions require courts to "slosh [their] way through the factbound morass of reasonableness" 202 without actual facts. Second, ex ante restrictions are imposed in ex parte hearings without legal briefing or a hearing. Both reasons suggest that ex ante restrictions often will inaccurately gauge the reasonableness of how warrants are executed. The major difficulty with ex ante restrictions is that the reasonableness of executing a warrant is highly factbound, and judges trying to impose ex ante restrictions generally will not know the facts needed to make an accurate judgment of

reasonableness. Granted, magistrate judges might have a ballpark sense of the facts, from which they might derive a sense of what practices are ideal. For example, they might think that it is unreasonable to seize all of a suspect's home computers if on-site review is possible. Alternatively, they might think it is unreasonable to conduct a search for image files if the warrant only seeks data not likely to be stored as an image. They might think it is unreasonable to keep a suspect's computer for a very long period of time without searching it. All of these senses will be based on a rough concept of how the competing interests of law enforcement and privacy play out in typical computer searches and seizures.

At the same time, these ballpark senses of reasonableness can never improve past very rough approximation. A magistrate judge cannot get a sense of the exigencies that will unfold at each stage of the search process. The reasonableness of searching on-site will not be known until the agents arrive and determine how many computers are present, what operating systems they use, and how much memory they store. The needed time window before the government searches the seized computer depends on how much the government can prioritize that case over other cases, given existing forensic expertise and resources, as well as which agency happens to be working that case.203 The reasonableness of different search protocols depends on the operating systems, an analyst's expertise in forensics, which forensics programs the government has in its possession, what kind of evidence the government is searching for, and whether the suspect has taken any steps to hide it.204 Finally, the reasonableness of retaining seized computers that have already been searched depends on whether the government might need the original computer as evidence or whether it ends up containing contraband that should not be returned and is subject to civil forfeiture. 205

The magistrate presented with an application for a warrant simply cannot know these things. Judges are smart people, but they do not have crystal balls that let them predict the number and type of computers a suspect may have, the law enforcement priority of that particular case, the forensic expertise and toolkit of the examiner who will work on that case, whether the suspect has tried to hide evidence, and if so, how well, and what evidence or contraband the seized computers may contain. Magistrate judges can make ballpark guesses about these questions based on vague senses of what happens in typical cases. But even assuming they take the time to learn about the latest in law enforcement resources and the computer forensics process—enough to know about typical cases—they cannot do more than come up with general rules that they think are useful for those typical cases.

The errors of ex ante restrictions are particularly likely to occur because warrant applications are ex parte. The investigators go to the judge with an affidavit and a proposed warrant.206 The judge reads over the materials submitted. The judge can modify the warrant, but his primary decision is whether to sign or reject it. The entire process takes a matter of minutes from start to finish. No hearing occurs. There is no testimony beyond the affidavit in most cases, and the affidavit usually contains only standard language about computer searches.207 A prosecutor may be present, but need not be. Obviously, no representative of the suspect is present to offer witnesses or argument.

In that setting, judges are particularly poorly equipped to assess reasonableness. The most they can develop is a standard set of ex ante restrictions that they use in all computer warrants, perhaps one shared with other magistrate judges in their district. More careful scrutiny is both impractical and unlikely. The ability of a magistrate judge to assess reasonableness in that setting is a far cry from her ability to rule on reasonableness in an ex post hearing, in which agents and experts can

take the stand and counsel for the defendant can cross-examine the agent, offer his own witnesses, submit written briefs, and present oral argument.

Ex post review significantly decreases the risk of judicial errors

Kerr, 10 - Professor, George Washington University Law School (Orin, "EX ANTE REGULATION OF COMPUTER SEARCH AND SEIZURE" Virginia Law Review, October, SSRN)

The proper answer is "no." Ex ante restrictions are unworkable and unwise for two core reasons. First, the combination of error-prone ex ante judicial review and more accurate ex post judicial review will result in systematic constitutional error. Instead of requiring reasonableness, ex ante review will result in reasonable steps being prohibited by judicial error. The likelihood of error will be a function of constitutional uncertainty. The more unclear the relevant legal rules, the more uncertain will be the restrictions needed to ensure reasonableness. However, as the law of reasonableness becomes clear, ex ante restrictions also become useless: the police will follow the rules because they know they will be imposed ex post, without a need for ex ante restrictions. From this perspective, the perceived need for ex ante restrictions is merely a response to present legal uncertainty.

Of course, it is better to prohibit unreasonable searches ex ante than invalidate them ex post while the law remains uncertain. Perhaps this carves out a role for ex ante restrictions, just as a placeholder until the law becomes settled? Again, the answer is "no." The difficulty is that ex ante restrictions impair the ability of appellate courts and the Supreme Court to develop the law of unreasonable searches and seizures in the usual case-by-case fashion. Assuming ex ante restrictions are not null and void, they transform Fourth Amendment litigation away from an inquiry into reasonableness and towards an inquiry into compliance with the magistrate's commands. Search and seizure law cannot develop in this environment. For that reason, ex ante restrictions cannot be temporary measures used until the law becomes settled. Ironically, those measures will actually prevent the law from being settled.

AT: Perm do the CP

The plan relies on FISA authorization to limit surveillance – that's by definition ex ante. The CP establishes robust FISC review of surveillance after it has occurred – that's ex post

Morgan, 8 - Law Clerk to the Honorable Samuel H. Mays, Jr., United States District Court for the Western District of Tennessee. J.D., 2007, New York University School of Law (Alexander, "A BROADENED VIEW OF PRIVACY AS A CHECK AGAINST GOVERNMENT ACCESS TO E-MAIL IN THE UNITED STATES AND THE UNITED KINGDOM" 40 N.Y.U. J. Int'l L. & Pol. 803, Spring, lexis)

In this Note, I use "oversight" to refer to any form of review, be it internal or external, judicial or nonjudicial, that accompanies e-mail surveillance either before (ex ante) or after (ex post) its use. The American regime includes both ex ante and ex post oversight of e-mail surveillance. Ex ante oversight includes departmental protocols, as well as the judicial authorization requirements under the ECPA and **FISA**. Departmental protocols that require senior agency officials to approve applications to courts provide an administrative hurdle that informally limits the number of surveillance applications and ensures a good-faith basis for their submission. n61 Though these protocols provide initial limits on e-mail surveillance, the judiciary remains the most important, as judges provide an extrinsic check that agency officials cannot. Judges are less likely than prosecutors or executive agents to have a vested interest in an investigation's success and are therefore better suited to oversee compliance with surveillance requirements. n62

[*815] Courts are the only forum for ex post oversight in the United States. Where the government conducts surveillance in violation of statute, courts may impose penalties on the persons guilty of unauthorized surveillance and, in some cases, they may exclude the evidence from trial. n63 Suppression of evidence obtained in violation of the ECPA is available for wire or oral communications, but is inexplicably absent for e-mail. n64 Legal commentators denounce this distinction as "baseless" n65 and further argue that, without a statutory hook, criminal defendants have a lesser "incentive to raise challenges to the government's internet surveillance practices." n66

When government surveillance abridges constitutional rights, there are two avenues of redress. n67 At trial, criminal defendants may seek to suppress evidence obtained through unconstitutional means, as well as evidence derived therefrom (deemed "fruit of the poisonous tree"). n68 Victims of unconstitutional searches may also bring civil actions seeking damages for deprivation of rights under color of law. n69

Ex post oversight is qualitatively different from the plan – it allows all surveillance to occur, but establishes protections against the misuse of surveillance data. The plan severs because it has to curtail surveillance from the start

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

In addition to oversight by outsiders, a programmatic surveillance regime also should feature a system of internal checks within the executive branch, to review collection before it occurs, after the fact, or both. As for the ex ante checks, internal watchdogs should be charged with scrutinizing proposed bulk collection to verify that it complies with the applicable constitutional and statutory rules, and also to ensure that appropriate protections are in place for privacy and civil liberties. The Justice Department's Office of Intelligence is a well known example. The unit, which presents the government's surveillance applications to the FISA court, subjects these requests to exacting scrutiny with the goal of increasing the likelihood of surviving judicial review. n65 Indeed, the office has a strong incentive to ensure that the applications it presents are airtight, so as to preserve its credibility with the FISA court. n66 Ex post checks include such commonplace mechanisms as agency-level inspectors general, who can audit bulk collection

programs, assess their legality, and make policy recommendations to improve their operation, as well as entities like the Privacy and Civil Liberties Oversight Board, which perform similar functions across the executive branch as a whole. Another important ex post check is to offer meaningful whistleblower protections to officials who know about programs that violate constitutional or statutory requirements. Allowing officials to bring their concerns to ombudsmen within the executive branch (and then eventually to Congress) can help root out lawlessness and also relieve [*539] the felt necessity of leaking information about highly classified programs to the media.

The CP doesn't curtail surveillance – it curtails what authorities may DO with the data after it's collected – it's a form of harm minimization only

Sales, 14 - Associate Professor of Law, Syracuse University College of Law (Nathan, I/S: A Journal of Law and Policy for the Information Society, "Domesticating Programmatic Surveillance: Some Thoughts on the NSA Controversy" 10 ISJLP 523, Summer, lexis)

A third operational consideration is the need for strong minimization requirements. Virtually all surveillance raises the risk that officials will intercept innocuous data in the course of gathering evidence of illicit activity. Inevitably, some chaff will be swept up with the wheat. The risk is especially acute with programmatic surveillance, in which the government assembles large amounts of data in the search for clues about a small handful of terrorists, spies, and other national security threats. n71 Minimization is one way to deal with the problem. Minimization rules limit what the government may do with data that does not appear pertinent to a national security investigation--e.g., how long it may be retained, the conditions under which it will be stored, the rules for accessing it, the purposes for which it may be used, the entities with which it may be shared, and so on. Congress appropriately has required intelligence officials to adopt minimization procedures, both under FISA's longstanding particularized surveillance regime n72 and under the more recent authorities permitting bulk collection. n73 But the rules need not be identical. Because programmatic surveillance often involves the acquisition of a much larger trove of non-pertinent information, the minimization rules for bulk collection ideally would contain stricter limits on the use of inadvertently collected information for purposes unrelated to national security. In other words, the minimization procedures should reflect the anti-mission-creep principle described above.

PRISM SDI

On Case

US/EU Adv

US/EU Frontline

The U.S. government has acted decisively to mitigate EU concerns about PRISM and NSA surveillance.

Archick, 2014 [Kristin, Specialist in European Affairs, Congressional Research Service, U.S.-EU Cooperation Against Terrorism, December 1, 2014, https://www.fas.org/sgp/crs/row/RS22030.pdf]

U.S. officials have sought to reassure EU leaders and MEPs that U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for the SWIFT and the PNR accords. At the EU's request, a high-level U.S.-EU working group was established to discuss the reported NSA surveillance operations, especially the so-called PRISM program (in which the NSA allegedly collected data from leading U.S. Internet companies), and to assess the "proportionality" of such programs and their implications for the privacy rights of EU citizens.35 In November 2013, the European Commission (the EU's executive) issued a report on the findings of this working group, along with recommendations for addressing European concerns about U.S.-EU data flows and restoring transatlantic trust.36 U.S. and EU policy makers have been seeking possible ways to implement some of the Commission's proposals. In June 2014, U.S. Attorney General Holder announced that as part of efforts to conclude the DPPA, the Obama Administration would seek to work with Congress to enact legislation to provide EU citizens with the right to pursue redress in U.S. courts for certain data privacy violations—a key EU demand.

Shared interests between U.S. and Europe trump fallout from U.S. surveillance. Relations are resilient.

Raisher, '14 [Josh is a program coordinator for the Transatlantic Trends survey at the German Marshall Fund of the United States, "Ties that Bind?" U.S. News & World Report, 9-11-2014, http://www.usnews.com/opinion/blogs/world-report/2014/09/11/german-us-relationship-still-strong-despite-nsa-merkel-spying-rift]

Fortunately, this is happening at a time when shared interests continue to push the two countries towards closer cooperation, irrespective of how much their leaders – and publics – trust each other. Whatever difficulties exist in the transatlantic relationship, Obama and Merkel have presented a united front when addressing Russian actions in Ukraine. And there is evidence of this confluence of policy preferences in the general public as well: In the same Transatlantic Trends survey, American and German publics often agreed when asked

what tools they would prefer to use to address foreign policy concerns. Sixty percent of Germans said that U.S. leadership in world affairs was desirable, and 70 percent of Americans said the same of the EU. The relationship between the two countries is still fundamentally strong, and Germany still sees a prominent place for the U.S. in world affairs. But more and more, Germans may want that place to be farther outside of their own borders.

TTIP kills the multilateral trading system

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

Bretton-Woods multilateralism has provided the world with 30 years of economic growth following World War II. Its initial purpose was mainly political: building up an international system geared towards support, across the IMF membership, of New Deal models through trade liberalisation and monetary stability guaranteed by capital controls. Because of the Cold War and the persisting colonial and post-colonial system, it was the West and the North that primarily reaped Bretton-Woods benefits. America gradually abandoned its role of guardian of the Bretton-Woods mainly by decoupling dollar from gold and pushing to replace solidarity between countries through the IMF by entrusting financial markets, through deregulation and floating exchange rates, with the responsibility of preventing and correcting structural deficits and surplus, which actually did not work. However, market-driven globalisation has taken over and has succeeded in eventually bringing about a certain North-South convergence through the rise of Asia, driven by China's Renaissance. This change in the power balance between emerging and advanced economies must translate into a new type of governance. This governance model must build up on Bretton-Woods foundations, and must definitely retain its multilateral character, but with the rebalancing of voting rights and enough flexibility to allow for the diversity of development models in economies that are catching up. **TTIP goes in a different direction by substituting pressure with negotiation and by imposing a *'one-size fits all'* reference model. An EU-US deal would further weaken a multilateral trading system already undermined by a chaotic flurry of FTA deals and by the competitive liberalisation race triggered by the US. • The coalition of the two largest trading powers would entail a trade diversion effect for the rest of the WTO membership. • A regulatory coalition of the declining hegemons amounts to an attempt to twist the arm of emerging nations with regard to norms and standards.** • However, emerging nations have the right to develop their own norms and standards for their domestic markets which are expanding faster than in advanced countries. This is where the real trade-off between the West and China comes though: regulatory harmonisation for access to rising markets. • TTIP will either create the risk of a regulatory divide or will constitute a regulatory domination of the West over emerging countries, two scenarios which are incompatible with the spirit of multilateralism.

TTIP kills the NATO alliance – weakens U.S.-Europe relations.

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

TTIP would put Europe and America on a path which undermines the multilateral trading system at a time when the overall multilateral governance needs to be mended, rebalanced and reinforced so as to adjust it to the new multipolar structure of the world economy. By leaving China outside the scope of TPP and of TTIP, the US and Europe are running the risk of isolating this great emerging nation, with the subsequent prospect of pushing it towards an alternative strategy, i.e. forming a regional normative coalition with its neighbours so as to pursue its expansion by retaining the dynamism of its domestic and its regional markets for its companies. The EU and the US should be more careful about uniting against China. Their alliance will be perceived as two declining hegemonic powers attempting to dictate their rule to emerging powers. Instead of engaging in the construction of a new international economic order, TTIP is trying to prolong the ancient one. There is still time to stop the hazardous process of TTIP or rather to let it sink into the moving sands of popular contestation. An early harvest would serve as a face-saving device. A "plurilateralisation" of TTIP including China would however be the best possible outcome. It would represent a first step towards more balanced multilateral governance. The European Commission must reassess TTIP and propose to change tack before the whole process derails into frustration and acrimony with an unexpected paradox, a weakening of the strategic Atlantic Alliance.

TTIP's economic benefits are vastly exaggerated. It may even reduce economic output.

Bromund, Hederman, Riley and Coffey, '13 [Ted, PhD, is Senior Research Fellow in Anglo–American Relations in the Margaret Thatcher Center for Freedom; Rea, the Director of the Center for Data Analysis and the Lazof Family Fellow; Bryan, Jay Van Andel Senior Policy Analyst in Trade Policy in the Center for International Trade and Economics; Luke, the Margaret Thatcher Fellow in the Thatcher Center at The Heritage Foundation; "Transatlantic Trade and Investment Partnership (TTIP): Pitfalls and Promises," Issue Brief #4100, The Heritage Foundation, December 5, 2013, http://www.heritage.org/research/reports/2013/12/transatlantic-trade-and-investment-partnership-ttip-pitfalls-and-promises]

Existing models do not fully capture the dynamic and beneficial effects of freer trade. But precisely because the U.S. and EU economies are both large and already relatively open, the beneficial effects of freer trade, though real, would not be dramatic. One reason for caution about TTIP is the exaggerated hopes that many proponents place on it. U.S. Assistant Secretary of State for European Affairs Victoria Nuland asserts that "TTIP can be for our economic health what NATO has been to our shared security."[3] The Atlantic Council similarly asserts that TTIP "should increase military spending in Europe" and "would be a significant boost to the NATO alliance."[4] Both of these claims are doubtful at best. The reality is that, due in part to the policies of the EU itself, the EU's share of world output has declined and will continue to decline. According to the October 2013 edition of the International Monetary Fund's World Outlook Database, the EU share was 30.9 percent in 1980; by 2018, it will be 16.7 percent.[5] That is the fundamental fact that is driving world events and U.S. policy to turn away from Europe, and no conceivable TTIP would

alter this reality. Indeed, a bad agreement could actually make both the U.S. and the EU even less well off.

The overestimated benefits of TTIP are outweighed by its negative effects; low tariffs now, long time frame, miniscule benefits and uncertain job creation.

European Green Party Green Electoral Convention, **'14** ["Position Paper "TTIP – Too many untrustworthy promises and real risks," February 22, 2014, http://europeangreens.eu/brussels2014/content/position-paper-ttip]

A standard argument for "free trade" agreements is that they reduce tariffs, thereby expanding trade, allowing access to cheaper imports and that broad benefits to the economy clearly outweigh the downsides. But tariffs between the US and the EU are quite low already – 3 percent on average. Officials promoting TTIP are therefore focusing their positive economic predictions on the 'elimination, reduction, or prevention of unnecessary "behind the border" policies', so called non-tariff trade barriers. Optimistic studies have assumed that TTIP might result in a 0.5-1 percent increase in gross domestic product (GDP). Besides the fact that this way of thinking is the one that has lead Europe to the actual crisis, such estimates are unrealistically high, and fail to mention that the full range of benefits is only projected to be achieved by 2027. This means that the short-term benefits are unlikely to outweigh the negative effects – in terms of health, social protection, environment and privacy – of the agreement According to an analysis by Public Citizen´s Global Trade Watch (a consumer advocate group), benefits from TTIP would amount to about less than €40 per family, per year. And that does not take into account any additional costs from weakened safeguards regarding health, financial, environmental and other public interest regulations. Tom Jenkins from the European Trade Union Council (ETUC) has voiced his doubts regarding job increases promised through TTIP: „It is unclear, where these jobs should come from and which EU countries would in the end benefit."

TTIP undermines democratic freedoms through secret negotiations and special international tribunals.

European Green Party Green Electoral Convention, **'14** ["Position Paper "TTIP – Too many untrustworthy promises and real risks," February 22, 2014, http://europeangreens.eu/brussels2014/content/position-paper-ttip]

The lack of transparency that has characterised the TTIP negotiations is not only an ominous signal but an infringement on every citizen´s right to know what is being negotiated in their name. The negotiating mandate which the EU Council gave to the Commission is still classified as a secret document. Even members of the European Parliament, which plays an important role in Europe´s trade relations, because it can veto trade deals, as it did for Anti-Counterfeiting Trade Agreement (ACTA), are only allowed limited access to negotiating texts. The EU Commission does claim that it is being more transparent about TTIP than it was in earlier trade negotiations, but the members of an advisory body, which includes civil society representatives, do not have access to negotiating texts. Citizens, instead of transparency, get propaganda about an alleged benefit of €500 per family. We suspect that the organisation of a public consultation on investor protection provision for corporations are meant as a smokescreen designed to keep the issue off the agenda until after the European elections in late May. This secrecy undercuts democratic values. When neither citizens nor their representatives are allowed to be in the know about sensitive negotiations concerning regulatory issues that affect their daily lives in so many ways, this is not right. It is a collusion of bureaucratic power with special interest groups who get privileged access through some 600 lobbyists. Greens insist on full transparency, nothing less. The negotiation mandate and the negotiating texts of each round should be made public, so that a

transparent and public debate can be held at regular intervals. After all, norms and rules that have been democratically decided are at stake. Greens also strictly oppose the inclusion of investor-to-state dispute settlement (ISDS) mechanisms in TTIP. ISDS allows foreign investors to bypass domestic courts and to file their complaints directly with international arbitration tribunals, often composed of corporate lawyers. Why have such legal privileges for international investors when they could rely on well-developed judicial systems? This is about corporate power. If an arbitration tribunal concludes that democratically determined policies might narrow an investor's projected profits, it could oblige a government to pay billions in damages. This would disastrously limit the democratic freedom to legislate on environmental, health, financial and other matters.

Democracy prevents nuclear warfare, ecosystem collapse, and extinction.

Diamond 95. [Larry a professor, lecturer, adviser, and author on foreign policy, foreign aid, and democracy, "Promoting Democracy in the 1990s: Actors and instruments, issues and imperatives : a report to the Carnegie Commission on Preventing Deadly Conflict", December 1995, http://wwics.si.edu/subsites/ccpdc/pubs/di/di.htm]

This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness.

TTIP is a secret trade agreement hurting our health, food safety, public services, the environment and democracy

The Gaia Foundation 14 {The Gaia Foundation is a charity group dedicated to helping people around the world and preserving the world; "What is the TTIP? Why is it bad news? What can you do about it in the UK?"; 6-27-14; http://www.gaiafoundation.org/orsinittip; ME}

The Transatlantic Trade and Investment Partnership (TTIP) is a bilateral 'free trade' agreement currently under secret negotiation by the EU, USA and powerful industry lobbies. According to its supporters the TTIP will boost economic growth and create jobs, but in reality it represents a corporate assault on our health, food safety, public services and the ecosystems we rely upon as EU citizens. This is because the TTIP is designed to 'harmonise' regulations and standards (regarded as 'trade irritants' by industry) between the EU and US. Since the EU has much stronger trade regulations protecting public health, food safety, and the environment, this 'harmonisation' really means deregulation in the EU; reducing protections for the environment and public health, in favour of exploiting them for corporate profits. If it is successful the TTIP will also place transnational corporations above the law, giving them new powers that undermine democracy and the ability of governments to control them. The EU and US want to finalise TTIP by the end of 2014, so it is vital that we understand and resist this threat to our health, ecosystems and common heritage. Here are some insights at a glance, and a few suggestions for how you can take action to

stop the TTIP. The TTIP's regulatory harmonisations will ignite a 'race to the bottom' of environmental regulations in the EU, so that they come to resemble the USA's far weaker regulatory system. This watering down of protective regulation, and the likely abandonment of the precautionary principle, (the cornerstone of EU environmental legislation) will open up our ecosystems to unchecked exploitation from fracking, GM monocultures, mining and other threats. It will also open EU markets to ecologically damaging and toxic products, such as tar sands, fuelling further ecological devastation around the globe. To top it all the TTIP could lock the EU and the USA into intensified use of fossil fuels.

Eco collapse causes extinction.

Jayawardena 9 (Asitha, London South Bank University, "We Are a Threat to All Life on Earth", Indicator, 7-17, http://www.indicator.org.uk/?p=55)

Sloep and Van Dam-Mieras (1995) explain in detail why the natural environment is so important for life on Earth. It is from the environment that the living organisms of all species import the energy and raw material required for growth, development and reproduction. In almost all ecosystems plants, the most important primary producers, carry out photosynethesis, capturing sunlight and storing it as chemical energy. They absorb nutrients from their environment. When herbivores (i.e. plant-eating animals or organisms) eat these plants possessing chemical energy, matter and energy are transferred 'one-level up.' The same happens when predators (i.e. animals of a higher level) eat these herbivores or when predators of even higher levels eat these predators. Therefore, in ecosystems, food webs transfer energy and matter and various organisms play different roles in sustaining these transfers. Such transfers are possible due to the remarkable similarity in all organisms' composition and major metabolic pathways. In fact all organisms except plants can potentially use each other as energy and nutrient sources; plants, however, depend on sunlight for energy. Sloep and Van Dam-Mieras (1995) further reveal two key principles governing the biosphere with respect to the transfer of energy and matter in ecosystems. Firstly, the energy flow in ecosystems from photosynthetic plants (generally speaking, autotrophs) to non-photosynthetic organisms (generally speaking, heterotrophs) is essentially linear. In each step part of energy is lost to the ecosystem as non-usable heat, limiting the number of transformation steps and thereby the number of levels in a food web. Secondly, unlike the energy flow, the matter flow in ecosystems is cyclic. For photosynthesis plants need carbon dioxide as well as minerals and sunlight. For the regeneration of carbon dioxide plants, the primary producers, depend on heterotrophs, who exhale carbon dioxide when breathing. Like carbon, many other elements such as nitrogen and sulphur flow in cyclic manner in ecosystems. However, it is photosynthesis, and in the final analysis, solar energy that powers the mineral cycles. Ecosystems are under threat and so are we Although it seems that a continued energy supply from the sun together with the cyclical flow of matter can maintain the biosphere machinery running forever, we should not take things for granted, warn Sloep and Van Dam-Mieras (1995). And they explain why. Since the beginning of life on Earth some 3.5 billion years ago, organisms have evolved and continue to do so today in response to environmental changes. However, the overall picture of materials (re)cycling and linear energy transfer has always remained unchanged. We could therefore safely assume that this slowly evolving system will continue to exist for aeons to come if large scale infringements are not forced upon it, conclude Sloep and Van Dam-Mieras (1995). However, according to them, the present day infringements are large enough to upset the world's ecosystems and, worse still, human activity is mainly responsible for these infringements. The rapidity of the human-induced changes is particularly undesirable. For example, the development of modern technology has taken place in a very short period of time when compared with evolutionary time scales – within decades or centuries rather than thousands or millions of years. Their observations and concerns are shared by a number of other scholars. Roling (2009) warns that human activity is capable of making the collapse of web of life on which both humans and non-human life forms depend for their existence. For Laszlo (1989: 34), in Maiteny and Parker (2002), modern human is 'a serious threat to the future of humankind'. As Raven (2002) observes, many life-support systems are deteriorating rapidly and visibly. Elaborating on human-induced large scale infringements, Sloep and Van Dam-Mieras (1995) warn that they can significantly alter the current patterns of energy transfer and materials recycling, posing grave problems to the entire biosphere. And climate change is just one of them! Turning to a key source of this crisis, Sloep and Van Dam-Mieras (1995: 37) emphasise that, although we humans can mentally afford to step outside the biosphere, we are 'animals among animals, organisms among organisms.' Their perception on the place of humans in nature is resonated by several other scholars. For example, Maiteny (1999) stresses that we humans are part and parcel of the ecosphere. Hartmann (2001) observes that the modern stories (myths, beliefs and paradigms) that humans are not an integral part of nature but are separate from it are speeding our own demise. Funtowicz and Ravetz (2002), in Weaver and Jansen (2004: 7), criticise modern science's model of human-nature relationship based on conquest and control of nature, and highlight a more desirable alternative of 'respecting ecological limits, …. expecting surprises and adapting to these

Extension – Surveillance No Impact on Relations

NSA surveillance has not harmed trust and relations with Europe.

A. France proves no adverse impact.

Landauro and Schechner, 6-24-15 [Inti, writes about French industrial companies and general news from The Wall Street Journal's Paris bureau; Sam, covers technology across Europe, based out of the Wall Street Journal's Paris bureau. He has previously served as a French business correspondent, "France Seeks to Play Down Tensions With U.S. Following Spying Allegations," Wall Street Journal, 6-24-2015, http://www.wsj.com/articles/france-says-u-s-spying-on-its-presidents-unacceptable-1435136798]

During the call, Mr. Obama "reiterated that we have abided by the commitment we made to our French counterparts in late 2013 that we are not targeting and will not target the communications of the French president," the White House said. French government spokesman Stephane Le Foll said France didn't expect the WikiLeaks allegations to hurt relations between the allies. France's intelligence coordinator, Didier Le Bret, he said, plans to meet with NSA officials to ensure that the agency is honoring pledges that the Obama administration made in the wake of leaks from former NSA contractor Edward Snowden. "We need to keep a measured response given what is at stake," Mr. Le Foll said. WikiLeaks and two French publications published late Tuesday six documents describing purported U.S. surveillance of internal deliberations and conversations of Mr. Hollande, as well as former French presidents Nicolas Sarkozy and Jacques Chirac. "These are unacceptable facts that have already led to clarifications between the United States and France," Mr. Hollande's office said. "France will not tolerate any acts that compromise its security and the safeguarding of its interests." After his meeting with Ms. Hartley, Mr. Fabius said he had asked the U.S. ambassador to come back with assurances that similar surveillance of the French government will not occur again. "We understand that there may be interceptions where terrorists are concerned," he said. "But that has absolutely nothing to do with listening to allied and friendly leaders." After the documents were published, the White House said it wasn't currently spying on Mr. Hollande and wouldn't conduct such surveillance of him in the future. The statement didn't deny that spying had taken place in the past. "We do not conduct any foreign intelligence surveillance activities unless there is a specific and validated national-security purpose," said Ned Price, a spokesman for the White House National Security Council. "This applies to ordinary citizens and world leaders alike." Still, the latest leak detailing alleged U.S. spying on European allies is a reminder of the simmering trans-Atlantic tensions over surveillance. The disclosure of widespread spying has also put European governments on the defensive over their gathering of intelligence. France ranks among the most sophisticated countries when it comes to electronic surveillance. U.S. intelligence and law-enforcement officials have cited France as one of the countries with the capabilities to spy on the U.S., though Mr. Le Foll reiterated on Wednesday that France doesn't spy on allies. France also shares electronic intelligence with the NSA, taking advantage of the its access to submarine cables and communications networks in swaths of Africa where it was once a colonial power, one former French official said. In return, the U.S. shares information on other parts of the world, the official added.

B. Germany has dropped investigations into alleged U.S. surveillance of Angela Merkl. No actual evidence was unearthed.

Landauro and Schechner, 6-24-15 [Inti, writes about French industrial companies and general news from The Wall Street Journal's Paris bureau; Sam, covers technology across

Europe, based out of the Wall Street Journal's Paris bureau. He has previously served as a French business correspondent, "France Seeks to Play Down Tensions With U.S. Following Spying Allegations," Wall Street Journal, 6-24-2015, http://www.wsj.com/articles/france-says-u-s-spying-on-its-presidents-unacceptable-1435136798]

Since 2013, leaks from Mr. Snowden have detailed widespread surveillance efforts by the NSA, as well as specific allegations of U.S. spying on allies—including the tapping of the cellphone of German Chancellor Angela Merkel. The German general prosecutor's office said earlier this month it was dropping its investigation into the alleged eavesdropping on Ms. Merkel's cellphone because of a lack of evidence. Tuesday's publication comes just weeks after documents unearthed by a German parliamentary probe alleged that Germany's intelligence service helped the NSA spy on European governments, including France's. The allegations caused a political firestorm in Germany and were embarrassing for the German government, which has loudly protested U.S. surveillance practices.

Empirically, U.S.-German relations have thrived despite U.S. surveillance. Germany has dropped its investigation for lack of evidence.

BBC, 6-12-15 ["Snowden NSA: Germany drops Merkel phone-tapping probe," BBC News-Europe, 6-12-15, http://www.bbc.com/news/world-europe-33106044]

Germany has dropped an investigation into alleged tapping of Chancellor Angela Merkel's phone by the US National Security Agency (NSA). The office of federal prosecutor Harald Range said the NSA had failed to provide enough evidence to justify legal action. The allegations of NSA phone-tapping came out in the secrets leaked by US whistleblower Edward Snowden about large-scale US surveillance in 2013. German-US ties were severely strained. When the allegations were made the White House gave no outright denial, but said Mrs Merkel's phone was not being bugged currently and would not be in future. Mrs Merkel told the US government angrily that "spying between friends just isn't on". And the alleged spying shocked public opinion in Germany. On 4 June last year Mr Range said "sufficient factual evidence exists that unknown members of the US intelligence services spied on the mobile phone of Chancellor Angela Merkel". But in December he revealed that the investigation was not going well and he had not obtained enough evidence to succeed in court. A statement from Mr Range's office on Friday said "the accusation cannot be proven in a legally sound way under criminal law". It said "the vague statements by US officials about possible surveillance of the chancellor's mobile telecommunication by a US intelligence service - 'not any more' - are not enough to describe what happened". The prosecutor did not manage to obtain an original NSA document proving the alleged spying, and a transcript which purportedly re-created it from memory was deemed insufficient as evidence. The BBC's Jenny Hill in Berlin says Germans are very concerned about privacy because of their own history. Mass surveillance was a characteristic of the Nazi era and the communist East German state. But now President Obama and Chancellor Merkel have a fairly pragmatic, pleasant relationship, our correspondent says. A German parliamentary committee is also investigating NSA surveillance, but it has not managed to get much help from US officials either, Germany's Spiegel news website reports.

Extension – TTIP Kills Economy

TTIP trades off with domestic reforms that are key to the economy. Domestic growth must precede trade induced economic progress.

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

The most serious problem posed by TTIP will be the social cost for Europe of the large restructurings that would arise from the mergers, acquisitions, closures and privatisations brought about by the completion of a single transatlantic market. The economic law of a single price for goods and services in a unified market tends to make factor prices i.e. wages and profits converge. The communicating vessels process is very effective for the labour market. In the context of unemployment, labour prices will be pulled downwards and the unequal income structure prevailing in the US will weigh on the European wage structure. In such a context, productivity gains brought about by economies of scale will not translate into higher wages, but into lower ones. The transformative effect asserted by TTIP proponents might in the end just be an overall degradation of working conditions and of the Welfare State. Ignoring this high risk scenario against the current populist backcloth in Europe would be politically hazardous. In conclusion, the main rationale for TTIP might not withstand the decisive test of growth. The truth about growth and jobs in Europe – a large economy where the macroeconomic impact of external trade is limited – is that the solution does not lie under the lamppost of trade policy. The Eurozone has entered into a 'lost decade' for growth. The EU can be caught in the 'secular stagnation' recently highlighted by Lawrence Summers, whilst deflation becomes a short-term possibility for the Eurozone. Growth has come to a halt in Euthat rope for both supply-side and demand-side reasons. On the supply side, which is decisive for the long-term potential output, Europe is lagging behind on innovation, both technological and institutional. The relative cost of labour to capital is too high. Energy costs are relatively more expensive than in the US. On the demand side, which is at present the most critical element for attaining the potential output level, the debt overhang, both public and private, severely inhibits consumption demand. Moreover, as highlighted by the IMF, growing inequalities – the poor spend, the rich save – also exert a deflationary impact. Fiscal austerity, when procyclical as it currently is, aggravates the poor growth performance and further deteriorates the debt/GDP ratio. The way to resume growth is not through trade, which for Europe is a necessary but auxiliary growth engine. Today, only domestic policies can spark growth in the Eurozone: first, mutualisation and restructuring of debt through a transfer union with fiscal discipline would prove very effective; second, massive innovation investments hanging from R-D and education to transeuropean networks would boost both long-term competitiveness and short-term job creation; third, fighting inequalities through national social policies would be eased by EU tax harmonisation. The expansionary impact of domestic policy-driven Eurozone growth on transatlantic trade would by far exceed the growth impact of bilateral trade liberalisation. In the trade and growth nexus, causality undeniably goes both ways. Growth feeds trade as trade feeds growth, depending on the economic context and on the type of trade deal. TTIP is definitely not the right answer for resuming growth, either in Europe, or in the US. However, a growth policy would boost Atlantic trade.

TTIP doesn't generate real economic growth.

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE

FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

Growth is the main rationale put forward for justifying TTIP. A CEPR study financed by the Commission estimates that by the end of a 12 year transition, TTIP will have secured an EU GDP additional growth of 0.5% provided that the negotiation liberalisation objectives are fully met with regard to tariffs, NTBs and public procurement. 0.5% is a very low figure and ex-post analysis usually proves that such forecasts are very tentative and are usually overrated. In the case of TTIP, which is the first FTA the EU is negotiating with a somewhat larger and more advanced partner; three major risks cannot be ignored. (i) A modest growth figure Why is the figure so modest though? This is essentially for three reasons. Firstly, no one challenges the idea that trade liberalisation is conducive to long term growth if only through its transformative impact. Yet the more differences there are between partners, the higher the trade-led growth. This is the case in multilateral deals with broad sectorial and geographical coverage. It is less obvious when resource endowments and productivity levels are very similar between partners like between the US and the EU. Transformation benefits are then minimal but restructuring costs can be high. Secondly, the US and the EU have already completed a high level of integration in the goods sector through massive crossed investments, aimed at turning the regulatory obstacles around and providing 7 million jobs on each side of the pond. Harmonisation would mean partial job repatriation. In the services sector, which is less integrated, the expected benefits will be limited by imperfect competition (monopolies, oligopolies, market power) resting on economies of scale, network effects and branding. US firms often enjoy the advantages of being the prime movers, such as in information technology and digital industries and services. Moreover, it is unlikely that efficiency gains in sensitive sectors like health, education and public utilities, for which pressure for de facto privatisation schemes will grow, will be felt by the consumer. They will be monopolised by the shareholders of large firms. Restructuring will take place through privatisation and through mergers and acquisitions, and their eventual growth impact and distributional effects are not clear. In the case of "public goods by choice" (health, education, water), the political dimension cannot be ignored. In this case, market liberalisation can conflict with democracy and therefore come into severe conflict with public opinion. Thirdly, TTIP promoters completely ignore an assumption which trade theoreticians deem critical: trade allows for an increase in productivity as imports free up already employed resources so that they can be redirected into more efficient uses. The current high level of unemployment in Europe severely limits this crucial gain from trade liberalisation. In fact, trade liberalisation in the context of severe unemployment can very well generate no additional growth at all. Unemployment must first be brought down by domestic growth policy. (ii) A diverging growth The overall additional EU GDP growth of 0.5% guaranteed by TTIP would translate into further divergence within the Eurozone and would aggravate domestic inequalities within countries. Some countries such as Germany and its Nordic neighbours will benefit but other countries will lose out. However, unlike the US, neither the EU nor even the Eurozone, have any effective political mechanisms for redistributing gains and losses among Member States and among social groups2 . (iii) A clash between two social models Contrary to the proponents of the so-called trigger-down growth theory, trade does not amount to a win-win game and does not necessarily alleviate poverty. If trade proves a win win game in the long term, there are winners and losers in the short and medium term. Most trade economists dismiss or overlook these distributional issues and deem them irrelevant. They insist that growth matters more than fair redistribution. This is challenged by the school of inclusive growth which highlights the social and economic costs of excessive inequalities. Distributional effects of trade liberalisation are critical since nowadays they provide the main source of citizen mistrust vis-à-vis markets, governments and the EU. Moreover, the IMF has recently acknowledged the deflationary bias of growing inequalities.

Extension – TTIP Kills Democracy

TTIP will ruin democracy by enhancing corporate power.

The Gaia Foundation 14 {The Gaia Foundation is a charity group dedicated to helping people around the world and preserving the world; "What is the TTIP? Why is it bad news? What can you do about it in the UK?"; 6-27-14; http://www.gaiafoundation.org/orsinittip; ME}

The TTIP represents an unabashed corporate attack on democracy. This attack is implemented through something known as the Investor-State Dispute Settlement (ISDS), a mechanism that grants corporations the right to sue governments if they pass laws or enact policies that could reduce a corporation's present or future profits. ISDS will allow corporation's to sue such government's through secretive international trade courts. The money won by corporations in these secretive and undemocratic 'justice' proceedings will be taken directly from the taxpayers' pockets. ISDS and similar provisions have already been used to undermine authorities who chose to protect their people and Earth around the world to chilling effect. Even before legislation is passed they have prevented states from introducing socially or environmentally progressive measures for fear of being challenged through ISDS.

Extension – TTIP Is Net Worse

TTIP could cause job loss, lower income, risk public services, environment damage, and violate safety regulations, worsening income inequality.

O'Grady 14 {Frances O'Grady is the British Trades Union Congress General Secretary; "TTIP - A Bad Deal Could Be Worse Than No Deal at All"; 25/11/14; http://www.huffingtonpost.co.uk/frances-o-grady/ttip-uk-economy_b_6219536.html}

But I'm worried that a bad deal would be even worse. A bad deal could cost jobs, lower wages, and worse still it could put the NHS and other public services at risk. A bad deal might well be worse than no deal at all. Projections from some economists suggest that, even if TTIP creates growth, the benefits won't necessarily be shared fairly, and the proportion of growth going to wages could fall further - deepening a trend that has been going on for a generation. Using the more-realistic-than-most UNCTAD economic model, Tufts University researchers suggest workers' wages could fall by over £3,000 a year. Some of the tariff reductions proposed in TTIP could indeed be good news for British exporters, such as the chemicals and automotive industries - and even textiles, Scotch Whisky and farming. And there are some non-tariff barriers, such as regulatory requirements that achieve the same standards by different routes, which could also usefully be negotiated away. But I think the cart has been put before the horse. Instead of seeking an agreement with those limited but uncontentious objectives, politicians and business on both sides of the Atlantic have over-reached, seeking to sweep away all sorts of health and safety, environmental and consumer protections.

AT: TTIP Solves EU Soft Power

TTIP kills EU soft power.

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

TTIP will aggravate Europe's already ingrained difficulty to build up its own identity. From the very beginning, Europe has been a hybrid construction mixing federal and intergovernmental features. However, more importantly, it has developed a schizophrenic personality. It still cannot decide whether it wants to build up a true European political community with its own model, its own currency, and its own defence; or constitute a subset of a broader Atlantic Alliance, in which its economic affiliation to the US supplements the strategic NATO partnership. TTIP exacerbates these feelings of ambivalence and Atlanticist tropism which would interfere with Europe's drive towards political unity. This last objection to TTIP is the most decisive, but it is also extremely difficult to express in clear and convincing terms. For those who see Europe mainly through business lenses, the very idea that a Transatlantic Common Market would put the attempt to build up a sense of a common destiny among European citizens at risk is irrelevant or even ludicrous. Yet this is the crux of the argument against TTIP: one must choose between Europe and TTIP.

TTIP trades off with an effective EU foreign policy

Defraigne, '14 (Pierre, Executive Director, Madariaga-College of Europe Foundation, former Deputy Director-General in DG Trade, former Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), and former Director for North-South Relations and Head of Cabinet for Etienne Davignon, Vice-President of the European Commission (1977-1983), "THE FUTURE OF EU-US RELATIONS: POLITICAL AND ECONOMIC REFLECTIONS ON THE TTIP AGREEMENT," October, http://www.feps-europe.eu/assets/b0b70ad7-6aca-4ed0-9a4b-a89b4e490280/ttip-contributions-oct2014-pdefraignepdf.pdf, bgm)

TTIP is first and foremost a formidable distraction from EU priorities which, from a growth and jobs perspective, should focus on completing the unity of the Single Market, consolidating Eurozone governance and remedying its dangerous drift towards deflation. From a more political standpoint, the EU should tackle the construction of its own strategic capacity which conditions the possibility of an effective EU foreign policy aimed at promoting EU interests and values which differ from US ones. Europe must reassess the Atlantic relationship in the light of its own long term future which does not yet appear very clear to most Europeans, and does not even achieve consensus among governments. However, whatever the institutional forms the EU takes or the exact geographical territory it covers, Europe will have to come to terms with two challenges: the first is the choice of a common social and environmental model as the benchmark for all national ones so as to reconcile the unity of the EU's Single Market with the free circulation of people, production factors, goods and services and to share the governance consistency of the Eurozone. The second is a sufficient degree of strategic autonomy so as to take responsibility for defending the model, which reflects not only a way of life but deep and important values which make up the European civilisation. This construction calls for a sense of commonality of destiny, which would provide the EU with a shared transnational identity beyond national identities.

Cloud Computing Adv

Cloud Computing Frontline

Alternative causality: Declining U.S. educational standards devastate its competitiveness.

Grossman, Rivkin, Sharer and Porter, 2014 [Allen, Senior Fellow and Professor of Management Practice, Harvard Business School; Jan, Rauner Professor at Harvard Business School; Kevin, Senior Lecturer of Business Administration, Harvard Business School; Michael Porter, Bishop William Lawrence Professor at Harvard Business School; "K–12 EDUCATION AND THE ROLE OF BUSINESS," AN ECONOMY DOING HALF ITS JOB, September 2014, http://www.hbs.edu/competitiveness/Documents/an-economy-doing-half-its-job.pdf]

The challenge that America's education system poses to U.S. competitiveness has been obscured by a lack of long-run information on student performance that is comparable across countries. Last fall, however, the Organisation for Economic Co-operation and Development (OECD) released new data that make it possible to see the issue in a fresh light. For the first time, the OECD evaluated the workplace competencies of adults—in literacy, numeracy, and problem-solving skills—by age and country.4 The data allow us to examine adult competencies in successive age cohorts within a country and thereby get a sense of how well a country's education and training systems have performed over long periods. Figure 10 shows the OECD results for literacy, with a measure of proficiency on the vertical axis. The blue columns show that younger U.S. workers have better literacy skills than older workers. This reflects, presumably, an education system that is making progress in absolute terms. The challenge to America, however, is that the green columns, representing the international average, have progressed much faster than the blue columns. America has among the most literate 55- to 65-year-olds in the world, but the same is not true of younger cohorts. Figure 11 shows that America faces similar challenges in problem-solving and numeracy skills. What were once American advantages in human capital have turned into disadvantages. Relative performance matters in global competition, where American workers must out-produce and out-innovate the world's best. Some would argue (and we would agree) that Figures 10 and 11 reveal an ethical issue: our society is not fulfilling its promise to children to educate and prepare them. Others would argue (and again we would agree) that the figures point to a political problem: our democracy cannot work well when many citizens are denied the opportunities that strong educations afford. We would add that the figures highlight a fundamental business problem: companies operating in the U.S. cannot succeed without well-educated, highly skilled employees. Moreover, the living standards of most Americans will not rise if their workplace skills lag much of the world's. The situation captured in the OECD data—and reflected also in the mediocre performance on international tests—does not allow business leaders to sit on the sidelines.

Alternative Causality: Inadequate post educational job skills kill U.S. competitiveness.

Fuller, 2014 [Joseph, Senior Lecturer of Business Administration, Harvard Business School; "WORKFORCE SKILLS," AN ECONOMY DOING HALF ITS JOB, September 2014, http://www.hbs.edu/competitiveness/Documents/an-economy-doing-half-its-job.pdf]

The OECD data discussed on page 14—showing a growing U.S. disadvantage in adult competencies—point to weaknesses not only in America's K–12 education system but also in the way we develop skills after high school and on the job. Troubles in workforce skills have been evident in the United States for years. In annual surveys conducted by ManpowerGroup since 2006, the portion of U.S. employers reporting difficulty in filling positions reached as high as 52%, with "lack of technical skills" in applicants among the top causes.5 In the 2011 HBS survey on U.S. competitiveness, alumni involved in firm location choices reported that access to skilled labor was more often a reason to move a business activity out of the United States than it was a reason to keep an activity in America.6 In 2013–14 as in past years, alumni assessed workforce skills as a U.S. strength that is in decline. (See Figure 5 on page 10.) Skills shortages make it hard for firms operating in the United States to increase their productivity consistently, the major driver in sustaining their ability to compete and raising their capacity to pay workers. Thus, skills issues are at the heart of the aspect of U.S. competitiveness that worries us the most: the stagnation of living standards among most Americans. Historically, the prosperity of America's middle class rested on a foundation of world-class workplace skills. That has proven especially true for workers in so-called middle-skills jobs—roles that

require more education and training than a high school diploma but less than a four-year college degree. Middle-skills jobs are estimated to account for as much as 48% of all work in America.7 They have provided high and rising living standards for generations of American welders, machinists, health care workers, computer technicians, and others. Any path to greater U.S. competitiveness, and especially to higher living standards in America, will require reinvigorating the skill base of America's workforce, particularly for middle-skills occupations.

Alternative Causality: Crumbling transportation and logistics infrastructure crush U.S. competitiveness.

Kanter, 2014 [Rosabeth Moss, Ernest L. Arbuckle Professor of Business Administration, Harvard Business School, "TRANSPORTATION INFRASTRUCTURE," AN ECONOMY DOING HALF ITS JOB, September 2014, http://www.hbs.edu/competitiveness/Documents/an-economy-doing-half-its-job.pdf]

It is widely understood that America's companies depend heavily on the nation's transportation infrastructure— to bring inputs into their operations, to deliver goods to customers, and to move personnel where they are needed. Infrastructure affects the costs, quality, speed, service, and safety of business in America. Transportation infrastructure also shapes the living standards of all U.S. citizens, by influencing commuting times and the cost of living, for instance. Transportation infrastructure has an especially profound impact on less affluent citizens, who are more likely to rely on public transportation and to live in neighborhoods with few transport options. For them in particular, mobility is opportunity. Because it is so vital to America's businesses and citizens, transportation infrastructure has been a focal topic for the HBS project on U.S. competitiveness. In 2013–14, Professor Rosabeth Moss Kanter, the head of HBS's transportation infrastructure efforts and an expert on change leadership, added a set of infrastructure questions to the alumni survey. She also convened a national summit of 200 top leaders across sectors and industries to define an agenda for action, "America on the Move: Transportation and Infrastructure for the 21st Century." (For more information on the summit and agenda, see http://www.hbs.edu/competitiveness/ research/transportation-infrastructure/america-on-themove.html.) This section draws lessons from both the survey and the summit. A Strength, but in Decline The challenges to American transportation and logistics infrastructure are well publicized. The American Society of Civil Engineers recently gave the United States a D+ grade for the quality of its infrastructure. The federal Highway Trust Fund nearly became insolvent in 2014. Congresss recently extended funding until May 2015, but there is no plan for a longer-term funding solution. Such challenges have contributed to increasing concerns about what has historically been a U.S. strength. Respondents to the 2012 HBS survey on U.S. competitiveness rated logistics infrastructure as a competitive strength but were overwhelmingly pessimistic about its trajectory—significantly more so than a sample of the general population.17 On the 2013– 14 survey, a majority of respondents, 75%, reported that logistics infrastructure—railroads, highways, ports, and airports—was at least average compared to other advanced economies, with 52% rating it better or much better than average. However, the majority, 51%, also reported that this infrastructure is falling behind that of other advanced economies, with only 8% indicating optimism about its trajectory. Compared to past years, there is a slight upswing in optimism: in 2013–14, 10% fewer business leaders reported a belief that logistics infrastructure was declining than in 2012.

More Alt Causes

Alternative Causality: the U.S. tax code places domestic companies at a severe competitive disadvantage. This discourages critical investment.

Fricke, 2014 [Peter, contributor to the Daily Caller, former associate at the Charles G. Koch Institute, "US Tax Code Causes Businesses to Flee Overseas," Daily Caller, 7-28-14, http://dailycaller.com/2014/07/28/us-tax-code-causes-businesses-to-flee-overseas/]

While agreeing on the need for comprehensive business tax reform, many conservatives and other free-market advocates dispute Lew's assessment that inversion is just a cynical ploy to avoid paying U.S. taxes. Curtis Dubay, a research fellow at the Heritage Foundation, points out in a recent column for the Daily Signal that "any business, no matter where headquartered, pays the 35 percent U.S. corporate tax rate on income earned within our borders." The real motivation behind inversion, he says, is the "worldwide tax system", whereby U.S. businesses are taxed on their foreign earnings. The U.S. is the only industrialized country in the world with such a system, putting domestic companies at a disadvantage relative to foreign competitors who are "free to make investments that the U.S. worldwide tax system makes unprofitable for U.S. businesses." Jason Fichtner of the nonpartisan Mercatus Institute, a free-market think tank, believes anti-inversion legislation serves mainly to deflect attention from the real issue of U.S. competitiveness. "Legislative proposals that attempt to treat the symptoms of the corporate tax code's problems—rather than issues causing them—are doomed to fail," he told The Daily Caller News Foundation.

Alternative Causality: US fiscal policy poses the largest threat to competitiveness

Walker and Kaplan, '13 [David Walker served as United States Comptroller General from 1998 to 2008, and is Founder and CEO of the Comeback America Initiative. Robert Kaplan is a Professor Emeritus at Harvard Business School and co-developer of both activity-based costing and the Balanced Scorecard, Current Fiscal policy harms US competitiveness, 4/112013, http://fortune.com/2013/04/11/current-fiscal-policy-harms-u-s-competitiveness/ , MC]

We're focusing too much on the present, and too little on the future. Political dysfunction in D.C. has led to the American public being barraged by continuous media reports about the fiscal cliff, the debt ceiling, and the sequester. But the political skirmishes and impasses around these short-term events are distracting us from the real danger ahead: Our reckless fiscal trajectory that threatens America's competitiveness. For the nation to prosper, we must remain an attractive location for companies to pay competitive wages consistent with high and rising living standards. This requires targeted investments by the government, especially in physical and informational infrastructure, education and training, and scientific research. But the bad measurements used by the government are keeping the public in the dark about how needed investments for the future are being crowded out by the government's enormous debt and other obligations. The nation's reported debt has almost tripled — to over $16.6 trillion — just since 2000, and the interest on this debt must be paid every year into the future. This obligation, however, is not the real problem. The U.S. actually is in a much deeper financial hole, and one that is not evident on the federal balance sheet. The nation's off-balance sheet obligations include our country's promises for future Medicare and Social Security payments which, as of fiscal 2012, totaled nearly $50 trillion. These off-balance sheet obligations also include other promises, such as the unfunded pension and retiree health benefits for civilian and military personnel, and for various contingent commitments like guarantees for student loans, home mortgages and corporate pension benefits.

Excessive regulation and high taxes stifle innovation, job creation, killing competitiveness

SST '12 [The Committee on Science, Space, and Technology has jurisdiction over all energy research, development, and demonstration, and projects, "Excessive regulation and high taxes stifle innovation, job creation", 3/27/2012, https://science.house.gov/press-release/excessive-regulation-and-high-taxes-stifle-innovation-job-creation, MC]

In the first three years of the Obama Administration, the Federal Government imposed 106 new major regulations with annual costs of more than $46 billion. As of April 1, 2012, the United States will have the highest marginal corporate income tax in the industrialized world. Chairman Quayle warned that "This tax rate harms competitiveness by taking money away from companies that could

be better used to conduct research, develop new innovations and create jobs, and it encourages companies to look for more favorable business environments abroad." While the U.S. continues to have the largest economy in the world, recent trends suggest that other countries are catching up in terms of economic growth and competitiveness. A study by the Information Technology and Innovation Foundation, a non-partisan research and educational institute, ranks the U.S. sixth out of 40 countries in overall innovation-based competitiveness.

Solvency

Solvency Frontline

Empirically, the President will engage in illegal NSA surveillance, ignoring legal authority.

ACLU, 2015 [American Civil Liberties Union, "NSA SPYING ON AMERICANS IS ILLEGAL," Copyright 2015, https://www.aclu.org/nsa-spying-americans-illegal]

What if it emerged that the President of the United States was flagrantly violating the Constitution and a law passed by the Congress to protect Americans against abuses by a super-secret spy agency? What if, instead of apologizing, he said, in essence, "I have the power to do that, because I say I can." That frightening scenario is exactly what we are now witnessing in the case of the warrantless NSA spying ordered by President Bush that was reported December 16, 2005 by the New York Times. According to the Times, Bush signed a presidential order in 2002 allowing the National Security Agency to monitor without a warrant the international (and sometimes domestic) telephone calls and e-mail messages of hundreds or thousands of citizens and legal residents inside the United States. The program eventually came to include some purely internal controls - but no requirement that warrants be obtained from the Foreign Intelligence Surveillance Court as the 4th Amendment to the Constitution and the foreign intelligence surveillance laws require.

Absent international agreements, curtailing surveillance is impossible. So-called totalitarian nightmares and beyond will be inevitable.

Rothkopf, 5-12-15 [David, CEO and Editor of the Foreign Policy Group, "What Would Thomas Jefferson Do…With the CIA?" Foreign Policy, 5-12-15, https://foreignpolicy.com/2015/05/12/thomas-jefferson-u-s-intelligence-needs-an-overhaul/?utm_source=Sailthru&utm_medium=email&utm_term=Flashpoint]

By 2020, it is estimated, 50 billion devices will be connected to the Internet—most of them embedded microprocessors that will offer real-time insights into every aspect of life on the planet. Furthermore, effectively every human being, every organization, and every government on Earth will be connected in a man-made system for the first time in history. Each of those billions of microprocessors and each connection on the web will be a potential entry point for surveillance and spying. What's more, thanks to drones and nanodevices that can be hidden and embedded on targets by the millions, humans stand at the dawn of an era of potentially ubiquitous sensing. (This is not to speak of the gradual impact artificial intelligence will have on how people direct, conduct, and analyze what is gathered.) If the world does not set limits, **preferably by international treaty**, as to what is fair game in this system—in terms of both surveillance and cyberconflict—humanity runs the risk of entering a period that will make Big Brother dystopian

fantasies pale by comparison. Central to this process of setting limits will be having a public debate about the philosophical building blocks of the system: what is privacy, who owns the data each sensor produces, how should people divvy up the rights of individuals, corporations, and states. Furthermore, intelligence agencies will have to be reorganized to deal with these new realities, and so too will entire national security systems. Increasingly, the Internet will be the terrain on which most future battles will be fought, won, or lost; information warriors, many of them from the IC, will be the principal combatants.

Global efforts regulate information gathering will be necessary to render surveillance more transparent.

Rothkopf, 5-12-15 [David, CEO and Editor of the Foreign Policy Group, "What Would Thomas Jefferson Do…With the CIA?" Foreign Policy, 5-12-15, https://foreignpolicy.com/2015/05/12/thomas-jefferson-u-s-intelligence-needs-an-overhaul/?utm_source=Sailthru&utm_medium=email&utm_term=Flashpoint]

It will be essential that **the world** reconsider views on the classification of information. Vastly more information is publicly available than could likely ever be gathered covertly. Such open-source information is easier to verify, easier to share, of greater use to policymakers, and essential to the kind of public-private collaboration that will be required in the new security environment. Conversely, estimates from career intelligence consumers suggest the vast majority of what is available via classified channels is also available or discoverable via open sources. Not classifying it would save billions of dollars.

Ext – Circumvention

Legislative reform of illegal surveillance will always be circumvented. Only revolution which destroys the entire surveillance infrastructure can solve.

Whitehead, 5-16-15 [John, constitutional and human rights attorney, and founder of the Rutherford Institute," The NSA's Technotyranny: One Nation Under Surveillance," WashingtonsBlog, 5-16-15, http://www.washingtonsblog.com/2015/05/the-nsas-technotyranny-one-nation-under-surveillance.html]

In other words, it doesn't matter who occupies the White House: the secret government with its secret agencies, secret budgets and secret programs won't change. It will simply continue to operate in secret until some whistleblower comes along to momentarily pull back the curtain and we dutifully—and fleetingly—play the part of the outraged public, demanding accountability and rattling our cages, all the while bringing about little real reform. Thus, the lesson of the NSA and its vast network of domestic spy partners is simply this: once you allow the government to start breaking the law, no matter how seemingly justifiable the reason, you relinquish the contract between you and the government which establishes that the government works for and obeys you, the citizen—the employer—the master. Once the government starts operating outside the law, answerable to no one but itself, there's no way to rein it back in, short of revolution. And by revolution, I mean doing away with the entire structure, because the corruption and lawlessness have become that pervasive.

NSA surveillance reform is useless: The government simply ignores restrictive legislation and surveillance is too pervasive.

Whitehead, 5-16-15 [John, constitutional and human rights attorney, and founder of the Rutherford Institute," The NSA's Technotyranny: One Nation Under Surveillance," WashingtonsBlog, 5-16-15, http://www.washingtonsblog.com/2015/05/the-nsas-technotyranny-one-nation-under-surveillance.html]

The National Security Agency (NSA) has been a perfect red herring, distracting us from the government's broader, technology-driven campaign to render us helpless in the face of its prying eyes. In fact, long before the NSA became the agency we loved to hate, the Justice Department, the FBI, and the Drug Enforcement Administration were carrying out their own secret mass surveillance on an unsuspecting populace. Just about every branch of the government—from the Postal Service to the Treasury Department and every agency in between—now has its own surveillance sector, authorized to spy on the American people. Then there are the fusion and counterterrorism centers that gather all of the data from the smaller government spies—the police, public health officials, transportation, etc.—and make it accessible for all those in power. And of course that doesn't even begin to touch on the complicity of the corporate sector, which buys and sells us from cradle to grave, until we have no more data left to mine. The raging debate over the fate of the NSA's blatantly unconstitutional, illegal and ongoing domestic surveillance programs is just so much noise, what Shakespeare referred to as "sound and fury, signifying nothing." It means nothing: the legislation, the revelations, the task forces, and the filibusters. The government is not giving up, nor is it giving in. It has stopped listening to us. It has long since ceased to take orders from "we the people."

Illegal surveillance is inevitable. The rule of law cannot curtail it.

Whitehead, 5-16-15 [John, constitutional and human rights attorney, and founder of the Rutherford Institute," The NSA's Technotyranny: One Nation Under Surveillance," WashingtonsBlog, 5-16-15, http://www.washingtonsblog.com/2015/05/the-nsas-technotyranny-one-nation-under-surveillance.html]

What this brief history of the NSA makes clear is that you cannot reform the NSA. As long as the government is allowed to make a mockery of the law—be it the Constitution, the FISA Act or any other law intended to limit its reach and curtail its activities—and is permitted to operate behind closed doors, relaying on secret courts, secret budgets and secret interpretations of the laws of the land, there will be no reform. Presidents, politicians, and court rulings have come and gone over the course of the NSA's 60-year history, but none of them have done much to put an end to the NSA's "technotyranny." The beast has outgrown its chains. It will not be restrained.

Surveillance State Adv

Surveillance State Frontline

The surveillance state is too pervasive. All branches and agencies, plus corporations, exercise biopower over the people; NSA only reform will fail.

Whitehead, 5-16-15 [John, constitutional and human rights attorney, and founder of the Rutherford Institute," The NSA's Technotyranny: One Nation Under Surveillance,"

WashingtonsBlog, 5-16-15, http://www.washingtonsblog.com/2015/05/the-nsas-technotyranny-one-nation-under-surveillance.html]

The National Security Agency (NSA) has been a perfect red herring, distracting us from the government's broader, technology-driven campaign to render us helpless in the face of its prying eyes. In fact, long before the NSA became the agency we loved to hate, the Justice Department, the FBI, and the Drug Enforcement Administration were carrying out their own secret mass surveillance on an unsuspecting populace. Just about every branch of the government—from the Postal Service to the Treasury Department and every agency in between—now has its own surveillance sector, authorized to spy on the American people. Then there are the fusion and counterterrorism centers that gather all of the data from the smaller government spies—the police, public health officials, transportation, etc.—and make it accessible for all those in power. And of course that doesn't even begin to touch on the complicity of the corporate sector, which buys and sells us from cradle to grave, until we have no more data left to mine. The raging debate over the fate of the NSA's blatantly unconstitutional, illegal and ongoing domestic surveillance programs is just so much noise, what Shakespeare referred to as "sound and fury, signifying nothing." It means nothing: the legislation, the revelations, the task forces, and the filibusters. The government is not giving up, nor is it giving in. It has stopped listening to us. It has long since ceased to take orders from "we the people.

NSA surveillance isn't analogous to Foucault's Panopticon. At best, reactions to rather than applications of surveillance are comparable.

McGraw, '13 [Bryan, Associate Professor of Politics at Wheaton College, "How NSA Surveillance is NOT Like Foucault (but our reactions are)," Civitas Peregrina, June 11, 2013, https://civitasperegrina.wordpress.com/2013/06/11/how-nsa-surveillance-is-not-like-foucault-but-our-reactions-are/]

It's easy to see why we might then jump from the NSA's Prism program to Foucault. But here's what makes Foucault's argument interesting and not just some obtuse forerunner of the "X Files" (or any other conspiracy minded move/tv show). One of the panopticon's key features was that the tower where the guards resided was mirrored so that the prisoners could not tell if they were actually under observation at any particular moment. In fact, they need not be under observation at all for the tower to do its job. Foucault's view was that our liberal society was indeed one of deep disciplining, but it was not the case that there was a "them" that was doing the disciplining. Rather, we all are caught up and participate in our mutual disciplining. We are, to Foucault's mind, our own oppressors in that we impose a kind of "normalization" on one another. What the NSA=Foucault folks suppose is that Foucault had in mind a social order in which some small elite, armed with technologies and power, would herd the rest of us into docile compliance. Foucault's argument was actually much more worrisome: that all of us, armed with the ordinary technologies of communication and observation, would herd ourselves into docile submission. So the NSA program (whatever its merits and demerits) isn't Foucaldian. Rather, I would argue, it is our reactions – where commentators assume their expected positions, offer ritualized expressions of support or outrage, and punish (via dialogue) those who range outside the bounds of "proper" discourse – that reminds me of Foucault.

Alternative Causality: the modern Imperial Presidency is the root cause of Foucaldian biopower.

Smith, '13 [Reid, Freedom Works' staff writer and editor, "The Surveillance State in Your Head," The American Conservative, July 19, 2013, http://www.theamericanconservative.com/articles/the-surveillance-state-in-your-head/]

With the fall of the Soviet Union, there was hope that the imperial presidency would be scaled back by Congress, but such optimism proved hollow. In The Cult of the Presidency, Gene Healy notes that while partisan rhetoric today is as acerbic as it has been in decades, Republicans and Democrats alike accept the bottomless depth of executive responsibility and the president's unique grasp on power. We've normalized dependence on his guidance and our subordination. The modern president has greatly exceeded, in size and scope, the few enumerated powers initially bestowed upon him and in the process has become a great deal more powerful—and potentially more dangerous. His powers of surveillance and social compulsion are virtually unmatched in human history. From a Foucauldian perspective, one might argue our president (Bush or Obama, it hardly matters) has staked his claim as our watchman. We become increasingly aware that all we do takes place under surveillance, and our dull surprise at this revelation suggests our submission to the system—the inevitable outcome of our assent to political power.

Foucaldian critique of NSA surveillance is impossible under modern capitalism. Current power structures are self -reinforcing.

Bruno, '14 [Zachary, BA, Critical Theory, Occidental College, "The PRISM Program Panopticon: Foucault's Insights in the Era of Snowden," March 24, 2014, http://www.zachcbruno.com/academic/dd-preview/images/pdf/PrismProgramPanopticon.pdf]

With this, Foucault would propose that critiquing the NSA's illicit surveillance program would first require deconstructing the structures of power and discursive claims making which surround it. In this regard, Reeves (2003) argues that a self-reinforcing dynamics exists, as it pertains to the discourses and power structures sustaining such governmental tools. In this regard, the difficulty of critiquing them, in the sense which Foucault (1995) intends, is related to the manner in which this power is self-reinforcing. Indeed, to garner a better understanding of the difficulties of critique in such a context, one need only examine Foucault's work on sexuality, repression, and biopolitics-based social control to understand the operation of these mechanisms. With the above in mind, what becomes most apparent, from considering Foucault's portrayal of the diffusion of normalizing power in contemporary society, is that it is impossible to resist the potency of this power from within modern society itself. Given that the latter is permeated with multiple structures of repression, often invisible to the human eye, or already internalized to such a degree that we are no longer capable of even recognizing their existence; it becomes clear that we live in a social context in which resistance through critique, within society, is at least temporarily impossible. If a social revolution were to ever undo the structures of normalizing power which currently permeate our social interactions, it might become possible to rebuild a society without the concentrations of capital, and thus power, which prevail today. In the interim, however, resisting and informally critiquing within the confines of organized modern capitalist society is a futile endeavor because of the all-too-deep entrenchment of those entities which regulate us, and force us to adopt certain behaviors in spite of our desires. Thus, because the entirety of our society has been permeated by these powerful exogenous forces, there is no true potential for resistance within society. Instead, because we cannot necessarily understand or confront all of the elements of our oppression, it is clear that resistance to the forces identified by Foucault must take place outside of mainstream society. On this basis, critique of the everyday colloquial variety is impossible simply because it necessitates that we accept and take for granted the imposed structures of meaning which emerge from society's most significant power bases.

The American populace cannot engage in Foucaldian critique of NSA surveillance because of disciplinary structures like the War on Terror.

Bruno, '14 [Zachary, BA, Critical Theory, Occidental College, "The PRISM Program Panopticon: Foucault's Insights in the Era of Snowden," March 24, 2014, http://www.zachcbruno.com/academic/dd-preview/images/pdf/PrismProgramPanopticon.pdf]

Applied to the context of the NSA's surveillance Panopticon, the ultimate reality of the impossibility of critique is one wherein it is impossible for the American mass to understand the multiple structures of oppression inherent to the PRISM Program. Indeed, the apathy discussed by Zurchner (2014) is likely an embodiment of a context wherein the American population is blinded by the other disciplinary structures, like the purported threats of the War on Terror, which serve to maintain high levels of fear in American society. In this regard, the work of Lokaneeta (2010) suggests that these, associated with the notion of American governmentality, have preponderated in the post-9/11 context because of the visceral power of the discourse of threat which the Bush and Obama Administrations have spread.

Extension – Alt Causes to Panopticism

The Foucaldian Panopticon is inherent to a myriad of government agencies. Restricting NSA based surveillance is too narrowly based to succeed.

Buttar, '13 [Shahid, former executive director of the Bill of Rights Defense Committee, is a constitutional lawyer and grassroots organizer. Shahid directed a national program to combat racial and religious profiling, after serving for three years as associate director of the American Constitution Society for Law & Policy, "Beyond the Panopticon: The NSA Isn't Alone," Defending Dissent Foundation, 12-26-13, http://www.bordc.org/blog/beyond-panopticon-nsa-isn%E2%80%99t-alone]

The Panopticon is real. It siphons billions of dollars each year from a federal budget in crisis. And it is watching you and your children. Lost in the debate about NSA spying, however — and even most public resistance to it — have been the various other federal agencies also complicit in Fourth Amendment abuses. Even critics of domestic surveillance have largely failed to recognize how many government agencies spy on Americans. A presidential review panel recently recommended substantial changes to FBI powers, including ending the authority to issue National Security Letters. NSLs are secret data requests used to circumvent both First and Fourth Amendment protections, demanding information about third parties and gagging the recipients. The FBI's pattern of abusing undercover infiltration to disrupt First Amendment protected organizations, however, stretches back decades, threatens democracy even more deeply than NSLs, and continues unabated. Beyond the NSA and FBI, many other agencies are also involved in domestic surveillance. And all of them continue to evade public and congressional scrutiny.

Federal agencies other than NSA are complicit in maintaining the Panopticon.

A. Department of Homeland Security:

Buttar, '13 [Shahid, former executive director of the Bill of Rights Defense Committee, is a constitutional lawyer and grassroots organizer. Shahid directed a national program to combat racial and religious profiling, after serving for three years as associate director of the American Constitution Society for Law & Policy, "Beyond the Panopticon: The NSA Isn't Alone," Defending Dissent Foundation, 12-26-13, http://www.bordc.org/blog/beyond-panopticon-nsa-isn%E2%80%99t-alone]

The Department of Homeland Security (DHS) is a sprawling behemoth, with nearly a quarter million employees scattered across nearly two dozen component agencies. While purporting to protect the "homeland" (a term with loaded connotations worth noting, but setting aside for now) from various threats, DHS spies on Americans in several disturbing ways. Some of the most dystopian piggyback on programs presented to the public as supporting immigration enforcement.

Border security agencies, like Customs & Border Protection (CBP) and Immigration & Customs Enforcement (ICE), have facilitated a record number of deportations under the Obama administration, creating a domestic humanitarian crisis. Critics of the administration's immigration crackdown have vocally challenged its failures. According to the New York Times, "the department's continually shifting strategies against illegal immigration had two things in common. They were ineffective and cruel."

B. Postal Service:

Buttar, '13 [Shahid, former executive director of the Bill of Rights Defense Committee, is a constitutional lawyer and grassroots organizer. Shahid directed a national program to combat racial and religious profiling, after serving for three years as associate director of the American Constitution Society for Law & Policy, "Beyond the Panopticon: The NSA Isn't Alone," Defending Dissent Foundation, 12-26-13, http://www.bordc.org/blog/beyond-panopticon-nsa-isn%E2%80%99t-alone]

Nor are law enforcement agencies the only ones joining the intelligence agencies to spy on Americans. Even the US Postal Service is getting in on the surveillance racket. In July, the New York Times reported on the Mail Isolation Control and Tracking program, "in which Postal Service computers photograph the exterior of every piece of paper mail that is processed in the United States — about 160 billion pieces last year…." It concluded that "postal mail is subject to the same kind of scrutiny that the National Security Agency has given to telephone calls and e-mail." Like the NSA's ubiquitous electronic wiretapping, postal surveillance carries disturbing implications, particularly in terms of enabling the suppression of political dissent. Most astounding in the context of the controversy over NSA spying, however, is the sheer ignorance about the postal service's monitoring practices.

C. State and local law enforcement:

Buttar, '13 [Shahid, former executive director of the Bill of Rights Defense Committee, is a constitutional lawyer and grassroots organizer. Shahid directed a national program to combat racial and religious profiling, after serving for three years as associate director of the American Constitution Society for Law & Policy, "Beyond the Panopticon: The NSA Isn't Alone," Defending Dissent Foundation, 12-26-13, http://www.bordc.org/blog/beyond-panopticon-nsa-isn%E2%80%99t-alone]

DHS also erodes constitutional rights through its collaborations with local police. State and local law enforcement agencies around the country collaborate with a series of over 70 regional DHS-funded fusion centers pursuing ambiguous missions at unknown costs. DHS leaders have praised fusion centers, but critics — extending from the libertarian CATO Institute and immigrant rights groups to FBI veterans — have described them as wasteful, duplicative, constitutionally offensive, and ineffective from a public safety standpoint. Targeted surveillance, of the sort abused by the FBI, is also a problem across state & local departments. For years, peace activists, Ron Paul supporters, environmentalists, and Muslims have been targeted for government spying in dozens of states--not only by the FBI, but also by state and local police. Until being shut down by the Governor in 2010, Pennsylvania state officials not only spied on environmental activists, but also shared its intelligence reports with their corporate targets, including mining companies. DHS also facilitates the paramilitarization of local and state police agencies, which around the country have sought DHS grants to buy everything from sophisticated listening devices to surveillance cameras, automated drivers license plate scanners developed originally for military uses, aerial surveillance drones, and even armored tanks.

AT: Add-ons

AT: Internet Fragmentation Add-on

Internet fragmentation is irreversible. Countries have gone too far in establishing their own networks. In any case, no impact on Internet users.

Kaspersky, '13 [Eugene, chairman and CEO of Kaspersky Lab, "What will happen if countries carve up the internet?" the Guardian, 12-17-2013, http://www.theguardian.com/media-network/media-network-blog/2013/dec/17/internet-fragmentation-eugene-kaspersky]

Ordinary users will hardly perceive any change while these state-run parallel networks are being built, but there is another aspect of this global trend that will affect everyone directly. Some countries are already seriously considering making sure as much of their internet traffic as possible stays within their national borders. In some countries, for example Brazil, there's talk about forcing global giants such as Google and Facebook to locate their data centres locally to process local communications. If this trend gains worldwide momentum, it will be a disaster for global IT giants and pose a threat of full-blown Balkanisation of the internet. The process would probably foster the creation of local search engines, email systems, social networks and so on – an intimidating prospect for publicly listed companies. As a result, the whole notion of netizens, or global online citizens, and of the internet being a global village could lose all practical meaning. What could emerge is a patchwork of online nation states with different rules and regulations and hindered communications. Sadly, I don't think the trend can be reversed. It feels as inevitable as the change of the seasons. But while one can't help complaining about bad weather in December, it's worth remembering that a bit of snow is not the end of the world.

Alternative causality: Multiple factors generate internet fragmentation, not just surveillance: dominance of international bodies, cyber- crime and cyber war.

Patrick,'14 [Stewart, Senior Fellow and Director, Program on International Institutions and Global Governance, Council on Foreign Relations, "The Obama Administration Must Act Fast to Prevent the Internet's Fragmentation," The Internationalist, 2-26-2014, http://blogs.cfr.org/patrick/2014/02/26/the-obama-administration-must-act-fast-to-prevent-the-internets-fragmentation/]

Since the dawn of the digital age, the United States had consistently supported an open, decentralized, and secure cyber domain that remains largely in private hands. Even before the Snowden disclosures, that vision was under threat, thanks to disagreements among governments on three fundamental issues. First, some world leaders are questioning whether the ITU(International Telecommunications Union) ought to play a more active role in regulating cyberspace. To the degree that the Internet is "governed," the primary regulatory body remains ICANN (the Internet Corporation for Assigned Names and Numbers), an independent, nonprofit corporation based in Los Angeles. The outsized role of ICANN—and the widespread perception of U.S. (and broader Western) control over the Internet—has long been a sore point for authoritarian states, as well as many developing countries, which would prefer to move cyber governance to the intergovernmental ITU. A second threat to the open Internet has been a surge in cyber crime—and disagreement over how to hold sovereign jurisdictions accountable for criminality emanating from their territories. Estimates of the magnitude of cyber crime range from large to astronomical. In 2012, NSA director general Keith Alexander put the annual global cost at $1 trillion. Most cyber crime is undertaken by nonstate actors against private sector targets for motives of financial gain. But national authorities have also been involved in economic espionage, both directly and through proxies. The most infamous case involves a unit of China's People's Liberation Army, which allegedly has been at the forefront of Chinese hacking efforts to steal industrial secrets and technology from

leading U.S. companies. Third, the growing specter of cyberconflict—even cyber war—among nations threatens a secure and open Internet. Worldwide, dozens of governments are developing doctrines and capabilities to conduct "information operations." This includes, of course, the United States, which has established a robust Cyber Command within the Department of Defense. Meanwhile, there is no international consensus on what constitutes a "cyberattack," what responses to these incursions are permissible, and whether and how existing laws of war might be applied to cyberconflict.

U.S. surveillance isn't the real reason for fragmentation. It's an excuse for the real, localized motivations for national and regional networks.

Lillington, '14 [Karlin, journalist and columnist with the Irish Times focusing on technology, with a special interest in the political, social, business and cultural aspects of information and communication technologies, PhD from Trinity College; "Halting internet fragmentation tops agendas," Irish Times, 5-8-2014, http://www.irishtimes.com/business/technology/halting-internet-fragmentation-tops-agendas-1.1786657]

Most sessions at the two-day event had acknowledged that the revelations by Edward Snowden of mass covert surveillance by the NSA in the US, and GCHQ in England, had accelerated proposals to localise data – often referred to as a "Balkanisation" of data – in some countries. But human rights activists had warned that such proposals were not always what they seemed. For example, Joana Varon Ferraz, of Centro de Tecnologia e Sociedade da Fundação Getulio Vargas, Brazil, noted several times during the event that Brazil's motivations in agreeing to build new undersea broadband cables, and calling for data to be held only within its borders, were more about increasing its own access to its citizen's data, and opportunities for internal covert surveillance.

An non-fragmented Internet enhances cyberstalking, violence against women and actually restricts freedom.

Lillington, '14 [Karlin, journalist and columnist with the Irish Times focusing on technology, with a special interest in the political, social, business and cultural aspects of information and communication technologies, PhD from Trinity College; "Halting internet fragmentation tops agendas," Irish Times, 5-8-2014, http://www.irishtimes.com/business/technology/halting-internet-fragmentation-tops-agendas-1.1786657]

She (Jody Liddicoat, human rights specialist with the Association for Progressive Communications) also questioned whether a completely free and unfettered internet was desirable. The arrival of new technologies, such as Google Glass, highlighted this complication, she said, as its use could contribute to cyberstalking and the ongoing problem of violence against women. "One internet isn't one where all freedoms are unbounded. It's one where we begin to negotiate those freedoms," she said. "Unbounded freedom has the potential to inhibit the freedom of another."

AT: Cybersecurity Add on

There is no clear evidence of existential cyber security threat. Alarmist rhetoric constitutes an example of threat construction similar to the run-up to the Iraq War.

Brito & Watkins, '11 [Jerry, Senior Research Fellow, Mercatus Center at George Mason University; Tate, Research Associate, Mercatus Center at George Mason University, "Loving the Cyber Bomb? The Dangers of Threat Inflation in Cybersecurity Policy," Harvard National

Security Journal, April 26, 2011, http://mercatus.org/sites/default/files/publication/Loving-Cyber-Bomb-Brito-Watkins.pdf]

Over the past two years, there has been a steady drumbeat of alarmist rhetoric coming out of Washington about potential catastrophic cyber threats. For example, at a Senate Armed Services Committee hearing last year, Chairman Carl Levin said, "cyberweapons and cyberattacks potentially can be devastating, approaching weapons of mass destruction in their effects."2 Proposed responses include increased federal spending on cybersecurity and the regulation of private network security practices. Security risks to private and government networks from criminals and malicious state actors are no doubt real and pressing. However, the rhetoric of "cyber doom"3 employed by proponents of increased federal intervention in cybersecurity implies an almost existential threat that requires instant and immense action. Yet these proponents lack clear evidence of such doomsday threats that can be verified by the public. As a result, the United States may be witnessing a bout of threat inflation similar to that seen in the run-up to the Iraq War. Additionally, a cyber-industrial complex is emerging, much like the military-industrial complex of the Cold War. This complex may serve not only to supply cybersecurity solutions to the federal government, but to drum up demand for those solutions as well.

Using apocalyptic rhetoric to address cybersecurity ensures counterproductive policymaking. Further study is necessary before acting.

Brito & Watkins, '11 [Jerry, Senior Research Fellow, Mercatus Center at George Mason University; Tate, Research Associate, Mercatus Center at George Mason University, "Loving the Cyber Bomb? The Dangers of Threat Inflation in Cybersecurity Policy," Harvard National Security Journal, April 26, 2011, http://mercatus.org/sites/default/files/publication/Loving-Cyber-Bomb-Brito-Watkins.pdf]

Cybersecurity is an important policy issue, but the alarmist rhetoric coming out of Washington that focuses on worst-case scenarios is unhelpful and dangerous. Aspects of current cyber policy discourse parallel the run-up to the Iraq War and pose the same dangers. Pre-war threat inflation and conflation of threats led us into war on shaky evidence. By focusing on doomsday scenarios and conflating cyber threats, government officials threaten to legislate, regulate, or spend in the name of cybersecurity based largely on fear, misplaced rhetoric, conflated threats, and credulous reporting. The public should have access to classified evidence of cyber threats, and further examination of the risks posed by those threats, before sound policies can be proposed, let alone enacted.

Empirical, historical evidence proves cyber-doom scenarios are highly unlikely. Threatened systems are resilient.

Lawson, '11 [Sean, writes about science, technology, security, and military affairs. Topics of interest include cybersecurity policy, surveillance, drones, network-centric warfare, military use of social media, and the rhetoric of threat inflation. He is assistant professor in the Department of Communication at the University of Utah, "Cyberwar Hype Comes Under Increasing Scrutiny," Forbes, April 28, 2011, Ahttp://www.forbes.com/sites/seanlawson/2011/04/28/cyberwar-hype-comes-under-increasing-scrutiny/]|

My own report for the Mercatus Center, also released in January, largely echoed the findings of the OECD report. In it, I argued that current debates about cyberwar rely too much on hypothetical scenarios that imagine the worst, what I called "cyber-doom scenarios." I demonstrated that when subjected to evaluation based on empirical evidence from history and sociology, we can conclude that cyber-doom scenarios are unlikely. Fears of vulnerabilities based in new technologies are not new. The telegraph, telephone, radio, railroads, and other new technologies have led to similar fears in the past and those fears have yet to be realized. Instead, what history and sociology show us is that both technological systems and social systems are more resilient than we often assume. Cases such as strategic bombing, blackouts, natural disasters, and terrorist attacks have not typically led to total

or long-term collapse of social, economic, or technological systems. If these events have not led to the kinds of results that the prophets of cyber-doom predict, why would we expect that cyber-attacks would?

Cybersecurity hype increases the risk of a NATO-Russia war. It constitutes a self-fulfilling prophecy.

Lee & Rid, '14 [Robert, an active-duty USAF Cyber Warfare Operations Officer who has led multiple cyberspace operations programmes in the Air Force and US Intelligence Community; Thomas, professor in the Department of War Studies at King's College London, OMG CYBER! THIRTEEN REASONS WHY HYPE MAKES FOR BAD POLICY," RUSI Journal, October/November 2014, http://www.tandfonline.com/doi/pdf/10.1080/03071847.2014.969932]

Eleven: Hype Escalates Conflict. Government, military and industry leaders are consequently able to make wild claims without providing evidence. This has an escalatory effect. 'We're in a pre-9/11 moment, in some respects, with cyber,' said John Carlin, assistant attorney general for national security in the Justice Department in Aspen, Colorado in July. 25 He did not provide concrete details to back up his claim. Just weeks after Russia annexed Crimea in March 2014, NATO's Supreme Allied Commander Europe (SACEUR), USAF General Philip Breedlove, made comments about Russia's use of cyber in doing so. He told the New York Times that cyber-warfare had been used to isolate the Ukrainian military on the Crimean peninsula.26 A month later he revisited these claims, stating that cyber was a critical part of Russia's actions. To quote Breedlove:27 When they [Russia] took Crimea, cyber was part of a well-planned, total decapitation of Crimea from the command and control structure of Ukraine. Ukraine was absolutely disconnected from being able to do anything with their forces in that area. Cyber was one of three tools used, and used quite exquisitely. Consequently, the Atlantic Alliance is updating its cyber-defence policy – a point confirmed at the recent NATO summit in Wales. A very serious cyberattack, some in the Atlantic Alliance seem to suggest, should be treated like an invasion. 'For the first time we state explicitly that the cyber-realm is covered by Article5of the Washington Treaty, the collective defence clause', said Jamie Shea, NATO's deputy assistant secretary general for emerging security challenges, in June. 28 At first glance, this statement appears to be meant as a deterrent. However, deterrence does not seem to apply: to deter, a statement needs to be clear and backed by credible threat of punishment. So far, NATO is doing the reverse: 'We do not say in exactly which circumstances or what the threshold of the attack has to be to trigger a collective NATO response,' Shea said, 'and we do not say what that collective NATO response should be'.29 A vague but high bar for cyber-attacks also implicitly legitimises ongoing espionage attacks as acceptable and minor. Moreover, the vast majority of cyber-attacks also do not fall into NATO's remit in the first place: espionage and cyber-crime are problems for intelligence agencies and law enforcement, not for a military alliance. For militants and the Kremlin, the subtext is clear: cyber matters; better up your game. NATO – among others– is escalating a problem that someone else will have to solve.

Current efforts will provide effective safeguards against cyber- attacks. Security improvements are ongoing.

Keller, 3-3-15 [John, editor-in-chief of Military & Aerospace Electronics magazine, which provides extensive coverage and analysis of enabling electronic and optoelectronic technologies in military, space, and commercial aviation applications. A member of the Military & Aerospace Electronics staff since the magazine's founding in 1989, Mr. Keller took over as chief editor in 1995., "DARPA eyes cyber security program to safeguard private and proprietary computer information," Military & Aerospace Magazine, March 3, 2015, http://www.militaryaerospace.com/articles/2015/03/darpa-cyber-security.html]

U.S. military researchers will brief industry on 12 March 2015 on an upcoming new cyber security research program to develop ways of protecting the private and proprietary information of individuals and enterprises. Officials of the U.S. Defense Advanced Research Projects Agency (DARPA) in Arlington, Va., will detail the upcoming program from 10 a.m. to 3 p.m. on 12 Brandeis March 2015 at the Holiday Inn, 4610 North Fairfax Drive, in Arlington, Va. The Brandeis proposers day is to familiarize participants with DARPA's interest in privacy science; identify potential proposers; and provide an opportunity for potential proposers to ask questions about the upcoming Brandeis program. Privacy is critical to a free society, DARPA researchers say. As Louis Brandeis said in 1890, the right to privacy is a consequence of understanding that harm comes in more ways than just the physical. He was reacting to the ability of the new "instantaneous camera"

to record personal information in new ways. Since then, the ability of technology to collect and share information has grown beyond all expectation. DARPA researchers are reaching out to industry for ways to continue the benefits of information sharing, while safeguarding the private information of individuals and businesses.

Related: DARPA picks six companies to define enabling technologies for U.S. cyber warfare strategy

The White House has made cyber security a priority and has launched initiatives to enable the safe and effective sharing of information to increase the nation's ability to protect itself and to thwart any adversary's ability to shut down our networks, steal trade secrets, or invade the privacy of Americans, researchers say.

Off Case

Executive Self Restraint CP

1NC CP Shell

TEXT: The President should issue and implement an executive order repealing all domestic online surveillance authority under Executive Order 12333, preventing enforcement of domestic online surveillance authority under the Patriot Act and the FISA Act Amendments of 2008 and prohibiting any requirement for manufacturers of electronic devices or software to provide bypasses for encryption.

Counterplan is net beneficial because using the executive avoids the link to politics.

Executive Self Restraint functions to substantially curtail national security and specifically surveillance operations. Empirics prove.

Sales, '12 [Nathan, Assistant Professor of Law, George Mason University, "SELF RESTRAINT AND NATIONAL SECURITY," JOURNAL OF NATIONAL SECURITY LAW & POLICY [Vol. 6:227], George Mason University Law and Economics Research Paper Series, August 8, 2012, http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf]

If the only thing we knew about national security was what we learned from Hollywood, we'd come away with the impression that the Pentagon and CIA were populated entirely by rogue agents who routinely, if not gleefully, flout the legal restrictions that govern them. Think of Jack Bauer goading a captured terrorist into talking by staging a mock execution of his young son, or General Jack Ripper enthusiastically ordering a nuclear strike on the Soviet Union. That crude caricature is almost the exact opposite of reality. Military and intelligence officials tend to be scrupulously careful when deciding how to deploy the immense powers at their fingertips. The government frequently adopts constraints on its ability to carry out certain national security operations, restrictions that go much farther than what is required by the governing principles of domestic or international law. Recent history offers plenty of examples. Counterterrorism interrogators aren't getting as close as possible to the legal line drawn by the Convention Against Torture, the federal torture statute, and the Detainee Treatment Act; they've been restricted to the relatively benign techniques authorized in the Army Field Manual. In the 1980s and 1990s, officials were reluctant to order targeted killings that they believed were perfectly consistent with domestic and international prohibitions on assassination; they either rejected them outright (in the case of Osama bin Laden) or modified them to camouflage their true purpose (in the case of Mohammar Qadaffi). Military officers aren't itching to order attacks that are even arguably permissible under the laws of war; they're foregoing lawful strikes that members of the JAG corps regard as problematic for moral, economic, and other non-legal reasons. **Justice Department lawyers didn't aggressively promote information sharing under** the **Foreign Intelligence Surveillance Act; they built a wall that segregated cops from spies and set themselves up as** the department's information sharing **gatekeepers.**

New Executive Orders curtailing surveillance are easy to pass and implement as well as legally binding. Time frame is immediate.

Electronic Frontier Foundation, 7-9-15 [EFF-The Electronic Frontier Foundation is the leading nonprofit organization defending civil liberties in the digital world. EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. "Tell Obama: Stop Mass Surveillance Under Executive Order 12333," 7-9-15, https://act.eff.org/action/tell-obama-stop-mass-surveillance-under-executive-order-12333]

Executive orders are legally binding orders given by the President of the United States which direct how government agencies should operate. Executive Order 12333 covers "most of what the NSA does" and is "the primary authority under which the country's intelligence agencies conduct the majority of their operations."1 So while the U.S. Congress is considering bills to curtail mass telephone surveillance, the NSA's primary surveillance authority will be left unchallenged. It's time to change that. Last July, former State Department chief John Napier Tye came forward with a damning account of Executive Order 12333, which he published in The Washington Post2. Thanks to his account and the reports of others who have spoken out candidly against surveillance under E.O. 12333, we know: Executive Order 12333 is used to collect the content of your communications– including Internet communications like emails and text messages. Executive Order 12333's has no protections for non-U.S. persons, a fact that has been used to justify some of the NSA's most extreme violations of privacy, including the recording of an entire country's telephone conversations.3 Executive Order 12333 is used to collect information on U.S. persons who are not suspected of a crime. As Tye wrote, "It does not require that the affected U.S. persons be suspected of wrongdoing and places no limits on the volume of communications by U.S. persons that may be collected and retained." No US court has seriously considered the legality and constitutionality of surveillance conducted under Executive Order 12333. This executive order was signed by President Ronald Reagan in 1981, many years before the Internet was widely adopted as a tool for mass communication. A stroke of the U.S. President's pen over thirty years ago created the conditions that led to our global surveillance system. The present President could fix it just as easily. Join us in calling on President Obama to fix Executive Order 12333 and end the mass surveillance of people worldwide.

1NC Net Benefit Shell: Presidential Power Good

The President acting alone preserves executive power – prevents Congress from stepping in.

Wall Street Journal 2013

[Wall Street Journal, 9/5/2013. "Obama's Curbs on Executive Power Draw Fire," http://online.wsj.com/article/SB10001424127887323893004579057463262293446.html]

A senior administration official said that while the new drone-strike policy does rein in executive authority, the NSA and Syria proposals weren't a reduction of power but an effort to increase transparency and build public confidence. Still, the president, who was criticized for seizing too much power through recess appointments and other steps that some said circumvented Congress, now is being criticized by veterans of past Republican administrations for weakening the presidency. John Yoo, The president's moves on national-security issues reflect a mix of political pragmatism as well as personal principles, and exactly how much power Mr. Obama actually has given up is the subject of debate. He has walked a fine line on Syria, for example, saying he wasn't required to seek sign-off from lawmakers for a military strike but asking for their approval anyway. a Justice Department official in the George W. Bush administration, said Mr. Obama had unnecessarily limited his own authority. He noted that it is rare to see a president restrict his powers. Mr. Obama "has been trying to reduce the discretion of the president when it comes to national security and foreign affairs," said Mr. Yoo, now a law professor at the University of California at Berkeley. "These proposals that President Obama is making really run counter to why we have a president and a constitution." Others, though, said the president had given up a modicum of authority in an effort to protect presidential power and guard against congressional action. The question of the extent of executive power has been long debated in Washington. President Lyndon Johnson was accused of using a narrow congressional resolution to vastly and illegally expand the Vietnam War, for example, and President Richard Nixon was accused of creating an "imperial presidency" before his resignation. More recently, Mr. Obama's predecessor, Mr.

Bush, was accused by Democrats of having inappropriately expanded executive powers in combating terrorism. Jack Quinn, who served as White House counsel for President Bill Clinton, said Mr. Obama's recent moves amount to threading a needle to reach agreements and avoid larger setbacks for executive power. "Sometimes, it's important to show tolerance for others in order to preserve the power that you have," he said. "I don't think anyone can say that he is a shrinking violet when it comes to his use of power as president." A.B. Culvahouse, White House counsel under Ronald Reagan, agreed that the president imposing constraints on executive authority is the preferable course if it helps dissuade Congress from stepping in to impose the same or more onerous limitations. Lawmakers retain the power of the purse, he noted, and also could codify restrictions in statute.

A strong unchecked executive is necessary to prevent and win inevitable conflicts, including wars with China, North Korea, Iran and the War on Terrorism.

McCarthy, '06

[Andrew, Director Center for law and counterterrorism at the Foundation for Defense of Democracies, March 2006, "The Powers of War and Peace by John Yoo," Commentary, https://www.commentarymagazine.com/articles/the-powers-of-war-and-peace-by-john-yoo/]

Yoo's thesis in this book is strongest as an argument grounded in text—the text, that is, of our founding law. Precisely because the Constitution reposes such power in the executive, he argues, it is adaptable to the demands of crisis (though one must add that broad presidential power is necessarily also open to great abuse and even disastrous miscalculation). It is also flexible enough to allow for international cooperation in the name of the national interest without a wholesale commitment to dreamy multilateral constructs (though this, too, can make for trouble in an age of globalization in which dependable allies are essential). But is Yoo's reading, especially concerning the power of war, truly consistent with the framers' original understanding? As the constitutional scholar Cass Sunstein has observed in reviewing Yoo's book, George Washington himself construed Congress's power to declare war as meaning that "no offensive expedition of importance can be undertaken until after they [Congress] have deliberated on the subject, and authorized such a measure." Other giants of the founding—Adams, Jefferson, Hamilton, Madison, Chief Justice John Marshall—voiced similar sentiments. Even granting that the framers expressly resisted congressional war-making, and promoted a vibrant executive, one need not interpret "declare" as narrowly and legalistically as Yoo suggests. In short, the tension reflected in the debates at the constitutional convention persists. But one must also be alert to reality. In a world beset by the constant threat of sudden destructive force, a robust and firmly grounded view of presidential power is imperative. Potential perils come today not just from growing national powers like China but from rogue states in Iran and North Korea as well as from increasingly diffuse terror cells that have demonstrated their capacity to continue striking globally even when, as now, they are under siege. If public safety is to be something other than an illusion, securing it will demand the power to attack quickly and, in appropriate circumstances, preemptively; the price of awaiting consensus from 535 members of Congress may be too prohibitive. For showing how that power derives from the very system the framers bequeathed us, John Yoo deserves our deep thanks.

2NC: Executive Self Restraint CP Extensions

Executive Self Restraint eliminates the need for external checks and oversight. Empirically, the incentives for restraint are powerful.

Sales, '12 [Nathan, Assistant Professor of Law, George Mason University, "SELF RESTRAINT AND NATIONAL SECURITY," JOURNAL OF NATIONAL SECURITY LAW & POLICY [Vol. 6:227], George Mason University Law and Economics Research Paper Series,

August 8, 2012, http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf]

Much of the case law and scholarship concerning national security rests on the assumption that the executive branch is institutionally prone to overreach – that, left to its own devices, it will inch ever closer to the line that separates illegal from legal, and sometimes enthusiastically leap across it. The obvious conclusion is that external, principally judicial, checks are needed to keep the Executive in line.2 In many cases the Executive does indeed push the envelope. But not always.3 The government often has powerful incentives to stay its own hand – to forbear from military and intelligence operations that it believes are perfectly legal. Officials may conclude that a proposed mission – a decapitation strike on al Qaeda's leadership, say, or the use of mildly coercive interrogation techniques on a captured terrorist – is entirely permissible under domestic and international law. Yet they nevertheless might rule it out. In other words, the government sometimes adopts self-restraints that limit its ability to conduct operations it regards as legally justified; it "fight[s] with one hand behind its back," to borrow Aharon Barak's memorable phrase.4

There are powerful motives for executive self- restraint: cost/benefit analysis and bureaucratic empire building.

Sales, '12 [Nathan, Assistant Professor of Law, George Mason University, "SELF RESTRAINT AND NATIONAL SECURITY," JOURNAL OF NATIONAL SECURITY LAW & POLICY [Vol. 6:227], George Mason University Law and Economics Research Paper Series, August 8, 2012, http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf]

The question then becomes why officials adopt these restraints even when they believe them to be legally unnecessary. Public choice theory suggests two possible explanations. First, self-restraint might result from systematic asymmetries in military and intelligence officials' expected value calculations. The expected costs of a given national security operation often dwarf the expected benefits; officials have more to lose from being aggressive than they have to gain. In particular, operations –even concededly lawful ones – can inspire adversaries to launch demoralizing propaganda campaigns accusing the United States of war crimes, can sap the willingness of allies to assist this country, and can even result in criminal prosecutions or private lawsuits against the responsible officials. In addition, the resulting costs can be internalized onto the responsible officials more easily than the resulting benefits. While all national security players experience a degree of cost benefit asymmetry, some experience more than others. In particular, the senior policymakers who approve operations, and the lawyers who review them, seem even more cautious than the operators who actually carry them out. This may be because policymakers and lawyers discount some of the benefits that operators expect to gain (e.g., certain forms of psychic income), and also account for certain costs that operators overlook (e.g., ramifications for the country's broader strategic priorities). Policymakers and lawyers therefore will veto proposed missions when they calculate – as they often will – that their costs exceed their benefits. Second, self-restraint might result from bureaucratic "empire building,"5 as lawyers and other officials seek to magnify their clout by rejecting operations planned by their inter- and intra-agency competitors. Military and intelligence figures seek to maximize, among other values, the influence they hold over senior policymakers as well as autonomy to pursue the priorities they deem important. One way for an official to do that is to interfere with a rival's plans. A bureaucratic player typically gains no power by serving as a competitor's yes man. Often, it gains by saying no, because its obstruction forces the rival to be responsive to its concerns. Reviewers in the government's national security apparatus therefore will veto operations planned by other entities when doing so will enhance their welfare.

Cost benefit differences and bureaucratic empire building enhance executive self-restraint.

Sales, '12 [Nathan, Assistant Professor of Law, George Mason University, "SELF RESTRAINT AND NATIONAL SECURITY," JOURNAL OF NATIONAL SECURITY LAW & POLICY [Vol. 6:227], George Mason University Law and Economics Research Paper Series, August 8, 2012, http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf]

Public choice theory can help answer that question. As developed in this article, there are at least two explanations that can account for the government's tendency to tie its own hands in national security operations: cost-benefit asymmetry and empire building. Officials in military and intelligence agencies tend to be cautious for a straightforward reason. It is in their interest to be cautious. The expected costs of national security operations are often greater than the expected benefits. The best case scenario for a cop, spy, or soldier is that he gets a pat on the back; the worst is that he goes to jail. That gap naturally predisposes officials to play it safe, and senior government policymakers (and therefore their lawyers) are likely to be especially cautious. It shouldn't come as much of a surprise, then, when attorneys in the intelligence community or the Pentagon veto an operation – even a concededly lawful operation – that has the potential to inspire demoralizing propaganda campaigns by adversaries, expose officials to criminal prosecutions, or worse. The lawyers are doing what all lawyers do – trying to keep their clients out of trouble. You may be convinced that it's legal to bomb a particular convoy or share a particular intelligence report with your buddy at the FBI. But there's no guarantee that Belgian war crimes prosecutors or the FISA Court will see things the same way. Why take the chance?

Persuasive examples of executive self- restraint in national security and specifically surveillance abound.

Sales, '12 [Nathan, Assistant Professor of Law, George Mason University, "SELF RESTRAINT AND NATIONAL SECURITY," JOURNAL OF NATIONAL SECURITY LAW & POLICY [Vol. 6:227], George Mason University Law and Economics Research Paper Series, August 8, 2012, http://jnslp.com/wp-content/uploads/2012/08/08__Sales_Master_6-28-12-NS.pdf]

One example of self-restraint is Executive Order 13,491, which limits counterterrorism interrogations, including those conducted by the CIA, to the techniques listed in the Army Field Manual. The AFM prohibits or severely restricts a number of fairly mild interrogation methods such as low-grade threats, the "good cop, bad cop" routine, and other staples of garden-variety law enforcement investigations. A second example, sketched above, is the White House's onetime reluctance to use targeted killings against Osama bin Laden, despite its belief that doing so would be consistent with domestic and international laws against assassination. Third, lawyers in the Judge Advocate General corps sometimes reject military strikes that would be permissible under the law of war, but that they regard as problematic for moral, economic, social, or political reasons. A fourth example is the Justice Department's erection of a "wall" that restricted information sharing between intelligence officials and criminal investigators, despite the fact that the applicable statute (the Foreign Intelligence Surveillance Act of 1978) contained no such limits, and despite the fact that the governing DOJ guidelines established mechanisms for swapping such data.

Politics Links

PRISM Politics Links

Bipartisan support for PRISM is overwhelming. Congress definitively supports the status quo.

Green, '13 [Lloyd, former attorney in the Justice Department, "Prism and the NSA: Something Congress Can Agree On," The Daily Beast, June 6, 2013, http://www.thedailybeast.com/articles/2013/06/16/prism-and-the-nsa-something-congress-can-agree-on.html]

Finally, our polarized political leaders have found their bipartisan spirit. Lloyd Green on why members of Congress from both sides of the aisle like government data mining. The center lives. Bipartisanship is not dead, as Democratic and Republican congressional leaders rally around the National Security Agency's big data grab. With the exception of op-ed writers, the American Civil Liberties Union, and the Pauls—Rand and Ron—Washington's establishment is standing together with the administration. In this scrum, party is secondary, at least on Capitol Hill. In a show of unity virtually unseen since 9/11, the congressional leadership has come out unanimously in support of the status quo, while deflecting allegations that The Guardian's news story was actually news. According to Senate Majority Leader Harry Reid, senators who complain about being left in the dark have only themselves to blame, and all other Americans should sit down and shut up.

Fear of being blamed for terrorist attacks ensures continued Congressional support for PRISM surveillance.

Green, '13 [Lloyd, former attorney in the Justice Department, "Prism and the NSA: Something Congress Can Agree On," The Daily Beast, June 6, 2013, http://www.thedailybeast.com/articles/2013/06/16/prism-and-the-nsa-something-congress-can-agree-on.html]

But can you really blame Congress for its reluctance to challenge the president or the very legal rubric that Congress itself enacted? As Peggy Noonan put it, "The thing political figures fear most is a terror event that will ruin their careers. The biggest thing they fear is that a bomb goes off and it can be traced to something they did or didn't do, an action they did or didn't support."

The American public supports PRISM as critical to fight terrorism after 9-11.

Green, '13 [Lloyd, former attorney in the Justice Department, "Prism and the NSA: Something Congress Can Agree On," The Daily Beast, June 6, 2013, http://www.thedailybeast.com/articles/2013/06/16/prism-and-the-nsa-something-congress-can-agree-on.html]

Meanwhile, Americans are not demanding that the administration stop doing whatever it is doing. Public opinion is ambivalent, not adamant, with conflicting polls delivering contrary messages. According to a joint Washington Post–Pew Research Center poll, 56 percent find the NSA's telephone tracking program to be acceptable, while two in five disagree. Still, a later Gallup poll showed a majority of the public opposed to telephone and Internet tracking, with less than two fifths supportive. In other words, don't expect much to change, insofar as 9/11 has changed everything where the threat of terror is concerned. Sen. Al Franken, by way of Harvard and SNL, tells us that Prism and the NSA are "not about spying on the American people." Channeling his inner Stuart Smalley, Franken adds, "There are certain things that are appropriate for me to know that is not appropriate for the bad guys to know."

There is bipartisan House support for continuing the current PRISM program.

Harris, '13 [Bryant, reporter with Inter Press Service News. He has worked in Muscat, Oman and was a U.S. Peace Corps Volunteer in Morocco. He graduated from UW-Madison in 2011 with a BA in Middle East Studies, "Amash Amendment: House PRISM Vote Shows GOP Hypocrisy in Action," News.Mic, July 25, 2013, http://mic.com/articles/56539/amash-amendment-house-prism-vote-shows-gop-hypocrisy-in-action]

On Wednesday the House voted on an amendment to an appropriations bill that would have defunded the NSA's PRISM program and ended its ability under the PATRIOT Act to collect phone records and metadata from individuals not under investigation. "Small government" Republicans teamed up with "liberal" Democrats to narrowly defeat Rep. Justin Amash's (R-Mich.) amendment, 217-205. One hundred thirty-four Republicans voted "no" on the Amash amendment, as opposed to 83 Democrats. Although many of the Republican representatives who opposed the amendment constantly rail against the excesses of big government and actively oppose the Affordable Care Act on the grounds that it gives the federal government too much power, they have no problem giving President Barack Obama control and unlimited access to our phone records and metadata.

There is bipartisan Senate support for continuing the PRISM program.

Fischer-Zernin, '13 [Maxime, Studying Political Science at Duke University (T. '15). His interests lie primarily in American national security and foreign policy. He is currently an Editor-at-Large for the Duke Political Review, and is a contributor for PolicyMic.com., "PRISM Scandal: Same Republicans Who Blamed Obama For Benghazi, IRS, AP, Are Silent On PRISM — Why?" News.Mic, June 7, 2013, http://mic.com/articles/47129/prism-scandal-same-republicans-who-blamed-obama-for-benghazi-irs-ap-are-silent-on-prism-why]

The NSA programs of acquiring broad amounts of telephone and Internet data have drawn support from both Republicans and Democrats, including the leading members of both parties on the Senate Intelligence Committee, Dianne Feinstein and Saxby Chambliss. While some in the GOP, such as Sen. Rand Paul (R-Ky.) are standing by their principles, others such as Sen. Chambliss (R-Ga.) and Lindsey Graham (R-SC) appear to trust Obama only when it suits their agenda. In a statement, Chambliss says that these "lawful intelligence activities must continue, with the careful oversight of the executive …" This is surprising coming from the same man who believes that President Obama was misleading the American people: "What Susan Rice said was exactly what President Obama told her to say … They were about ready to throw her under the bus." He later added, "I do think that there were some politics involved in the message that the White House wanted to send." Talking about the IRS and Benghazi scandals, Sen. Lindsey Graham commented, "The Obama administration is not a victim of anything other than their excess abuse of power," calling Obama's actions "every bit as damaging as Watergate." However, Graham does not seem to have an issue with the same administration that was "spinning the American people" and "stonewalling the Congress" while acquiring masses of telephone and Internet data on American and foreign citizens. Defending the NSA, Graham told Fox & Friends that "I'm glad the NSA is trying to find out what the terrorists are up to overseas and in our country." While neither Chambliss's nor Graham's mistrust of Obama is necessarily problematic, it is difficult to "square the circle" as to why the White House cannot be trusted to run the IRS or secure diplomatic compounds, but can be trusted with voluminous quantities of personal data. On the libertarian right, congressmen have been far more consistent in their views. Sen. Rand Paul condemned the NSA surveillance as "an astounding assault on the Constitution," adding, "After revelations that the Internal Revenue Service targeted political dissidents and the Department of Justice seized reporters' phone records, it would appear that this administration has now sunk to a new low." Sen. Graham has even gone as far as to attack Rand Paul for criticizing the White House: "I see the threat to the average American, radical Islam coming to our backyard trying to destroy our way of life. He sees the threat (from) the government that's trying to stop the attack. I'm more threatened by the radical Islamists than I am the government agencies who are trying to protect us." While Republicans continue to push the Benghazi and IRS scandals, the choice of many to defend Obama's use of the NSA suggests that Republicans may actually care about the policy enough not to exploit the issue and use it as part of the giant scandal narrative, which would seem to be the smart political play.

Terrorism DA

Terror Links

PRISM is Essential to U.S. Security in War Against Terrorism –DA Links!

Carafano '13 (James, Vice President for the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, and the E. W. Richardson Fellow, "PRISM is Essential to U.S. Security in War Against Terrorism", August 6th, 2013, http://www.heritage.org/research/commentary/2013/8/prism-is-essential-to-us-security-in-war-against-terrorism)

Our intelligence professionals must be able to find out who the terrorists are talking to, what they are saying, and what they're planning," said the president. "The lives of countless Americans depend on our ability to monitor these communications." He added that he would cancel his planned trip to Africa unless assured Congress would support the counterterrorism surveillance program. The president was not Barack Obama. It was George W. Bush, in 2008, pressing Congress to extend and update reforms to the Foreign Intelligence Surveillance Act (FISA). He was speaking directly to the American public, in an address broadcast live from the Oval Office. How times have changed. Back then, the President of the United States willingly led the fight for the programs he thought necessary to keep the nation safe. Now, our president sends underlings to make the case. In distancing himself from the debate over PRISM (the foreign intelligence surveillance program made famous by the world-travelling leaker Edward Snowden), President Obama followed the precedent he established in May at the National Defense University. There, he spoke disdainfully of drone strikes, the authorization to use military force against terrorists, and the detention facilities at Guantanamo Bay. All three are essential components of his counterterrorism strategy. In distancing himself from his own strategy, Obama hoped to leave the impression that he is somehow above it all. He has dealt with the Snowden case the same way. When asked while traveling in Africa if he would take a role in going after the leaker, the president replied "I shouldn't have to." The White House's above-it-all attitude sends seriously mixed messages to the American people, who are trying to figure if the government's surveillance programs are legal and appropriate. Congress has not been much better. The authority for PRISM is in FISA Section 702. Congress debated these authorities in 2007 and again when the program was reauthorized in 2008. Senate Majority Leader Harry Reid, D-Nev., surely remembers the controversy. He wrote President Bush: "There is no crisis that should lead you to cancel your trip to Africa. But whether or not you cancel your trip, Democrats stand ready to negotiate a final bill, and we remain willing to extend existing law for as short a time or as long a time as is needed to complete work on such a bill." Evidently, Reid must have felt the authorities granted under Section 702 received a full and sufficient hearing. Most current members of Congress were seated under the dome during the 2008 debates. They had every opportunity not just to read the law, but to be briefed on the program by intelligence officials before voting on the bill. For them to act shocked at the scope of the program today rings about as hollow as Obama's expressed disdain for the operations he oversees. The reality is that Congress and the administration share responsibility for these programs. If they want to change or modify them, who's stopping them? If changes are made, however, they should to be made for the right reason. Leaders must never compromise our security for political expediency. At least 60 Islamist-inspired terrorist plots have been aimed at the U.S. since the 9/11 attacks. The overwhelming majority have been thwarted thanks to timely, operational intelligence about the threats. Congress should not go back to a pre-/11 set of rules just to appeal to populist sentiment. Congress and the White House have an obligation to protect our liberties and to safeguard our security -- in equal measure. Meeting that mission is more important than winning popularity polls.

PRISM helped stop terrorism in US and 20-plus countries.

Mattise '13 (Nathan, New Orleans-based Staff Editor at Ars Technica, "PRISM helped stop terrorism in US and 20-plus countries", June 16th 2013, http://arstechnica.com/tech-policy/2013/06/prism-helped-stop-terrorism-in-us-and-20-plus-countries-nsa-document-argues/)

US intelligence officials sent Congress a new declassified document on Saturday, which the Senate Intelligence Committee then made public. Outlets such as CNN and the Associated Press received the document and revealed a number of interesting statistics related to the government's use of the NSA's controversial PRISM program. However, this document has not yet been published on the Senate Intelligence Committee's website (and does not seem to be easily obtained through basic Internet search). The new document is part of an intelligence official's effort to "show Americans the value of the program," according to the AP. The report's primary supporting stat? Intelligence officials said that information gleaned from these NSA initiatives helped prevent terrorist plots in the US and more than 20 other countries. Additionally, the release stated that phone metadata was searched for less than 300 times within the secretive database last year. The document also added details to the public's growing picture of the PRISM program. CNN reported that the NSA must delete these records after five years. The AP wrote that the NSA programs are reviewed every 90 days by a secret court authorized by the Foreign Intelligence Surveillance Act (FISA), and that the metadata records (which includes a call's time and length) can only be inspected for "suspected connections to terrorism." Despite all the public attention, the Obama Administration continues to insist that no privacy violations took place. According to White House Chief of Staff Denis McDonough (speaking Sunday on Face The Nation), the president plans to further clarify this "in the days ahead." On Friday, TechDirt also published a set of two documents described as "talking points about scooping up business records (i.e., all data on all phone calls) and on the Internet program known as PRISM." One of the talking points' main arguments is that Section 702 of the Foreign Intelligence Surveillance Act authorizes actions similar to those described above. This is despite the fact that no member of the public has ever been able to see the FISA court's ruling of the government's interpretation.

PRISM stopped 50 terrorist attacks, including assaults on the New York Stock Exchange and New York City subways.

Gerstein '13

(Josh, White House reporter for POLITICO, specializing in legal and national security issues, "PRISM stopped NYSE attack", June 18th 2013, http://www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html**)**

Recently leaked communication surveillance programs **have** helped thwart more than 50 "potential terrorist events" **around the world since the Sept. 11 attacks, National Security Agency Director Keith Alexander said Tuesday. Alexander said at least 10 of the attacks were set to take place in the United States, suggesting that most of the terrorism disrupted by the program had been set to occur abroad. The** NSA **also** disclosed **that** counterterrorism **officials** targeted fewer than 300 phone numbers **or other "identifiers**" last year in the **massive** call-tracking database **secretly** assembled by the U.S. government. **Alexander said the programs were subject to "extraordinary oversight." "This isn't some rogue operation that a group of guys up at NSA are running," the spy agency's chief added. The data on use of the call-tracking data came in a fact sheet released to reporters in connection with a public House Intelligence Committee hearing exploring the recently leaked telephone data mining program and another surveillance effort focused on Web traffic generated by foreigners. (POLITICO Junkies: NSA leaks cause flood of political problems) Alexander said** 90 percent of the potential terrorist incidents were disrupted by **the Web traffic program known as** PRISM**. He was less clear about how many incidents the call-tracking effort had helped to avert.** Deputy FBI Director Sean Joyce said the **Web traffic** program had contributed to arrests averting a plot to bomb the New York Stock Exchange that resulted in criminal charges in 2008**. Joyce also indicated that the** PRISM **program** was essential to disrupting a plot to bomb the New York City subways in 2009**. "Without the [Section] 702 tool, we would not have identified Najibullah Zazi," Joyce said. However, President Barack Obama acknowledged in an interview aired Monday that it is impossible to know whether the subway plot might have been foiled by other methods. "We might have caught him some other way. We might have disrupted it because a New York cop saw he was suspicious. Maybe he turned out to be incompetent and the bomb didn't go off. But at the margins we are increasing our chances of preventing a catastrophe like that through these programs," Obama told Charlie Rose on PBS. At the hearing, Alexander detailed the scope and safeguards of the programs, while Deputy Attorney General James Cole laid out the legal basis for the surveillance. "This is not a program that's off the books, that's been hidden away," Cole said of the call-tracking program, which was classified "top secret" prior to recent leaks. He noted that the Patriot Act provision found to authorize it has been twice reauthorized by Congress. "All of us in the national security [community] are constantly trying to balance**

protecting public safety with protecting people's civil liberties," Cole said. NSA Deputy Director Chris Inglis said a very limited number of individuals are authorized to access the call-tracking database.

Terror DA Turns the Case – EU Relations

Fallout from a terrorist attack would damage US-European relations far more than U.S. surveillance. The disad turns the case.

Raisher, '14 [Josh is a program coordinator for the Transatlantic Trends survey at the German Marshall Fund of the United States, "Ties that Bind?" U.S. News & World Report, 9-11-2014, http://www.usnews.com/opinion/blogs/world-report/2014/09/11/german-us-relationship-still-strong-despite-nsa-merkel-spying-rift]

So even if policymakers significantly rein in the NSA program itself, along with other espionage activities targeting Germany, something new would inevitably replace them – and potentially something far less appealing to America's allies. The potential domestic fallout of a successful terror attack is sufficiently monumental that it makes political sense for leaders to disregard the fraying of America's relationship with an ally if it reduces the risk of such an event; and if the president wants to curtail intelligence-gathering programs, his room for error is dangerously narrow.

Policing DDI

*** Off-Case ***

Baudrillard Visibility K

Visibility K - 1NC

(I only retagged the first card – you probably should retag the rest, but you don't need to.)

The affirmative's critique relies on the structural notion of difference and otherness, turning the Other into a symbol by calling upon it and subjectifying its existence. This logic necessitates the violence of transparency – turning the other into a subject justifies the racism that they try to prevent

Grace 2000—Senior Lecturer in Feminist Studies @ University of Canterbury at Christchurch (Victoria, 2000, Routledge, "Baudrillard's Challenge: A Feminist Reading," http://sociology.sunimc.net/htmledit/uploadfile/system/20100724/20100724151252877.pdf, rmf)

Baudrillard develops his most sustained discussion of the erasure of 'Otherness' and the proliferation of 'difference' in The Transparency of Evil (TE). His critique distinguishes 'difference' from a form of otherness that is radical, in which there is no scale of values upon which otherness can be registered. Baudrillard is emphatic that not only is otherness not the same as difference, but **difference is what destroys otherness**. Differences are indeed differentiated along a single scale of values. In an interview with Le Journal des Psychologues he says that difference is diversification, 'it is the spectre of modality', making it distinct from alterity in a way he describes there as 'absolute' (Gane 1993: 173). The 'hell of the same' (the void in the second quotation cited at the beginning of this section) is deflected by the hyperreal 'melodrama of difference' (both being chapter titles in TE). Simulation of a spectacular, everproliferating display of 'difference' is entirely consistent with the logic of sign value. Baudrillard claims that **otherness can now be considered to be subject to the law of the market, and** in fact, as a rare item, **is highly valued**. **The 'Other' is** no longer to be conquered, exterminated, hated, excluded, or seduced but rather **now to be understood, liberated, recognised, valued, 'coddled', resurrected as 'different'** This distinction between a form of 'otherness' that is indeed structurally irreducible, neither comparable nor opposable, and a form of 'difference' that is precisely predicated on establishing criteria against which difference is ascertained,3 is central to the critique offered here of feminist insistence on 'irreducible difference'. For this feminist proclamation to be meaningful we need some kind of structural critique of the social, political, economic, and semiotic structuring of difference and otherness. Baudrillard's analysis shifts the ground considerably. It makes additional questions pertinent; for example, what is at stake contemporarily in insisting on the importance of 'irreducible difference'? His work suggests that this kind of question has to be addressed through a critique of the political economy of the sign. At least. With reference to Baudrillard's 'melodrama of difference', the word 'melodrama' has the sense of 'decidedly overdone'. A dictionary definition is: 'sensational dramatic piece with crude appeals to emotions and usually happy ending'. The 'usually happy ending' is rather ironic given its humanist appeal, and the 'happy ending' of cultural hybridity would see the end of the apparent anachronism of racism, a form of discrimination Baudrillard analyses as precisely

prescribed by 'difference' (I will elaborate on this below). Baudrillard uses the term 'melodrama' in conjunction with 'psychodrama' and 'sociodrama' to critique contemporary discourses and practices of 'otherness', both of which conjure the centrality of simulation to the scene of 'cultural difference', and metaphorically depict the simulated and dramatised absence of the other, with its 'melodramatic' undertones of crude emotionality. Baudrillard's argument that racism is an artefact of the institution of difference is integrally related to the structure of differentiation and the axiological and semiological form of its logic. To differentiate in the hyperreal mode of simulation is to discriminate: to establish differences that, generated from the model, are nothing more than more of the same. **Racism**, Baudrillard argues, **does not exist 'so long as the other remains Other'** (TE: 129). When the Other is foreign, strange, 'other', for example, within the order of the symbolic in Baudrillard's critical terms, **there is no scale of equivalence or difference against which discrimination can be performed.** Encounter and transformation are fully open and reversible, in all forms (including the agonistic encounter of violence and death). Racism becomes possible when 'the other becomes merely different' as then the other becomes 'dangerously similar'. This is the moment, according to Baudrillard, when 'the inclination to keep the other at a distance comes into being' (TE: 129). The intolerable introjection of difference in the case of the construction of 'the subject' as 'different', or traversed by a multiplicity of 'differences', means **the other must be exorcised: the differences of the other must be made materially manifest.** The inevitability of a fluctuation, oscillation, vacillation of differences in a differential system means the 'happy ending' will always be illusory. 'Difference' (of others) is fetishised as the icon that keeps 'the subject' different.

The visibility of the affirmative recreates virulence through the hyper-signification of the 1ac. The medium has become the message. The 1ac's politics of transparency internalizes control through the panendoptikon, where individuals become transparent to themselves. Reality only exists through hyper-expression and over-representation; the modern "subject" no longer exists, rather an empty screen projecting a fake sociality.

Baudrillard 2 ~ "The violence of the image", http://www.egs.edu/faculty/jean-baudrillard/articles/the-violence-of-the-image/

This is the typical violence of information, of media, of images, of the spectacular. Connected to **a total visibility**, a total **elimination of secrecy.** Be it of a psychological or mental, or of a neurological, biolo-gical or genetic order - soon we shall discover the gene of revolt, the center of violence in the brain, perhaps even the gene of resistance against genetic manipulation - biological brainwashing, brainstorming, brainlifting, with nothing left but recycled, whitewashed lobotomized people as in Clockwork Orange. At this point we should not speak of violence anymore, but rather of virulence. Inasmuch that it does not work frontally, mechanically, but by contiguity, by contamination, along chain reactions, breaking our secret immunities. And operating not just by a negative effect like the classical violence, but on the contrary by an excess of the positive, just as a cancerous cell proliferates by metastasis, by restless reproduction and an excess of vitality.

That is the point in the controversy about the **violence on the screens** and the **impact of images** on people's mind. The fact is that **the medium itself has a neutralizing power**, counterbalancing the direct effect of the violence on the imagination. I would say : the violence of the third type annihilates the violence of the first and second type - but at the price of a more virulent intrusion in the deep cells of our mental world. The same as for anti-biotics : they eradicate the agents of disease by reducing the general level of vitality.

When the medium becomes the message (MACLUHAN), then **violence as a medium becomes its own message**, a messenger of itself. So the violence of the message cannot be compared with the violence of the medium as such, with the **violence-emanating** from the **confusion between medium**

and message. It is the same with viruses the virus also is information, but of a very special kind - it is medium, and message, agent and action at the same time. That the very origine of its "virulence", of its uncontrollable proliferation. In fact, in all actual biological, social or mental processes,**virulence has substituated violence**. The **traditional violence of alienation**, power and oppression **has been superated** by something more violent than violence itself : **the virality**, the virulence. And while it was an historical or individual subject of violence, **there is no subject**, no personal agent of virulence (of contamination, of chain reaction), and then no possibility to confront it efficiently. The classical violence was still haunted by the specter of the Evil, it was still visible. Virulence only transappears, it is **of the order of transparency** and its logic is that of the transparency of the Evil.

The image (and more generally the s re of information) is **violent** because what happens there is the **murder of the Real**, the vanishing point of Reality. **Everything must be seen, must be visible**, and the **image is the site par excellence of this visibility**. But at the same time it is the site of its disappearance. And that something in it has disappeared, has returned to nowhere, makes the very fascination of the image.

Particularly in the case of all professional of **press-images which testify of the real events**. **In making reality**, even the most violent, **emerge to the visible**, it makes the **real substance disappear. I**t is like the Myth of Eurydice : when Orpheus turns around to look at her, she vanishes and returns to hell. That is why, the more exponential the marketing of images is growing the more fantastically grows the **indifference towards the real world**. Finally, the real **world becomes a useless function**, a collection of **phantom shapes** and **ghost events**. We are not far from the silhouettes on the walls of the cave of Plato.

A wonderful model of this **forced visibility** is Big Brother and all similar programs, reality shows, docusoaps etc. Just there; where everything is given to be seen **there is nothing left to be seen**. It is the mirror of platitude, of banality, of the zero degree of everyday life. There is the place of **a fake sociality**, a virtual sociality where the Other is desperately out of reach - this very fact illuminating perhaps the fundamental truth that the human being is not a social being. Move over in all these scenarii the televisual public is mobilized as spectator and judged as become itself Big Brother. The power of **control** and transvisuality **has shifted** to the **silent majorities** themselves.

We are far beyond the panoptikon, where **there was still a source of power and visibility** it was so to say a panexoptikon - things were made visible to an external eye, whereas here they are made **transparent** to themselves - a **panendoptikon** - thus erasing the traces of control and making the operator himself transparent. **The power of control is internalized**, and **people** are no more Lt victims of the image : **they transform themselves into images** - they only exist as screens, ;or in a superficial dimension.

All that is visualized there, in the operation Big Brother, is pure virtual reality, a synthetic image of the banality, producted : as in a computer. The equivalent of a ready-made - a given transcrition of everyday life - which is itself already **recycled by all current patterns.**

Is there any sexual voyeurism ? Not at all. Almost no sexual scenery. But people dont want that, what they secretly want to see is the **spectacle of the banality**,which is from now our real pornography, own true obscenity - that of the nullity,of insignificance and platitude (i.e. the extreme reverse of the "There of the Cruelty"). But maybe in that scene lies a certain form of cruelty, at least of a virtual one. At the time when media and television are more and more unable to give an image of the events of the world, then they discover the everyday life, the existential banality as the most criminal event, as the most violent (in)actua-lity, as the very place of the Perfect Crime. And that it is, really. And people are fascinated, terrified and fascinated by this indifference of the Nothing-to-see, of the Nothing-to-say, by the indifference of their own life, as of the zero degree of living. The banality and the consumption of banality have now become an olympic discipline of our time - the last form of the experiences of the limits.

In fact, this deals with the naive impulsion to be nothing, and to comfort oneself in this nothingness - sanctioned by the right to be nothing and to be considered and respected as such. Something like a struggle for Nothing and for Virtual death - the perfect opposite to the basic anthropological postulat of the struggle for life. At least it seems that we are all about to change our basic humanistic goals.

There are two ways of disappearing, of being nothing, (in the Integral Reality, everything must logically want to disappear - automatic abreaction to the overdose of reality). Either to be hidden,and to insist on the right not-to-be-seen (the actual defense of private life).Or one shifts to a delirious exhibitionism of his own platitude and insignificance - ultimate protection against the servitude of being,and of being himself. Hence the

absolute obligation to be seen,to make oneself visible at any price. Everyone deals on both levels at the same time. Then **we are in the double bind** - not **to be seen,and to be continously visible**. No ethics,no legislation can solve this dilemma,and the whole current polemic about the right to information,all this polemic is useless. **Maximal information, maximal visibility** are now part of the human rights (and of human duties all the same) and the destiny of the image is trapped between the unconditional right to see and that, unconditional as well, not to be seen.

This means that **people are deciferable at every moment**. **Overexposed to** the light of **information**, and addicted to their own image. Driven to express themselves at any time - self-expression as the ultimate form of confession, as Faucauld said. To become an image, one has to give a visual object of his whole everyday life, of his possibilities, of his feelings and desires. He-has to keep no secrets and to interact permanently. Just here is the deepest violence, a violence done to the deepest core, to the hard core of the individual. And at the same-time to the **language**, because **it also loses its symbolic originality - being nothing more than the operator of visibility**.. It loses its ironic dimersion, its conceptual distance, its autonomous dimension - where language is more important than what it signifies. **The image too is more important than what it sneaks of**. That we forget usually, again and again and that is a source of the violence done to the image.

Today everything takes the look of the image - then all pretend that the real has disappeared under the pression and the profusion of images.. What is totally neglected is that **the image also disappears under the blow and the impact of reality**. The image is usually spoiled of its own existence as image, deyoted to a **shameful complicity with the real.** The violence exercised by the image is largely balanced by the violence done to the image - its exploitation as a pure vector of documen-tation, of testimony, of message (including the message of misery and violence), its allegeance to morale, **to pedagogy, to politics, to publicity**. Then the magic of the image, both as fatal and as vital illusion, is fading away. The Byzantine Iconoclasts wanted to destroy images in order to abolish meaning and the representation of God. Today we are still iconoclasts, but in an opposite way : **we kill the images by an overdose of meaning**.

Borgès'fable on " The People of the Mirror :he gives the hypothesis that **behind each figure of resemblance and representation there is a vanquished enemy**, a defeated singularity, a dead object. And the Iconoclasts clearly understood how icons were the best way of letting God disappear. (but perhaps God himself had chosen to disappear behind the images ? Nobody knows). Anyway,today is no more the matter of God : **We disappear behind our images**. No chance anymore that our images are stolen from us, that we must give up our secrets - because we no longer have any. That is at the same time the sign of our ultimate morality and of our total obscenity.

There is a deep misunderstanding of the process of meaning. Most **images** and photographs today **reflect the misery and the violence of human condition**. But all this affects us less and less, just because **it is over signified**. In order for the meaning, for the message to affect us, **the image has to exist on its own**, to **impose its original language**. In order for the real to be transferred to our imagination, or our imagination transferred to the real, it must be a counter-transference upon the image, and this countertransference has to be resoluted, worked through (in terms of psychoanalysis). Today we see misery and violence becoming a leitmotiv of publicity just by the way of images. Toscani for example is reintegrating sex and Aids, war and death into fashion. And why not ? Jubilating ad-images are no less obscene than the pessimistic ones) But at one condition to show the violence of publicity itself, the violence of fashion, the violence of the medium. What actually publishers are not able even to try to do. However, **fashion** and high society are themselves a kind of **spectacle of death**. The world's misery is quite **so visible**, quite so transparent in the line and the face of any top-model as on the skeletal body of an african boy. The same cruelty is to be perceived everywhere, if one only knows how to look at it.

The 1AC is nothing more than the production and assimilation of otherness. This creates a violent form of identification whereby the other becomes an object of manipulation, another commodity in the economy of symbolic exchange.

Baudrillard 02

/Jean, Screened Out, 51 – 56/

With modernity, we enter the age of the production of the Other. **The aim is no longer to kill the Other, devour it, seduce it, vie with it, love it or hate it, but, in the first instance, to produce it** The Other is no longer an object of passion, but an object of production. Perhaps, in its radical otherness or its irreducible singularity, the Other has become dangerous or unbearable, and its seductive power has to be exorcized? Or perhaps, quite simply, otherness and the dual relation progressively disappear with the rise of individual values and the destruction of symbolic ones? The fact remains that otherness does come to be in short supply and, ifwe are not to live otherness as destiny, the other has to be produced imperatively as difference. This goes for the world as much as for the body, sex and social relations. It is to escape the world as destiny, the body as destiny, sex (and the opposite sex) as destiny, that the production of the other as difference will be invented. For example, sexual differ- ence: each sex with its anatomical and psychological characteristics, with its own desire and all the irresolvable consequences that ensue, including the ideology ofsex and the Utopia of a difference based both in right and in nature. None of this has any meaning in seduction, where it is a question not of desire but of a game with desire, and where it is a question not of the equality of the sexes or the alienation ofthe one by the other, since game-playing involves a perfect reciprocity ofpart- ners (not difference and alienation, but otherness and complicity). Seduction is as far from hysteria as can be. Neither of the sexes projects its sexuality on to the other; the distances are given; otherness is intact - it is the very condition of that higher illusion that is play with desire.

However, with the coming of the nineteenth century and Romanticism, a mas- culine hysteria comes into play and with it a change in the sexual paradigm, which we must once again situate within the more general, universal framework of the change in the paradigm of otherness.

In this hysterical phase, it was, so to speak, the femininity of man which pro- jected itself on to woman and shaped her as an ideal figure in his image. In Romantic love, the aim was not, now to conquer the woman, to seduce her, but to create her from the inside, to invent her, in some cases as achieved Utopian vision, as idealized woman, in others as jemme jatale, as star - another hysterical, supernat- ural metaphor. The Romantic Eros can be credited with having invented this ideal of harmony, of loving fusion, this ideal of an almost incestuous form of twin beings — the woman as projective resurrection ofthe same, who assumes her super- natural form only as ideal of the same, an artefact doomed henceforth to Vamour ox, in other words, to a pathos ofthe ideal resemblance ofbeings and sexes - a pathetic confusion which substitutes for the dual otherness of seduction. The whole mechanics ofthe erotic changes meaning, for the erotic attraction which previously arose out of otherness, out of the strangeness of the Other, now finds its stimulus in sameness - in similarity and resemblance. Auto-eroticism, incest? No. Rather a hypostasis of the Same. Of the same eyeing up the other, investing itself in the other, alienating itselfin the other - but the other is only ever the ephemeral form ofa difference which brings me closer to me. This indeed is why, with Romantic love and all its current spin-offs, sexuality becomes connected with death: it is because it becomes connected with incest and its destiny - even in banalized form (for we are no longer speaking ofmythic, tragic incest here; with modern eroticism we are dealing with a secondary incestuous form - of the protection of the same in the image of the other - which amounts to a confusion and corruption of all images).

We have here then, in the end, the invention of a femininity which renders woman superfluous. **The invention of a difference which is merely a roundabout copulation with its double. And which, at bottom, renders any encounter with otherness impossible** (it would be interesting to know whether there was not any hysterical quid pro quo from the feminine in the construction of a virile, phallic mythology; feminism being one such example of the hystericization of the mas- culine in woman, of the hysterical projection of her masculinity in the exact image ofthe hysterical projection by man ofhis femininity into a mythical image of woman).

However, there still remains a dissymmetry in this enforced assignment to dif- ference.

This is why I have contended, paradoxically, that man is more different from woman than woman is from man. I mean that, within the framework ofsexual dif- ference, man is merely different, whereas in woman there remains something ofthe radical otherness which precedes the debased status ofdifference.

In short, in this process of extrapolation of the Same into the production of the Other, of hysterical invention of the sexual other as twin sister or brother (if the twin theme is so prominent today, that is because it reflects this mode oflibidinal cloning), the sexes become progressively assimilated to each other. This develops from difference to lesser difference through to the point of role-reversal and the vir- tual non-differentiation of the sexes. And it ends up making sexuality a useless function. In cloning, for example, pointlessly sexed beings are going to be repro- duced, since sexuality is no longer needed for their reproduction.

If the real woman seems to disappear in this hysterical invention ofthe feminine (though she has other means ofresisting this), in this invention ofsexual difference, in which the masculine occupies the privileged pole from the outset, and in which all the feminist struggles will merely reassert that insoluble privilege or difference, we must recognize too that masculine desire also becomes entirely problematical since it is able only to project itselfinto another in its image and, in this way, render itselfpurely speculative. So all the nonsense about the phallus and male sexual priv- ilege, etc. needs revising. There is a kind of transcendent justice which means that, in this process ofsexual differentiation which culminates inexorably in non- differentiation, the two sexes each lose as much of their singularity and their otherness. This is the era ofthe Transsexual,

in which all the conflicts connected with this sexual difference carry on long after any real sexuality, any real alterity of the sexes, has disappeared.

Each individual repeats on his or her own body this (successful?) takeover ofthe feminine by masculine projection hysteria. The body is identified and appropriated as a self-projection, and no longer as otherness and destiny. In the facial features, in sex, in sickness and death, identity is constantly being altered. You can do nothing about that. It is destiny. But this is precisely what has to be warded off at all costs in the identification of the body, the individual appropriation of the body, of your desire, your appearance, your image: plastic surgery on all fronts. **For if the body is no longer a site of otherness, of a dual relation, if it is a site of identification, then you have urgently to reconcile yourselfwith it, to repair it, perfect it, turn it into an ideal object**. Everyone treats his/her body as man treats woman in the projective identification we have described: he invests it as a fetish in a desperate attempt at self-identification. **The body becomes an object of autistic worship, of an almost incestuous manipulation**. And it is the body's resemblance to its model which becomes a source oferoticism and unconsummated self-seduction, insofar as it vir- tually excludes the Other and is the best means of excluding any seduction from elsewhere.

Many other things relate also to this production of the Other - a hysterical, spec- ulative production. Racism is one example, in its development throughout the modern era and its current recrudescence. Logically, it ought to have declined with progress and the spread ofEnlightenment. But the more we learn how unfounded the genetic theory of race is, the more racism intensifies. This is because we are dealing with an artificial construction of the Other, on the basis of an erosion of the singularity of cultures (of their otherness one to another) and entry into the fetish- istic system of difference. So long as there is otherness, alienness and a (possibly violent) dual relation, there is no racism properly so called. That is to say, roughly, up to the eighteenth century, as anthropological accounts attest. Once this 'natural' relation is lost, we enter upon an exponential relation with an artificial Other. And there is nothing in our culture with which we can stamp out racism, since the entire movement of that culture is towards a fanatical differential construction of the Other, and a perpetual extrapolation ofthe Same through the Other. Autistic cul- ture posing as altruism.

We talk of alienation. But the worst alienation is not being dispossessed by the other, but being dispossessed of the other: **it is having to produce the other in the absence of the other, and so continually to be thrown back on oneself and one's own image**. If, today, we are condemned to our image (to cultivate our bodies, our 'looks', our identities, our desires), this is not because ofalienation, but because ofthe end ofalienation and the virtual disappearance ofthe other, which is a much worse fate. In fact, the definition ofalienation is to take oneselfas one's focus, as one's object of care, desire, suffering and communication. This definitive short-circuiting of the

other ushers in the era of transparency. Plastic surgery becomes universal. And the surgery performed on the face and the body is merely the symptom ofa more rad- ical surgery: that performed on otherness and destiny.

What is the solution? There is no solution to this erotic trend within an entire culture; to this fascination, this whirl of denial of otherness, of all that is alien and negative; to this foreclosing of evil and this reconciliation around the Same and its multiple figures: incest, autism, twinship, cloning. All we can do is remind ourselves that seduction lies in non-reconciliation with the other, in preserving the alien status of the Other. **One must not be reconciled with oneself or with one's body. One must not be reconciled with the other, one must not be reconciled with nature, one must not be reconciled with the feminine** (that goes for women

The system demands that we maximize production of meaning – in response, we refuse the affirmative's injection of meaning and their call upon the other, we refuse signification, and we refuse meaning.

Baudrillard 2K ~http://www.egs.edu/faculty/jean-baudrillard/articles/simulacra-and-simulations-viii-the-implosion-of-meaning-in-the-media/

What is essential today is to evaluate this double challenge – the challenge of the masses to meaning and their silence (**which is not at all a passive resistance**) - the challenge to meaning

that comes from the media and its fascination. All the marginal, alternative efforts to revive meaning are secondary in relation to that challenge.

Evidently, there is a paradox in this inextricable conjunction of the masses and the media: do the media neutralize meaning and produce unformed [informe] or informed [informée] masses, or is it the masses who victoriously resist the media by directing or absorbing all the messages that the media produce without responding to them? Sometime ago, in "Requiem for the Media," I analyzed and condemned the media as the institution of an irreversible model of communication without a response. But today? This absence of a response can no longer be understood at all as a strategy of power, but as a counterstrategy of the masses themselves when they encounter power. What then? Are the mass media on the side of power in the manipulation of the masses, or are they on the side of the masses in the liquidation of meaning, in the violence perpetrated on meaning, and in fascination? Is it the media that induce fascination in the masses, or is it the masses who direct the media into the spectacle? Mogadishu-Stammheim: the media make themselves into the vehicle of the moral condemnation of terrorism and of the exploitation of fear for political ends, but simultaneously, in the most complete ambiguity, they propagate the brutal charm of the terrorist act, they are themselves terrorists, insofar as they themselves march to the tune of seduction (cf. Umberto Eco on this eternal moral dilemma: how can one not speak of terrorism, how can one find a good use of the media - there is none). The media carry meaning and countermeaning, they manipulate in all directions at once, **nothing can control this process**, they are the vehicle for the simulation internal to the system and the simulation that destroys the system, according to an absolutely Mobian and circular logic - and it is exactly like this. **There is no alternative** to this, no logical resolution. Only a logical exacerbation and a catastrophic resolution.

With one caution. We are face to face with this system in a double situation and insoluble double bind - exactly like children faced with the demands of the adult world. Children are simultaneously required to constitute themselves as autonomous subjects, responsible, free and conscious, and to constitute themselves as submissive, inert, obedient, conforming objects. The child resists on all levels, and **to a contradictory demand** he **responds with a double strategy**. To the demand of being an object, he opposes all the practices of disobedience, of revolt, of emancipation; in short, **a total claim to subjecthood**. To the demand of being a subject he opposes, just as obstinately and efficaciously, **an object's resistance**, that is to say, exactly the opposite: **childishness, hyperconformism, total dependence, passivity, idiocy.** Neither strategy has more objective value than the other. The subject-resistance is today unilaterally **valorized** and viewed as positive - just as in the political sphere **only** the practices of **freedom, emancipation, expression, and** the constitution of **a political subject** are seen as valuable and subversive. But this is to ignore the equal, and without a doubt superior, **impact of all the object practices**, **of the renunciation of the subject position and of meaning** - precisely the practices of the masses - that we bury under the derisory terms of **alienation and passivity**. The liberating practices respond to one of the aspects of the system, to the constant ultimatum we are given to constitute ourselves as pure objects, but they do not respond at all to the other demand, **that of constituting ourselves as subjects**, of liberating ourselves, expressing ourselves at whatever cost, of voting, producing, deciding, speaking, participating, playing the game - a form of blackmail and ultimatum just as serious as the other, even more serious today. To a system whose argument is oppression and repression, the strategic resistance is the liberating claim of subjecthood. But this strategy is more reflective of the earlier phase of the system, and even if we are still confronted with it, it is no longer the strategic terrain: **the current argument of the system is to maximize**

speech, the maximum production of meaning. Thus the strategic resistance is that of the **refusal of meaning** and of the spoken word - or of the hyperconformist simulation of the very mechanisms of the system, which is a form of refusal and of non-reception. It is the strategy of the masses: it is equivalent to returning to the system its own logic by doubling it, to **reflecting meaning**, like a mirror, **without absorbing it**. This strategy (if one can still speak of strategy) prevails today, because it was ushered in by that phase of the system which prevails.

To choose the wrong strategy is a serious matter. All the movements that only play on **liberation**, **emancipation**, on the **resurrection of a subject** of history, of the group, of the word based on "consciousness raising," indeed a "**raising of the unconscious**" of subjects and of the masses, do not see that they are going in the direction of the system, **whose imperative today is precisely the overproduction and regeneration of meaning and of speech.**

T

(maybe some of the FW args and cards apply here, but you should probably just run FW, T was just an extra thing I did)

1NC

A is the Interpretation

Curtail is to reduce or limit

Cambridge 15 (Definition of curtail from the Cambridge Academic Content Dictionary © Cambridge University Press) http://dictionary.cambridge.org/us/dictionary/american-english/curtail

> Curtail verb [T] us /kərˈteɪl/
> › to reduce or limit something, or to stop something before it is finished: He had to curtail his speech when time ran out.

B Is the Violation

The aff engages in counter gazing, they define the "white gaze" as a form of surveillance employed by the federal government to reduce bodies to their surface stereotypes, that's 1AC Yancy 13.

By this logic, the "intellectual counter gazing" of the affirmative is a mechanism that instead surveils systems of whiteness.

By applying an additional "gaze" unto systems of whiteness, the affirmative increases surveillance rather than curtail it.

C. The Affirmative Interpretation Is Bad For Debate

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Permitting reduction by effect is unlimiting. All sorts of things affect surveillance. For example, the economy affects government spending and budgeting for surveillance, and just about everything affects the economy.

D. T IS A VOTER

The opportunity to prepare promotes better debating

FW (better than T)

1NC

Our interpretation is that an affirmative should defend curtailing federal government surveillance as the endpoint of their advocacy. This does not mandate roleplaying, immediate fiat or any particular means of impact calculus.

Surveillance can only be understood in relation to the agent doing the surveying – understanding federal government surveillance as unique is key or the topic becomes abstract and unlimited

Cetina 14
(DANIEL K. CETINA, BALANCING SECURITY AND PRIVACY IN 21ST CENTURYAMERICA: A FRAMEWORK FOR FISA COURT REFORM, 47 J. Marshall L. Rev. 1453 2013-2014, Hein)

Any legitimate attempt to discuss and critique United States surveillance tactics necessarily demands defining exactly what surveillance is and what it entails. Although discourse surrounding governments' intelligence and law enforcement techniques transcends any specific epoch or state,11 modern communication technologies "have revolutionized our daily lives [and] have also created minutely detailed recordings of those lives," 12 thereby making governmental surveillance simple, potentially ubiquitous, and susceptible to abuse.13 Of course, recent surveillance programs were implemented for the noble purpose of conducting the War on Terrorism; 14 but the danger is that pursuing this purpose unchecked can undermine the central principles that both provide the Republic's foundation and differentiate it from the very enemies it combats. 15¶ While the prospect of governmental surveillance seems to implicitly suggest a quasi-Orwellian dystopia,16 fantastical science fiction mythologies, 17 abstruse philosophical concepts, 18 or documented repressive regimes,19 the reality is both less foreboding and more nuanced. Although American society, ostensibly, is looking increasingly akin to such fiction, theory, and

totalitarianism, surveillance as applied is not so disturbing. Surveillance involves and encompasses many topics and practices, both abstract and practical,20 but it primarily involves power relationships. 2 1 Specifically, surveillance is "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction."22 Surveillance can target a modern society's numerous communications networks, 28 which exist to send and receive information. 24 The communications include both envelope information and content information, distinct categories that draw varying degrees of interest from the surveillance authority. 25¶ But surveillance is not strictly the province of the federal government. 26 Indeed, state and local governments have their own surveillance practices, as do private corporations, which routinely use surveillance data to determine purchasing trends and calibrate advertising, especially through such social media sites as Facebook.28 Surveillance, therefore, transcends the boundary between the private sector and the public sector. 29¶ The focus here, however, is on federal governmental surveillance. It is therefore critical to understand from where the federal government derives its authority to monitor and analyze communications networks.

The Aff undermines the ability to have a limited and stable number of Affirmatives to prepare against. The link magnitude is high. Their affirmative prevents arguments about core topic areas like the NSA and the political ramifications of the plan.

This is a reason to vote negative.

Our first standard is competition – every affirmative argument needs to be filtered through the question of "how does this function in a competitive venue of debate where there must be a win or a loss assigned to each team. All their evidence will assume non-competitive academic environment rather than one where a forced choice will inevitably take place with every ballot.

Second is substantive side bias

Not defending the clear actor and mechanism of the resolution produces a substantive side bias.

They have the ability to recontextualize link arguments, shift focus to different proscriptive claims of the 1AC while using traditional competition standards like perms to make non-absolutist disagreements irrelevant.

This undermines research. The Aff is incentivized to pick a body of literature with very little negative literature and a prolif of aff advocacies based on single articles or created phrases. There is no incentive to produce detailed strategies because academic

disagreements in the literature are minute and easily wished away by perms or Aff changes.

And we have an external impact – Sufficient research-based preparation and debates focused on detailed points of disagreement are key to political effectiveness. This means they can never effectively assemble a movement and decks their solvency

Gutting 13 (professor of philosophy at the University of Notre Dame)

(Gary, Feb 19, A Great Debate, http://opinionator.blogs.nytimes.com/2013/02/19/a-great-debate/?emc=eta1)

This is the year of what should be a decisive debate on our country's spending and debt. But our political "debates" seldom deserve the name. For the most part representatives of the rival parties exchange one-liners: "The rich can afford to pay more" is met by "Tax increases kill jobs." Slightly more sophisticated discussions may cite historical precedents: "There were higher tax rates during the post-war boom" versus "Reagan's tax cuts increased revenues."¶ Such volleys still don't even amount to arguments: they don't put forward generally accepted premises that support a conclusion. Full-scale speeches by politicians are seldom much more than collections of such slogans and factoids, hung on a string of platitudes. Despite the name, candidates' pre-election debates are exercises in looking authoritative, imposing their talking points on the questions, avoiding gaffes, and embarrassing their opponents with "zingers" (the historic paradigm: "There you go again.").¶ There is a high level of political discussion in the editorials and op-eds of national newspapers and magazines as well as on a number of blogs, with positions often carefully formulated and supported with argument and evidence. But even here we seldom see a direct and sustained confrontation of rival positions through the dialectic of assertion, critique, response and counter-critique. Such exchanges occur frequently in our law courts (for example, oral arguments before the Supreme Court) and in discussions of scientific papers. But they are not a significant part of our deliberations about public policy. As a result, partisans typically remain safe in their ideological worlds, convincing themselves that they hold to obvious truths, while their opponents must be either knaves or fools — with no need to think through the strengths of their rivals' positions or the weaknesses of their own.¶ Is there any way to make genuine debates — sustained back-and-forth exchanges, meeting high intellectual standards but still widely accessible — part of our political culture? (I leave to historians the question of whether there are historical precedents— like the Webster-Hayne or Lincoln-Douglas debates.) Can we put our politicians in a situation where they cannot ignore challenges, where they must genuinely engage with one another in responsible discussion and not just repeat talking points?¶ A first condition is that the debates be focused on specific points of major disagreement. Not, "How can we improve our economy?" but "Will tax cuts for the wealthy or stimulus spending on infrastructure do more to improve our economy?" This will prevent vague statements of principle that don't address the real issues at stake.¶ Another issue is the medium of the debate. Written discussions, in print or online could be easily arranged, but personal encounters are more vivid and will better engage public attention. They should not, however, be merely extemporaneous events, where too much will depend on quick-thinking and an engaging manner. We want remarks to be carefully prepared and open to considered responses.

Next is Mechanism Education

The Aff's failure to identify an agent and mechanism makes cost-benefits analysis impossible, meaning debates take place in an academic vacuum where tradeoffs are irrelevant. It makes link comparisons vacuous and means that detailed PICs about substance are all but impossible.

And this turns the Aff – debates over mechanisms for change are crucial to solve material violence on a large scale. This means they wont be able to create a government and their 1ac will have no solvency because they will just break down the system and not be able to create a new one. This turns case.

Capulong 9 (Assistant Professor of Law, University of Montana)

(Eduardo R.C., CLIENT ACTIVISM IN PROGRESSIVE LAWYERING THEORY, CLINICAL LAW REVIEW, 16 Clinical L. Rev. 109, Fall, 2009)

Motivating client activism under dynamic social conditions requires the development and constant assessment and reassessment of a political perspective that measures that resistance and its possibilities. That task in turn requires the development of specific activist goals within the context of such analyses, and perhaps broader, national and international strategy--what some call the political "next step." This is particularly true today, when the economic crisis plaguing capitalism, the "war on terror" and climate change undeniably have world-wide dimensions. Instances of failure, too, need to be part of that analysis, because they teach us much about why otherwise promising activist efforts do not become sustained mass movements of the sort to which we all aspire.¶ Thus, the theoretical need is two-fold: to construct a broader organizing perspective from a political standpoint, and to consider activism writ large. Without reading the pulse of prevailing social conditions, it is easy to miscalculate what that next step ought to be. We will not build a mass movement though sheer perseverance--a linear, idealist conception of change at odds with dynamic social conditions. By the same token, we may underestimate the potential of such mass activism if we focus simply on the local dimensions of our work.¶ The dialectic between a dynamic social context and political consciousness and action requires a constant organizational and political calibration and modulation often missing from theoretical scholarship. Without such a working perspective, we are apt to be either ultra-left or overly conservative. As Jim Pope put it recently in the context of new forms of labor organizing: "If we limit our vision of the future to include only approaches that work within the prevailing legal regime and balance of forces, then we are likely to be irrelevant when and if the opportunity for a paradigm shift arises." n449 The cyclical nature of labor organizing, he argues, mirrors politics generally:¶ American political life as a whole has likewise alternated between periods characterized by public action, idealism, and reform on the [*189] one hand, and periods of private interest, materialism, and retrenchment on the other. A prolonged private period spawns orgies of corruption and extremes of wealth and poverty that, sooner or later, ignite passionate movements for reform. n450¶ C. 'Activism': Towards a Broader, Deeper, Systematic Framework¶ In progressive lawyering theory, grassroots activism is frequently equated with "community organizing" and "movement" or "mobilization" politics. n451 Indeed, these methods have come to predominate activist lawyering in much the same way as "public interest law" has come for many to encompass all forms of progressive practice. "Activism" is, of course, broader still. Even on its own terms, the history of community organizing and social movements in the United States includes two vitally important traditions frequently given short shrift in this realm: industrial union organizing and alternative political party-building. n452 In this section, my aim is not to catalogue the myriad ways in which lawyers and clients can and do become active (methodically or institutionally)--which, given human creativity and progress, in any event may be impossible to do--but rather to problematize three assumptions: first, the tendency to define grassroots activity narrowly; second, the notion that certain groups--for example "the poor" or the "subordinated"--are the definitive agents of social change; and finally, the conviction that mass mobilization or movement-building, by itself, is key to social transformation.¶ 1. Grassroots Activism¶ There are countless ways in which people become socially or politically active. Yet even the more expansive and sophisticated considerations of activism in progressive lawyering theory tend to unnecessarily circumscribe activism. For example, Cummings and Eagly argue that we need to "unpack" the term "organizing." n453 Contrasting two strategies of the welfare rights movement in the 1960s, these authors distinguish between "mobilization as short-term community action and organizing as an effort to build long-term institutional power." n454 In the same breath, however, they define organizing "as shorthand for a range of community-based practices," n455 even though at least some activism, for example union organizing or, say, [*190] fasting, might not be best characterized as "community-based."¶ What is required is a larger framework that takes into account the sum total of activist initiatives. Lucie White argues that we need to "map out the internal microdynamics of progressive grassroots initiatives ... observe the multiple impacts of different kinds of initiatives on wide spheres of social and political life ... and devise typologies, or models, or theories that map out a range of opportunities for collaboration." n456 This map would be inadequate--and therefore inaccurate--if we include certain activist initiatives and not others. But that is precisely what the progressive lawyering literature has done by failing to regularly consider, for example, union organizing or alternative political party-building.¶ 2. Agents of Social Change: Identity, Class and Political Ideology As with our definition of activism, here, too, the problem is a lack of clarity, breadth or scope, which leads to misorientation. Have we defined, with theoretical precision, the social-change agents to whom we are orienting--e.g., the "people," the "poor," the "subordinated," "low-income communities" or "communities of color?" And if so, are these groupings, so defined, the primary agents of social change? By attempting to harmonize three interrelated (yet divergent) approaches to client activism--organizing on the bases of geography and identity, class and the workplace, and political ideology--modern community organizing simultaneously blurs and balkanizes the social-change agents to whom we need to orient. What, after all, is "community?" In geographic terms, local efforts alone cannot address social problems with global dimensions. n457 As Pope observed of workers' centers: "the tension between the local and particularistic focus of community unionism and the global scope of trendsetting corporations like Wal-Mart makes it highly unlikely that community unionism will displace industrial unionism as 'the' next paradigm of worker organization." n458 On the other hand, members of cross-class, identity-based "communities" may not necessarily share the same interests. In the "Asian American community," Ancheta explains: using the word "community" in its singular form is often a misnomer, because Asian Pacific Americans comprise many communities, each with its own history, culture and language: Filipino, Chinese, Japanese, Korean, Vietnamese, Thai, Cambodian, Lao, Lao-Mien, [*191] Hmong, Indian, Indonesian, Malaysian, Samoan, Tongan, Guamanian, Native Hawaiian, and more. The legal problems facing individuals from different communities defy simple categorization. The problems of a fourth-generation Japanese American victim of job discrimination, a monolingual refugee from Laos seeking shelter from domestic violence, an elderly immigrant from the Philippines trying to

keep a job, and a newcomer from Western Samoa trying to reunite with relatives living abroad all present unique challenges. Add in factors such as gender, sexual orientation, age, and disability, and the problems become even more complex. n45 Angela Harris echoes this observation by pointing out how some feminist legal theory assumes "a unitary, 'essential' women's experience [that] can be isolated and described independently of race, class, sexual orientation, and other realities of experience." n460 The same might be said of the "people," which, like the "working class," may be too broad. Other categorizations--such as "low-income workers," "immigrants", and the "poor", for example--may be too narrow to have the social weight to fundamentally transform society. In practice, progressive lawyers orient to the politically advanced among these various "communities." In so doing, then, we need to acknowledge that we are organizing on the basis of political ideology, and not simply geography, identity or class. Building the strongest possible mass movement, therefore, requires an orientation not only towards certain "subordinated" communities, but to the politically advanced generally. Otherwise, we may be undermining activism writ large. This is not to denigrate autonomous community efforts. As I have mentioned, subordinated communities of course have the right to self-determination, i.e. to organize separately. But the point is not simply to organize groups of people who experience a particular oppression, but rather to identify those who have the social power to transform society. Arguing that these agents are the collective, multi-racial working class, Smith explains: The Marxist definition of the working class has little in common with those of sociologists. Neither income level nor self-definition are [sic] what determine social class. Although income levels obviously bear some relationship to class, some workers earn the same or higher salaries than some people who fall into the category of middle class. And many people who consider themselves "middle [*192] class" are in fact workers. Nor is class defined by categories such as white and blue collar. For Marx the working class is defined by its relationship to the means of production. Broadly speaking, those who do not control the means of production and are forced to sell their labor power to capitalists are workers. n461 The practical consequence of this very well may be that we redefine who we represent as clients and consider activism or potential activism outside subordinated communities, for example union activity and alternative political-party building, as part of our work.¶ 3. From Movementism to Political Organization¶ Dogged as our work is in the activist realm, any effort at fundamental social transformation is doomed without effective political leadership. Such leadership, in turn, requires work not often associated with "activism," such as, for example, theoretical study. n462 "Movementism," n463 by which I mean the conviction that building a mass movement is the answer to oppression and exploitation, has its limitations. Even though activism itself is perhaps the best school for political education, we have an enormous amount to learn from our predecessors. In the final analysis, fundamental social transformation will only come about if there are political organizations clear enough, motivated enough, experienced enough, large enough, embedded enough and agile enough to respond to the twists and turns endemic in any struggle for power. "The problem," as Bellow astutely observed, "is not our analytic weaknesses, but the opportunistic, strategic, and political character of our subject." n464 Such opportunities typically occur when there is a confluence of three factors: a social crisis; a socio-economic elite that finds itself divided over how to overcome it; and a powerful mass movement from below. As I understand the nature of social change, successful social transformations occur when there is a fourth element: political organization.¶ Conclusion¶ Client activism is not a monolithic, mechanical object. Most of the time, it is neither the gathering mass movement many of us wish for, nor the inert, atomized few in need of external, professional motivation. Rather, activism is a phenomenon in constant ebb and flow, a [*193] mercurial, fluid complex shaped by an unremitting diversity of factors. The key through the maze of lawyering advice and precaution is therefore to take a hard, sober look at the overarching state of activism. Are our clients in fact active or are they not? How many are and who are they? What is the nature of this period? Economically? Politically? Culturally? What are the defining issues? What political and organizing trends can be discerned? With which organizations are our clients active, if any? What demands are they articulating, and how are they articulating them?¶ This is a complex evaluation, one requiring the formulation, development and constant assessment and reassessment of an overarching political perspective. My aim in this Article is to begin to theorize the various approaches to this evaluation. In essence, I am arguing for the elaboration of a systematic macropolitical analysis in progressive lawyering theory. Here, my purpose is not to present a comprehensive set of political considerations, but rather to develop a framework for, and to investigate the limitations of, present considerations in three areas: strategic aims; prevailing social conditions; and methods of activism. Consciously or not, admittedly or not, informed and systematic or not, progressive lawyers undertake their work with certain assumptions, perspectives and biases. Progressive lawyering theory would be a much more effective and concrete guide to action--to defining the lawyer's role in fostering activism--if it would elaborate on these considerations and transform implicit and perhaps delimited assumptions and approaches into explicit and hopefully broader choices.¶ Over the past four decades, there has been remarkable continuity and consistency in progressive lawyers' use of litigation, legislation, direct services, education and organizing to stimulate and support client activism. The theoretical "breaks" to which Buchanan has referred n465 have not been so much about the practice of lawyering itself, but rather about unarticulated shifts in ultimate goals, societal analyses, and activist priorities, each necessitated by changes in the social, economic, and political context. That simply is another way of stating the obvious: that progressive lawyers change their practices to adapt to changing circumstances. The recurrent problem in progressive lawyering theory is that many commentators have tended to generalize these practice changes to apply across social circumstances. In so doing, they displace and often replace more fundamental differences over strategic goals, interpretation of social contexts, and organizing priorities with debates over the mechanics of lawyering practice.¶ The argument is turned on its head: we often assume or tend to [*194] assume agreement over the meanings and underlying conceptual frameworks relating to "fundamental social change," current political analysis, and "community organizing," and debate lawyering strategy and tactics; but instead we should be elaborating and clarifying these threshold political considerations as a prerequisite to using what we ultimately agree to be a broad and flexible set of lawyering tools. In effect, the various approaches to lawyering have become the currency by which scholars have debated politics and activism. The irony is that our disagreements are less about lawyering approaches per se, I believe, than they are about our ultimate political objectives, our analyses of contemporary opportunities, and our views of the optimal paths from the latter to the former. The myriad lawyering descriptions and prescriptions progressive lawyering theory offers are of limited use unless they are anchored in these primary considerations. How do we decide if we should subscribe to "rebellious" and not traditional "public interest" lawyering, for example, or "collaborative" over "critical" lawyering, if we do not interrogate these questions and instead rush too quickly into practical questions? The differences among these approaches matter precisely because they have different political goals, are based on different political analyses, and employ different political activist strategies.¶ Activist lawyers already engage in these analyses--necessarily so. To foster client activism, they must read prevailing social conditions and strategize with their clients about the political next step, often with an eye toward a long-term goal. But I don't think we necessarily engage in these analyses as consciously, or with as full a picture of the history and dynamics involved or options available, as we could. Often this is because there simply isn't time to engage these questions. Or perhaps not wanting to dominate our clients, we squelch our own political analysis and agenda to allow for organic, indigenous leadership from below. But if we are truly collaborative--and when we feel strongly enough about certain political issues--we engage on issues and argue them out. In either event, we undertake an unsystematic engagement of these fundamental issues at our peril.¶ If we adhere to the belief that only organized, politicized masses of people can alter or replace exploitative and oppressive institutions and bring about lasting fundamental social change, then, as progressive lawyers, we need to be clear about which legal tactics can bring about such a sustained effort in each historical moment. Without concrete and comprehensive diagnoses of ultimate political goals, social and economic contexts, and organizing priorities, progressive legal practice will fail to live up to its potential.

Becomings K

(This is pretty suspect tbh – the first two cards could just be a case thing, that might be preferable)

The aff overdetermines whiteness and blackness as a linguistic problem – the child shouting "look" assumes racism as something created by this call, but this paralyzes us from acting in response to how language shapes these biological phenotypes - they address the symptom not the cause

Saldnha 6 (Aran, Dep of Geography @ U of Minnesota, "Reontologising race: the machinic geography of phenotype" pg. 11-12 Environment and Planning D: Society and Space 2006, volume 24, pages 1066-24)

The relationality between blackness and whiteness in Fanon **will** to many readers **be reminiscent of the relationalities of language**. Signifiers, in the legacy of Ferdinand de Saussure, can only mean by way of a *formal* system or arbitrary differences. After the 'linguistic turn' associated with the poststructuralists Roland Barthes, Jacques Derrida, Julia Kristeva, Jacques Lacan, and the 'archaeological' Foucault, society has been widely considered to operate in the same way that Saussurian signs do. **In a social system of differences, dominance is achieved through the fearful discursive exclusion of 'the Other'. But since identity is never given, the future of the system is inherently political. Politics is then about the formation of heterogeneous coalitions amongst the disenfranchised to wrestle signifiers from the dominant**. **This conception of the social as structured through negativity and floating signifiers is very influential**, more or less informing important theorists of the left such as Butler, Gilroy, Homi Bhabha, Stuart Hall, Ernesto Laclau, Chantal Mouffe, Edward Said, Gayatri Spivak, and Slavoj ZiZek.

These theorists might retort to the phenomenologist of race that it isn't phenotype at all, but the white boy's reiterated interjection ''Look!'' that determines the differentiation of bodies. Fanon is 'interpellated' as black subject by the use of racist language, while the boy reproduces himself as white. **They** both **have little choice but to be produced by discourse. But what does 'produced' mean?** Surely not that there was no Frantz Fanon prior to this boy's interjection. **It means**, for these theorists, **that the interjection makes phenotype matter, that without language there would not be any difference**. **Language** (or culture at large) **is a screen which** *mediates* **between consciousness and the obscure matter of the body. Whenever language** (the language of science, for example) **claims to grasp materiality 'itself', it in fact hits against the wall of its own mediations.** In this mediation model of language, **materiality is forever unknown and there is no intermingling possible between the two realms**. In *Bodies That Matter,* Butler writes: "The body posited as prior to the sign, is always *posited* or *signified* as *prior.* This signification produces as an *effect* of its own procedure the very body that it nevertheless and simultaneously claims to discover as that which *precedes* its own action'' (1993, page 30). **Butler's well-known argument is that there is no anatomy or phenotype unless invoked by signification, by discourses of gender and race**. **It is beyond dispute that no body is untouched by signification. The question is,** rather, **how signification comes to have any effect at all, if not through the materiality of signs, bodies, and spaces**. The statement *''Tiens, un negre''* requires a larynx, the proximity of a Negro, a comprehension of French, and being within earshot to hear it. For sure, Butler repeatedly states that there is a 'materiality' to signs, but she refuses to extend this statement to bodies or things. **The physical body of skin, blood, and bones remains other, a 'constitutive outside' that is** *expelled by* **discourse** *(''signified* as *prior*''), **but has no rhythms and volume of its own**. Thus, a Butlerian critique can rightly question the 'naturalness' of a bedrock of phenotype posited by, and justifying, racial discourse (Butler, 1997). But such critique halts abruptly at the deep gorge between racist discourse (which it attacks) and phenotypical matter (about which it will not say anything). Is not pheno- type itself shaped by cultural practice? Does phenotype ever resist its 'performance'? By not allowing anything from across the gorge to enter her critique, **Butler ultimately remains complicit with what she attacks: the metaphysical positing of an inert exteriority to language. Can it not be possible to think and write about physical bodies** *without* **positing them as primary, pure, fixed, bounded, and self-transparent?**

Bodies need to be appreciated as productive in their own right, just like words or money or architecture. Fanon's **phenotype is not at all 'performed' or 'constituted'** by the boy's exclamation. **Phenotype is constituted instead by genetic endowments, environmental conditions, exercise, hormones, diet, disease, ageing**, etc. **What language does to phenotype**—phenotype *itself*— **is** *charge* **it, circumscribe what it is capable of doing in particular spaces.** There was certainly real phenotypical difference before the exclamation, but it had no effect on the situation (yet). The

exclamation brings out a latency, a latency Fanon knew was there, but had perhaps forgotten, looking absent- mindedly for a seat. After the exclamation, Fanon's options are limited. Now, his **phenotype demands active management.** Now, his phenotype is alive, chaining him to the histories and geographies of race and colonialism.

Yancy's demands of race as a social problem leaves the arena open for other justifications – rather than approaching it as a concept of language we need to focus on the problem of identity and difference itself

Saldnha 6 (Aran, Dep of Geography @ U of Minnesota, "Reontologising race: the machinic geography of phenotype" pg. 9-10 Environment and Planning D: Society and Space 2006, volume 24, pages 1067-24)

In contemporary theory, **race tends to be conceived as a problem of language**. **We read that race is an ideology, a narrative, a discourse. Race then refers to** the **cultural *representation*** of people, **not to people** themselves. It could be said that **race tends to be approached as an *epistemological* problem**: how is race known? Why was it invented? Some argue that we should simply stop thinking in terms of race. In this paper I would like to argue this might not be a good idea. Race will be approached ***ontologically,*** as a real process demanding particular concepts and commitments. Not so much representations, but bodies and physical events will be foregrounded. For instance, **the phenotype of humans can be shown to play an active part in the event called race.** When understood as immanent process, it becomes clear that, though contingent, **race cannot be transcended, only understood and rearranged**. Whether there is any physical basis for the concept of race has of course been hotly contested for many decades. In cultural studies, postcolonial theory, cultural anthropology, and most human geography, **it is common to treat race as a discursive construct. Many** in American critical race theory, such as Howard Winant and Naomi Zack, **opt** instead **for a** more **realist approach, granting that there *are* phenotypical differences but that their social force depends on culture, economics, and the law**. In this paper I chiefly follow poststructuralist philosophy not American left-wing pragmatism, but **I** do so in order to **take issue with the epistemological bias in much of the humanities inspired by poststructuralism**. Despite coming from a different intellectual trajectory, therefore, I would locate this intervention closer to the realist approach. The paper presents a number of entries into the argument. This theoretical eclecticism demonstrates that **the materiality of race can be conceptualised from a number of perspectives, making the reconceptualisation very much due**. First, Frantz Fanon's phenomenology of race is revisited, and I argue against Judith Butler's linguistic take on embodiment. Then the deontologisation of race in authors such as Paul Gilroy is scrutinised. Not asking properly what race ***is,*** Gilroy believes too easily in the possibility of its transcendence. In the fourth section, the refusal to engage with phenotype is with Bruno Latour shown to follow from a wider anxiety in the social sciences about matter. Nevertheless, in many places, as in the feminism of Elizabeth Grosz, **materiality is again treated positively**. As discussed in the fifth section, the openness of the human organism is also affirmed in anthropology—as well as in biology, from Darwin onwards. In particular, biology influenced by complexity theory and its philosophical underpinning by Gilles Deleuze and Michel Serres can help in imagining the biocultural emergence and evolution of race relations. The last two sections follow Deleuze and Guattari and use their term *machine assemblage* to capture race's reality of unmediated connections. **Far from being an arbitrary classification system imposed *upon* bodies, race is a nonnecessary and irreducible effect of the ways those bodies themselves interact with each other and their physical environment. The spatiality of race is not one of grids or self/other dialectics, but one of *viscosity,* bodies gradually becoming sticky and clustering into aggregates. Battling against racism is then not a question of denying race, but of cultivating its energies against the stickiness of racial segregation. Crucial in this process is that social scientists critically engage with race's biological aspect. For if they insist that race is but a 'social construction', they might leave the discursive arena open for** (closet) **racists to reinstate biological justifications for white privilege.**

These distinctions are generated between self and other by the idea of a static being over the molecularity of becoming. This is the true root of all conflict and subordination in human society. This same mentality exists between humans and animals maintaining our position as always the other and always different rather than something to become. This ethical exclusion and upholds structures of racism, sexism, and hierarchy.

Vint in 2005(Sherryl, Assistant Professor of English at Brock University, Science Fiction Studies, Vol. 32, No. 2,*Becoming Other: Animals, Kinship and Butler's "Clay's Ark",* July 2005)

Much recent political and philosophical thought has been focused on the figure of the animal in Western history, particularly the way in which the animal has been used to delineate the shifting boundaries of what it means to be human. Within science fiction, the cyborg has been a privileged figure for rethinking politics since Donna Haraway published "A Cyborg Manifesto" in 1984. While much attention has been paid to the android and other machine-human hybrids that help us rethink what it means to be human, we often overlook how Haraway calls for us to rethink our relationship not only to machines but also to animals, arguing that new meanings for human animality are part of our struggle to find new ways of theorizing political responsibility and new myths to help us escape from "the maze of dualism in which we have explained our bodies and our tools to ourselves" (181). Haraway notes that the cyborg is a figure of biopolitics; Giorgio Agamben's recent work on ethics in Homo Sacer (1998) and The Open (2004) also places the analysis of biopower at the center of ethical and political theory for the twenty-first century. Agamben argues that the centrality of biopolitics is inextricably connected to the boundary constructed between the human and the animal, and that "in our culture, the decisive political conflict, which governs every other conflict, is that between the animality and the humanity of man" (The Open 80). In making this argument, Agamben draws upon a long tradition within philosophy that defines the human through an opposition to the animal, creating the animal as a category solely to allow what is "unique" or "essential" about humans to emerge. Jacques Derrida has also recently focused on this question of the animal in his scholarship, investigating the tradition running from Descartes through Heidegger to Levinas and Lacan of establishing what it means to be human and what it means to be ethical through the expulsion of what is called animal. Derrida focuses on the singularity of the word "animal," a word that creates a strict boundary between human and "all the living things that man does not recognize as his fellows, his neighbors, or his brothers" ("Animal that I Am" 402), a word that ignores the differences among all creatures within the category of non-human. Derrida also notes that thinking through the animal as a boundary-making term is essential for understanding the decentered subject and our concepts of democracy, legal and human rights, and morality, all of which are "less clear, less homogenous, and less of a given than we believe or claim to believe" and need to be "rethought, radicalized, and considered as a thing of the future" ("Eating Well"108). Agamben, Derrida, and Haraway thus each call for a rethinking of the human subject's relationship to its animal other as part of a transformation of ethics and politics. Their scholarship also makes clear that the category of the animal is important to our philosophical heritage precisely for the ways in which This content downloaded from 128.223.223.251 on Tue, 23 Dec 2014 20:22:57 PMAll use subject to JSTOR Terms and Conditions282 SCIENCE FICTION STUDIES, VOLUME 32 (2005) it informs various discriminatory hierarchies established among humans to designate the Other and thereby used to exclude certain humans from the realm of ethics. Science fiction, also, has a history of theorizing otherness and of making literal what is figurative in other discourses. Octavia Butler's work is well known for its complex exploration of difference; she continually places her characters in situations that explore the anxieties humans feel when coping with difference and our seemingly inevitable desire to respond to that difference with hierarchy and discrimination. Although Butler frequently shows characters who can respond positively to difference in order to survive in her futures, she as frequently shows that living with such difference is not easy. This paper situates Butler's novel Clay's Ark (1984) within the discourse

on biopolitics and the human/animal boundary to demonstrate her exploration of difference. Understanding how the concept "animal" has been deployed over time in philosophical discourse will show how hierarchy and prejudice continue to function within human cultures. The persistence of this boundary as absolute marks a persistence of its exclusionary and hierarchical logic. Butler explores not only examples of racist and sexist stratifications in the futures she imagines, but also the structural constraints that produce such societies. Her work thereby works to challenge racism and sexism as well as the binary logic and Manichean thinking that provide support for racist and sexist discourses.

In place of this, we affirm an ethic of becoming:

Via the logic of becoming, we can eliminate the stasis imposed by the idea of being. This opens us up to a new ideal of the self encompassing things outside of the current boundary. This eliminates the harmful binaries of the squo.

Vint in 2005(Sherryl, Assistant Professor of English at Brock University, Science Fiction Studies, Vol. 32, No. 2, Becoming Other: Animals, Kinship and Butler's "Clay's Ark", July 2005)

Deleuze and Guattari further note that the power of the majority is expressed precisely "over those who do not [have it]" (291). Expressed in these terms, then, the majority is the position of the white, the male, and ultimately of the human over and against the animal. The majority "assumes as pregiven the right and power of man" (291). This status of the majority aligns Deleuze and Guattari's position with Agamben's analysis that the "the decisive political conflict, which governs every other conflict" is the boundary between human and animal (The Open 80). To reconfigure what it means to be a human subject, to transform the social and political order, we need becomings, not molar human/animal. The PATTERNIST series suggests a very similar analysis in its trajectory from the least animalized to the most animalized of its disenfranchised subjects and in its insistence that the structure of prejudice must change as much as its content to make a better future. The category of animal and all the exclusions it represents must be changed if we are to become open to difference and a new order. The tension between the becoming animal of the infected people and the being animal of abject humans such as the car family further emphasizes the need to break down the logic of the species boundary. Most of the people taken by Eli seem to This content downloaded from 128.223.223.251 on Tue, 23 Dec 2014 20:22:57 PMAll use subject to JSTOR Terms and ConditionsBECOMING OTHER 295 prefer the life they can have within the farm community; Lupe says she was "alone" on the outside, but that on the farm she is "part of something, and it feels good" (85). Ingraham was once like the car family, but now is something more: "Take away the gang and give him something better and he turns into a person. A man" (85). What we call "human" or "person," "man" in this context, is something that Ingraham can discover only through becoming animal. Ingraham's example reinforces why Deleuze and Guattari argue that it is necessary to become animal, to break out of the channeled lines of desire that have produced the current, limited configuration of the human. Within the Western philosophical tradition, the species boundary has been used most frequently

to demarcate the lines of ethics. Humans are those to whom we owe an ethical duty, whom we recognize as kin in Derrida's terms, and animals are those outside this logic, able to be sacrificed as food, used as resource. In the Past sections of the novel, when Eli struggles to hold on to his humanity, he invokes this idea that ethics marks the species line. Eli insists, "We're changed, but we have ethics. We aren't animals" (39). Eli equates ethics with his humanity. In an argument over the ethics of kidnapping people to grow the colony, another character, Lorene, gleefully comments, "this is the kind of thing you always read about men doing to women-kidnapping them, then the women getting to like the idea. I think I'm going to enjoy reversing things" (108). Eli harshly reminds her that the man she is about to kidnap might die, that he has a family he is being taken away from. He refuses to ignore the wider context of what they are doing and what it means to the people they are doing it to, arguing "We've lost part of our humanity. We can't lose more without even realizing it" (109). Consistent with the gap between molar being and molecular becoming represented by the difference between Keira and Rane, simply reversing the power structures to privilege those who used to be excluded is not sufficient. Instead, the structures themselves must be changed. The exchange between Eli and Lorene suggests that keeping one's humanity means keeping a sense of the Other as person, as someone to whom we owe an ethical duty. But, to remain ethical, one must keep the sense of the boundary alive, maintaining an ethical duty only toward other humans while acknowledg- ing that there is a line beyond which no ethical duty is owed. Eli fights against putting unchanged humans on the other side of this line, but he doesn't challenge the existence of the line. There are, however, two important things to note here that undermine Eli's attempt to construct this boundary as stable. First, the situation that Lorene takes glee in subverting is one that commonly occurs among humans; she is just reversing the gender. Thus, the notion of ethics as particularly human is already undermined because we often fail to see kinship with different humans, fail to recognize our ethical duty. Second, Eli's insistence that they hold on to their humanity by not putting unchanged humans into the category of prey or animal reveals that this sort of category, this sort of sacrifice or reduction of the other, is precisely a human invention. In holding on to what he calls his humanity, Eli ironically preserves as much bad as good. The ethics that have been established on the ground of the excluded animal require a category of beings outside ethics. Rethinking identity and animality demands a new vision of ethics as well as a new vision of the human. Derrida has explored the necessary connection between ethics and the category of the animal in his essay "The Animal that Therefore I Am" (2002). He notes a dishonesty or bad faith that lies at the heart of how we establish our subjectivity on the ground of the excluded animal and thereby refuse the status of ethics to our interactions with animals. He points out that within the philosophical tradition of talking about the animal, philosophers proceed "as if they themselves had never been looked at, and especially not naked by an animal that addressed them" (383). Derrida claims that this tradition is founded on a disavowal: as it is not possible that they lack the experience of being looked at, we must conclude that they cannot admit it into their philosophy. This disavowal that animals can look back, Derrida goes on, "institutes what is proper to man, the relation to itself of a humanity that is above all careful to guard, and jealous of, what is proper to it" (383). Thus, what it means to be ethical, to retain one's humanity in the old configuration that unites the human with the ethical, is paradoxically also to retain the space of exclusion. Derrida further suggests that literary or poetic traditions of discourse do "admit taking upon themselves the address of an animal that addresses them" (383) but claims that he can find no example of a subject who does this as "theoretical, philosophical, or juridical man, or even as

citizen" (383). Thus, to be a citizen, to be a majority in Deleuze and Guattari's terms, is precisely to exclude the voice and gaze of the other, of the animal. Science fiction such as Butler's Clay's Ark can perhaps bridge the gap between a literary tradition that admits the address of animals and a philosophical and cultural discourse that addresses what is proper to human as subject and citizen. Looked at in this light, we can see something more positive and less conventional in Eli's defense of the need to retain ethics even in a transformed state, something beyond reaffirming the boundary marked by animal/human even if its location has perhaps been shifted. The more radical implication, however, is that the ethics, too, must become other. The changed people of Clay's Ark never forget that the unchanged can "look back" at them. Their own subjectivity is not constructed on disavowal of the subjectivity of others. Derrida suggests that a similar transformation is required of contemporary humans, who need to develop a changed relationship to compassion as a consequence of our changed material relationship with animals, a material change that has increased the degree to which we exploit them in laboratory experiments and factory farms, among other locations. Such a change is required, Derrida argues, "in order to awaken us to our responsibilities and our obligations with respect to the living in general" ("The Animal" 395). Derrida's notion of a responsibility toward life in general is very similar to what Agamben has called "bare life" in his analysis of homo sacer: that is, an ethical responsibility toward living beings as such, not merely an ethical responsibility toward beings given a recognized place within the grid of juridico-political power. Both Agamben and Derrida recognize that rethinking the category of the animal is essential to revisioning ethics.

*** Case ***

The 1AC is a failed movement – flipping the gaze only leads to fixity, essentialism, and eventually alienation. By defining whiteness as a universal idea, Yancy causes additional instances of the problem, and the totalizing idea alienates those people of color without the same experience of whiteness.

(Duncan '12, Keeping Hold of Ariadne's Thread: A Critical Review of George Yancy's Look, a White!,Taine Duncan, University of Central Arkansas, NEWSLETTER ON PHILOSOPHY

AND THE BLACK EXPERIENCE, APA Fall 2012) //LS

However, in the introduction I find two possible issues with Yancy's project that emerge. First, if this is really an activity of "flipping" the gaze, wouldn't similar issues of fixity, essentialism, and what he later calls missilic consciousness attend the reversal? Yancy recognizes this issue from the start of Look, a White! and he responds by explaining that essentializing whiteness is descriptive of the phenomenological experience of whiteness—he reiterates "Look, a white!" (14). He explains that not describing a universal whiteness allows for self-perceived exceptional whites to escape responsibility. I understand this problem. It is similar to an issue faced by feminist theorists who must explain patriarchy in order to undo it. By defining patriarchy and differentiating it from feminism, feminists have seen that sometimes the difference that they are attempting to account for is occluded. Sometimes women themselves feel alienated from the project because of the perceived essentialism. And this brings up the second potential problem with the onset of Yancy's project: the risk of alienating the insights of the individual Black subjects on which this exposure of whiteness stands. Yancy recognizes that "it is true that not all people of color have the same understanding of the operations of whiteness, at all levels of its complex expression" (8). He contends, however, that "this does not negate the fact that people of color undergo raced experiences vis-à-vis whiteness that lead to specific insights that render whiteness visible" (8). Again, I am sympathetic to this position from the analogous issues in feminist theory. But, I do not feel that Yancy addresses the complexity of this issue enough to demonstrate his recognition and understanding of the messiness of this issue. In fact, I was somewhat troubled by his later reference to Christine E. Sleeter's account of students of color dropping her course due to frustration (60). Yancy uses this example to demonstrate the frustration of the power of the unexamined white collective in the classroom. However,

since Sleeter's class was explicitly about cultural diversity, this would appear to be the perfect place for students of color to address these frustrations. What kept these students out? How can I ensure that my own students do not feel similarly threatened in my own "Gender, Race, and Class" course? Potential alienation needs further examination, especially in relation to the explicit project of reforming the academy that Yancy has laid out for himself in this book.

Yancy's "countergazing" at sexuality and gender fails – creates the potential for misinterpretation– rather than seeing the countergaze as interrogation, the subject of countergazing interprets it as reinforcing existing norms

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Yancy references Some Like It Hot and Tootsie, two comedic films which deploy cross-dressing as a performance of countergazing at sexuality and gender (110). In these cases, the cross-dressing was the subversive element, whereas in White Chicks the subversive angle seems to come from "whiting up," while the drag seems to be merely for comedic purposes. **This worries me** that the film's potential sexism and heteronormativity might reinforce sexist assumptions that would impact women of color as well as white women, diminishing the effective critique of whiteness as such. Here, again, Yancy might be served by an exploration of the intersections of gender, race, and sexuality to diffuse any confusion about White Chicks as an effective exposé of whiteness.

The aff is a uphill battle – The question of convincing those who are assured of their invulnerability in whiteness is near impossible and the 1AC offers no answer

(Duncan '12, Keeping Hold of Ariadne's Thread: A Critical Review of George Yancy's Look, a White!,Taine Duncan, University of Central Arkansas, NEWSLETTER ON PHILOSOPHY

AND THE BLACK EXPERIENCE, APA Fall 2012) //LS

I found this argument persuasive and illuminating, but I had the same difficulty with Yancy's

extension of the argument as I did with Butler's original. **How do we reach and convince those who are assured of their autonomy and invulnerability?** In other words, this notion of autonomy so attendant to white privilege is difficult to argue against for those who actively resist being vulnerable: men who see vulnerability as emasculating; women who see their empowerment at risk; tea partiers who see it as irresponsible social weakness; even students with learning disabilities who have been taught it as an effective defense mechanism. How do you get these groups to open up to the dangerous and fearless classroom both for their own good and for the social good of challenging hegemonic white privilege? This is the quintessential problem of democratically liberationist theories, so I do not expect Yancy to have the final answer. However, his critique is so sophisticated, and his pedagogical insights so compelling, I would love to see him theorize on these ideas more.

Yancy traps whiteness in a double bind – claiming that whiteness defines the other through socio-cultural history and yet is free from socio-cultural history when defining itself

(Lake '12, Look, a White! Philosophical Essays on Whiteness, A Review on George Yancy, Temple University Press, 2012, pp. 207. Tim Lake, Wabash College, NEWSLETTER ON PHILOSOPHY AND THE BLACK EXPERIENCE, APA Fall 2012) //LS

Yancy dodges the problem of biological essentialism but lands in the trap of cultural determinism. Well, not quite. He argues that what is problematic is the way that whites learn to perform and perpetuate certain racial logics—e.g., racial spatial logics (Blacks are to be kept at a distance), racial affective logics (Blacks are harmful), and racial judgmental logics (Blacks are inferior)—that do not mark whiteness as racist or detrimental to white children (22). It is the refusal to be seen, the anonymity of individual whites as the normative mode for being human, that sets the context and informs the content of white identity formation. But whites are visible to Blacks and other nonwhites through their whiteness (Yancy's expansive term for racist acts, white supremacy ideology, and white privileging socio-historical structures, etc). Moreover, the fact that Blacks exist at all is owing to whiteness' relative equivocation of their humanity.

For Yancy, whiteness and Blackness are necessarily relational. Put another way, whites create Blacks so as to make their whiteness possible. So what appeared to be cultural determinism is really identity formation cloaked in a set of socio-historical practices and supremacist discourse charged by muddy reasoning: "You are not because I am not." The translation here is that racialized nonwhites assume the default status of non-normatively human and whites, who are not racialized, assume the default status of normatively human. According to Yancy, "whiteness gains its ontological purchase through the construction and degradation of nonwhiteness." He continues, "Thus, to 'authenticate' their whiteness, they must enact a form of white solipsism whereby the nonwhite is erased and devalued, reduced to a form of nonbeing" (116-117). You (Blacks) are not human vis-à-vis race because I am (whites) not racial vis-à-vis human. While Yancy is aware of the relational character of any self- conception (e.g., whites call Black bodies into existence as a means of crafting their own identity), **he doesn't give it sufficient attention** for understanding the myth of the autonomous white subject. He argues that part of what it means to be white is to grant to oneself the power to name and define the range of possibilities for Others while, yet, remaining self-defined and unrestricted. And, **yet, this is so despite the** fact of the **relational character of whiteness to the Other**. But how exactly is this so? Whites understand themselves as "completely autonomous agents, free from the power of white racist effective history." Yancy argues, "whites see themselves, even if unconsciously, as raceless, as abstract minds, spectral beings, as constituting the transcendental norm" (161). Yancy appeals to the work of feminist philosophers elsewhere but doesn't enlist them in exploring the implication of conceptualizations of autonomy for white identity formation. Here, he can be helped by Catronia Mackenzie and Natalie Stoljar's edited book, Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self (Oxford, 2000). Particularly insightful are Stoljar's "Autonomy and the Feminist Intuition" and Diana Tietjens Meyers' "Intersectional Identity and the Authentic Self?: Opposites Attract."

Far from leading to activism, interrogating the "lie of whiteness" only breeds silence and retreat from white activists – even if the aff movement has good intentions, it can't gain steam

(Roediger '12, I Am Not George Yancy, David Roediger, University of Illinois, NEWSLETTER ON PHILOSOPHY AND THE BLACK EXPERIENCE, APA Fall 2012) //LS

James Baldwin insists that misery among whites is a key to any honest interrogation of what he calls the "lie of whiteness." White writers, myself decidedly included, seldom succeed in probing this misery—my Freudian slip in the first draft of this response rendered "misery" as "mystery"—much. I used to think that an understandable hesitancy to be taken as possibly conflating the miseries whites experience with the miseries white supremacy deals out to people it racializes produce reticence surrounding the issue. But the simultaneity of racial learning with the learning of the fault lines in families, the repression of sexuality, and the illusion of security may also reinforce silences and incuriosity. My one other reservation regarding "I Am Not Trayvon Martin" flags an issue in Look, a White! that I want to mention, but not much pursue in the depth it deserves here. As much as the speaker in the video frames matters within her admiration of the movements to free Troy Davis and to secure justice in the Martin murder case, the hard truths she articulates can sound like they are delivered from above the fray of social movements. When I recently played the clip for students in San Diego, some in the audience worried, across racial lines, that white activists, having just gotten involved in anti-racist work, would feel denounced as racists and would retreat from involvement. I am much in favor of hard truths. But the point

that the academic elucidation of a critique and the effective introducing of it into movement practice differ seems worth pondering.

[…]

I do lecture frequently on whiteness visiting in other cities. When I do, the sorts of direct expressions of doubt and opposition from the audience that Yancy recounts rarely surface during the lecture, the Q and A that follows, or talks with faculty and students over meals. Opposition is generally expressed via email, anonymously, rarely, and after the fact. Tears are very occasional, most recently when I argued against the idea of "white culture" and a Missouri **student cried, "If I can't be white, what can I be?"**

The aff overdetermines whiteness and blackness as a linguistic problem – the child shouting "look" assumes racism as something created by this call, but this paralyzes us from acting in response to how language shapes these biological phenotypes - they address the symptom not the cause

Saldnha 6 (Aran, Dep of Geography @ U of Minnesota, "Reontologising race: the machinic geography of phenotype" pg. 11-12 Environment and Planning D: Society and Space 2006, volume 24, pages 1075-24)

The relationality between blackness and whiteness in Fanon **will** to many readers **be reminiscent of the relationalities of language**. Signifiers, in the legacy of Ferdinand de Saussure, can only mean by way of a *formal* system or arbitrary differences. After the 'linguistic turn' associated with the poststructuralists Roland Barthes, Jacques Derrida, Julia Kristeva, Jacques Lacan, and the 'archaeological' Foucault, society has been widely considered to operate in the same way that Saussurian signs do. **In a social system of differences, dominance is achieved through the fearful discursive exclusion of 'the Other'. But since identity is never given, the future of the system is inherently political. Politics is then about the formation of heterogeneous coalitions amongst the disenfranchised to wrestle signifiers from the dominant**. **This conception of the social as structured through negativity and floating signifiers is very influential**, more or less informing important theorists of the left such as Butler, Gilroy, Homi Bhabha, Stuart Hall, Ernesto Laclau, Chantal Mouffe, Edward Said, Gayatri Spivak, and Slavoj ZiZek.

These theorists might retort to the phenomenologist of race that it isn't phenotype at all, but the white boy's reiterated interjection ''Look!'' that determines the differentiation of bodies. Fanon is 'interpellated' as black subject by the use of racist language, while the boy reproduces himself as white. **They** both **have little choice but to be produced by discourse. But what does 'produced' mean?** Surely not that there was no Frantz Fanon prior to this boy's interjection. **It means**, for these theorists, **that the interjection makes phenotype matter, that without language there would not be any difference**. **Language** (or culture at large) **is a screen which** *mediates* **between consciousness and the obscure matter of the body. Whenever language** (the language of science, for example) **claims to grasp materiality 'itself', it in fact hits against the wall of its own mediations.** In this mediation model of language, **materiality is forever unknown and there is no intermingling possible between the two realms**. In *Bodies That Matter,* Butler writes: "The body posited as prior to the sign, is always *posited* or *signified* as *prior.* This signification produces as an *effect* of its own procedure the very body that it nevertheless and simultaneously claims to discover as that which *precedes* its own action'' (1993, page 30). **Butler's well-known argument is that there is no anatomy or phenotype unless invoked by signification, by discourses of gender and race**. **It is beyond dispute that no body is untouched by signification. The question is,** rather, **how signification comes to have any effect at all, if not through the materiality of signs, bodies, and spaces**. The statement *''Tiens, un negre''* requires a larynx, the proximity of a Negro, a comprehension of French, and being within earshot to hear it. For sure, Butler repeatedly states that there is a 'materiality' to signs, but she refuses to extend this statement to bodies or things. **The physical body of skin, blood, and bones remains other, a 'constitutive outside' that is** *expelled by* **discourse** *(''signified* as *prior*''), **but has no rhythms and volume of its own**. Thus, a Butlerian critique can rightly question the 'naturalness' of a bedrock of phenotype posited by, and justifying, racial discourse (Butler, 1997). But such critique halts abruptly at the deep gorge between racist discourse (which it attacks) and phenotypical matter (about which it will not say anything). Is not pheno- type itself shaped by cultural practice? Does phenotype ever resist its 'performance'? By not allowing anything from across the gorge to enter her critique, **Butler ultimately remains complicit with what she attacks: the metaphysical positing of an inert exteriority to language. Can it not be possible to think and write about physical bodies** *without* **positing them as primary, pure, fixed, bounded, and self-transparent?**

Bodies need to be appreciated as productive in their own right, just like words or money or architecture. Fanon's **phenotype is not at all 'performed' or 'constituted'** by the boy's exclamation. **Phenotype is constituted instead**

by genetic endowments, environmental conditions, exercise, hormones, diet, disease, ageing, etc. **What language does to phenotype**—phenotype *itself*— **is** *charge* **it, circumscribe what it is capable of doing in particular spaces.** There was certainly real phenotypical difference before the exclamation, but it had no effect on the situation (yet). The exclamation brings out a latency, a latency Fanon knew was there, but had perhaps forgotten, looking absent- mindedly for a seat. After the exclamation, Fanon's options are limited. Now, his **phenotype demands active management.** Now, his phenotype is alive, chaining him to the histories and geographies of race and colonialism.

Yancy's demands of race as a social problem leaves the arena open for other justifications – rather than approaching it as a concept of language we need to focus on the problem of identity and difference itself

Saldnha 6 (Aran, Dep of Geography @ U of Minnesota, "Reontologising race: the machinic geography of phenotype" pg. 9-10 Environment and Planning D: Society and Space 2006, volume 24, pages 1076-24)

In contemporary theory, **race tends to be conceived as a problem of language**. **We read that race is an ideology, a narrative, a discourse. Race then refers to** the **cultural *representation*** of people, **not to people** themselves. It could be said that **race tends to be approached as an *epistemological* problem**: how is race known? Why was it invented? Some argue that we should simply stop thinking in terms of race. In this paper I would like to argue this might not be a good idea. Race will be approached ***ontologically,*** as a real process demanding particular concepts and commitments. Not so much representations, but bodies and physical events will be foregrounded. For instance, **the phenotype of humans can be shown to play an active part in the event called race.** When understood as immanent process, it becomes clear that, though contingent, **race cannot be transcended, only understood and rearranged**. Whether there is any physical basis for the concept of race has of course been hotly contested for many decades. In cultural studies, postcolonial theory, cultural anthropology, and most human geography, **it is common to treat race as a discursive construct. Many** in American critical race theory, such as Howard Winant and Naomi Zack, **opt** instead **for a** more **realist approach, granting that there *are* phenotypical differences but that their social force depends on culture, economics, and the law**. In this paper I chiefly follow poststructuralist philosophy not American left-wing pragmatism, but **I** do so in order to **take issue with the epistemological bias in much of the humanities inspired by poststructuralism**. Despite coming from a different intellectual trajectory, therefore, I would locate this intervention closer to the realist approach. The paper presents a number of entries into the argument. This theoretical eclecticism demonstrates that **the materiality of race can be conceptualised from a number of perspectives, making the reconceptualisation very much due**. First, Frantz Fanon's phenomenology of race is revisited, and I argue against Judith Butler's linguistic take on embodiment. Then the deontologisation of race in authors such as Paul Gilroy is scrutinised. Not asking properly what race ***is,*** Gilroy believes too easily in the possibility of its transcendence. In the fourth section, the refusal to engage with phenotype is with Bruno Latour shown to follow from a wider anxiety in the social sciences about matter. Nevertheless, in many places, as in the feminism of Elizabeth Grosz, **materiality is again treated positively**. As discussed in the fifth section, the openness of the human organism is also affirmed in anthropology—as well as in biology, from Darwin onwards. In particular, biology influenced by complexity theory and its philosophical underpinning by Gilles Deleuze and Michel Serres can help in imagining the biocultural emergence and evolution of race relations. The last two sections follow Deleuze and Guattari and use their term *machine assemblage* to capture race's reality of unmediated connections. **Far from being an arbitrary classification system imposed** *upon* **bodies, race is a nonnecessary and irreducible effect of the ways those bodies themselves interact with each other and their physical environment. The spatiality of race is not one of grids or self/other dialectics, but one of** *viscosity,* **bodies gradually becoming sticky and clustering into aggregates**. **Battling against racism is then not a question of denying race, but of cultivating its energies against the stickiness of racial segregation. Crucial in this process is that social scientists critically engage with race's biological aspect. For if they insist that race is but a 'social construction', they might leave the discursive arena open for** (closet) **racists to reinstate biological justifications for white privilege.**

Gilroy

The premise of the K is flawed, civil society can be reformed through social and political mobilization to rearticulate racialized discourses

Paul **GILROY** Anthony Giddens Prf. of Social Theory @ London School of Economics **'9** *Race and the Right to be Human* p. 12-4

There are a number of ways in which strategies premised upon emotional communication, psychological identification and the formation of moral communities might open up possibilities for change achieved through social and political mobilization. Indeed the dissemination and refinement of an idea of the human which was not compatible with racial hierarchy might already have been one result of

precisely that kind of sentimental contact across the colour line. The case of Anne Frank provides a second example of the consequences of this kind of connection.¶ These days, the urge peremptorily to dismiss the prospect of any authentic human connection across those carefully selected and supposedly impermeable lines of absolute and always singular "identity": class, culture, colour, gender and sexuality, can serve its own dubious psychological and political purposes. That depressing pseudo-political gesture supplies an alibi for narcissistic quiescence and resignation to the world as it is. Timid and selfish responses are justified in the names of complexity and ambivalence. Exploring a different genealogy for Human Rights requires us to consider more hopeful possibilities.¶ The structure of sentimental feeling articulated by Harriet Beecher Stowe was instrumental in the formation of a trans-national moral collectivity and in winning recognition of the suffering humanity of the slave whom it was no longer possible to dismiss as a brute. Through her voice and chosen genre, distinctive patterns of "heteropathic" identification appear to have leaked not only into Europe but further afield as well. Uncle Tom's Cabin helped to compose a cosmopolitan chapter in the moral history of our world. Is all of that potential for political action and pedagogy to be damned now because campus anti-humanism doesn't approve of the dubious aesthetic and moral registers in which an un-exotic otherness was initially made intelligible?¶ The scale of the historical and interpretative problems posed by the case of Uncle Tom's Cabin can only be glimpsed here. George Bullen, keeper of books at the British Museum compiled a bibliographic note included in the repackaged 1879 edition. He revealed that almost three decades after publication, Stowe's novel had been translated into¶ ¶ numerous languages including Dutch, Bengali, Farsi, Japanese, Magyar and Mandarin. Fourteen editions had been sold in the German language during the first year of publication and a year later, seventeen editions in French and a further six in Portuguese had also appeared. In Russia, the book had been recommended as a primer in the struggle against serfdom and was duly banned. The first book to sell more than a million copies in the US, the publication of Stowe's novel was a world historic event. Though it cemented deeply problematic conceptions of slave passivity, redemptive suffering and indeed of racial type, it was also instrumental in spreading notions of black dignity and ontological depth as well as the anti-racist variety of universal humanism that interests me. This combination merits recognition as a potent factor in the circulation of a version of human rights that racial hierarchy could not qualify or interrupt.¶ The example of Stowe draws attention to issues which would reappear through the nineteenth century as part of struggles to defend indigenous peoples, to improve the moral and juridical standards of colonial government and to reform the immorality and brutality of Europe's imperial order. This activity was not always altruistically motivated.¶ How those themes developed in the period after slavery is evident from the para-academic work of campaigners like Harriet Colenso, Ida B. Wells, Roger Casement and E.D. Morel. The constellation of writings produced by these critical commentators on racism, justice and humanity needs to be reconstructed in far greater detail than is possible here. They can nonetheless be seen to comprise a tradition of reflection on and opposition to racial hierarchy that, even now, has the power, not only to disturb and amend the official genealogy provided for Human Rights but also to re-work it entirely around the tropes of racial difference.

Exclusion in civil society is not constitutive but contingent, so that blackness is not the anti-human but it is considered the infrahuman, this means that we can reform civil society to remove exclusion

Paul **GILROY** Anthony Giddens Prf. of Social Theory @ London School of Economics **'9** *Race and the Right to be Human* p. 15

Allied with parallel insights drawn from struggles against colonial power, these interventions contribute to a counterhistory of the contemporary conundrum of rights and their tactical deployment. This neglected work remains significant because debate in this field is increasingly reduced to an unproductive quarrel between jurists who are confident that the world can be transformed by a

better set of rules and sceptics who can identify the limits of rights talk, but are almost always disinterested in racism and its metaphysical capacities.¶ Thinkers like Wells and Morel were alive to what we now call a deconstructive approach. They identified problems with rights-talk and saw the way that racial difference mediated the relationship of that lofty rhetoric to brutal reality. They grasped the limits of rights-oriented institutional life empirically and saw how rights-claims entered into the battle to extend citizenship. But, their vivid sense of the power of racism meant that the luxury of any casual anti-humanism could not be entertained. They wished to sustain the human in human rights and to differentiate their own universalistic aspirations from the race-coded and exclusionary humanisms which spoke grandly about all humanity but made whiteness into the prerequisite for recognition. Their alternative required keeping the critique of race and racism dynamic and demanding nothing less than the opening of both national- and world-citizenship to formerly infrahuman beings like the negro. ¶ Grimké, Wells and the rest appealed against racism and injustice in humanity's name. Their commentaries might even represent the quickening of the new humanism of which Frantz Fanon would speak years later. The movement these commentators created and mobilized persisted further into the twentieth century when new causes and opportunities were found that could repeat and amplify its critique of racialized political cultures and terroristic governmental administration.

Haiti, Liberia, and Ethiopia prove this

Paul **GILROY** Anthony Giddens Prf. of Social Theory @ London School of Economics **'9** *Race and the Right to be Human* p. 15

Three sovereign states: Haiti, Liberia and Ethiopia triangulated the modern world of black politics. The Caribbean republic was forged by a successful eighteenth-century uprising. In the nineteenth century, the West African country grew out of the slaves' embattled return as colonisers to the continent from which their foreparents had been stolen away. The returnees were determined to demonstrate that they could build and govern a national state and thus vindicate their contested humanity and historicality. The third state, Ethiopia, was an ancient power distinguished by its biblical pedigree. During the early twentieth century, its independence and territorial integrity were made into objects of pan-African consciousness by wars with the invading Italians. The country's pre-eminent position in the political imagination of African and African-descended peoples derives from the conflict with Mussolini's Fascism and from the globalization of black solidarity in which it resulted. Here too, issues of human rights would become relevant14.¶ Ethiopia had not only maintained its beleaguered independence for centuries, it had also joined The League of Nations where the new Emperor pleaded for support against the Italian invaders. That war is remembered now primarily for marking the start of humanitarian action by the international committee of the Red Cross (ICRC) and for the invaders' deployment of chemical weapons in violation of Italy's treaty obligations. Mustard gas was used against civilian populations judged to be a verminous part of the natural rather than the historical world15.¶ For the wider public born into the era of the newsreel and the radio broadcast, these modern horrors dramatised the political and economic dynamics of racism and imperialism. Emperor Selassie was identified as a potent symbol of hope, freedom and resistance¶ ¶ 16¶ ¶ against colonial domination. Under his guidance, Ethiopia would be a founding member of the United Nations and of the organisation of African Unity. He was one of the first political thinkers inclined to try and imagine a postcolonial future for the whole continent.¶ After their accession to power in 1933, the Nazi regime's anti-Jewish policies were also discussed by the League of Nations. A plenary session of its assembly was addressed by one Antoine Frangulis—a contemporary of Raphael Lemkin--who spoke there as a representative of the Haitian government. He unsuccessfully proposed the establishment of an international convention on Human Rights under the League's auspices and argued that a generalization of rights held in common by all people would be the best possible way to address the vulnerable predicament of Germany's Jews16.¶ The proposal was not accepted. The US were

said to be opposed to anything that might affect the integrity of their system of racial segregation while the British and French governments were alert to the implications of this change of policy for the administration of their imperial territories17.

Fischer

The logic of politics of revenge are flawed, we must hold on to a universal notion of freedom to critique Western political and racial domination (possible alt card? Meh.)

Sibylle **FISCHER** Spanish and Portuguese, Comparative Literature @ NYU (Center for Latin American and Caribbean Studies) **'10**"History and Catastrophe" *small axe* 33

That is what we did. But it was difficult not to hear uncanny echoes of an age-old rhetoric of modernity, liberty, and liberation in government declarations during those days; difficult, too, not to see that that rhetoric would be supplemented by policies in plain disregard of the enlightened principles that were supposedly being defended. Extraordinary renditions had not yet become official policy, the category of enemy combatant not yet resignified to sidestep the Geneva Convention, but I remember a feeling of foreboding that cast a long shadow over the proceedings of the colloquium. There was a catastrophe unfolding in front of our eyes, and the discussion of Western historiographic discourses and their shortcomings seemed ultimately inadequate.

"Hegel and Haiti" could have been understood simply as an argument against Western political and racial domination and its pitiful intellectual consequences, an admirable instance of committed scholarship that works by inciting our imaginative capacity rather than merely deconstructing existing discourses. "Universal History" picks up from there and tries to pro-vide us with a theoretical ground on which the critique of Eurocentrism is more than just a complaint about equal representation and recognition. The importance of the Haitian Revolu-tion does not lie in that it "avenges the New World." The terror of drones must not be justified by the terror of suicide bombs. If "Universal History" lacks the straightforward rhetorical power of "Hegel and Haiti," this is because it seeks to show that we can—and must—hold on to a universal notion of freedom, and that doing so does not mean a return to the false universalism of much Western political philosophy. There are not many problems harder than this one.

"Universal History" takes a combative approach. On the one hand, it is directed against relativistic beliefs in plural modernities and plural truths, the pieties of multiculturalist politics of recognition, and against the high-minded certainties of Western emancipatory discourses. On the other hand, it is an argument against a politics of revenge, the eye-for-an-eye logic of jihad and drone bombs, against the defense of torture of prisoners in the interest of national security and Islamist defenses of suicide bombings. In fact, a muted but noticeable subtext runs through "Universal History" that keeps linking the slave insurrection to Islamic jihad. There is for instance a hypothetical discussion of a "jihadist" Boukman,6 an offhand reference to tales of redemption, "Hegelian, Marxist, Muslim, or otherwise," and an invocation of the Western revolutionary slogan "Liberty or Death" as a parallel to the calls for Islamic jihad (143). If "Hegel and Haiti" is a striking vignette about blindness and insight in the stories the West tells about itself, "Universal History" tries to reconstitute a ground on which the juxtaposition of Hegel and Haiti acquires significance for the moral and political catastrophe we are facing today. Under the title of "Universal History" the Haitian Revolution acquires emblematic meaning.

Tag

Sibylle **FISCHER** Spanish and Portuguese, Comparative Literature @ NYU (Center for Latin American and Caribbean Studies) **'10**"History and Catastrophe" *small axe* 33

"This raw, free, and vulnerable state"¶ There is another aspect to Buck-Morss's argument that I find more difficult, and this has to do with the subjective dimension of the essay. Let me cite one of the key passages at some length here:¶ The definition of universal history that begins to emerge here is this: . . . human universality emerges in the historical event at the point of rupture. It is in the discontinuities of history that people whose culture has been strained to the breaking point give expression to a humanity that goes beyond cultural limits. And it is in our empathetic identification with this raw, free, and vulnerable state, that we have a chance of understanding what they say. Common humanity exists in spite of culture and its differences. A person's non-identity with the collective allows for subterranean solidarities that have a chance of appealing to universal, moral sentiment, the source today of enthusiasm and hope. It is not through culture, but through the threat of culture's betrayal that consciousness of a common humanity comes to be. (133)¶ At first sight, this passage is simply as a response to the pieties of a multicultural politics of recognition: culture divides us, and when absolutist claims are made in the name of culture, all is lost. "Osama bin Laden meets Jean-Jacques Dessalines, and Vladimir Lenin meets George W. Bush" (143). Perhaps. But Buck-Morss's argument actually tries to provide us with an alternative. Discussing the controversial issue of the survival of African belief and ritual in New World slavery cultures, she says, "I do not mean to imply that in the New World nothing remained of the original intent [of African religious and social elements]. But it is inconceiv-able, from a human point of view, that these brutally enslaved and expatriated persons carried their rituals and gods with them in slave-ship holds like so much checked baggage" (128–29).¶ Now, I think we have good reasons to think, for instance, that Vodou is a profoundly modern ritual, a thorough reworking of African belief and ritual under the pressures of slavery and forced Christianization. I think Buck-Morss is quite right when she insists that a profound change in meaning took place when elements of African religions and social life were reem-ployed in the context of the slave plantation. But it is one thing to recognize the rupture of the Middle Passage and the radically syncretic nature of the cultures that developed on the other side of the Atlantic, and another to imagine humans as blank slates. Do we ever really encounter a human being in a state that could be described as "raw, free, and vulnerable"? Is this image of a human evacuated of all cultural meaning and stripped of all social ties not rather always a metaphysical fantasy? Like primitive accumulation in Marx's thought, the raw subject needs to be assumed for theoretical reasons, but cannot actually be seen. Cultural rupture is a systemic event, something that affects culture over time. There are striking resonances here¶ with the imaginary subject of classical liberalism: an abstract human subject, unmarked by gender, race, and culture, which then becomes the subject of certain entitlements.¶ There are other considerations. Assuming that the brutality of slave transportation and plantation labor did indeed wrest humans out of their social and cultural networks in this most radical sense, can we really call that person *free*? Again, one might say, there are resonances of classical liberalism here. What kind of concept of freedom would this radical uprooting generate? Is it really a freedom that can become the foundation of a universal history? We might recall here Hannah Arendt's powerful analysis of the predicament of Jews in Nazi Germany. Why did the German state bother to strip Jews of their citizenship before hoard-ing them into camps? Arendt's answer is profoundly pessimistic: when the people of Europe encountered those miserable beings who had indeed "lost all other qualities and specific relationships—except that they were still human," they "found nothing sacred in the abstract nakedness of being human."8 German authorities clearly assumed, rightly, that abjectness did not necessarily produce empathy.¶ There is a deeply troubling, though rarely discussed, moment in John Locke's *Second Treatise of Government* that is particularly pertinent here, as it provides us with an example of how slavery functions within a foundational account of inalienable human liberty. Having introduced the conventional argument that prisoners taken in a just war can be enslaved because they have "forfeited" their lives (a tale Locke knew did not correspond to the reality of the Atlantic slave trade),[9] he continues as follows: "Having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society . . . ; and so revolting from his own kind to that of beasts, by making force . . . to be his rule of right, he renders himself liable to be destroyed by the injured person, and the rest of mankind, . . . as any other wild beast, or noxious brute, with whom mankind can have neither society nor security."[10] What is remarkable here is not that¶ Locke, the theorist of liberty, justifies slavery. Practically all natural lawyers before him did so. Rather, it is the tinge of what Lacan called *jouissance*, an almost gleeful fantasy of legitimate cruelty that follows once the human being has been stripped of all his or her human bonds.¶ There was no need for Locke to engage in sadistic fantasy. His argument did not require

it, and predecessors such as Grotius or Suarez did not do this. But neither did they insist that the enslaved had to loose all social and cultural ties. It seems as if the fantasy of the loss of all human ties—this "abstract nakedness of being human"—opens a space where we can imagine the unimaginable.

Prison Searches DDI

Prisons Neg

Case Frontlines

Solvency

*If you aren't reading the transphobia K, read one of the Lamble cards (the last two) in the Visuality and Identity file under queer pessimism in the prison links on the solvency flow as a reason why reforms can't solve – talks about how it renders sexual violence invisible both inside and outside the system because the problem is "solved for" by the government (might have to retag the card) – turns aff solvency

1. No solvency – jails are local and short-term facilities, prisons are long-term facilities - can't have spillover from local level to federal level

Bureau of Justice Statistics No Date ("What is the Difference Between Jails and Prisons?" Part of the US Department of Justice, http://www.bjs.gov/index.cfm?ty=qa&iid=322)

Jails are locally-operated, short term facilities that hold inmates awaiting trial or sentencing or both, and inmates sentenced to a term of less than 1 year, typically misdemeanants. Prisons are long term facilities run by the state or the federal government and typically hold felons and inmates with sentences of more than 1 year. Definitions may vary by state.

2. No solvency- the nature of prison is inherently sexually violent. The affirmative focuses on sexual violence while refusing to face the other issues of sexual violence that occurs inside of prisons. This turns case as the affirmative leaves these other forms to be ignored and increase while the world feels good about how they solved for sexual violence in prisons.

Arkels, **2015** Gabriel. Professor of Legal Skills at Northeastern University School of Law. Regulating Prison Sexual Violence. Northeastern University Law Journal. Vol. 7 No. 1. 71-130.

In this article, I argue that a fundamental tension arises in efforts to curb carceral sexual violence. Preventing sexual violence requires an expansion of bodily autonomy for prisoners, in that to be free from sexual violence one must have at least the ability to prevent certain nonconsensual acts upon the body. Also, sexual self-determination, including not only the freedom to say "no," but also to say "yes," is an integral part of preventing sexual violence.5 And as many women-of-color feminists and critical theorists have established, freedom from sexual violence requires redistribution of wealth and power6 and an end to gender, racial, class, sexuality, nationality, and disability-based subordination.7 However, imprisonment demands major infringements on the bodily autonomy and self-determination of prisoners that courts, regulators, and legislatures frequently hesitate to curtail. For example, carceral agencies routinely require their staff and contractors to perform strip searches, body cavity searches, and nonconsensual medical interventions on prisoners: acts that have much in common with other forms of sexual violence. Carceral agencies and their staff control the movements, activities, clothing, sexual expression, basic hygiene, nutrition, and virtually every other aspect of the biological and social lives of prisoners.8 As Alice Ristroph argues, incarceration is inherently a sexual punishment, because of the extent of corporal control that carceral systems exert over prisoners.9 Incarceration cannot be fully desexualized.10 Carceral mechanisms also aggravate inequitable distribution of wealth and power, as well as subordination on the basis of race, gender, class, disability, nationality, religion, and sexuality.11 A reluctance to frankly confront the tension between protection of autonomy and maintenance of control has diminished possibilities for meaningfully and transparently addressing carceral sexual violence. In this article, I begin that frank confrontation.

3. No reason officers would listen – just because strip searches out in the open won't be legal doesn't mean they will stop behind closed doors. It's the aff burden to prove that guards would follow this policy

4. Plan can't solve – alt causes and reforms make issues worse through the system of incarceration. If not through sexual violence, then those who are targeted will be forced into solitary confinement – can't work within the system

Lamble 2011 (S. Lamble has been involved in social justice, antipoverty and prisoner solidarity work in Ontario, Canada and London, England. Lamble currently teaches at Birkbeck Law School, University of London and is a founding member of the Bent Bars Project, a collective which coordinates a letter writing program for queer, trans and gender-non-conforming prisoners in Britain, "Transforming Carceral Logics: 10 Reasons to transform the prison industrial complex through queer/trans analysis and action," *Captive Genders* pg 243)

Prisons are harmful, violent, and damaging places, especially for queer, trans, and gender-non-conforming folks. Prisons are violent institutions. People in prison and detention experience brutal human rights abuses, including physical assault, psychological abuse, rape, harassment, and medical neglect. Aside from these violations, the act of putting people in cages is a form of violence in itself. Such violence leads to extremely high rates of self-harm and suicide, both in prison and following release.35 These problems are neither exceptional nor occasional; violence is endemic to prisons It is important to bear in mind that prison violence stems largely from the institutional structure of incarceration rather than from something supposedly inherent to prisoners themselves. Against the popular myth that prisons are filled with violent and dangerous people, the vast majority of people are held in prison for non-violent crimes, especially drug offenses and crimes of poverty.36 For the small number of people who pose a genuine risk to themselves or others, prisons often make those risks worse. In other words, prisons are dangerous not because of who is locked inside, but instead prisons both require and foster violence as part of their punitive function. For this reason, reform efforts may reduce, but cannot ultimately eliminate, prison violence. The high number of deaths in state custody speaks to the devastating consequences of imprisonment. Between 1995 and 2007, the British prison-monitoring group Inquest documented more than 2,500 deaths in police and prison custody.37 Homicide and suicide rates in Canadian prisons are nearly eight times the rate found in non-institutional settings.38 In the United States between 2001 and 2006, there were 18,550 adult deaths in state prisons,39 and between 2003 and 2005, there were an additional 2,002 arrest-related deaths.40 It is extremely rare for state officials to be held accountable for these deaths. For example, among the deaths that Inquest has documented in Britain, not one police or prison officer to date has been held criminally responsible

5. Prohibitions on consensual relation ships also lead to sexual violence in prisons.

Arkels, **2015** Gabriel. Professor of Legal Skills at Northeastern University School of Law. Regulating Prison Sexual Violence. Northeastern University Law Journal. Vol. 7 No. 1. 71-130.

The enforcement of prohibitions on consensual sex often involves physical and sexual violence. Detecting sex requires extensive surveillance, which may involve viewing the naked body or even touching or penetrating the body through searches or medical exams. Punishing people for consensual sex also often involves direct intrusion on the body, including forcibly removing people from where they are and placing them in solitary confinement. "In both jails and in the prison I was in, sexual contact was punishable by time in the hole."135 Loss of good time credits, another common punishment for consensual sex, forces people to remain in prison for longer periods of time. Lin Elliot said, "Even in states—such as here in Washington— where there are no laws against homosexuality, consensual sex between prisoners is against prison rules and can result in severe punishment—even loss of 'good time,' thereby extending a person's sentence."136 Placement in solitary confinement, as well as longer terms of confinement in prison, in turn make people more

vulnerable to other forms of sexual violence, including rape. Other penalties for consensual sex include forced labor, and forced separation from one's lover.137 Punishments are not always equal: they can be worse for trans people and for HIV positive people.13 Prohibitions on consensual sex perpetrate homophobia and transphobia, which can increase the level of sexual and other violence targeting people perceived as trans or queer. While trans and queer people are far from the only people having sex in prison, they are often assumed to be having sex and get punished for it.139 Historically, concerns about sexuality in prison have focused at least as much on homosexuality as on sexual assault.140 Courts continue to accept stopping or discouraging homosexuality and homosexual relationships as "legitimate penological objectives."141 Because prisons tend to conflate queer and trans identity, consensual sex in prison, and sexual assault, prison officials have at times interpreted measures against rape to express zero tolerance for queer and trans people.142 Some prison officials expressed confusion about the PREA regulation stating that prisons may not treat consensual sex the same as sexual assault.143 This confusion speaks to the deeper issue—that prison officials still see queer sex as the problem, not sexual assault— or they see the two as indistinguishable and identically bad. Jason Lydon, a formerly incarcerated gay man and founder of Black and Pink, explains, "[u]nfortunately, it is against the rules, and in many states against the law, for prisoners to have sex with each other (and in some places prisoners even get in trouble for masturbating). The Prison Rape Elimination Act (PREA) has also increased guard harassment of prisoners in romantic relationships with each other. Black and Pink has gotten reports of prisoners getting disciplinary tickets for simply holding hands."144 Martin Morales, in her pro se complaint challenging Vermont prohibitions on consensual sex in prison, identified a host of problems that the prohibitions caused, including "sexual assaults within the incarceration system…homophobia…hatred…and bigotry."145 Citing Romer v. Evans, she explained that these prohibitions are rooted in anti-LGBT prejudice.146 As another author explains, teaching homophobic, transphobic, and sexist sexual shame can make people more vulnerable to abuse in relationships. "If that little girl has learned that her queer longings and desires are sinful … and dirty, and that she should expect to be beaten and raped by the upstanding citizens … then how will she know when the things her lover does to her are abusive? If that non-gender-conforming child has never been allowed to name hir own body, and learned everyone but hirself has the right to name, manipulate, and modify hir body, then how will ze know when a touch is invasive?"147 Others have also pointed out that prohibitions on consensual sex keep prisoners from learning positive relationship skills. Paul Wright says, "If most prisoners are going to be getting out, how are you helping to make them better people from when they came in? […] If you accept the fact that relationships are a normal part of human existence, what are you doing to normalize that?"148 Derrick Corley, a writer and prisoner in New York, said, "If it is true that healthy people have healthy relationships, and, if these relationships are systematically denied prisoners, then how can we be expected to eventually live in society as normal, law-abiding, productive people?" The focus on preventing consensual sex can lead prison officials to put prisoners in unnecessarily dangerous situations. A prisoner named Steven said, "They will put you in a 12 X 8 cell with a homophobe and expect you to get along with your cellmate. Heaven forbid they put you in a cell with another bisexual, transgender, or gay individual because they will automatically assume that ya'll are having sex. What do they care if we have consensual sex?"150 A stud151 in a women's state prison agrees: "If you want to have a relationship with somebody or cell up with them that should be your business. This would create a much safer environment for everybody."152 The prohibitions on consensual sex can also deter prisoners from coming forward about sexual assault, for fear that they will be punished for having sex. That is exactly what happened to one of my former clients, who was disciplined for having sex when she told a staff member that another prisoner had raped her. Brenda V. Smith points out that if prisons permitted consensual sexual expression, they could improve in several ways. For example, they could "appropriately identify[] acts that are consensual as opposed to coerced … to more accurately report information to the Bureau of Justice Statistics and meet the data collection requirements of the [Prison Rape Elimination] Act."153 This shift in focus would also lead

officials to devote their limited resources to focus on preventing, investigating, and responding to sexual violence, rather than consensual sex.154 She acknowledges that "recognizing and granting inmates a degree of sexual expression may enhance inmate safety by decreasing prison rape" and agrees with those described above that it would also "help prisoners learn healthy and responsible sexual behavior prior to reentering the community."1

Framing (if reading extinction impacts)

Our interpretation is that you should weigh the impacts based on three factors: probability, magnitude, and time frame. Hold magnitude in a high regard – it determines the severity of the situation and is a useful skill and one that policymakers use.

Moral obligation hurts political responsibility and allows for injustices and violence to occur

Jeffrey **Isaac 2002**, professor of political sicence and director of the center for the study of democracy and public life at Indiana University, "Ends, Means, and Politics," *Dissent*

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics— as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about unintended consequences as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

Case Extensions

Solvency

1. No solvency – the aff's plan only changes the blanket policy of jails, which can't solve for two reasons:

a. Jails are local while prisons are federal – the USFG can't tell jails what to do nor do they have a means of enforcing what happens in jail. No spillover claims – spillover would be the opposite – beginning with the prison/federal level and then spilling over to the local level of jails

b. Prisons are the long-term facilities – not changing anything in prison systems means the aff can't solve for other structural systems

2. Turn – the aff only focuses on one scenario of sexual violence in prisons – this delegitimizes other instances that happen within prisons – Arkels. The plan creates the idea that a "good job" has been done and shifts focus onto the next issue, rendering other cases of violence within prison systems invisible even though the nature of the prison system is sexually violent based on alternative causes like medical searches.

3. There is no proof or reason as to why guards would listen – the violence would no longer take place in the open, but could still happen behind closed doors – this is arguably worse because there is no acknowledgement of there being a problem. Instead, it becomes invisible because of the idea that the issue has been "solved for"

4. No solvency – reforms worsen the system and allow guards to continue abusing prisoners in other ways like through solitary confinement – Lamble 11. Prison systems also exacerbate existing acts of violence performed by those who were put in prison for violent crimes, making these systems inherently dangerous.

5. Alt causes to sexual violence – Arkels indicates that sexual violence happens often between prisoners because the victim is too scared to come forward out of fear of being punished for having sex, especially trans and queers who are the primary targets of these prohibitions.

6. (If they read Miller 2k and y'all are running a kritik): Miller flows neg – all Miller does is criticize the current system, but that is tied to the basis of the system itself – creating blanket policies does nothing to change the groundings of sexual violence within prisons that is connected to a specific mindset.

7. Can't solve for trans who have not had surgery – they are not classified with their gender identity in prison – increases their risk of sexual violence even with the plan

NCLR 2000 (National Center for Lesbian Rights, 2000, "Transsexual Prisoners," http://www.transgenderlaw.org/resources/prisoners.htm)

Do transgender prisoners have a right to be housed in a facility consistent with their gender identity?♂ Transsexual people who have not had genital surgery are generally classified according to their birth sex for purposes of prison housing, regardless of how long they may have lived as a member of the other gender, and regardless of how much other medical treatment they may have undergone[1] -- a situation which puts male-to-female transsexual women at great risk of sexual violence. Transsexual people

who have had genital surgery are generally classified and housed according to their reassigned sex.♂ One mechanism that is sometimes used to protect transsexual women who are at risk of violence due to being housed in male prisons is to separate them from other prisoners. This is referred to as "administrative segregation." On the positive side, placing a transgender or transsexual woman in administrative segregation may provide her with greater protection than being housed in the general population. On the negative side, however, administrative segregation also results in exclusion from recreation, educational and occupational opportunities, and associational rights.[2]

8. *Alt causes – non-consensual medical procedures are part of normal prison policy that sexually violate the prisoners. The affirmative makes no move to combat this unique form of violence that involves penetrating the body.*

Arkels, **2015** Gabriel. Professor of Legal Skills at Northeastern University School of Law. Regulating Prison Sexual Violence. Northeastern University Law Journal. Vol. 7 No. 1. 71-130.

Prisoners retain a limited right to refuse treatment, but state interests significantly constrain this right.74 For example, if certainsubstantive and procedural thresholds are met, medical professionalsmay medicate detained people with psychiatric disabilities against theirwill.75 Courts have held that nonconsensual treatment with insulin for diabetes,76 nonconsensual testing for AIDS,77 nonconsensual vaccination for Hepatitis A,78 and nonconsensual artificial nutrition and hydration79 do not violate prisoners' constitutional rights. As Iwill discuss further below, courts have also found some nonconsensual gynecological and rectal exams to be lawful. However, nonconsensual treatment may not always be permitted, particularly where the prisoner objects based on sincerely held religious beliefs.80 Deliberate denial of necessary medical care can also be unlawful.81In or out of prison, people often do give full, free, knowing consent to medical interventions. In some situations, providingmedical care to someone who cannot consent—someone who is,for example, unconscious—may be appropriate. Here, I am only considering those situations where a person could have consentedbut did not, or where a person could not consent and no legitimatemedical need supported the intervention. I don't argue that everynonconsensual medical intervention is a form of sexual violence;while nonconsensual medical interventions may always be violent,the violence is not necessarily always sexual. I focus on those nonconsensual medical interventions that involve stripping someoneor forcing someone to strip; touching or penetrating the genitals, anus, breasts, or reproductive organs; or harming a person's capacityfor sexual pleasure, sexual acts, or reproduction. Like searches, the physical acts of nonconsensual medicalinterventions are often indistinguishable from other forms of sexualviolence. Mandatory medical exams are widely imposed in prisonsand jails, including gynecological exams.82 "[Women prisoners] haveexperienced sexual violence in their private lives, in their domesticlives, in their intimate lives. And then they go to prison where theirbodies are handled by so-called doctors who are sticking things intotheir vaginas and their anuses and it feels exactly like the sexualabuse that they have already experienced."83 One imprisoned womandescribes her physical pain and the doctor's denial of her experienceduring an exam as follows: "[He] is the biggest man with the biggesthands... [H]e tried to force his way into my cervix and he kept tellinme it wasn't painful while I was crying and tears were streamingdown my face."84Some prisoners experience nonconsensual vaginal and analexams as sexual violence. Michann Meadows sued over a doctor nonconsensuallypenetrating her vagina.85 She cried out during the examand demanded that the doctor stop "jiggling [his] fingers in and outof [her]."86 He refused to stop and pushed his fingers inside of her even harder, claiming that he needed to do what he was doing to "get around her uterus."87 The exam caused her pain and bleeding.88 Afterward, a nurse gave Meadows a menstrual pad and privately advised her to file a complaint against the doctor for his conduct.89 In her complaint, Meadows said she felt sexually violated.90 Jessie Hill sued over a doctor non-consensually penetrating his anus and rectum.91 Guards took Hill to a prison doctor after he complained of rectal pain.92 He told the doctor that he consented only to a visual examination and specifically told the doctor not to stick anything in his rectum.93 The doctor stuck his finger in Hill's rectum over his protests.94 When Hill called for the guards to help him, they laughed at him instead.95 Hill said that he experienced the penetration as rape.96 Also like searches, nonconsensual medical interventionsinfringe on the same interests in bodily integrity, privacy, dignity,self-determination, and autonomy as in sexual violence more broadly,and can cause similar types of harm.97 Forced exams to investigatesexual violence, which typically involve penetration of the mouth,vagina, and/or anus and come on the heels of other sexual violence,can be particularly harmful. "Almost all interviewees in a recent studyof survivors of sexual

abuse said they were re-traumatized by themedical examination procedures…. [B]ecause there is an underlyingassumption that they are not to be believed, material evidence mustbe collected from their bodies as they are objectified and invaded,penetrated a second time by medical intervention."98 A prisoner in a California women's facility said, "Ninety-nine percent of the womenhave been abused or raped. To have a man take us into an office thesize of a closet . . . stripped down . . . rough and hurts us . . . it takesus right back to the beginning."99Other forms of nonconsensual medical interventions,such as sterilization, also violently control people's sexuality andreproduction.100 As one Black trans man subjected to a hysterectomyin a California prison said, "I felt coerced. I didn't understand theprocedure….I never planned on having children but I would have likedthe option to be mine."101 The history of nonconsensual sterilizationIn prisons—including psychiatric institutions—is extensive. Thesepractices have tended to target disabled people, low-income people,indigenous people, queer people, gender nonconforming people,Black people, immigrants, and sexually active women.102 Whilethese practices have often targeted people with a uterus, they havecertainly not spared people with testicles. Nonconsensual castrationhas been used as a punishment for alleged sexual violence, atreatment for homosexuality, and a part of medical experimentation.103Nonconsensual sterilization practices are not over. Justice Now recently documented extensive practices of nonconsensualsterilization in California women's prisons, which seemed to targetnon-trans women of color and trans men of color.104 Like other formsof sexual violence, these nonconsensual sterilizations invade people's

Framing

Extend our interpretation – weigh impacts based on: magnitude, time frame, and probability – hold magnitude in high regards as it is how policymakers make their decisions and becomes a portable skill in life.

Claims of "moral obligation" hurt responsibility for those events and allow the cycles of violence and injustice to continue – Isaac 02. This fits the idea of "the road to Hell is paved with good intentions" – communism in the 20th century proves as morality inhibits judgment and undermines political capability.

T USFG

1NC

1. The affirmative is not topical because the overt search of body cavities and strip searches of inmates are not classified as "undercover activity". We draw this conclusion because the only card in the 1ac that makes the affirmative topical, the Marx 98, specifically says that body cavity searches, strip searches, and other prison-type searches are only domestic surveillance if they are direct quote "undercover tactics". Our interpretation is that in order for those actions to be domestic surveillance they need to be conducted by domestic surveillance agencies, such as the TSA, FBI, ICE, DEA, etc.

USFG includes three branches

Black's Law 90 Black's Law Dictionary, 1990 p. 695 "government"

> In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.

2. Violation: The aff violates our interpretation because jail surveillance is not conducted by any USFG domestic surveillance agency.

Jails are under local jurisdiction, while prisons are at the federal level

Bureau of Justice Statistics No Date ("What is the Difference Between Jails and Prisons?" Part of the US Department of Justice, http://www.bjs.gov/index.cfm?ty=qa&iid=322)

Jails are locally-operated, short term facilities that hold inmates awaiting trial or sentencing or both, and inmates sentenced to a term of less than 1 year, typically misdemeanants. Prisons are long term facilities run by the state or the federal government and typically hold felons and inmates with sentences of more than 1 year. Definitions may vary by state.

Police are the responsibility of the State Governments only.

Brian **Darling**, Brian Darling is Sr. Vice President for Third Dimension Strategies, a strategic communications public relations firm in Washington, D.C. Darling served as Sr. Communications Director and Counsel for Senator Rand Paul (R-KY) from 2012-15. Before his tenure with Sen. Paul, Darling served in three different capacities with The Heritage Foundation. **"**Firefighters, Teachers and Police - Not a Federal Responsibility", Jun 18, 20**12**,

The left wants us to believe that paying for teachers, **firefighters and police is a federal responsibility**. Not so. **Such services have traditionally been the responsibility of state and local governments.** In Federalist 45, James Madison wrote that the powers of the federal government are "few and defined." Madison argued that state power extends to issues that "concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." **Nowhere in the Constitution is the federal government given the explicit power** to supplant the traditional **powers** of the states. Article 1, Section 8 of the Constitution enumerates powers granted to the federal government. Nowhere does it list the power to "bail out the states who come up short in paying for firefighters, police and teachers." Furthermore, when the feds "give" lesser governments money to pay for local responsibilities, they often attach conditions to funding that may be unconstitutional. **The 10th Amendment states "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."** The educating of children, the **protection of the populace from crime** and the suppression of fires **are clearly powers reserved to the states**.

3. Standards: The affirmative explodes the topic because they talk about actions that are not conducted by surveillance agencies. There are multiple agencies within the USFG that deal with domestic surveillance, such as the FBI, DEA, TSA, and others. The amount of domestic surveillance these agencies, conduct, such as the bulk gathering of metadata, stingray, drones, wire-tapping, and many other methods and instances. This leads to a variety of different affs available to the affirmative. Exploding the topic leads to no topic specific education, kills neg ground, and decreases fairness.

a. A topical version of the Aff would be an aff that only deals with federal prisons instead of local jails. Federal prisons are owned by the USFG, so they would be topical under the resolution. CHOOSE 1

1b. A topical version of the aff would be one that deals with TSA border surveillance and the infringements of personal privacy/ the bodies of people that they commit.

1. **Topicality is key to topic specific education. This is the most important impact within the debate round because we cannot actually solve for the issues of the 1ac.**

4. Voting issue: Topicality is a voting issue because it is key to fair educational debate.

More jail vs prison

A jail is in a county or city while a prison is federal – prefer legal definitions

Margo **Schlanger 2003**, preparation for a Harvard law seminar, "Differences between jails and prisons," *Prison Readings Part A,* pg 42

A jail is paradigmatically a county or city facility that houses pretrial defendants who are∂ unable to make bail, misdemeanant offenders, relatively short-term felony offenders (the term varies∂ by state – most often, it's under a year, but it can be far more), and short and long-term offenders∂ awaiting transfer to a state prison. A prison, by contrast, is a state (or federal) facility that houses∂ long-term felony offenders. Many observers of American corrections assume away jails, or at best,∂ assume that jails are just like prisons. Both assumptions warp understanding. There are many areas∂ of difference, but this essay will focus on four – size, population flow, political setting, and∂ demography.

T Surveillance

1NC Search isn't Surveillance

1. Interpretation – Surveillance is to closely watch a person, place or thing for the purpose of investigation and is distinct from a Search which intrudes on an expectation of privacy.

Hutchins, 2007, Mark, Alameda County District Attorney's Office "Police Surveillance" http://le.alcoda.org/publications/files/SURVEILLANCE.pdf

Before we begin, a word about terminology. As used in this article, the term "surveillance" means to "closely watch" a person, place, or thing for the purpose of obtaining information in a criminal investigation.5 It also includes recording the things that officers see or hear, and gaining access to public and private places from which they can make their observations. It does not include wiretapping and bugging which, because of their highly-intrusive nature, are subject to more restrictive rules.6 THE TEST: "Plausible vantage point" Surveillance becomes a "search"—which requires a warrant—if it reveals sights or sounds that the suspect reasonably believed would be private.7 As the court explained in People v. Arno, "[T]he test of validity of the surveillance [turns upon] whether that which is perceived or heard is that which is conducted with a reasonable expectation of privacy."8 Thus, a warrant is unnecessary if the suspect knew, or should have known, there was a reasonable possibility that officers or others might have seen or heard him.9 In the words of the Supreme Court, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."10

2. Violation - Prison body cavity searches are not surveillance.

Anthony Kennedy, Supreme Court Justice 2012, Anthony, Opinion of the Majority, 4/2/12, https://www.law.cornell.edu/supremecourt/text/10-945

The Court's opinion in Bell v. Wolfish, 441 U. S. 520 (1979) , is the starting point for understanding how this framework applies to Fourth Amendment challenges. That case addressed a rule requiring pretrial detainees in any correctional facility run by the Federal Bureau of Prisons "to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from

outside the institution." Id., at 558. Inmates at the federal Metropolitan Correctional Center in New York City argued there was no security justification for these searches. Officers searched guests before they entered the visiting room, and the inmates were under constant surveillance during the visit. Id., at 577–578 (Marshall, J., dissenting). There had been but one instance in which an inmate attempted to sneak contraband back into the facility. See id., at 559 (majority opinion). The Court nonetheless upheld the search policy. It deferred to the judgment of correctional officials that the inspections served not only to discover but also to deter the smuggling of weapons, drugs, and other prohibited items inside. Id., at 558. The Court explained that there is no mechanical way to determine whether intrusions on an inmate's privacy are reasonable. Id., at 559. The need for a particular search must be balanced against the resulting invasion of personal rights. Ibid.

Prefer our interpretation

A. Brightline – our interepretation creates a clear and precise limit on the types of affirmatives that are topical, their interpretation opens up to anything the government does that might be icky.

B. Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including searches adds an entirely different legal regime with different laws, judicial standards, and other issues for THOUSANDS of different crimes.

Topicality is a Voting Issue.

Limits cards

There are five kinds of prison searches alone that the aff's interpretation allows for that ours does not – proof that the aff explodes the limits

Prisoners' Legal Service 2002 (Prisoners' Legal Service Inc., 2002, "Searches of Prisoners," www.plsqld.com/files/pamphlets/**Searches**%20of%20**prisoners**.doc)

There are five types of searches that can be performed on prisoners in certain circumstances. These range from the least intrusive scanning search to the extremely intrusive strip search and body search: ∂ Scanning search∂ A search by electronic or other means that does not require a person to remove their general clothes (except perhaps a coat or shoes) or to be touched by a person. For example: a hand-held scanner, passing through an "arch" type metal detector or using a sniffer dog.∂ General search∂ A search to reveal the contents of the person's outer garments, general clothes (dress, skirt, shirt or trousers) or hand luggage without touching the person or the luggage. During a general search a person may be required to open their hands or mouth for visual inspection or to shake their hair vigorously. ∂ Personal search∂ A search during which light pressure may be momentarily applied to a prisoner over their general clothes (dress, skirt, shirt or trousers) without direct contact being made with genital or anal areas or a female prisoner's breasts. Basically a "frisk" type search.∂ Strip search∂ A search in which a prisoner removes all garments during the search, but direct contact cannot be made with the prisoner.∂ The searching officer may require the prisoner to hold their arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made.∂ Strip search guidelines∂ Prison laws, regulations and policies contain a number of guidelines. These include:∂ Only prison officers of the same gender as the prisoner can carry out a strip search; ∂ There must be at least two prison

officers present, but no more than are reasonably necessary to carry out the search;∂ Before carrying out a strip search the prison officer must tell the prisoner that they will be required to remove clothing during the search and tell the prisoner why it is necessary to remove the clothing;∂ The officer must, if reasonably practicable, give the prisoner the opportunity to remain partly clothed during the search, for example, by allowing the prisoner to dress their upper body before being required to remove clothing from their lower body;∂ A prison officer carrying out the search must ensure, as far as reasonably practicable, that the way in which the search is conducted causes minimal embarrassment to the prisoner;∂ A searching officer must take reasonable care to protect the prisoner's dignity, must carry out the search as quickly as reasonably practicable and must allow the prisoner to dress as soon as the search is finished. ∂ Body search∂ A search of a prisoner's body includes an examination of an orifice or cavity of the prisoner's body. This type of search can only be performed by a doctor. Some prison doctors refuse to perform these searches.

Four overarching categories of searches that are not surveillance

NMA No Date (Norwegian Medical Association, unknown date, "What types of searches are performed on prisoners?" https://nettkurs.legeforeningen.no/mod/lesson/view.php?id=1457&pageid=7624)

Most searches performed by prison staff are not body searches. Furthermore, the term "body search" itself has different meanings and implications which are often confused by the general public and sometimes even by medical staff.∂ Generally speaking, three categories of searches performed on prisoners can be distinguished, by increasing degree of thoroughness:∂ pat-down searches of the clothed body, or "frisking";∂ searches involving the removal of clothing – "strip searches" – usually performed in two steps (first the upper and then the lower body) but without examining body cavities;∂ squat searches, which sometimes accompany strip searches;∂ body-cavity searches (visual inspection and manual probing).

Prisons DDI

T Surveillance Covert

1NC

Interpretation – surveillance must be covert

Baker 5 – MA, CPP, CPO

(Brian, "Surveillance: Concepts and Practices for Fraud, Security and Crime Investigation," http://www.ifpo.org/wp-content/uploads/2013/08/surveillance.pdf)

Surveillance is defined as **covert** observations of places and persons for the purpose of obtaining information (Dempsey, 2003). The term covert infers that the operative conducting the surveillance is **discreet and secretive**. Surveillance that maintains a concealed, hidden, undetected nature clearly has the greatest chance of success because the subject of the surveillance will act or perform naturally. Remaining undetected during covert surveillance work often involves physical fatigue, mental stress, and very challenging situations. Physical discomfort is an unfortunate reality for investigators, which varies from stinging perspiration in summer to hard shivers during the winter.

Violation – the aff curtails surveillance that is not covert

Reasons to prefer –

a) Limits—allowing the ending of public surveillance explodes the limits of the topic by allowing affirmatives that deal with programs that have known surveillance like detention facilities

b) Ground—covert surveillance key to neg ground like terrorism and politics disads

Voting issue for competitive equity

2nc Covert Extensions

Surveillance must be covert

IJ 98

(Info Justice, OPERATIONS, SURVEILLANCE AND STAKEOUT PART 1, http://www.infojustice.com/samples/12%20Operations,%20Surveillance%20And%20Stakeout%20Part%201.html)

Surveillance is defined as the systematic observation of persons, places, or things to obtain information. Surveillance is carried out **without** the knowledge of those under surveillance and is concerned primarily with people.

Even the broadest definition doesn't include information provided with consent

Pounder 9 – PhD, Director, Amberhawk Training and Amberhawk Associates

(Chris, "NINE PRINCIPLES FOR ASSESSING WHETHER PRIVACY IS PROTECTED IN A SURVEILLANCE SOCIETY," Scholar)

This paper uses the term "surveillance" in its widest sense to include data sharing and the revealing of identity information in the **absence of consent** of the individual concerned. It argues that the current debate about the nature of a "surveillance society" needs a new structural framework that allows the benefits of surveillance and the risks to individual privacy to be properly balanced.

T – Domestic Surveillance

1NC

1. Domestic surveillance is information gathering on US persons

IT Law Wiki 15 IT Law Wiki 2015 http://itlaw.wikia.com/wiki/Domestic_surveillance

Definition Edit

Domestic surveillance is the acquisition of nonpublic information concerning United States persons.

2. That means citizens, corporations, or legal resident aliens – the aff violates because the United States jails noncitizens

Jackson et al 9 Brian A. Jackson, Darcy Noricks, and Benjamin W. Goldsmith, RAND Corporation

The Challenge of Domestic Intelligence in a Free Society RAND 2009 BRIAN A. JACKSON, EDITOR

http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG804.pdf

3 Federal law and executive order define a U.S. person as "a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association with a substantial number of members who are citizens of the U.S. or are aliens lawfully admitted for permanent residence, or a corporation that is incorporated in the U.S." (NSA, undated). Although this definition would therefore allow information to be gathered on U.S. persons located abroad, our objective was to examine the creation of a domestic intelligence organization that would focus on—and whose activities would center around—individuals and organizations located inside the United States . Though such an agency might receive information about U.S. persons that was collected abroad by other intelligence agencies, it would not collect that information itself.

3. Body cavity searches are not data collection

Marx 5 (Gary T. Marx is Professor Emeritus from M.I.T. He has worked in the areas of race and ethnicity, collective behavior and social movements, law and society and surveillance studies. Marx was named the American Sociological Association's Jensen Lecturer for 1989-1990. He received the Distinguished Scholar Award from its section on Crime, Law and Deviance, the Silver Gavel Award from the American Bar Association, the Bruce C. Smith Award for research achievement, the W.E.B. Dubois medal, the Lifetime Achievement Award from the Society for the Study of Social Problems, and the inaugural Outstanding Achievement Award from the Surveillance Studies Network. In 1992 he was the inaugural Stice Memorial Lecturer in residence at the University of Washington and he has been a UC Irvine Chancellor's Distinguished Fellow, the A.D. Carlson Visiting Distinguished Professor in the Social Sciences at West Virginia University, and the Hixon-Riggs Visiting Professor of Science, Technology and Society at Harvey Mudd College. Major works in progress are books on new forms of surveillance and social control across borders. He received his Ph.D. from the University of California at Berkeley, "Soft Surveillance: Mandatory Voluntarism and the Collection of Personal Data", University of Pennsylvania press, Dissent, Volume 52, Number 4, Fall 2005 (whole No. 221), http://muse.jhu.edu/journals/dissent/v052/52.4.marx.pdf, p.36-37) //RL

IN TRURO, MASSACHUSETTS, at the end of 2004, police politely asked all male residents to provide a DNA sample to match with DNA material found at the scene of an unsolved murder. Residents were approached in a non-threatening manner and asked to help solve the crime. **This tactic** of rounding up all the usual suspects and then some is still rare in the United States for historical, legal, and logistical reasons, but it **is becoming more common**. The Truro case illustrates **expanding trends in surveillance and social control**. There is increased reliance on "soft" means for collecting personal information. In criminal justice contexts these means involve some or all of the following: persuasion to gain voluntary compliance, universality or at least increased inclusiveness, and emphasis on the needs of the community relative to the rights of the individual. As with other new forms of surveillance and detection, the process of gathering the DNA information is quick and painless, involving a mouth swab, and is generally not felt to be invasive. This makes such requests seem harmless relative to the experience of having blood drawn, having an observer watch while a urine drug sample is produced, or being patted down or undergoing a more probing physical search. **In contrast, more traditional police methods, such as an arrest, a custodial interrogation, a search, a subpoena, or traffic stop, are "hard**." They involve coercion and threat to gain involuntary compliance. **They may also involve a crossing of intimate personal borders, as with a strip or body-cavity search.** In principle such means are restricted by law and policy to persons there are reasons to suspect, and thus they implicitly recognize the liberty of the individual relative to the needs of the community. Yet the culture of social control is changing. Hard forms of control are not receding, but soft forms are expanding. I note several forms of this, from requesting volunteers based on appeals to good citizenship or patriotism to using disingenuous communication to profiling based on lifestyle and consumption to utilizing hidden or low-visibility, information collection techniques

3. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE. Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Unlimits the topic to surveillance of literally anything because they make the “domestic” and “surveillance” limits meaningless.

4. T IS A VOTER because preparation fosters good debate

2NC Not US Persons

Tens of thousands of US prisoners are noncitizens

USDOJ 14 (E. Ann Carson, PhD, US Department of Justice Bureau of Justice Statistics Statistician, “Prisoners in 2013”, USDOJBOJ, September 30th, 2014, http://www.bjs.gov/content/pub/pdf/p13.pdf) //RL

Fewer youth held in the custody of adult prisons in 2013¶ States held 1,200 youth (inmates age 17 or younger) in adult¶ prison facilities at yearend 2013, a 69% decrease from 2000,¶ when NPS began asking states for data on these inmates¶ (figure 2). Prisoners age 17 or younger comprised less than a¶ tenth of a percent of inmates held in state prison facilities in¶ 2013 (0.09%). The majority of these inmates (96%) were males,¶ and 23% (275 inmates) were held in Florida and New York¶ (table 18). Other states with large counts of prisoners age 17 or¶ younger held in adult facilities include Georgia (92 inmates),¶ Connecticut (88), Michigan (73), Texas (69), and Illinois and¶ North Carolina (68 inmates each).¶ The BOP does not house inmates age 17 or younger in its¶ general prison population. Instead, these prisoners are held in¶ separate contract facilities, and some are under the jurisdiction¶ of U.S. probation but in the custody of the BOP. The number of¶ youth in BOP contract facilities has only been captured from¶ 2005 forward but has decreased 58% over this period. Similar¶ to the youngest inmates in the state prison population, federal¶ prisoners age 17 or younger comprise a small fraction of the¶ total BOP population (0.04%).¶ **At yearend 2013, the BOP had custody of 25,800 inmates¶ it identified as noncitizens, 35% of the total number of¶ reported noncitizens held in prisons.** Because some states¶ define noncitizens as those born outside the U.S. regardless¶ of current citizenship status, caution should be used in¶ making comparisons across jurisdictions. Texas, Florida,¶ Arizona, and New York reported the largest populations of¶ noncitizen inmates in custody on December 31, 2013. Of those¶ prisoners identified by the states and BOP as noncitizens,¶ 4% (3,400 inmates) were females.

T – Its

1NC

1. Federal means the national government, not the states

DGP 98 (Dictionary of Government and Politics 1998, Ed. P.H. Collin, p. 116)

federal ['federal] adjective (a) referring to a system of government in which a group of states are linked together in a federation; a federal constitution = constitution (such as that in Germany) which provides for a series of semi-autonomous states joined together in a national federation (b) referring especially to the federal government of the United States; federal court or federal laws = court or laws of the USA, as opposed to state courts or state laws.

2. Violation – state and local prisons house most of the incarcerated people in America and the federal government doesn't have jurisdiction over them – at best, the aff is FXT

Piecora 14 (JURIST Guest Columnist Christina Piecora, St. John's University School of Law, Class of 2015, is the author of the first article in a twelve-part series from the staffers of the Journal of Civil Rights and Economic Development, "Female Inmates and Sexual Assault", JURIST.ORG, http://jurist.org/dateline/2014/09/christina-piecora-female-inmates.php) //RL

Another reason for the high incidence of prison sexual assault is the limited oversight of state prisons. Recently the federal government made history by passing the Prison Rape Elimination Act (PREA). The PREA implemented national standards for the detection, prevention and punishment of prison rape. However, **the PREA standards only apply federally. Thus, because state and local facilities confine the majority of inmates, most inmates are not protected by the PREA standards.**

3. Limits – allowing state and locality affs justifies tangential topicality and makes the topic mammoth –take a stand at camp to save the negative research burden because there's no way we can prepare for that limits explosion – that's a voter for fairness and education

5. FXT – a plan must be topical in and of itself; the affirmative cannot pick and choose a possible consequence of the plan's action – this is a central standard of debate and is a voter for fairness because the negative cannot rebut an effects link chain

6. T IS A VOTER because preparation fosters better debate

2NC

State prisons house the majority of America's incarcerated population and specifically have some of its worst sexual assault problems – either the aff doesn't solve or it's extra-topical

Piecora 14 (JURIST Guest Columnist Christina Piecora, St. John's University School of Law, Class of 2015, is the author of the first article in a twelve-part series from the staffers of the Journal of Civil Rights and Economic Development, "Female Inmates and Sexual Assault", JURIST.ORG, http://jurist.org/dateline/2014/09/christina-piecora-female-inmates.php) //RL

Males are the perpetrators in 98 percent of staff-on-inmate sexual assault (PDF] of female inmates. Forty-one percent of guards in the average state female correctional center are male, a job that entitles them to perform strip searches and have access to prisoners in their most vulnerable states. Therefore, although women comprise only 7 percent of the state prison population, they comprise 46 percent of sexual abuse victims. Male prison officials not only use force and violence to commit sexual assault against female prisoners but also use their positions to coerce, threaten and intimidate inmates into sexual activity. Thousands of documented accounts exist of prison staff demanding sex in exchange for drugs, favors and access to educational programs. Similarly, prison officials often use threats of going to the parole board with false reports of bad behavior, planting drugs on prisoners or withholding basic necessities such as feminine hygiene products or visitation with children if inmates do not perform sexual acts. While these acts are repugnant, prison officials are not the only perpetrators of sexual assault against female inmates.¶ The rate of inmate-on-inmate sexual victimization [PDF] is at least 3 times higher for females (13.7%) than males (4.2%). This has been attributed to the fact that a majority of prison officials do not view female-on-female sexual assault as "true rape," making them less likely to reprimand inmates. Furthermore, as the female prison population has grown at a dramatic rate, states have been unable to keep up. Therefore, female prison facilities tend to be overcrowded and poorly designed, making them difficult to police.¶ In addition to cross-gender supervision and poorly designed facilities, prison sexual assault against females is prevalent because little punishment exists to deter perpetrators. Victims are often blocked from bringing charges against prison staff who were either complacent or the culprits in their attacks by the Prison Litigation Reform Act (PLRA). The PLRA requires prisoners to exhaust all administrative remedies before they are allowed to file suit in federal court to challenge prison abuses. For victims this means that they must report their abuse to the very people committing or facilitating that abuse. Thus, inmates who complained of staff sexual misconduct were punished 46.3 percent of the time.¶ Additionally, victims must meet an incredibly high burden of proof to substantiate a constitutional claim. The Eighth Amendment establishes the right to be free from cruel and unusual punishment. However, for victims to establish a violation of their Eighth Amendment rights they must prove that the prison official had a "seriously culpable state of mind" by satisfying the subjective deliberate indifference test. The test requires that the prison official must (1) "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) "also draw the inference." For victims, the difficulty lies in proving

that prison administrators were aware of the risk and ignored it. In applying the test courts have severely limited the liability of prison officials.

Queer Pessimism

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Prison reforms continue the violent policing of gender and sexuality by the state while neglecting to bring the failings of the system to the forefront of their work. The law does not treat everyone equally and it never will absent the destruction of the state.

Ware 11 (Ware, Wesley [Wesley Ware is the founder of BreakOUT!, a project of the Juvenile Justice Project of Louisiana (JJPL) that fights for justice for lesbian, gay, bisexual, transgender, and queer/questioning youth in the juvenile justice system and the author of the recently released report, Locked Up & Out: Lesbian, Gay, Bisexual, and Transgender Youth in Louisiana's Juvenile Justice System. Wes serves on the Advisory Board for the Equity Project, a national initiative to bring fairness and equity to LGBT youth in juvenile delinquency courts. At JJPL, he coordinated the investigation for a class-action lawsuit on behalf of youth detained in an abusive youth jail in New Orleans and monitors the conditions of three state-run youth prisons in Louisiana.]. 2011 "Rounding Up the Homosexuals: The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth" in "Captive Genders: Trans Embodiment and the Prison Industrial Complex" Pg. 77 (Eds. Smith & Stanley) 2011 AK press. Accessed: 7/17/2015. http://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf)//ALepow

However, with the juvenile justice system's intent to provide "treatment" to young people, many queer/trans youth inherit the ideology that they are "wrong" or in need of "curing," as evidenced by their stories. As sexual and gender transgressions have been deemed both illegal and pathological, queer and trans youth, who are some of the most vulnerable to "treatments," are not only subjected to incarceration but also to harassment by staff, conversion therapy, and physical violence.6 Moreover, with the juvenile justice system often housed under the direct authority of state correctional systems and composed of youth referred directly from state police departments, it should not be surprising that young people locked up in the state juvenile system, 80 percent of whom are black in Louisiana,7 are often actually destroyed by the very system that was created to intervene. Worse than just providing damaging outcomes for youth once they are incarcerated, this rehabilitative system funnels queer and trans/gendernon-conforming youth into the front doors of the system. Non-accepting parents and guardians can refer their children to family court for arbitrary and subjective behaviors, such as being "ungovernable."8 Police can bring youth in for status offenses, offenses for which adults cannot be charged, which often become contributing factors to the criminalization of youth. Charges can range from truancy to curfew violations to running away from home. Like in the adult criminal justice system, queer and trans youth can be profiled by the police and brought in for survival crimes like prostitution or theft. Youth may be referred for self-defense arising from conflict with hostile family members or public displays of affection in schools that selectively enforce policies only against queer and trans youth. Although youths' rights were greatly expanded in 1967 when the Supreme Court decided that the juvenile system was not operating according to its original intent,9 youth continue to struggle in the courts with fewer protections than adults. Defense lawyers for youth, who are sometimes the only advocates young people have in court, have at times confused their role, advocating for what they believe to be the "best interest" of the youth rather than defending their client's "expressed interest." Juvenile court judges with little accountability have similarly expanded their role with the intent to provide services, through incarceration, to every youth that comes through their courtrooms. In this effort to rehabilitate "deviant" children and without the right to a jury trial for delinquent offenses, the issue of guilt versus innocence can fall to the wayside. Further aggravated by the public's fear of youth sexuality and

our desire to control 80 young people and their bodies, juvenile court presents a unique opportunity to destroy the lives of queer and trans/gender-non-conforming youth. The agenda of juvenile court then, for queer and trans youth at least, often becomes to "rehabilitate" youth into fitting heteronormative and gendertypical molds. Guised under the "best interest of the child," the goal often becomes to "protect" the child—or perhaps society—from gender-variant or non-heterosexual behavior. While not as explicit as the sumptuary laws (laws requiring people to wear at least three items of gender-appropriate clothing) or sodomy laws of the past that led to the Compton's Riots and Stonewall Rebellion, the policing of sexuality and state regulation of gender has continued to exist in practice—perhaps nowhere more than in juvenile courts. In many ways, the system still mirrors the adult criminal justice system, whose roots can be traced to slavery, the commodification of bodies as free labor, institutionalized racism, and state regulation of low-income people of color, immigrants, and anyone deemed otherwise "deviant" or a threat to the political norm. Combined with the Puritan beliefs that helped spark the creation of juvenile courts, it becomes clear that, borrowing the words of Audre Lorde, queer and trans youth of color "were never meant to survive." In fact, one youth in a Louisiana youth prison responded to the number of queer and trans youth incarcerated by stating, "I'm afraid they're rounding up the homosexuals." Once locked up, queer and trans youth experience the same horrors that their adult counterparts in the system do, but magnified by a system designed to control, regulate, and pathologize their very existence. In Louisiana's youth prisons, queer and trans youth have been subjected to "sexual-identity confusion counseling," accused of using "gender identity issues" to detract from their rehabilitation, and disciplined for expressing any gender-non-conforming behaviors or actions. Youth are put on lockdown for having hair that is too long or wearing state-issued clothing that is too tight. They are instructed how to walk, talk, and act in their dorms and are prohibited from communicating with other queer youth lest they become too "flamboyant" and cause a disturbance. They are excessively punished for consensual same-sex behavior and spend much of their time in protective custody or in isolation cells. In meetings with representatives from the Juvenile Justice Project of Louisiana, directors of youth jails have referred to non-heterosexual identities as "symptoms" and have conflated youth adjudicated for sex offenses with youth who are queer. In addition, 81 when advocates asked what the biggest problem was at a youth prison in Baker, Louisiana, guards replied, "the lesbians." Even more troubling, unlike the adult criminal justice system where individuals either "ride out their time" or work toward "good time" or parole, youths' privileges in prison and eventual release dates are often determined by their successful completion of their rehabilitative programming, including relationships with peers and staff. Thus, youth who are seen as "deviant" or "mentally ill," or who otherwise do not conform to the rules set forth by the prison, often spend longer amounts of time incarcerated and are denied their opportunity for early release. For queer and trans/gender-non-conforming youth, this means longer prison terms. In fact, in the last four years of advocacy on behalf of queer and trans youth in prison in Louisiana at the Juvenile Justice Project of Louisiana, not one openly queer or trans youth has been recommended for an early release by the Office of Juvenile Justice. While protections afforded to youth in the juvenile justice system like a greater right to confidentiality are extremely important for youth, they can also be another strike against queer and trans youth seeking to access resources or support networks while inside. Like queer and trans adults in

the criminal justice system who have difficulty receiving information that "promotes homosexuality," youth are unable to access affirming information during a particularly formative time in their lives, which can already be plagued with confusion and questioning. The right to confidentiality for youth in prison can result in their being prohibited from communicating with pen pals or seeking services from community organizations. Other rights are afforded to adults but not to minors, such as accessing legal counsel to challenge the conditions of their confinement. Youth under 18 must rely on their guardians to assist with filing a civil complaint, despite the fact that many queer and trans youth have had difficulty with their families prior to their incarceration—and that those family members may have contributed to their entering into the system in the first place. This barrier also holds true for transgender youth who are minors and seeking healthcare or hormones. These youth may need the approval from a guardian or judge in order to access these services—or approval from a guardian in order to file a civil complaint to request them. Meanwhile, as state institutions are placing queer and trans/gendernon-conforming youth behind bars and effectively silencing their voices, prominent gay activists are fighting for inclusion in the very systems that criminalize youth of color (such as increased sentencing for hate crimes) 82 under the banner of "we're just like everybody else." A far stray from the radicalism of the early gay rights movement, mainstream "gay issues" have become focused on the right to marry and "don't ask, don't tell" policies in the military, despite the fact that queer youth of color have consistently ranked these at the bottom of their list of priorities of issues that impact their lives.10 Likewise, the public "face of gay" as white, middle-class men has become a further detriment to queer and trans youth in prison, particularly in the South where queer youth of color are often not "out," and individuals, like in all areas of the country, have difficulty discussing the two issues at the center: race and sexuality.11 As a result of the invisibility of so many incarcerated queer and trans youth, especially youth of color, juvenile justice stakeholders in the South often mistake queer and trans youth to be white, vulnerable youth usually charged with a sex offense, if they acknowledge them at all. As a result, they assume that any concern for these youth to be coming from white advocates who believe that queer and trans youth have been funneled into a system made for "poor black children;" in other words, into a system that is "OK for some children, but not for others." We must be clear about why we do this work—it is not because some children belong locked away at night and others do not—it is because no child should be behind bars. Further, the data tells us that queer and trans youth in detention are equally distributed across race and ethnicity, and comprise 15 percent of youth in detention centers. So far, the data has been consistent among youth in different regions in the United States, including the rural South.12 Since queer and trans youth are overrepresented in nearly all popular feeders into the juvenile justice system—homelessness, difficulty in school, substance abuse, and difficulty with mental health13—the same societal ills, which disproportionately affect youth of color—it should not be surprising that they may be overrepresented in youth prisons and jails as well. Since incarcerated youth have so few opportunities to speak out, it is critically important for individuals and organizations doing this work to keep a political analysis of the failings of the system at the forefront of the work—particularly the inherent racial disparities in the system—while highlighting the voices of those youth who are most affected and providing vehicles through which they can share their stories. Despite the targeting and subsequent silencing of queer and trans/ gender-non-conforming

youth in youth prisons and jails across Louisiana, young people have developed creative acts of resistance and mechanisms 83 for self-preservation and survival. By failing to recognize the ways that young people demonstrate their own agency and affirm each other, we risk perpetuating the idea of vulnerable youth with little agency; victims rather than survivors and active resisters of a brutal system. Perhaps the most resilient of all youth in prison in Louisiana, incarcerated queer and trans youth have documented their grievances, over and over again, keeping impeccable paper trails of abuse and discrimination for their lawyers and advocates. When confronted by the guards who waged wars against them, one self-identified gay youth let it be known, "You messin' with the wrong punk." Although prohibited from even speaking publicly with other queer youth in prison, queer and trans youth have formed community across three youth prisons in the state, whispered through fences, and passed messages through sympathetic staff. They have made matching bracelets and necklaces for one another, gotten each other's initials tattooed on their bodies, and written letters to each other's mothers. They have supported each other by alerting advocates when one of them was on lockdown or in trouble and unable to call**.** Trans-feminine youth have gone to lockdown instead of cutting their hair and used their bed sheets to design curtains for their cells once they got there. They have smuggled in Kool-Aid to dye their hair, secretly shaved their legs, colored their fingernails with markers, and used crayons for eye shadow. When a lawyer asked her trans-masculine client to dress more "feminine" for court, knowing that the judge was increasingly hostile toward gender-non-conforming youth, her client drew the line at the skirt, fearlessly and proudly demanding that she receive her sentence in baggy pants instead. Queer and trans/gender-non-conforming youth have made us question the very purpose of the juvenile justice system and holding them behind bars in jails and prisons made for kids. By listening to their voices it becomes apparent that until we dismantle state systems designed to criminalize and police young people and variant expressions of gender and sexuality, none of us will be free. And to my younger client recently released from a youth prison, yes, the world is more beautiful now. Welcome home.

Violence against queerness results in the annihilation of identity—this is a form of soul murder

Yep, Lovaas, and Elia 03 Professors, San Francisco University (Gust, Karen, and John, Journal of Homosexual Studies, Vol. 45, No. 2/3/4, pp. 18,)

These are the internal injuries that individuals inflict upon themselves. Very early in life children learn from interpersonal contacts and mediated messages that deviations from the heteronormative standard, such as homosexuality, are anxiety-ridden, guilt-producing, fear-inducing, shame-invoking, hate-deserving, psychologically blemishing, and physically threatening. Internalized homophobia, in the form of self-hatred and self-destructive thoughts and behavioral patterns, becomes firmly implanted in the lives and psyches of individuals in heteronormative society. Exemplifying the feelings and experiences of many people who do not fit in the heteronormative mandate, Kevin Jennings (1994) tells us his personal story: I was born in 1963. . . . [I] realized in grade school that I was gay. I felt absolutely alone. I had no one to talk to, didn't know any openly gay people, and saw few representations of gays in the media of the 1970s. I imagined gay people were a tiny, tiny minority, who had been and would always be despised for their "perversion." Not once in high school did I ever learn a single thing about homosexuality or gay people. I couldn't imagine a happy life as a gay man. So I withdrew from my peers and used alcohol and drugs to try to dull the pain of my isolation. Eventually, at age seventeen I tried to kill myself, like one out of every three gay teens. I saw nothing in my past, my present, or (it seemed) my future suggesting that things would ever get any better. (pp. 13-14) Heteronormativity is so powerful that its regulation and enforcement are carried out by the individuals themselves through socially endorsed and culturally accepted forms of soul murder. Soul murder is a term that I borrow from the child abuse and neglect literature to highlight the torment of heteronormativity (Yep, 2002). Shengold (1999) defines soul murder as the "apparently willful abuse and neglect of children by adults that are of sufficient intensity and frequency to be traumatic . . . [so that] the children's subsequent emotional development has been profoundly and predominantly negatively affected" (p. 1). Further explaining this concept, Shengold (1989) writes, "soul murder is neither a diagnosis nor a condition. It is a dramatic term for circumstances that eventuate in crime–the deliberate attempt to eradicate or compromise the separate identity of another person" (p. 2, my emphasis). Isn't the incessant policing and enforcement, either deliberately or unconsciously, by self and others, of the heteronormative mandate a widespread form of soul murder?

The alternative is to burn this world to the ground—we must rage against systems of normativity

Mary Nardini Gang 09 (Mary Nardini Gang [The Mary Nardini Gang are criminal queers from Milwaukee, Wisconsin.]. "Toward the Queerest Insurrection." Queer Jihad, 2009. http://zinelibrary.info/files/QueerestImposed.pdf)//ALepow

Some will read "queer" as synonymous with "gay and lesbian" or "LGBT". This reading falls short. While those who would fit within the con- structions of "L", "G", "B" or "T" could fall with- in the discursive limits of queer, queer is not a stable area to inhabit. Queer is not merely another identity that can be tacked onto a list of neat social categories, nor the quantitative sum of our identities. Rather, it is the qualitative position of opposition to presentations of stability - an identity that problematizes the manageable limits of identity. Queer is a territory of tension, defined against the dominant narrative of white-hetero-monogamous-patriarchy, but also by an affinity with all who are marginalized, otherized and oppressed. Queer is the abnormal, the strange, the dangerous. Queer involves our sexuality and our gender, but so much more. It is our desire and fantasies and more still. Queer is the cohesion of everything in conflict with the heterosexual capitalist world. Queer is a total rejection of the regime of the Normal. As queers we understand Normalcy. Normal, is the tyranny of our condition; reproduced in all of our relationships. Normalcy is violently reiterated in every minute of every day. We understand this Normalcy as the Totality. The Totality being the interconnection and overlap- ping of all oppression and misery. The Totality is the state. It is capitalism. It is civilization and empire. The totality is fence-post crucifixion. It is rape and murder at the hands of police. It is "Str8 Acting" and "No Fatties or Femmes". It is Queer Eye for the Straight Guy. It is the brutal lessons taught to those who can't achieve Normal. It is every way we've limited ourselves or learned to hate our bodies. We understand Normalcy all too well. When we speak of social war, we do so because purist class analysis is not enough for us. What does a marxist economic worldview mean to a survivor of bashing? To a sex work- er? To a homeless, teenage runaway? How can class analysis, alone as paradigm for a revolution, promise liberation to those of us journeying beyond our assigned genders and sexualities? The Proletariat as revolutionary subject marginalizes all whose lives don't fit in the model of heterosexual-worker. We must create space wherein it is possible for desire to flourish. This space, of course, requires conflict with this social order. To de- sire, in a world structured to confine desire, is a tension we live daily. We must understand this tension so that we can become powerful through it - we must understand it so that it can tear our confinement apart. This terrain, born in rupture, must challenge oppression in its entirety. This of course, means total negation of this world. We must become bodies in revolt. We need to delve into and indulge in power. We can learn the strength of our bodies in struggle for space for our desires. In desire we'll find the power to destroy not only what destroys us, but also those who aspire to turn us into a gay mimicry of that which destroys us. We must be in

conflict with regimes of the normal. This means to be at war with everything. If we desire a world without restraint, we must tear this one to the ground. We must live be- yond measure and love and desire in ways most devastating. We must come to understand the feeling of social war. We can learn to be a threat, we can become the queerest of insurrections.

2NC Links

Our discursive record of violence done against prisoners produces an epistemology that haunts the neoliberal-carceral state's legalistic discourse of "freedom" and "justice" even beyond a court decision – any legalistic attempt to bracket our discussion is the same political move that allows the law to possess and legitimize the violence of the carceral state.

Dillon 13 (Stephen, "Fugitive Life: Race, Gender, and the Rise of the Neoliberal-Carceral State," May 2013, Stephen Dillon, assistant professor of Queer Studies, holds a B.A. from the University of Iowa and a Ph.D. in American Studies with a minor in Critical Feminist and Sexuality Studies from the University of Minnesota.//RJ)

Many accounts of sexual violence committed against women in prison concern exceptional cases where a guard violated the law or other inmates perpetrate the violation. In this the case, **sexual violence was performed by the state in the name of the safety of the state**. As the captain put it, the state simply has the right to sexually assault those in their custody. Whether the cavity search is authorized by the consent of the prisoner or not, **consent is not available to the captive who is always already subject to the systems of violence and force available to the prison.** As Angela Davis observes, **if strip searches and cavity searches were performed by men** in plain clothes **on the street,** there would be no question that an act of sexual violence was taking place.515 Yet, **the body of the prisoner is ontologically a threat to the state and the public, and thus violence performed on the captive body preempts the violence the prisoner is perpetually waiting to unleash**. Simply, a rape is not a rape—it is safety and security. This particular act of state violence did not occur because prisoners are "juridical non-people" as Dylan Rodríguez would have it.516 Instead, sexual violence was authorized and performed by the law and through the law. The women were even given the non-choice of signing a legal document authorizing the terror that was coming regardless of their forced consent. Torres and Rosenberg were viewed as legal subjects who could authorize their own violation. For example, when Amnesty International wrote the FBP about the assault, the Associate Director responded: Regarding the particular search conducted of Ms. Torres and Susan Rosenberg prior to their transfer to Lexington, our careful review indicates that the search was not punitive nor outside of agency policy. This very isolated occurrence involved a search that was performed in a professional manner by a qualified physician's assistant.517 The sexual assault was the law, policy, and procedure of the prison. It was professional and part of the larger system of the prison's humane care of the prisoner. Like the unimaginable violence at Guantánamo, the women at Lexington were not beyond the safety of the law—they were **possessed by it.** Rosenberg countered state violence and terror: "I found a new way to survive by reading and writing and thinking with purpose."518 Her lawyer told her to write down the forms of violation, pain, and horror that were too numerous to catalogue during their visits, were so unimaginable they could not be conveyed by speech, or were simply unspeakable. Rosenberg's lawyer framed this process as building an archive that would contradict the state's account of Lexington and thus

would produce a different conception of the truth. Rosenberg writes: "Write it down, for the record. I half believed that keeping a record was a futile effort, and she half believed it would be of use in fighting for justice, but that sentence became a signal between us, a way to reference acts of violence too difficult to discuss."519 **The "record" in this formulation was a legal account that could potentially contest the state in court, but it was also an alternative record of events that could live on in places and times beyond the state's determination of what is real and true.** In this way, **writing became a way of producing an epistemology that haunts the neoliberal-carceral state's discourses of freedom, equality, and justice.** Writing became a way to document the violence of the law—violence the law itself could not register.

The Prison industrial Complex operates far beyond the walls of the prison to capture queerness. And it isn't broken its working well – endless cycles of reform make a façade of freedom while simultaneously reproducing the cycle of anti-queer violence that happens within it.

Stanley 11 – (Eric A., Ph.D. in History of Consciousness, UC Santa Cruz, UC President's Postdoctoral Fellow at UCSD edited by Eric A. Stanley and Nat Smith, *Captive Genders: Trans Embodiment and the Prison Industrial Complex*)

Trans/gender-non-conforming and queer people, along with many others, are born into webs of surveillance. The gendering scan of other children at an early age ("Are you a boy or a girl?") places many in the panopticon long before they enter a prison. For those who do trespass the gender binary or heteronormativity, physical violence, isolation, detention, or parental disappointment become some of the first punishments. As has been well documented, many trans and queer youth are routinely harassed at school and kicked out of home at young ages, while others leave in hopes of escaping the mental and physical violence that they experience at schools and in their houses. Many trans/queer youth learn how to survive in a hostile world. Often the informal economy becomes the only option for them to make money. Selling drugs, sex work, shoplifting, and scamming are among the few avenues that might ensure they have something to eat and a place to sleep at night. Routinely turned away from shelters because of their gender presentation, abused in residential living situations or foster care, and even harassed in "gay neighborhoods" (as they are assumed to drive down property values or scare off business), they are reminded that they are alone. Habitually picked up for truancy, loitering, or soliciting, many trans/queer people spend their youth shuttling between the anonymity of the streets and the hyper-surveillance of the juvenile justice system. With case managers too overloaded to care, or too transphobic to want to care, they slip through the holes left by others. Picked up—locked up—placed in a home—escape—survive—picked up again. The cycle builds a cage, and the hope for anything else disappears with the crushing reality that their identities form the parameters of possibility.10 With few options and aging-out of what little resources there are for "youth," many trans/queer adults are in no better a situation. Employers routinely don't hire "queeny" gay men, trans women who "cannot pass," butches who seem "too hard," or anyone else who is read to be "bad for business." Along with the barriers to employment, most jobs that are open to folks who have been homeless or incarcerated are minimum-wage and thus provide little more than continuing poverty and fleeting stability. Back to where they began—on the streets, hustling to make it, now older—they are often given even longer sentences. While this cycle of poverty and incarceration speaks to more current experiences, the discursive drives building their motors are

nothing new. Inheriting a long history of being made suspect, trans/queer people, via the medicalization of trans identities and homosexuality, have been and continue to be institutionalized, forcibly medicated, sterilized, operated on, shocked, and made into objects of study and experimentation. Similarly, the historical illegality of gender trespassing and of queerness have taught many trans/queer folks that their lives will be intimately bound with the legal system. More recently, the HIV/AIDS pandemic has turned the surveillance technologies inward. One's blood and RNA replication became another site of susceptibility that continues to imprison people through charges of bio-terrorism, under AIDS-phobic laws. Living through these forms of domination are also moments of devastating resistance where people working together are building joy, tearing down the walls of normative culture, and opening space for a more beautiful, more lively, safer place for all. Captive Genders remembers these radical histories and movements as evidence that our legacies are fiercely imaginative and that our collective abilities can, and have, offered freedom even in the most destitute of times.11 In the face of the overwhelming violence of the PIC, abolition—and specifically a trans/queer abolition—is one example of this vital defiance. An abolitionist politic does not believe that the prison system is "broken" and in need of reform; indeed, it is, according to its own logic, working quite well. Abolition necessarily moves us away from attempting to "fix" the PIC and helps us imagine an entirely different world—one that is not built upon the historical and contemporary legacies of the racial and gendered brutality that maintain the power of the PIC. What this means is that abolition is not a response to the belief that the PIC is so horrible that reform would not be enough. Although we do believe that the PIC is horrible and that reform is not enough, abolition radically restages our conversations and our ways of living and understanding as to undo our reliance on the PIC and its cultural logics. For us, abolition is not simply a reaction to the PIC but a political commitment that makes the PIC impossible. To this end, the time of abolition is both yet to come and already here. In other words, while we hold on to abolition as a politics for doing anti-PIC work, we also acknowledge there are countless ways that abolition has been and continues to be here now. As a project dedicated to radical deconstruction, abolition must also include at its center a reworking of gender and sexuality that displaces both heterosexuality and gender normativity as measures of worth.12

The law has been historically used to criminalize queer, Trans*, and gender non-conforming bodies. Reforms are unable to solve for the underlying hetero and cis normative roots of the prison industrial complex and merely result in the continuation of an unethical system

Lamble 11 (Lamble, S. [S. Lamble has been involved in social justice, antipoverty and prisoner solidarity work in Ontario, Canada and London, England. Lamble currently teaches at Birkbeck Law School, University of London and is a founding member of the Bent Bars Project, a collective which coordinates a letter writing program for queer, Trans and gender-non-conforming prisoners in Britain.]. 2011 "Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis and Action" in "Captive Genders: Trans Embodiment and the Prison Industrial Complex" Pg. 235 (Eds. Smith & Stanley) 2011 AK press. Accessed: 7/17/2015. http://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf)//ALepow

1. Queer, trans, and gender-non-conforming people have been historically subject to oppressive laws, gender policing, and criminal punishment—a legacy that continues today despite ongoing legal reforms. Law enforcement officials (including police, courts, immigration officers, prison guards, and other state agents) have a long history of targeting, punishing, and criminalizing sexual dissidents and gender-non-conforming people.12 While many overtly homophobic and transphobic laws have been recently overturned in Canada, the United States, and Britain, the criminalization

and punishment of queer and trans people extends well beyond formal legislation.13 State officials enable or participate in violence against queer, trans, and gender-non-conforming communities by (a) ignoring everyday violence against queer and trans people; (b) selectively enforcing laws and policies in transphobic and homophobic ways; (c) using discretion to over-police and enact harsher penalties against queer and trans people; and (d) engaging in acts of violence, harassment, sexual assault, and discrimination against queer and trans people.14 While some police departments are increasingly putting on a "gay-positive" public face, the problem of state violence against queer and trans people nonetheless persists and has been well documented by numerous police- and prison-monitoring groups.15 This ongoing legacy of violence should make queer and trans people both cautious of the state's power to criminalize our lives and wary of the state's claim to protect us from harm. Although some people believe that we can train transphobia out of law enforcement agents or eliminate homophobic discrimination by hiring more LGBT prison guards, police, and immigration officials, such perspectives wrongly assume that discrimination is a "flaw" in the system, rather than intrinsic to the system itself. Efforts to make prison and police institutions more "gay-friendly" perpetuate the myth that such systems are in place to protect us. But as the uneven history of criminalization trends in Canada, the United States, and Britain so clearly demonstrate (that is, the way that the system targets some people and not others), the prison industrial complex is less about protecting the public from violence and more about controlling, labeling, disciplining, Captive Genders 240 and in some cases killing particular groups of people—especially those who potentially disrupt the social, economic, and political status quo.16 While the state might stop harassing, assaulting, and criminalizing some people within queer and trans communities (namely those upwardly mobile, racially privileged, and property-owning folks), the criminal system will continue to target those within our communities who are deemed economically unproductive, politically threatening, or socially undesirable. As people who have historically been (and continue to be) targeted by this unjust system, queer, trans, and gender-non-conforming communities must move away from efforts to make the prison industrial complex more "LGBT-friendly" and instead fight the underlying logic of the system itself.

Attempts to reform prisons will always fail because prisons require and foster violence as part of their punitive function—prisons are sites of physical, social, and civil death, and a continuation of the system is a continuation of these issues

Lamble 11 (Lamble, S. [S. Lamble has been involved in social justice, antipoverty and prisoner solidarity work in Ontario, Canada and London, England. Lamble currently teaches at Birkbeck Law School, University of London and is a founding member of the Bent Bars Project, a collective which coordinates a letter writing program for queer, Trans and gender-non-conforming prisoners in Britain.]. 2011 "Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis and Action" in "Captive Genders: Trans Embodiment and the Prison Industrial Complex" Pg. 235 (Eds. Smith & Stanley) 2011 AK press. Accessed: 7/17/2015. http://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf)//ALepow

4. Prisons are harmful, violent, and damaging places, especially for queer, trans, and gender-non-conforming folks. Prisons are violent institutions. People in prison and detention experience brutal human rights abuses, including physical assault, psychological abuse, rape, harassment, and medical neglect. Aside from these violations, the act of putting people in cages is a form of violence in itself. Such violence leads to extremely high rates of self-harm and suicide, both in prison and following release.35 These problems are neither exceptional nor occasional; violence is endemic to prisons. It is important to bear in mind that prison violence stems largely from the institutional structure of incarceration rather than from something supposedly inherent to prisoners themselves. Against the popular myth that prisons are filled with violent and dangerous people, the vast majority of people are held in prison for non-violent crimes, especially drug offenses and crimes of poverty.36 For the small number of people who pose a genuine risk to themselves or others, prisons often make those risks worse. In other words, prisons are dangerous not because of who is locked inside, but instead prisons both require and foster violence as part of their punitive function. For this reason, reform efforts may reduce, but cannot ultimately eliminate, prison violence. The high number of deaths in state custody speaks to the devastating consequences of imprisonment. Between 1995 and 2007, the British prison-monitoring group Inquest documented more than 2,500 deaths in police and prison custody.37 Homicide and suicide rates in Canadian prisons are nearly eight times the rate found in non-institutional settings.38 In the United States between 2001 and 2006, there were 18,550 adult deaths in state prisons,39 and between 2003 and 2005, there were an additional 2,002 arrest-related deaths.40 It is extremely rare for state officials to be held accountable for these deaths. For example, among the deaths that Inquest has documented in Britain, not one police or prison officer to date has been held criminally responsible.41 Deaths in custody are symptomatic of the daily violence and harm that prisoners endure. Queer, trans, and gender-non-conforming people are subject to these harms in specific ways: • High risk of assault and abuse: Queer, trans, and gender-non-conforming people are subject to widespread sexual assault, abuse, and other gross human rights violations, not only from other prisoners, but from prison staff as well.42 Captive Genders 244 • Denial of healthcare: Many prisoners must fight to even see a doctor, let alone get adequate medical care. Trans people in particular are regularly denied basic medical needs, especially surgery and hormones. Many prisons have no guidelines for the care of trans and gender-variant persons, and even where guidelines exist, they are insufficient or not followed.43 Inadequate policy and practice on HIV/AIDS and Hep C prevention is another major health problem in prison, where transmission rates are exceptionally high.44 These risks increase dramatically for trans people, who already experience high rates of HIV/AIDS.45 This combination of high transmission risks, poor healthcare provision, inadequate sexual health policies, and long-term health effects of imprisonment (including shorter life expectancies), mean that prison is a serious health hazard for queer and trans people. • Subject to solitary confinement and strip-searching: Trans and gender-non-conforming prisoners are regularly placed in solitary confinement as a “solution” to the problem of sex-segregated prisons. Even when used for safety purposes, “protective custody” constitutes a form of punishment, as it usually means reduced access to recreational and educational programs, and increased psychological stress as a result of isolation. Trans and gendernon-conforming people are also frequently subject to humiliating, degrading, abusive, and overtly transphobic

strip-searches.46 • High risk of self-harm and suicide: Queer and trans people, especially youth, have higher rates of suicide attempts and self-harm. Such risks increase in prison and are heightened in segregation, particularly when prisoners are isolated from queer and trans supports.47 These risks are not limited to incarceration but continue after release. A study in Britain for example, found that men who leave prison were eight times more likely to commit suicide than the general population, and women released from prison were thirty-six times more likely to commit suicide.48 The prison system is literally killing, damaging, and harming people from our communities. Whether we consider physical death caused by self-harm, medical neglect, and state violence; social death caused by subsequent unemployment, homelessness, and stigmatization; or civil death experienced through political disenfranchisement and exclusion from citizenship rights, the violence of imprisonment is undeniable

Gender and sexual norms are at the very heart of the prison industrial complex—a reform of the system can never solve the institutional necessity of prisons to reinforce, perpetuate, and entrench these norms

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3. Prisons reinforce oppressive gender and sexual norms. Prisons reinforce gender and sexual norms in three key ways: First, sex-segregated prisons restrict people's right to determine and express their Captive Genders 242 own gender identity and sexuality. Because most prisons divide people according to their perceived genitals rather than their self-expressed gender identity, prisoners who don't identify as "male" or "female" or who are gender-non-conforming are often sent to segregation or forced to share a cell with prisoners of a different gender, often with little regard for their safety. In Britain, even trans people who have obtained a Gender Recognition Certificate (a state document that legally recognizes a person's self-defined gender) have been held in prisons with people of a different gender.27 By segregating institutions along sex/gender lines, prisons work to make invisible, isolate, and stigmatize those bodies and gender identity expressions that defy imposed gender binaries.28 Second, gender segregation in prisons plays a key role in "correctional" efforts to modify prisoner behavior in accordance with gender norms. Historically, women's prisons were designed to transform "fallen" women into better wives, mothers, homemakers, and domestic servants, whereas men's prisons were designed to transform males into disciplined individuals, productive workers, and masculine citizens.29 These gendered goals persist today, particularly in the division of prison labor. For example, when a new mixed-gender prison was built in Peterborough, England in 2005, all parts of the institution were duplicated to provide separate male and female areas, except for the single kitchen, where women were expected to do all the cooking.30 The current trend toward so-called "gender responsive" prisons is likewise framed as a measure to address the specific needs of female prisoners, but usually works to discipline, enforce, and regulate gender norms.31 Moreover, gender-

responsive prison reforms are increasingly used to justify building new prisons (without closing existing ones), thereby furthering prison expansion.32 Third, sexual violence plays a key role in maintaining order and control within prisons, a tactic that relies on oppressive sexual and gender norms.33 Sexual violence in prison, including harassment, rape, and assault, is shockingly widespread and often institutionally condoned. According to Stop Prisoner Rape, 1 in 5 males and 1 in 4 females face sexual assault in US prisons.34 To call attention to the enforcement of gender/ sexual norms in prison is not to suggest that prison culture is uniform across or within institutions, or that prisoners are more sexist, homophobic, or transphobic than non-prisoners. Rather, prisons as institutions tend to reinforce, perpetuate, and entrench gender/sex hierarchies and create environments in which sexual violence flourishes.

2NC Alt Extensions

Queerness can never exist within civil society—it is always forced to assimilate into normativity

Mary Nardini Gang 09 (Mary Nardini Gang [The Mary Nardini Gang are criminal queers from Milwaukee, Wisconsin.]. "Toward the Queerest Insurrection." Queer Jihad, 2009. http://zinelibrary.info/files/QueerestImposed.pdf)//ALepow

In the discourse of queer, we are talking about a space of struggle against this totality - against normalcy. By "queer", we mean "social war". And when we speak of queer as a **conflict with all domination**, we mean it. See, we've always been the other, the alien, the criminal. The story of queers in this civilization has always been the narrative of the sexual deviant, the constitutional psychopathic inferior, the traitor, the freak, the moral imbecile. We've been excluded at the border, from labor, from familial ties. We've been forced into concentration camps, into sex slavery, into prisons. The normal, the straight, the american family has always **constructed itself in opposition to the queer**. Straight is not queer. White is not of color. Healthy does not have HIV. Man is not woman. The discourses of heterosexuality, whiteness and capitalism reproduce themselves into a model of power. **For the rest of us, there is death**. In his work, Jean Genet1 asserts that the life of a queer, is one of **exile** - that all of **the totality of this world is constructed to marginalize and exploit us.** He posits the queer as the criminal. He glorifies homosexuality2 and criminality as the most beautiful and lovely forms of conflict with the bourgeois world. He writes of the secret worlds of rebellion and joy inhabited by criminals and queers. Quoth Genet, "Excluded by my birth and tastes from the social order, I was not aware of its diversity. Nothing in the world was irrelevant: the stars on a general's sleeve, Now they don't critique marriage, military or the state. Rather we have campaigns for queer assimilation into each. Their politics is advocacy for such grievous institutions, rather than the annihilation of them all. "Gays can kill poor people around the world as well as straight people!" "Gays can hold the reigns of the state and capital as well straight people!" "We are just like you". Assimilationists want nothing less than to construct the homosexual as normal - white, monogamous, wealthy, 2.5 children, SUVs with a white picket fence. This construction, of course, reproduces the stability of heterosexuality,

whiteness, patriarchy, the gender binary, and capitalism itself. If we genuinely want to make ruins of this totality, we need to make a break. **We don't need inclusion** into marriage, the military and the state. **We need to end them**. No more gay politicians, CEOs and cops. We need to swiftly and immediately articulate a wide gulf between the politics of assimilation and the struggle for liberation. simultaneously struggled against capitalism, racism and patriarchy and empire. **This is our history.**

Overkill is more than death—it is an attempt to rid the world of all queerness

Stanley 11 (Stanley, Eric [Eric Stanley is the President's Postdoctoral Fellow in the departments of Communication and Critical Gender Studies at the University of California.]. 2011. "Near Life, Queer Death: Overkill and Ontological Capture," Social Text 29.2 107)//ALepow

"He was my son—my daughter. It didn't matter which. He was a sweet kid," Lauryn Paige's mother, trying to reconcile at once her child's murder and her child's gender, stated outside an Austin, Texas, courthouse. 24 Lauryn was an eighteen-year-old transwoman who was brutally stabbed to death. According to Dixie, Lauryn's best friend, it was a "regular night." The two women had spent the beginning of the evening "working it" as sex workers. After Dixie and Lauryn had made about $200 each they decided to call it quits and return to Dixie's house, where both lived. On the walk home, Gamaliel Mireles Coria and Frank Santos picked them up in their white conversion van. "Before we got into the van the very first thing I told them was that we were transsexuals," said Dixie in 9 an interview. 25 After a night of driving around, partying in the van, Dixie got dropped off at her house. She pleaded for Lauryn to come in with her, but Lauryn said, "Girl, let me finish him," so the van took off with Lauryn still inside. 26 Santos was then dropped off, leaving Lauryn and Coria alone in the van. According to the autopsy report, Travis County medical examiner Dr. Roberto Bayardo cataloged at least fourteen blows to Lauryn's head and more than sixty knife wounds to her body. The knife wounds were so deep that they almost decapitated her—a clear sign of overkill. Overkill is a term used to indicate such excessive violence that it pushes a body beyond death. Overkill is often determined by the postmortem removal of body parts, as with the partial decapitation in the case of Lauryn Paige and the dissection of Rashawn Brazell. The temporality of violence, the biological time when the heart stops pushing and pulling blood, yet the killing is not finished, suggests the aim is not simply the end of a specific life, but the ending of all queer life. This is the time of queer death, when the utility of violence gives way to the pleasure in the other's mortality. If queers, along with others, approximate nothing, then the task of ending, of killing, that which is nothing must go beyond normative times of life and death. In other words, if Lauryn was dead after the first few stab wounds to the throat, then what do the remaining fifty wounds signify? The legal theory that is offered to nullify the practice of overkill often functions under the name of the trans- or gay-panic defense. Both of these defense strategies argue that the murderer became so enraged after the "discovery" of either genitalia or someone's sexuality they were forced to protect themselves from the threat of queerness. Estanislao Martinez of Fresno, California, used the trans-panic defense and received a four-year prison sentence after admittedly stabbing J. Robles, a Latina transwoman, at least twenty times with a pair of scissors. Importantly, this defense is often used, as in the cases of Robles and Paige, after the murderer has engaged in some kind of sex with the victim. The logic of the trans-panic defense as an explanation for overkill, in its gory semiotics, offers us a way of understanding queers as the nothing of Mbembe's query. Overkill names the technologies necessary to do away with that which is already gone. Queers then are the specters of life whose threat is so unimaginable that one is "forced," not simply to murder, but to push them backward out of time, out of History, and into that which comes before. 27 In thinking the overkill of Paige and Brazell, I return

to Mbembe's query, "But what does it mean to do violence to what is nothing?"28 This question in its elegant brutality repeats with each case I offer. By resituating this question in the positive, the "something" that is more often than not translated as the human is made to appear. Of interest here, the category of the human assumes generality, yet can only be activated through the 10 specificity of historical and politically located intersection. To this end, the human, the "something" of this query, within the context of the liberal democracy, names rights-bearing subjects, or those who can stand as subjects before the law. The human, then, makes the nothing not only possible but necessary. Following this logic, the work of death, of the death that is already nothing, not quite human, binds the categorical (mis)recognition of humanity. The human, then, resides in the space of life and under the domain of rights, whereas the queer inhabits the place of compromised personhood and the zone of death. As perpetual and axiomatic threat to the human, the queer is the negated double of the subject of liberal democracy. Understanding the nothing as the unavoidable shadow of the human serves to counter the arguments that suggest overkill and antiqueer violence at large are a pathological break and that the severe nature of these killings signals something extreme. In contrast, overkill is precisely not outside of, but is that which constitutes liberal democracy as such. Overkill then is the proper expression to the riddle of the queer nothingness. Put another way, the spectacular material-semiotics of overkill should not be read as (only) individual pathology; these vicious acts must indict the very social worlds of which they are ambassadors. Overkill is what it means, what it must mean, to do violence to what is nothing.

TO be queer means to live in opposition to civil society and to live an everyday death-in-waiting

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"Dirty faggot!" Or simply, "Look, a Gay!" These words launch a bottle from a passing car window, the target my awaiting body. In other moments they articulate the sterilizing glares and violent fantasies that desire, and threaten to enact, my corporal undoing. Besieged, I feel in the fleshiness of the everyday like a kind of near life or a death-in-waiting. Catastrophically, this imminent threat constitutes for the queer that which is the sign of vitality itself. What then becomes of the possibility of queer life, if queerness is produced always and only through the negativity of forced death and at the threshold of obliteration? Or as Achille Mbembe has provocatively asked, in the making of a kind of corporality that is constituted in the social as empty of meaning beyond the anonymity of bone, "But what does it mean to do violence to what is nothing?"1 In another time and place, " 'Dirty nigger!' Or simply, 'Look, a Negro!' " ("Sale nègre! ou simplement: Tiens, un nègre!") opened Frantz Fanon's chapter 5 of Black Skin, White Masks, "The Lived Experience of the Black" ("L'expérience vécue du Noir"), infamously mistranslated as "The Fact of Blackness."2 I start with "Dirty faggot!" against a logic of Near Life, Queer Death Overkill and Ontological Capture Eric Stanley 2 flattened substitution and toward a political commitment to non-mimetic friction. After all, the racialized phenomenology of blackness under colonization that Fanon illustrates may be productive to read against and with a continuum of antiqueer violence in the United States. The scopic and the work of the visual must figure with such a

reading of race, gender, and sexuality. It is argued, and rightfully so, that the instability of queerness obscures it from the epidermalization that anchors (most) bodies of color in the fields of the visual. When thinking about the difference between anti-Semitism and racism, which for Fanon was a question of the visuality of oppression, he similarly suggests, "the Jew can be unknown in his Jewishness."3 Here it may be useful to reread Fanon through an understanding of passing and the visual that reminds us that Jews can sometimes not be unknown in their Jewishness. Similarly I ask why antiqueer violence, more often than not, is correctly levied against queers. In other words, the productive discourse that wishes to suggest that queer bodies are no different might miss moments of signification where queer bodies do in fact signify differently. This is not to suggest that there is an always locatable, transhistorical queer body, but the fiercely flexible semiotics of queerness might help us build a way of knowing antiqueer violence that can provisionally withstand the weight of generality. 4 Indeed, not all who might identify under the name queer experience the same relationship to violence. For sure, the overwhelming numbers of trans/queer people who are murdered in the United States are of color. 5 Similarly, trans/gender nonconforming people, people living with HIV/ AIDS and/or other ability issues, undocumented and imprisoned trans/ queer people, sex workers, and working-class queers, among others, experience a disproportionate amount of structural violence. In turn, this structural violence more often than not predisposes them to a greater amount of interpersonal violence. Yet many lesbian, gay, bisexual, and transgender (LGBT) folks in the United States who have access to normative power may in their daily lives know very little about either structural or personal violence. The long history and magnified present of gay assimilation illustrates these varying degrees of possibility and power available to some at the expense of others. In contrast, I am marking queer as the horizon where identity crumbles and vitality is worked otherwise. To this end, queer might be a productive placeholder to name a nonidentity where force is made to live. This is not to suggest that the negativity of queer and methodologies of violence define the end of queer worlding or that the parameters of opposition are sedimented as such. 6 On the contrary, the very fact that queers do endure is evidence, as Fred Moten has beautifully argued about the history of blackness in relation to slavery, that "objects can and do resist."7 I start here, in reference to Fanon's text, because he continues to offer us among the most compelling analyses of structural abjection, (non)rec- 3 ognition, and psychic/corporal violence. "Look, a Negro!" violently freezes Fanon in a timeless place as a black object, overdetermined from without, as a signifier with no meaning of its own making. In a similar way, the "dirty faggot" of my opening places queerness in the anonymity of history and shocks it into the embodied practice of feeling queer in a particular place, body, and time. This meditation will attempt to understand how the queer approximates the cutting violence that marks the edges of subjectivity itself. Race and gender figure the contours of my thinking on the work of violence in the gathering up of queer remains. Here the force of violence that interests me is not introduced after the formation of something that might be called queer. I am using the term queer to precisely index the collision of difference and violence. In other words, queer is being summoned to labor as the moment when bodies, non-normative sexuality/genders, and force materialize the im/possibility of subjectivity. Against an identity that assumes a prior unity, queer disrupts this coherence and also might function as a collective of negativity, void of a subject but named as object, retroactively visible through the hope of a radical politics to come.

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The queer, here Rashawn Brazell, Lauryn Paige, or Scotty Joe Weaver, is forced to embody to the point of obliteration the movement between abject nothingness at one end—a generality that enables queers to be 12 killed so easily and frequently—and at the other end, the approximation of a terrorizing threat as a symbol of shattering difference, monstrosity, and irreconcilable contradiction. This fetishistic structure allows one to believe that queers are an inescapable threat and at the same time know that they are nothing. According to Lum Weaver, Scotty Joe's older brother, Gaines had always had "issues" with Scotty Joe's homosexuality. As in the majority of interpersonal antiqueer violence, the attackers knew, and in this case even lived with, their target. The murder of Weaver must be read as a form of intimate violence not only because of the relationship the murderers had to Weaver, but also, and maybe more important, because of the technologies of vivisection that were deployed. As Kelsay, Gaines, and Porter had, according to testimony, at least a week to plan the murder, it seems logical that, during that time in rural Alabama, they could have produced a gun that would have made the murder much less gruesome. However, the three decided to cut and rip Weaver to pieces using raw force. The psychic distance that may be produced through the scope of a hunting rifle, and the possible dissociation it might provide, is the opposite of blood squirting from your former roommate's chest and the bodily strength it takes to lunge a knife into the flesh and bone of a human body. The penetrative violence, the moments when Gaines was thrusting his knife into Weaver's body, stages a kind of terrorizing sexualized intimacy. If Weaver was at once so easy to kill, and at the same time so monstrous that he had to be killed, this intimate overkill might also help us to understand why antiqueer violence tends to take this form. Weaver was, after all, the roommate and "best friend" of one of his killers. However, at the same time, robbing him would not be enough, killing him would not be enough, the horror of Weaver's queerness forced his killers to mutilate, decapitate, and burn his body. This tender hostility of ravaging love and tactile brutality may be an opening for the task of facing the question scribed on the bathroom wall, "What if it feels good to kill or mutilate homos?" The disavowal of the queer threat through a murderous pleasure signals a much more complicated structure of desire and destruction. This complex structure of phobia and fetishism, not unlike the pleasure and pain Kelsay might have experienced as she helped slaughter her "best friend," asks us to consider antiqueer violence outside the explanatory apparatus that situates all antiqueer violence on the side of pure hate, intolerance, or prejudice. Affective Remains Weaver's body, bound in gasoline-soaked fibers, partially decapitated, charred, and pummeled beyond death, as remainder of a queer life, rep- resents what kind of sociality is (not)lived before such a death. There has been in the recent past an important and understandable drive in critical and artistic production to articulate the various forms of vitality that congeal below the surface or outside the orbit of the fully realized promise of personhood. This desire is at least in part a wish for a way of understanding what Audre Lorde has called, in her exacting ability to place us at the scene, "the deaths we are forced to live."31 Among the most productive and fraught expressions of this compromised vitality is Giorgio Agamben's offering of "bare life." For Agamben, bare life signals a kind of stripped-down sociality, skillfully articulated via his reading of the Nuremburg Laws enabled through a legal state of exception. The state of exception that placed absolute power in the hands of Hitler, as the necessary temporal precondition for

bare life, seems for some not an exception at all. The liberation of the camps that brought with it the dismantling of or at least radical change in Germany's juridical system, including the Nuremburg Laws (but surely did not end anti-Semitism), left untouched the "Nazi version" of Paragraph 175, the clause criminalizing homosexuality. To this end, as hundreds of thousands of those who survived the camps were swept to freedom, "homosexual" survivors were forced to serve their remaining sentences in prison. Death through freedom, as it were, requires a different formulation, or at least a different way to think about proximity and vitality. 32 If for Agamben bare life expresses a kind of stripped-down sociality or a liminal space at the cusp of death, then near life names the figuration and feeling of nonexistence, as Fanon suggests, which comes before the question of life might be posed. Near life is a kind of ontocorporal (non) sociality that necessarily throws into crisis the category of life by orientation and iteration. This might better comprehend not only the incomprehensible murders of Brazell, Paige, and Weaver, but also the terror of the dark cell inhabited by the queer survivor of the Holocaust who perished under "liberation."33 Struggling with the phenomenology of black life under colonization, Fanon opens up critical ground for understanding a kind of near life that is made through violence to exist as nonexistence. For Fanon, violence is bound to the question of recognition (which is also the im/possibility of subjectivity) that apprehends the relationship between relentless structural violence and instances of personal attacks evidenced by the traumatic afterlives left in their wake. For Fanon, the Hegelian master/slave dialectic, as theoretical instrument for thinking about recognition, must be reconsidered through the experience of blackness in the French colonies. For Fanon, Hegel positions the terms of the dialectic (master/slave) outside history and thus does not account for the work of the psyche and the historicity of domination like racialized colonization and the epidermal- ization of that power. In other words, for Fanon, when the encounter is staged and the drama of negation unfolds, Hegel assumes a pure battle. Moreover, by understanding the dialectic singularly through the question of self-consciousness, Hegel, for Fanon, misrecognizes the battle as always and only for recognition. Informed by Alexandre Kojève and Jean-Paul Sartre, Fanon makes visible the absent figure of Enlightenment assumed by the Hegelian dialectic. For Fanon, colonization is not a system of recognition but a state of raw force and total war. The dialect cannot in the instance of colonization swing forward and offer the self-consciousness of its promise. According to Fanon, "For Hegel there is reciprocity; here the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work."34 Hegel's dialectic that, through labor, offers the possibility of self-consciousness, for the colonized is frozen in a state of domination and nonreciprocity. 35 What is at stake for Fanon, which is also why this articulation is helpful for thinking near life, is not only the bodily terror of force; ontological sovereignty also falls into peril under foundational violence. This state of total war, not unlike the attacks that left Brazell, Paige, and Weaver dead, is at once from without—the everyday cultural, legal, economic practices— and at the same time from within, by a consciousness that itself has been occupied by domination. For Fanon, the white imago holds captive the ontology of the colonized. The self/Other apparatus is dismantled, thus leaving the colonized as an "object in the midst of other objects," embodied as a "feeling of nonexistence."36 While thinking alongside Fanon on the question of racialized difference, violence, and ontology, how might we comprehend a phenomenology of antiqueer violence expressed as "nonexistence"? It is not that we can take the specific structuring of blackness in the French colonies and assume it would function the same today, under U.S. regimes of antiqueer violence. However, if both desire and antiqueer violence are embrocated by the histories of colonization, then such a reading might help to make more capacious our understanding of antiqueer

violence today as well as afford a rereading of sexuality in Fanon's texts. Indeed, Fanon's intervention offers a space of nonexistence, neither master nor slave, written through the vicious work of epistemic force imprisoned in the cold cell of ontological capture. This space of nonexistence, or near life, forged in the territory of inescapable violence, allows us to understand the murders of queers against the logics of aberration. This structure of antiqueer violence as irreducible antagonism crystallizes the ontocorporal, discursive, and material inscriptions that render specific bodies in specific times as the place of the nothing. The figuration 15 of near life should be understood not as the antihuman but as that which emerges in the place of the question of humanity. In other words, this is not simply an oppositional category equally embodied by anyone or anything. This line of limitless inhabitation, phantasmatically understood outside the intersections of power, often articulated as "equality," leads us back toward rights discourse that seeks to further extend (momentarily) the badge of personhood. The nothing, or those made to live the death of a near life, is a break whose structure is produced by, and not remedied through, legal intervention or state mobilizations. For those who are overkilled yet not quite alive, what form might redress take, if any at all?

Prison Abolition K

1NC

The prison is not safe. The system has constructed the criminal - ideological and physical cages have entrapped bodies into an economy based on punishment - prisons are a form of nonaccountability and gender role enforcement. Status quo politics which justify the necessity of the prison keep the ablest, anti-black, and anti-queer politics the prison system is founded upon intact.

Rasheed and Stanley 14 (Kameelah Janan, Brooklyn-based conceptual artist working primarily with photography, installation, and texts. She is Arts Editor for Spook Magazine and Eric Stanley, Ph.D. in History of Consciousness, UC Santa Cruz, UC President's Postdoctoral Fellow at UCSD, "The Carceral State," http://thenewinquiry.com/features/the-carceral-state/#more-58702)

California gets called "progressive" despite operating one of the world's largest prison systems. "Abolition is not simply a reaction to the [prison-industrial complex] but a **political commitment** that makes the PIC impossible" writes Eric A. Stanley in the introduction to Captive Genders: Trans Embodiment and the Prison Industrial Complex. Nourishing these possibilities to create a future in which incarceration and policing are not normalized features of our society has been at the core of Stanley's academic writing and activist work. A president postdoctoral fellow in the departments of communication and critical gender studies at the University of California, San Diego, Stanley works at the intersections of radical trans/queer politics and prison abolition. Stanley has directed the films Homotopia (2006) and Criminal Queers (2013) along with Chris Vargas. Stanley talks to the New Inquiry about California's incarceration culture and those who resist it, how language shapes our imagining of a post-incarceration world and the importance of queering our conversations around the prison--industrial complex. What is unique about the Californian narrative of incarceration and policing? How has the history of California been shaped by the prison-industrial complex? California is in many ways emblematic of our current moment of U.S. empire. Our stage of late liberalism allows California to proclaim itself both the most "progressive" state while simultaneously producing among the most brutal carceral practices. We can look to California and the California Department of Corrections and Rehabilitation (CDCR) as a cautionary tale of how even well-meaning prison reform almost always produces more violence, rather than stopping it. To understand how "progressive California" became the way we talk about the operators of one of the largest prison systems in the world, we could look to the recent Proposition 47, the "Safe Neighborhoods and Schools Act," for an example. It is championed by many state prison-reform groups because it claims it will help pull some people out of prisons and jails through resentencing of what the legislation calls "nonserious nonviolent" inmates. And it might! At first glance, this seems like something that all of us fighting against the prison-industrial complex (PIC) could support. We know that decarceration is one strategy in the long vision that is abolition. However, written into the proposition is a provision that would mandate all the "savings" from releasing people be placed into a fund that would increase police presence in schools and mandate harsher truancy discipline. What looks like a victory in our struggle would actually build up rather than dismantle the PIC. As a response to the infamous overcrowding of California's prisons, this is something we know would reimprison 10,000 people, even if 10,000 people are released. Overcrowding is not a malfunction of the prison-industrial complex, it's how it's designed. For a more exacting account of California's carceral topography, I would defer to Ruthie Gilmore's amazing book,Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California. There, Ruthie helps us understand how labor and land are central to California's prison growth but often overlooked. While it seems obvious that capitalism is a big part of the story of imprisonment, Golden Gulag helps push against the understanding that it is only important at the level of a defendant's ability to fight charges. Identifying a structuring logic of the prison-industrial complex, Ruthie suggests her book is about "class war," and it is. I am interested in "exacting accounts." I think about the prison-industrial complex especially in considering who collects and distributes information about it, and the specificity required in describing what it is. How does this enumeration, calculation, and collecting further serve the prison-industrial complex? As example we might look at the National Crime Victim Survey, a database funneled through the Bureau of Justice, is currently the only space where national "biased" violence is aggregated. While having some important information, the database is little more than a misrecognition of the forms of structural abandonment and direct attack many people face everyday. Some have argued that if the reporting or vectors could be corrected we would have a more accurate representation of who is targeted for these kinds of harm. But I want us to undo the argument that more information or research necessarily produces more liberation. We have elaborate data on incarceration rates for black people in the U.S., and we know that this research has done nothing to curtail the reality that the prison-industrial complex functions as antiblackness. Even if statistics show how the prison-industrial complex is constitutively anti-trans and anti-black, they don't halt it. I think you're right. We've always known this information, but that information

by itself is not liberatory. Beyond the information we have about the functioning of the PIC, I am also interested in the information we have about movements challenging the PIC. I think it is easy to conflate the myriad of struggles against the PIC and this conflation can obscure the work of distinct activist organizations. I spent a little over a year with Critical Resistance, where I learned about the distinction between a prison-reform movement and a prison-abolition movement. For those who conceptualize prison reform in terms of more rehabilitation programs or the ending of mandatory minimums, how does your work for prison abolition differ from prison reform? What's the difference between asserting that the prison system is broken versus the assertion that is working as it is designed to function? While usually suspicious of the work of binary oppositions, I think the distinction between reform and abolition is vital. When they become confused, we end up with people arguing that Prop 47 is going to "solve the problem of mass incarceration." If we say that the prison system is working as designed, that is, as a set of antiblack, ableist, and gender-normative practices used to constrict, and at times liquidate, people and communities under the empty signifiers of "justice" and "safety," then we can more adequately assess what something like Prop 47 will actually do: Trade a few of the prison system's current hostages for an expansion into schools. We often arrive at the idea that the system is "broken" not because we have such a strong attachment to the state, but because we have a scarcity of language around the intensity of its violence. One of the ways its common sense remains entrenched is in our collective inability to articulate the enormity of our current conditions. Instead we—myself included—most often use language that is readily available, helping sabotage our own chances of living otherwise. In concrete terms, what does it mean to continue believing that the prison system is "broken"? If we believe that the prison system is broken, then we must also believe in its ability to be fixed. Here we can see how the PIC keeps functioning through the rehearsal of the "broken system" narrative. As Angela Davis and many others have argued, it is precisely through reform that the prison-industrial complex expands. We can see the materiality of this expansion through the mandatory increase in police in schools through Proposition 47. I was born and raised in California and I know this proposition would affect my old students and family members so let's talk about Prop 47. It is on the November 4 ballot. If it is approved by the state's voters, it would reduce the classification of most "nonserious and nonviolent property and drug crimes" from a felony to a misdemeanor. How do you respond to people who say this reform, however small, is better than nothing at all? In abolitionist work we sometimes talk about nonreformist reforms to think about the distance between people getting their immediate needs met, or their conditions made less unlivable, and the political worlds we want. Under our regime of racial capitalism, perhaps all we can inhabit is a set of shifting contradictions. Given this, one of the questions we try to continually ask is, "Will this reform be something we have to fight against in five years?" For me, this is how I determine if the compromise is too dangerous. In the case of California's Proposition 47, I'm not convinced it will actually lead to the release of people and will instead further involve schools as punitive practices. Focusing our efforts only on, and in the name of "nonviolent and nonserious" incarcerated people can also work to reaffirm the assumed serious and inescapable violence of those still inside. Are we willing to always allow the state to decide what constitutes the limits of "violence"? Under Proposition 47, someone who defrauds an entire community out of their homes may be considered "nonviolent," while someone who blocks their own home from being foreclosed could remain imprisoned as a violent offender. I want to talk more about the abolitionist vision and the construction of the "violent" and "nonviolent" offenders, as well as accountability. A tiring critique of prison abolition that can make even a self-identified radical sound like a mouthpiece for the right is that if we abolish the PIC, we will all be subject to greater risks of harm. In response to this assertion, it is important to note at least two related points. First, the most dangerous, violent people in our society are not in prison, but are running our military, government, prisons, and banks. Secondly, what we have now, even for people who have caused harm, is a form of nonaccountability where the survivors of a violation are often harmed again through the desires of a district attorney whose only interest is conviction rates. Anyone who has been deposed or been through a trial can attest to this. Abolition is not simply about letting everyone out of prison, as our critics like to suggest, although that would be an important component. It is forged in the work of daring to ask what **true accountability, justice, and safety might look** and feel like and what are the ways we might build our world now so violence in all its forms is decreased, rather than something that we only attend to post-infraction. I am interested in how we move toward abolition. Who are the people challenging the normalization of incarceration? Can you talk to us about local movements around prison abolition? And beyond California, what work is being done? I have to first give a shout-out to the Transgender, Gender Variant Intersex Justice Project based here in San Francisco. TGIJP is an organization by and for formerly incarcerated trans women of color, held down by Miss Major, Janetta Johnson, and others. I think what is unique about TGIJP is that unlike some antiprison organizations that tokenize currently or formerly incarcerated people, they center them in

every aspect of their work. TGIJP is also working hard on re-entry for trans women as abolitionist work. When people are released, especially those with felonies, the issues that found them in the prison industrial complex are dramatically compounded. With almost no resources, people get released into situations that are hyper-policed, and more often than not people get swept back up in the system. I would also point people toward Californians for a Responsible Budget (CURP), a statewide coalition of people and organizations fighting jail and prison expansion all over the state. As you know, there are also chapters of Critical Resistance in Los Angeles and Oakland that continue to push toward abolition in a culture where compromise is often the most we can expect. I'm also excited by all the work being done in less formal ways, by collectives of people like Black and Pink-San Diego, a prison letter-writing group, and Gay Shame, which I have organized with for the past 12 years. With Gay Shame, we keep trying to show the ways the prison industrial complex is ever-expanding and how LGBT people are at times complicit in its proliferation. As the banner at our last action read, we are pro-sex, anti-prison, queers for abolition. In Captive Genders, you write that this prison abolition work and trans/queer liberation must be grown together. How are these movements mutually dependent? In the past few decades, we have seen the mainstream LGBT movement fight hard to become part of the same systems of domination that have already destroyed so much. Most visibly, this fight toward inclusion resides in the legalization of gay marriage, military service, and the expansion of hate crimes legislation on both the state and federal level. When I was writing the introduction to Captive Genders, I wanted to help (with many others) redirect resources and organizing toward abolitionist work, and also remember the histories of trans and queer people, particularly low-income and/or of color, who have always fought against policing and incarceration. In other words, I wanted to mark both the unique moment of the organizing and analysis that Captive Genders gathers up, and also the ways we are in a genealogy of struggle that will continue beyond us. I have also been involved in various abolitionist projects over the past decade that did not necessarily foreground trans/queer politics. I think in similar ways I wanted to push trans/queer organizing to center abolition, I wanted to push antiprison organizing to include a trans/queer analysis that understood the specific ways trans/queer people of color have been and continue to be targets of the prison industrial complex. Both Nat [Smith] and I began the project knowing that we wanted it to be an explicitly abolitionist text. As it was the first book that centered the ways trans/queer people experience the PIC, we wanted to foreground a radical analysis. We also had a commitment to making space for currently and formerly incarcerated people while not wanting to rehearse the somewhat false division between theory and practice. In the introduction to Captive Genders, you write that "among the most volatile points of contact between state violence and one's body is the domain of gender." You've also written about how prisons are gendering institutions as well as queer spaces. How does this happen simultaneously? What are some examples of this resistance to gender normativity within prisons? Binary genders (male/female) are not something that pre-exist any institution (like prisons) but are produced and reproduced in their moment of interaction. In other words, the imagined stability of only two genders is part of **the work of prisons**. Not only are prisons gender segregated, but quotidian practice inside mandates the group fantasy of gender normativity. This is a bit of a different argument than suggesting that we only pay attention to the ways prisons treat trans/queer and gender nonconforming people, although we also need to do that. Yet even against the relentless force of punitive gender normativity, people still find ways to resist and embody, although perhaps protracted, gender self-determination in these spaces of suspended death. These usually take the form of what might look like small moments of resistance, but are the daily material that allow some people to survive the unsurvivable. For example, I have a friend who was inside a "women's prison" and she sewed boxer shorts out of sheets for her butch and trans masculine friends because they could not legally obtain them as they were not regulation in "women's prisons." People also find ways to do their hair, get or make cosmetics and other things that help them express whatever gender they are feeling. Resistance also comes in the ways people inside are in leadership positions of many "outside" organizations, like Sylvia Rivera Law Project and Justice Now and California Coalition for Women Prisoners (CCWP). We know the prison-industrial complex exists along a continuum, from the ways that people are policed and criminalized, to the point of trial and incarceration, to the moment of reentry. How does the prison industrial complex affect the lives of queer/trans folks living outside the physical site of the prison? When people first started using the term "prison industrial complex" it was an attempt to think about all the ways the prison as a force exists far beyond its walls. While we want to be vigilant in our attention to the condition of those inside, we always want to be aware of the various ways people are policed, criminalized and constricted that may seem **less obvious**. Through this expanded understanding of the PIC we must look at psychiatric imprisonment, public housing, shelters, Native boarding schools, drug treatment and diversion programs, juvenile facilities, ICE detention centers (and more) as all central to our work as abolitionists. In an essay called "Near Life, Queer Death," you

address the privatizing of violence. In thinking about the landscape of Californian incarceration, in ways does the "privatization [of] the enormity of antiqueer violence" collude with the privatization of the enormity of mass incarceration and policing in California? I would perhaps think about the different ways privatization is working in each of these scenes. Much antiprison organizing for the past 15 to 20 years has centered around critiquing the ways private prisons produce wealth through the business of captivity. I remember organizing in the 1990s at Cabrillo Community College in Santa Cruz where I was a student because our cafeteria contracted with Sodexho Marriott, which then had stakes in CCA, a private prison firm. That work was and continues to be necessary, but only as a way to open up conversations beyond the private-prisons argument. If we end there, it can seem as if we think prisons run by the state are "better" and that prisons are only troublesome if they produce surplus value. Again, this is where an abolitionist analysis becomes necessary to push us through the private prisons argument and toward a more general critique. In "Near Life, Queer Death," I was trying to think about how structural violence (like racist and anti-trans violence) is rewritten as individual acts against specific people. The legal system is one of the primary ways the systemic is transformed into the discrete or personal. This happens, in part, through the substitution of the idea that justice has been done with a conviction by the state. We might look at the recent attack against Sasha, an agender youth who was riding a bus in Alameda when their skirt was lit on fire by another 16-year-old. Sasha sustained second and third degree burns in yet another attack against a gender-nonconforming person. Seeking an easy conviction, the district attorney decided to charge the defendant as an adult and forced them to take a plea deal, which could now place them in prison for seven years. Sasha and their family asked the DA to not charge the person as an adult and also asked for restorative justice for the defendant and not prison time. Against the desires of the survivor, the DA refused and sought the conviction by way of a plea. The histories and futures of anti-trans violence become substituted with the "justice" of another conviction, while all those involved are left as collateral damage.

The prison industrial complex is a deathscape which renders the queer and black body as subjects of violent surveillance and control

Gossett 14 (Che, Lambda Literary Writer Retreat Fellow, black genderqueer and femme activist and writer, "We will not rest in peace AIDS activism, black radicalism, queer and/or trans resistance," *Queer Necropolitics*, Edited by Jim Haritaworn, Adi Kuntsman, and Silvia Posocco, Q Routledge, https://books.google.com/books?id=f0XIAgAAQBAJ&pg=PA1990&lpg=PA1990&dq=We+will+not+rest+in+peace+AIDS+activism,+black+radicalism,+queer+and/or+trans+resistance&source=bl&ots=SkTCNVY17c&sig=V5eGwagOhVKQcDMXM0GvE6O7olE&hl=en&sa=X&ved=0CCcQ6AEwAWoVChMIwtvF0f35xgIVQqA-Ch3VsAw3#v=onepage&q=the%20prison%20industrial%20complex%20is%20already&f=false)

16). The vast landscape of the prison industrial complex (PIC) can thus be described more generally as an example of what Mbembe calls a 'deathscape'—'new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead' (Mbeinbe 2003: 40). The prison industrial complex is an always already anti-black, violently antiqueer and anti-transgender enterprise that perpetuates what Saidiya Hartman names the afterlife of slavery' (Hartman 2008: 6). It institutionalizes forms of restricted life: following 're-entry', a formerly incarcerated person loses access to public housing, benefits and federal educational loans and faces chronic joblessness due to stigma. Incarceration has been historically employed as a means of maintaining an anti-black and white supremacist sociopolitical and racial capitalist order—from antebellum 'black codes' that criminalized vagrancy (Dru Stanley 125—126) post-'emancipation', to more recent attempts to extinguish the spirit and destroy the momentum of black liberationist movements in the United States (ranging from surveillance and sabotage of the Revolutionary

Action Movement, to COINTELPRO, to the current renewed targeting of Assata Shakur). Journalist Shane Bauer (2012) has documented how in California. the mere possession of black radical literature results in being criminalized as gang related and put in solitary housing units (SHU—a form of torture from which exit is uncertain. whose administration is often based on whether one informs on other incarcerated people (Bauer 2012: 1—4). Prisons thus continue the logic of COINTELPRO, which aimed to neutralize and eliminate black freedom movement(s). The prison industrial complex is at once a manifestation of a disciplinary and of a control society. The prison is one of the central and proliferating oppressive technologies through which bio- and necropolitical violence and the apparatuses of surveillance that reinforce it are naturalized. The insidious morphology of the carceral is such that even as it is dismantled via lobbying for decriminalization and decarceration. on the one hand, it proliferates via extended modes of surveillance and control—ankle bracelets, probation and parole—on the other. ('arceral violence is maintained in various penal registers and forms. In the post-9/1 1 age of the Patriot Act. which expanded surveillance and police militarization (implemented during the continuing war on drugs), we are witnessing the violence of what I propose to describe as penal securitocracy. The call for the abolition of the prison industrial complex requires the complete dismantling of spaces of confinement and detention—what Foucault termed the 'carceral continuum' (Foucault 1977: 297, 303)—ranging from the torturous sensory deprivation of solitary confinement that is the signature of the supermax prison, to the coercive containment that characterizes psychiatric institutionalization. The criminalization of HIV is one site in which anti-blackness, AIDS phobia. queer phobia and carceral violence converge. While recent research, particularly in public health, has begun to address the impact of mass incarceration on AIDS treatment and prevention. inside/outside AIDS activism and the struggle for HIV decriminalization in relation to queer and/or trans prison abolition politics have so far been neglected. As I will illustrate next, we have much to learn from this and I will turn to the insightful history of this struggle in the following section.

Reformism has made things worse. We must focus on a method of abolition that requires starving the prison industrial complex to death. Only then can we develop better alternatives to the system

Lamble 11 (S., Professor at the University of London, Birkbeck College of Law , "TRANSFORMING CARCERAL LOGICS: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis and Action," Captive Genders: Trans Embodiment and the Prison Industrial Complex, AK Press)

Prison abolition is not a call to suddenly fling open the prison doors without enacting alternatives. Nor is it an appeal to a utopian ideal. Abolition is a broad-based, practical vision for building models today that practice how we want to live in the future. Practicing alternatives requires different **starting points**, questions, and assumptions than those underlying the current system. The existing criminal justice model poses two main questions in the face of social harm: Who did it? How can we punish them? (And increasingly, how can we make money from it?). Creating safe and healthy communities requires a different set of questions: Who was harmed? How can we facilitate healing? How can we prevent such harm in the future?97 Developing alternatives with these latter goals in mind prioritizes the needs of people who have been harmed and emphasizes more holistic, prevention-oriented responses to violence. Such frameworks not only reduce the need for prisons, but also work to strengthen communities by reducing oppression and building community capacity more broadly. Abolitionist strategies differ from reformist tactics by working to reduce, rather than strengthen, the power of the prison industrial complex. 98 Prison reforms, however well-intentioned, have tended to extend the life and scope of prisons. So-called "gender-responsive" prisons are a prime example; reforms intended to address the needs of women have led to increased punishment and imprisonment of women, not less. By contrast, abolitionist strategies embrace tactics that undermine the prison system rather than feed it. There are many different approaches to abolition, some of which are outlined in the classic "Instead of

Prisons Handbook."99 To highlight a few: Starve the system. Abolition means starving the prison industrial complex to death—depriving it of financial resources, human resources, access to fear-mongering, and other sustaining rhetoric. 100 Enacting a moratorium on prison expansion is one key strategy; this means preventing governments and private companies from building any new prisons, jails, or immigration detention spaces; prohibiting increases in police and prison budgets; and boycotting companies that make a profit from imprisonment. Starving the prison system means fighting new laws that increase prison time or create new criminal offenses (for example, hate crimes laws and mandatory minimum sentences), and redirecting money and resources into community-based alternatives. • Stop using cages. Prisons are just one of the many cages that harm our communities. Racism, colonialism, capitalism, and ableism are other kinds of cages, which both sustain the prison system and give it force. Dismantling the prison industrial complex means working to eliminate all cages that foster violence and oppression. Taking this broad approach is especially important when developing alternatives, since some strategies (like electronic tagging or surveillance cameras) simply replace old cages with new ones. Getting people out of cages and preventing people from being put in those cages—even one person at a time—is a key abolitionist strategy. • Develop effective alternatives. Dismantling the prison industrial complex is impossible without developing alternative community protocols for addressing violence and harm. Creating abolitionist alternatives means encouraging non-punitive responses to harm, enacting community-based mechanisms of social accountability, and prioritizing prevention. Such alternatives include restorative/ transformative justice initiatives, community-based restitution projects, social and economic support networks, affordable housing, community education projects, youth-led recreational programs, free accessible healthcare services, empowerment-based mental health, addiction and harm reduction programs, quality employment opportunities, anti-poverty measures, and support for self-determination struggles.101 • Practice everyday abolition. Prison abolition is not simply an end goal but also an everyday practice. Being abolitionist is about changing the ways we interact with others on an ongoing basis and changing harmful patterns in our daily lives. Abolitionist practice mean questioning punitive impulses in our intimate relationships, rethinking the ways that we deal with personal conflicts, and reducing harms that occur in our homes, workplaces, neighborhoods, and schools. In this way, "living abolition" is part of the daily practice of creating a world without cages.

2NC Alt Extensions

The prison system is the culmination of the web of surveillance queer bodies are placed into at birth. The only way to break free from this web is to engage in a vital defiance to the prison industrial complex that is centered around displacing heteronormativity as a measure of worth

Stanley 11 (Edited by Eric A. Stanley and Nat Smith, Ph.D. in History of Consciousness, UC Santa Cruz, UC President's Postdoctoral Fellow at UCSD , Captive Genders: Trans Embodiment and the Prison Industrial Complex, AK Press)

Trans/gender-non-conforming and queer people, along with many others, are born into webs of surveillance. The gendering scan of other children at an early age ("Are you a boy or a girl?") places many in the panopticon long before they enter a prison. For those who do trespass the

gender binary or heteronormativity, physical violence, isolation, detention, or parental disappointment become some of the first punishments. As has been well documented, many trans and queer youth are routinely harassed at school and kicked out of home at young ages, while others leave in hopes of escaping the mental and physical violence that they experience at schools and in their houses. Many trans/queer youth learn how to survive in a hostile world. Often the informal economy becomes the only option for them to make money. Selling drugs, sex work, shoplifting, and scamming are among the few avenues that might ensure they have something to eat and a place to sleep at night. Routinely turned away from shelters because of their gender presentation, abused in residential living situations or foster care, and even harassed in "gay neighborhoods" (as they are assumed to drive down property values or scare off business), they are reminded that they are alone. Habitually picked up for truancy, loitering, or soliciting, many trans/queer people spend their youth shuttling between the anonymity of the streets and the hyper-surveillance of the juvenile justice system. With case managers too overloaded to care, or too transphobic to want to care, they slip through the holes left by others. Picked up—locked up—placed in a home—escape—survive—picked up again. The cycle builds a cage, and the hope for anything else disappears with the crushing reality that their identities form the parameters of possibility.10 With few options and aging-out of what little resources there are for "youth," many trans/queer adults are in no better a situation. Employers routinely don't hire "queeny" gay men, trans women who "cannot pass," butches who seem "too hard," or anyone else who is read to be "bad for business." Along with the barriers to employment, most jobs that are open to folks who have been homeless or incarcerated are minimum-wage and thus provide little more than continuing poverty and fleeting stability. Back to where they began—on the streets, hustling to make it, now older—they are often given even longer sentences. While this cycle of poverty and incarceration speaks to more current experiences, the discursive drives building their motors are nothing new. Inheriting a long history of being made suspect, trans/queer people, via the medicalization of trans identities and homosexuality, have been and continue to be institutionalized, forcibly medicated, sterilized, operated on, shocked, and made into objects of study and experimentation. Similarly, the historical illegality of gender trespassing and of queerness have taught many trans/queer folks that their lives will be intimately bound with the legal system. More recently, the HIV/AIDS pandemic has turned the surveillance technologies inward. One's blood and RNA replication became another site of susceptibility that continues to imprison people through charges of bio-terrorism, under AIDS-phobic laws. Living through these forms of domination are also moments of devastating resistance where people working together are **building joy**, tearing down the walls of normative culture, and opening space for a more beautiful, more lively, safer place for all. Captive Genders remembers these radical histories and movements as evidence that our legacies are fiercely imaginative and that our collective abilities can, and have, offered freedom even in the most destitute of times.11 In the face of the overwhelming violence of the PIC, abolition—and specifically a trans/queer abolition—is one example of this **vital defiance**. An abolitionist politic does not believe that the prison system is "broken" and in need of reform; indeed, it is, according to its own logic, working quite well. Abolition necessarily moves us away from attempting to "fix" the PIC and helps us **imagine an entirely different world**—one that is not built upon the historical and contemporary legacies of the racial and gendered brutality that maintain the power of the PIC. What this means is that abolition is not a response to the belief that the PIC is so horrible that reform would not be enough. Although we do believe that the PIC is horrible and that reform is not enough, abolition radically restages our conversations and our ways of living and understanding as to undo our reliance on the PIC and its cultural logics. For us, abolition is not simply a reaction to the PIC but a political commitment that makes the PIC impossible. To this end, the time of abolition is both yet to come and already here. In other words, while we hold on to abolition as a politics for doing anti-PIC work, we also acknowledge there are countless ways that abolition has been and continues to be here now. As a project dedicated to radical deconstruction, abolition must also include at its **center** a reworking of gender

and sexuality that displaces both **heterosexuality and gender normativity** as measures of worth.12

AT Perm

The perm fails—the queer body will never be safe in the prison and focusing on small reforms sacrifices a broader political vision that addresses anti-queer violence

Stanley 11 (Edited by Eric A. Stanley and Nat Smith, Ph.D. in History of Consciousness, UC Santa Cruz, UC President's Postdoctoral Fellow at UCSD , Captive Genders: Trans Embodiment and the Prison Industrial Complex, AK Press)

The violence that transgender people-significantly low-income transgender people of color-face in prisons, jails, and detention centers and the cycles of poverty and criminalization that leads so many of us to imprisonment is a key place to work for broad-based social and political transformation. There is no way that trans gender people can ever be "safe" in prisons as long as prisons exist and, as scholar Fred Moten has written, as long as we live in a society that could even have prisons. Building a trans and queer abolitionist movement means building power among people facing multiple systems of oppression in order to imagine a world beyond mass devastation, violence, and inequity that occurs within and between communities. We must resist the trap of being compartmentalized into "issues" and "priorities" and sacrificing a broader political vision and movement to react to the crisis of the here and now. This is the logic that allows many white and middle-class gay and lesbian folks to think that marriage is the most important and pressing LGBT issue, without being invested in the real goal of ending racism and capitalism. Struggling against trans imprisonment is one of many key places to radicalize queer and trans politics, expand anti-prison politics, and join in a larger movement for racial, economic, gender1; and social justice to end all forms of militarization, criminalization, and warfare

Cap/Neolib

Capitalism is the root cause of police brutality and the state of the prison system

Chris **Hedges**, **07-09**-15 [Hedges is a senior fellow at The Nation Institute in New York City. He has taught at Columbia University, New York University, Princeton University and The University of Toronto. He currently teaches prisoners at a maximum-security prison in New Jersey. He holds a B.A. in English literature from Colgate University and a Master of Divinity degree from Harvard University. He was awarded an honorary doctorate from Starr King School for the Ministry in Berkeley, Calif.] "Corporate Capitalism Is the Foundation of Police Brutality and the Prison State" Online: "http://www.occupy.com/article/corporate-capitalism-foundation-police-brutality-and-prison-state"

Our national conversation on race and crime is based on a fiction. It is the fiction that the organs of internal security, especially the judiciary and the police, can be adjusted, modernized or professionalized to make possible a post-racial America. We discuss issues of race while ignoring the economic, bureaucratic and political systems of exploitation — all of it legal and built into the ruling apparatus — that are the true engines of racism and white supremacy. No discussion of race is possible without a discussion of capitalism and class. And until that discussion takes place, despite all the proposed reforms to the criminal justice system, the state will continue to murder and imprison poor people of color with impunity. More training, body cameras, community policing, the hiring of more minorities as police officers, a better probation service and more equitable fines will not blunt the indiscriminate use of lethal force or reduce the mass incarceration that destroys the lives of the poor. Our capitalist system callously discards surplus labor, especially poor people of color, employing lethal force and the largest prison system in the world to keep them under control. This is by design. And until this predatory system of capitalism is destroyed, the poor, especially people of color, will continue to be gunned down by police in the streets, as they have for decades, and disproportionately locked in prison cages. "The strength of The New Jim Crow by Michelle Alexander is that, by equating mass incarceration with Jim Crow, it makes it rhetorically impossible to defend it," said Naomi Murakawa, author of The First Civil Right: How Liberals Built Prison America, when we met recently in Princeton, N.J. "But, on the other hand, there is no 'new' Jim Crow, there is just capitalist white supremacy in a state of constant self-preservation." "We should talk about what we are empowering police to do, not how they are doing it, not whether they are being nice when they carry out arrests," she said. "Reforms are oriented to making violence appear respectable and courteous. But being arrested once can devastate someone's life. This is the violence we are not talking about. It does not matter if you are arrested politely. Combating racism is not about combating bad ideas in the head or hateful feelings. This idea is the perfect formula to preserve material distributions in their exact configuration."

Neoliberalism is the root cause of the putrescent prison system

Stephen **Dillon**, May **2013**, Stephen Dillon, assistant professor of Queer Studies, holds a B.A. from the University of Iowa and a Ph.D. in American Studies with a minor in Critical Feminist and Sexuality Studies from the University of Minnesota. *Fugitive Life: Race, Gender, and the Rise of the Neoliberal-Carceral State,* Online: "https://conservancy.umn.edu/bitstream/handle/11299/153053/Dillon_umn_0130E_13833.pdf?sequence=1" Pgs. 3-4

Davis situated her imprisonment within the mutually constitutive relationship between racism, incarceration, and a changing economic landscape. According to Davis, prisons were filled with poor people of color and were thus a technology used to contain resistant and surplus populations

within a new formation of global capitalism. This insight forms a type of consensus within current scholarship on the prison system. For example, Ruth Wilson Gilmore writes, "As a class, convicts are deindustrialized cities' working or workless poor."9 Similarly, Loïc Wacquant argues that as social welfare policies were downsized in the 1970s and1980s, the "invisible hand of the deregulated labor market became wedded to the iron fist of the prison."10 According to Wacquant, the penal system functions as a apparatus to manage social insecurity and the social disorders created by deindustrialization, deregulation, and privatization.11 In the late 1970s and early 1980s, criminalization became the strategy of choice in dealing with the globalization of capital and the resistance it engendered.12Scholars in the last two decades have made clear the ways that the social state of the mid-twentieth century turned into a penal state by the mid-1980s. Yet, a young imprisoned black woman first documented this process more than forty years ago. And Davis was not the only one. As the prison and neoliberalism emerged as new modes of governance in the post-civil rights era, thousands of activists and prisoners reckoned with the changes occurring around them. Bettina Aptheker wrote, "It should be perfectly clear that thousands upon thousands of people currently in jail and prison have broken no laws whatsoever."13 She went on to argue that the prison had become a mechanism "through which the ruling powers seek to maintain their physical and psychological control, or the threat of control, over millions of working people, especially young people, and most especially black and brown young people."14 In this way, policing and penal technologies manage populations who are "actually or potentially disruptive" of the economic and social order.15

The prison system was a lie for the freedom of the individual, it was used as a means of control within the neoliberal system

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This turn to cultural-politics allows me to reperiodize the emergence of neoliberalism and mass incarceration. For example, the imprisoned writings of Angela Davis and Assata Shakur trace the market politics of the 1970s to the power of the market under chattel-slavery. Their writings and others allow me to document alternative genealogies for the emergence of neoliberalism in order to argue that the market's collusion with the carceral arose prior to the late 1970s and early 1980s. Neoliberalism did not become connected to the prison in the 1980s as Wacquant and others argue. Like the prison's constitutive relationship to race, mass incarceration was imagined as central to the rule of the free market long before deindustrialization, deregulation, privatization, and finance became new mechanisms of population management and governmentality. Indeed, the earliest writings of neoliberal economists in the 1940s, '50s and '60s advocated the containment of racialized and gendered populations considered surplus or potentially rebellious to the rule of the free market. At the same time, law and order politicians like Barry Goldwater and Richard Nixon argued that police and prisons were necessary to the freedom of the liberal individual and the deregulated labor market. While neoliberal economists argued that the free market needed the prison, law and order politicians argued that the prison would protect the free market and an emergent neoliberal social order. In other words, in the earliest articulations of what law and order and neoliberalism would be—before a wave of new laws and policy changes took hold in

the 1980s—neoliberalism was imagined as a carceral project and law and order envisioned as a neoliberal project.

The prison was created by and for neoliberalism in order to control the chaos that reigned from the fruits of it's putrid mouth. America is no different, America has become the carceral apparatus

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For Baldwin, hope that the United States had progressed beyond the time of slavery was only a fantasy. The present told a different story. The horrors of slavery were not an "intolerable sight" nor an "unbearable memory" to the American people; instead, slavery's visual economy and policing technologies composed a lesson about what was happening to Davis and countless others. The stillness of time meant the present and past were not aberrations to the radical alterity of the future, but rather, were anticipatory reflections of what lay ahead. Instead of imagining the civil rights victories of the mid-1960s as central to a teleological story of American progress, many 1970s activists worked to theorize, visualize, and comprehend the new forms of governance that would emerge in the aftermath of segregation, the Vietnam War, and the Keynesian welfare state. This anticipatory logic embedded in their cultural-politics theorized the relationship between the prison and the market before neoliberalism and mass incarceration became actual policies. For example, many of the contributors of If They Come in the Morning argued that the dismantling of the Keynesian welfare state and a wave of deindustrialization produced a massive surge of poverty and unemployment. Law and order policies then criminalized the forms of disorder produced by the neoliberal economic production of poverty. In effect, poor people of color were trapped between the abandonment of a crumbling welfare state and the power of an encroaching penal state. Many prisoners and activists argued that the free world started to feel like a prison. As Zayd Shakur wrote in 1970, "Prisons are really an extension of our communities. We have people who are forced at gunpoint to live behind concrete and steel. Other of us, in what we ordinarily 10 think of as the community, live at gunpoint again in almost the same conditions…It's the same system—America is the prison."19 Shakur's conception of "prison" undoes normative conceptions of space by exceeding the walls of the prison proper. Within the post-civil rights landscape, a changing economic system became co-extensive with an emerging carceral apparatus. An assemblage of race, gender, capital, policing, and penal technologies produced a symbiosis between the de-industrialized landscape of the late twentieth century urban United States and the gendered racisms of an emerging prison industrial complex. And as feminist color activists argued, diffuse structural networks of racism and sexism mimicked the steel bars of a cage. In this way, 1970s activists argued that the intimacy between the market and the prison was much deeper than has been articulated by scholars in the last two decades. Finally, as I argue throughout the project, neoliberalism and the prison have been central to the making and remaking of race, gender, and sexuality. The prison has routinely been theorized as intensely racialized, yet its relationship to gender and sexuality has only begun to be explored. On the other hand, the market is often theorized as connected to race, gender, and sexuality but not of them—in other words, the market is frequently isolated and abstracted from these categories. Fugitive

Life demonstrates that like the prison, the market does not only rely on race, gender, and sexuality, but is a racialized and gendered technology in and of itself. I provide an alternative narrative to the emergence of neoliberalism and mass incarceration by narrating both through the gender and sexual politics of post-civil rights activists. In this way, I document the centrality of race, gender, and sexuality to the organization, operation, and formation of the neoliberal-carceral state. Throughout Fugitive Life, I argue that this process had particular, profound, and too often unexplored consequences for queer women, women of color, and poor women. For many activists and scholars, mass incarceration signals a profound crisis for men of color (which it does), but its effects on women and gender non-conforming people have too often been subsumed under the visibility of the violence against men of color inside and beyond the prison. To that end, Fugitive Life focuses mostly on the activism and cultural products of people who identified as women. I center race, gender, and sexuality as I explore the writings of Davis and others, and the ways they theorized the prison and market in the making and remaking of state power; subjectivity; knowledge; space and time; and the reorganization of life itself.

Deference DA

Links

Legal precedent means the Supreme Court will defer to prison guards – specifically on sexual assault cases - empirics prove

Hill 14 (Tasha, J.D., 2014, University of California, Los Angeles School of Law, "SEXUAL ABUSE IN CALIFORNIA PRISONS: How the California Rape Shield Fails the Most Vulnerable Populations", UCLA Women's Law Journal, 21(2), peer reviewed, https://escholarship.org/uc/item/5sw7f149) //RL

In addition to the exclusionary rape shield law, there are multiple legal and institutional impediments to a prisoner's ability to obtain a judgment against an abuser or rapist. For example, **prison law, including federal legislation such as the Prison Litigation Reform Act and Supreme Court jurisprudence, is designed to defer to prison officials**.119 Public apathy is another hurdle; some people feel that we ought not be too concerned about prison rape, that we have more pressing social issues, or that offenders are getting their "just desserts."120 However, as the Supreme Court has clearly stated, "rape is never the sentence for a crime."121

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

Id. "Except as provided in subdivision (c), rape, as defined in Section 261 or 262, is punishable by imprisonment in the state prison for three, six, or eight years." Id. at § 264(a). 117 Cal. Evid. Code § 782 (West 2011); Cal. Evid. Code § 1103 (West 2011). 118 See Bachman and Smith, supra note 7. 119 Kim Shayo Buchanan, Beyond Modesty: Privacy in Prison and the Risk of Sexual Abuse, 88 Marq. L. Rev. 751, 754 (2005) **("[U]ncritical judicial deference, which abandons prisoners' well-being almost entirely to the discretion of guards and wardens, effectively privatizes the abuse of prisoners: prisoners, and their treatment, have been removed from the public realm.").** 120 See, e.g., Charles M. Sennott, Poll Finds Widespread Concern About Prison

Rape; Most Favor Condoms for Inmates, Bost. Globe, May 17, 1994, at 22 ("The U.S. public holds an indifferent or retributive attitude toward victims of prison sexual assault. According to a Boston Globe survey in 1994, fifty percent of those polled agreed with the statement, 'society accepts prison rape as part of the price criminals pay for wrongdoing.'"); Child Molester Sues Over Rape in Eastern Washington Jail, KOMOnews, August 14, 2014, comments, available at http://www.komonews.com/news/local/Child-molester-sues-over-rape-in-Eastern-Wash-jail-271260261.html ("He got exactly what he deserved."; I would have done him a few more times than(sic) cut his head off."; "He deserved every second of what was done to him.") 121 Farmer v. Brennan, 511 U.S. 825, 834 (1994).

2014] Sexual Abuse in California Prisons 111

The challenge faced by abused prisoners in the face of judicial deference to prison officials (in administering the prisons) is quite high. The Prison Litigation Reform Act,122 passed in 1996, added an exhaustion requirement to inmate complaints, including complaints against staff and other inmates. Inmates must exhaust all administrative remedies before bringing a case to court.123 Prison administrators and legislatures are able to create complex administrative procedures often involving very short time frames and complicated paperwork to deter inmate actions. Once an inmate misses a deadline, for any reason at all, including an extended hospital stay, illiteracy, or deliberate interference from prison guards, her claim for relief is dead.124 Complaints of sexual assault, therefore, rarely reach a court,125 for the above legal reasons as well as other factors, including a very real fear of reprisal from inmate or staff perpetrators, a code of silence amongst fellow inmates, embarrassment, and general distrust of prison staff.126

When allegations by inmates are made against prison staff, the inmate is generally perceived to be not credible,127 **whereas the**

guard's account is generally held to be true.128 Once it becomes

122 Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, § 802, 110 Stat.

1321 (codified at 18 U.S.C. § 3626 (2006)); see also 28 U.S.C. § 1915 (2012); see

also 42 U.S.C. § 1997e (2012).

123 Just Detention International, The Prison Litigation Reform Act Obstructs

Justice for Survivors of Sexual Abuse in Detention (Feb. 2009),

available at http://www.justdetention.org/en/factsheets/Prison_Litigation_Reform_Act.pdf.

124 Id. 125 See Anthea Dinos, Custodial Sexual Abuse: Enforcing Long-Awaited Policies

Designed to Protect Female Prisoners, 45 N.Y.L. Sch. L. Rev. 281, 284–85

(2000) (citing several decisive factors that keep female inmates from reporting

sexual abuse: the inmate's own lack of credibility, the specter of "protective

segregation" from the rest of the prison population, fear of the accused's retaliation,

and the unlikelihood of a favorable outcome in litigation). 126 Allen J. Beck & Candace Johnson, U.S. Dept. of Justice, Bureau of

Justice Statistics , Sexual Victimization Reported by Former State Prisoners

(2008), NCJ 237363 31 (2012), available at http://www.bjs.gov/index.

cfm?ty=pbdetail&iid=4312. 127 This is despite the fact there is evidence of high rates of sexual abuse by

staff. Paul Guerino & Allen Beck, U.S. Dept. of Justice, Bureau of Justice Statistics,

Sexual Victimization Reported by Adult Correctional Authorities,

2007–2008, NCJ 231172 1 (2011), available at http://www.bjs.gov/index.cfm?ty=

pbdetail&iid=2204 (finding that 46% of substantiated sexual assault incidents

involved staff assaulting inmates). See also Nancy Wolff et al., Sexual Violence

Inside Prisons: Rates of Victimization, 83 J. Urb. Health 835, 841 (2006) (finding

that 7.6 percent of male inmates reported sexual victimization by staff). 128 See, e.g., Hum. Rts. Watch, Nowhere to Hide: Retaliation Against

Women in Michigan State Prisons (July 1998), available at http://www.hrw.

org/legacy/reports98/women/.

known that an inmate has been sexually abused, the likelihood that

she will be abused again goes up dramatically as she is marked as

a victim by predators in the facility, be they inmate or staff.129 Additionally, in smaller jurisdictions where the correctional facility is a major employer, a company town mentality may predominate, with local prosecutors reluctant to pursue claims in which the defendant is a corrections officer who may also be a neighbor, relative or friend.130

Despite the fact that 46% of substantiated sexual assault incidents involve staff assaulting inmates,131 **corrections officers are rarely criminally prosecuted or sued for sexual assault**.132 In fact, rapes in prison are charged and prosecuted at a lower rate than in the general community, despite the high rate of prison rape.133 For example, in Los Angeles, a ten-year veteran Deputy District Attorney in the sex crimes unit said she had never heard of a single sexual assault case coming out of a prison or jail in California.134

Most prisons are under state, not federal jurisdiction

Piecora 14 (JURIST Guest Columnist Christina Piecora, St. John's University School of Law, Class of 2015, is the author of the first article in a twelve-part series from the staffers of the Journal of Civil Rights and Economic Development, "Female Inmates and Sexual Assault", JURIST.ORG, http://jurist.org/dateline/2014/09/christina-piecora-female-inmates.php) //RL

Males are the perpetrators in 98 percent of staff-on-inmate sexual assault (PDF] of female inmates. Forty-one percent of guards in the average state female correctional center are male, a job that entitles them to perform strip searches and have access to prisoners in their most vulnerable states. Therefore, although women comprise only 7 percent of the state prison population, they comprise 46 percent of sexual abuse victims. Male prison officials not only use force and violence to commit sexual assault against female prisoners but also use their positions to coerce, threaten and intimidate inmates into sexual activity. Thousands of documented accounts exist of prison staff demanding sex in exchange for drugs, favors and access to educational programs. Similarly, prison officials often use threats of going to the parole board with false reports of bad behavior, planting drugs on prisoners or withholding basic necessities such as feminine hygiene products or visitation with children if inmates do not perform sexual acts. While these acts are repugnant, prison officials are not the only perpetrators of sexual assault against female inmates.¶ The rate of inmate-on-inmate sexual victimization [PDF] is at least 3 times higher for females (13.7%) than males (4.2%). This has been attributed to the fact that a majority of prison officials do not view female-on-female sexual assault as "true rape," making them less likely to reprimand inmates. Furthermore, as the female prison population has grown at

a dramatic rate, states have been unable to keep up. Therefore, female prison facilities tend to be overcrowded and poorly designed, making them difficult to police.¶ In addition to cross-gender supervision and poorly designed facilities, prison sexual assault against females is prevalent because little punishment exists to deter perpetrators. Victims are often blocked from bringing charges against prison staff who were either complacent or the culprits in their attacks by the Prison Litigation Reform Act (PLRA). The PLRA requires prisoners to exhaust all administrative remedies before they are allowed to file suit in federal court to challenge prison abuses. For victims this means that they must report their abuse to the very people committing or facilitating that abuse. Thus, inmates who complained of staff sexual misconduct were punished 46.3 percent of the time.¶ Additionally, victims must meet an incredibly high burden of proof to substantiate a constitutional claim. The Eighth Amendment establishes the right to be free from cruel and unusual punishment. However, for victims to establish a violation of their Eighth Amendment rights they must prove that the prison official had a "seriously culpable state of mind" by satisfying the subjective deliberate indifference test. The test requires that the prison official must (1) "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) "also draw the inference." For victims, the difficulty lies in proving that prison administrators were aware of the risk and ignored it. In applying the test courts have severely limited the liability of prison officials.

Case

No Enforcement/Legal Redress

No enforcement in prisons—sexual violence allowed to continue

Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW*, http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 44-48//SRawal

In the United States, **sexual abuse by guards in women's prisons is so notorious and widespread that it has been described as "an institutionalized component of punishment behind prison walls."**1 **Women in prisons2 across the United States are subjected to diverse and systematic forms of sexual abuse: vaginal and anal rape; forced oral sex and forced digital penetration; quid pro quo coercion of sex for drugs, favors, or protection; abusive pat searches and strip searches; observation by male guards while naked or toileting; groping; verbal harassment; and sexual threats**.3 Guards and prisoners openly joke about prisoner "girlfriends" and guard "boyfriends." Women prisoners become pregnant when the only men they have had contact with are guards and prison employees; often they are sent to solitary conªnement—known as "the hole"—as punishment for having sexual contact with guards or for getting pregnant.**4 Such open and obvious abuses would seem relatively easy for a prison administration to detect and prevent if it chose to do so**. **Prisons owe an afªrmative legal duty to protect their inmates against abuse.5 Congress and forty-four states have criminalized all sexual contact between guards and prisoners, regardless of consen**t.6 **Nonetheless, within women's prisons guards routinely commit serious sexual offenses against the women in their custody**. **Government administrators know that such abuse is occurring**7 and acknowledge their duty to prevent it.8 However, **they have generally neglected to do much about it**, as **most prisons have failed to adopt institutional and employment policies that effectively prevent or reduce custodial sexual abuse**.9 In most workplaces, an employee who had sex on the job would be ªred. In prison, **a report of custodial sexual abuse is more likely to result in punishment or retaliation against the prisoner than in disciplinary consequences for the guard.**10 **One might expect the law to furnish incentives for prisons to control such unlawful acts by their employees,** as it does for other civil defendants**. It does not**.11 Instead, as I demonstrate in this Article, a network of prison law rules—the Prison Litigation Reform Act of 1995 ("PLRA"),12 governmental immunities, and constitutional deference— work together to confer near-complete immunity against prisoners' claims. In the United States, both male and female prisoners are stereotyped as black;13 more than two thirds of women in U.S. prisons are African American or Latina.14 In this Article, I consider how the gendered racialization of women prisoners informs legal and institutional indifference to their treatment in prison. Like black women under slavery,15 **women in contemporary prisons are subjected to institutionalized sexual abuse, while the law refuses to protect them or provide redress.**

No enforcement of prison reform laws- video-taping strip searches and inadequate mental health services prove

Trounstine 14

Jean Trounstine, author/editor of five published books and many articles, professor at Middlesex Community College in Massachusetts, and a prison activist, 9-10-2014, "Videotaping Strip Searches in Jail Is Not Reform," *Truthout*, http://www.truth-out.org/opinion/item/26098-videotaping-strip-searches-in-jail-is-not-reform#//SRawal

Much has been written about Sheriff Michael J. Ashe of Hampden County as a heralded criminal justice reformer. Most recently the Massachusetts Attorney General candidate, Warren Tolman, claimed support of Ashe with these words,"Sheriff Ash**e has been a leader in the Commonwealth on finding ways to rehabilitate, treat mental illness and be proactive in instituting criminal justice reforms."** Even Judge Michael Ponser, the judge who ruled that Sheriff's Ashe's deplorable policy of **videotaping strip-searches in the women's prison in Chicopee was "unconstitutional**," also noted that Ashe has a good reputation running the county's jails in the Conclusion to his Decision. But Debra Baggett**, the plaintiff** in the class-action case for 178 former and current detainees at the Chicopee jail **has much to say about the place where 274 strip searches were videotaped**. The lawsuit was filed by the law offices of Howard Friedman in 2011 against Sheriff Michael J. Ashe and Assistant Superintendent Patricia Murphy of the Western Massachusetts Regional Correctional Center in Chicopee and it contended that the searches violated the Fourth Amendment which protects citizens from unreasonable searches and seizures. **These tapes, began in** mid-September **2008,** and according to the suit, **68 percent of them show "some or all of the women's genitals, buttocks, or breasts."** Per Friedman's law office website, "From September 15, 2008 to May 20, 2010, **males held the camera for about 70% of the strip searches."** And the gender of the camera holder is not irrelevant in spite of the fact that men were supposed to have their backs to the prisoners during the videotaping. As the judge pointed out, "If you're going to videotape something, it's awfully hard not to view it." **The jail contended that these videotapes were used for safety reasons and to document a "potentially dangerous move"** from general population to the segregation unit. But as David Milton, an attorney for the women, said of the jail, in a telephone interview, "No one couldn't identify a single place in the country that videotaped strip searches." Baggett, who is now living in Alabama, said that to her, **the policies at Chicopee certainly didn't look so progressive**. She explained that "Seg" or the **Segregation Unit was "multi-function;" in other words, it was used to isolate women with behavioral issues and supposedly to prevent those with mental health issues from suicide.** Baggett said to me, imagine being a woman who had just lost her daughter or someone who had been raped a few hours before her arrest—both cases which occurred during her jail stay in Seg—and imagine how distraught you might be. Then imagine a jail that decides to handle such women with strip searches after they have been transferred from general population to Seg. From Think Progress, These searches required a woman to "run her fingers through her hair, remove dentures if she wore them, raise both arms, lift her breasts, lift her stomach for visual inspection if she had a large mid-section, and remove any tampon or pad if she were menstruating. She was then required to turn around, bend over, spread her buttocks, and cough." Then imagine being videotaped during those searches. **Videotaped, because the jail contended this was a necessity to stop possible infractions.** In two phone interviews, Baggett was very open about the fact that **a "Mental Health person was almost non-existent**" in her experience in Seg. **She never once saw a psychiatrist** while she was there**. She said that medication for her mental health issues was taken away when she entered WCC and she had a severe withdrawal from being without it that led to restraints and pepper spray. She said this kind of treatment exacerbated the issues that she suffered from.**

Abuses will continue- prisoners can't effectively access legal redress

Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW,* http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 70-73//SRawal

With few, if any, exceptions, prisoners' civil claims against correctional authorities for toleration of sexual abuse have succeeded only when a large number of women testify to widespread abuses, and some guard witnesses break ranks to corroborate the prisoners' accounts that severe custodial sexual abuse was both widespread and publicly known within the prison.199 When prison administrators seek to restrict male guards' access to women prisoners in order to protect the prisoners against sexual abuse, courts generally have upheld these institutional policies against guards' employment discrimination claims,200 at least at the appellate level.201 However, **when a prisoner brings civil claims on her own behalf, they are generally screened out or rejected.**202 Indeed, **one commentator argues that juries are so reluctant to award any damages to prisoners that they will not on basis that prisoner was "not credible" because she had formed a "plan" to get a transfer by reporting sexual activity with corrections officers; the court** found some of this activity not to have happened because it was uncorroborated,

and **stated that other activity "could only reasonably be described as consensual**" because the prisoner "never tried to caught [the guards] off, scream, or yell"). 70 Harvard Civil Rights-Civil Liberties Law Review [Vol. 42 do so unless they believe the defendant has acted with such malice that punitive damages are appropriate.203 Even when prisoners are able to prove that they have been raped, juries may tend to "lowball prisoners' nonwage damages as an expression of disregard for them."204 For example, in Morris v. Eversley, 205 a jury convicted a guard of sexually assaulting a female prisoner based on DNA evidence. **A civil jury awarded the prisoner only $500 in compensatory damages and $7,500 in punitive damages.2**06 The district court judge found the verdict generally inadequate, and ordered a new trial. The new jury awarded $1,000 for compensatory damages and $15,000 for punitive damages. The judge, apparently frustrated by this paltry award, wrote: I was baf°ed that the ªrst jury awarded such low amounts, and yet **the second jury did not award much more**. **It is hard to imagine that Morris could be made whole for the damages she suffered, including the loss of her dignity, by a mere $500 or $1,000 in compensatory damages**. . . . **[A] prisoner**, even a former prisoner, **is unable to recover a fair measure of damages**.207 **Such inadequate jury awards re°ect the discredited prejudicial racial and gender stereotypes by which low-status women, especially black women, prostitutes, and prisoners, are viewed as less likely to be harmed by sexual assault**. Outside of the prison context, damage awards for sexual assault are typically much higher**. A recent survey of civil actions for sexual assault resolved in state appellate courts between 2001 and 2004 found that damage awards in sexual assault cases outside prison can range from nothing to well over one million dollars**. But in cases involving institutional liability, "a signiªcant number of cases award compensatory damages of $100,000 to $200,000." Ellen M. Bublick, Tort Suits Filed by Rape and Sexual Assault Victims in Civil As Bublick observes, "[i]nadequate damage awards may be a particular issue when the victim and the assailant are acquaintances or partners," as they are by deªnition in cases of custodial sexual abuse 1. **The Prison Litigation Reform Act The Prison Litigation Reform Act209 ("PLRA") was expressly designed to deter prisoner lawsuits**. It was introduced in 1995 to respond to congressional concern about the dramatic increase in prisoner litigation between 1980 and the mid-1990s—an increase that, as commentators have noted, coincided with a dramatic increase in the incarcerated population in the United States.210 **The PLRA was not intentionally designed to block lawsuits for custodial sexual abuse; rather, it was designed to address the perceived problem of jailhouse lawyers who brought frivolous lawsuits**. In 1995, during the Senate debate over the bill, Senator Bob Dole cited a notorious prisoner lawsuit in which a prisoner complained that the prison served chunky, rather than creamy, peanut butter.211 Numerous other frivolous suits, such as claims arising from an unsatisfactory prison haircut and a desire for a particular brand of sneakers, were also used during the PLRA debates as examples of the pressing need for special barriers to prisoner litigation.212 During the congressional debates, Senator Joe Biden pointed out that the PLRA would erect "too many roadblocks to meritorious prison lawsuits."213 He urged Congress not to "lose sight of the fact that some of these lawsuits have merit—some prisoners' rights are violated."214 Senator Biden pointed out that hundreds of women prisoners had been sexually abused by dozens of guards, openly and for years, in Washington, D.C., prisons. He noted that this practice changed only after their class action was successful.215 Despite Senator Biden's warnings, no amendment was adopted to protect the right of prisoners to sue in the event of sexual abuse by guards. The PLRA is a status-based law that excludes almost all prisoner claims from the courts.216 Like historical doctrines designed to deter rape average sentence given to Black women's assailants is two years. The average sentence given to white women's assailants is ten years." Crenshaw, Sexual Harassment, supra note 44, at 1471. complainants, black witnesses, and married women from bringing white men to court, the PLRA establishes unique hurdles that are nearly impossible for prisoner plaintiffs to overcome. The most damaging hurdle imposed by the PLRA is its grievanceexhaustion requirement.217 Like the marital privacy doctrine that excluded wives' claims from the courts in order to protect "family government,"218 this provision values the peace of mind of those in power over the safety of those who are in their custody. **The grievance-exhaustion provision requires inmates to exhaust internal prison grievance procedures before they may bring their claims to an outside authority, even if the procedures are complex, inefªcient, unfair, or incapable of offering a remedy for the prisoner's claim.219 If the prisoner has failed to do so, the litigation is dismissed**. **Thus a prison is virtually insulated from prisoner litigation to the extent that its grievance process is complex and time-consuming, its deadlines for ªling a grievance are brief,220 and the threat of retaliation deters prisoners from using the process at all**. In practice the grievance-exhaustion requirement "invites technical mistakes resulting in inadvertent noncompliance with the exhaustion requirement, and bar[s] litigants from court because of their ignorance and uncounselled procedural errors."221 Unreasonably quick grievance deadlines evoke the "fresh complaint" requirements of traditional rape doctrine.222 In New York, for example, the Department of Corrections imposes a fourteen-day limit for ªling any prisoner grievance, unless the grievance authority determines that "mitigating circumstances" justify the delay.223 If a **prisoner is in a "consensual" sexual relationship with a guard, she is unlikely to express a grievance until well after the guard becomes threatening or abusive, thus missing the deadline**.224 If she misses the grievance deadline, her litigation is dismissed**. Furthermore, prison grievance procedures offer no prospective relief to protect the prisoner before she is raped**. If a guard has merely threatened to assault the prisoner, offered a quid pro quo for sex, or groped her— or if she did not think to preserve a DNA sample during her rape—the grievance process will do nothing.225 Even though ªling a grievance is futile in such circumstances, **the PLRA still requires the prisoner to report the abuse to her**

abuser's colleagues through an often-humiliating disciplinary procedure[226] **that is likely to result in retaliation**. In addition to its grievance-exhaustion requirement, **the PLRA further hinders prisoner litigation by prohibiting any prisoner lawsuit "without a prior showing of physical injury**."[227] Some courts have raised this barrier even further by requiring that the physical injury be at least as serious as an injury that would meet the Eighth Amendment's "de minimis harm" requirement.[228] **Presumably, vaginal or anal rape would suf[a]ce**.[229] On its face, however, **the physical injury requirement appears to bar prisoner claims for sexual abuse if no physical injury results**.[230] For example, the text of this provision appears to bar claims that a prisoner was forced to perform or submit to oral sex, was digitally penetrated, or was coerced into sexual compliance through threats or inducements without a beating.

Won't Solve – Precedent

Legal precedents are ineffective; debate is never-ending

Pierre **Schlag**, **1985**, "Rules and Standards,"
https://lawweb.colorado.edu/profiles/pubpdfs/schlag/schlagUCLALR.pdf

Every student of law has at some point encountered the "bright line rule" and the "flexible standard." In one torts casebook, for instance, Oliver Wendell Holmes and Benjamin Cardozo find themselves on opposite sides of a railroad crossing dispute. They disagree about what standard of conduct should define the obligations of a driver who comes to an unguarded railroad crossing. Holmes offers a rule: The driver must stop and look. Cardozo rejects the rule and instead offers a standard: The driver must act with reasonable caution. Which is the preferable approach? Holmes suggests that the requirements of due care at railroad crossings are clear and, therefore, it is appropriate to crystallize these obligations into a simple rule of law. Cardozo counters with scenarios in which it would be neither wise nor prudent for a driver to stop and look. Holmes might well have answered that Cardozo's scenarios are exceptions and that exceptions prove the rule. Indeed, Holmes might have parried by suggesting that the definition of a standard of conduct by means of a legal rule is predictable and certain, whereas standards and juries are not. This dispute could go on for quite some time. But let's leave the substance of this dispute behind and consider some observations about its form. First, disputes that pit a rule against a standard are extremely common in legal discourse. Indeed, the battles of legal adversaries (whether they be judges, lawyers, or legal academics) are often joined so that one side is arguing for a rule while the other is promoting a standard. And this is true regardless of whether the disputes are petty squabbles heard in traffic court or cutting edge controversies that grace the pages of elite law reviews. As members of the legal community, we are forever involved in making arguments for or against rules or standards. This brings us to a second observation: The arguments we make for or against rules or standards tend to be pretty much the same regardless of the specific issue involved. The arguments are patterned and stereotyped; the substantive context in which the arguments arise hardly seems to influence their basic character. The arguments are drearily predictable, almost routine; they could easily be canned for immediate consumption in a Gilbert's of legal reasoning. But if we accept these two observations, the implications are far from dreary or routine. On the contrary, it follows that much of legal discourse (including the very fanciest law-talk) might be nothing more than the unilluminating invocation of "canned" pro and con arguments about rules and standards. This prospect is neither dreary nor routine; it is, however, somewhat humbling. Lest undue humility get the upper hand, there are two major ways of avoiding this vexing embarrassment. First, we can argue that the two observations above are wrong. Unfortunately, I happen to think that they are in some sense correct-and part of this Article is devoted to supporting this contention. Second, we can argue that even if the observations are correct, there is more wisdom or rationality or sense (or other good

stuff) to the rules v. standards dispute than first meets the eye. In other words, even if rules v. standards disputes are stereotyped, almost caricatured, forms of argument, there may be more substance to these arguments about form than we might have guessed. But I don't think so: Ultimately, all the more promising conventional ways of understanding the rules v. standards dispute will turn out to be located within the bounds of that dispute. The conventional forms of legal thought allow us no place outside of the rules v. standards dichotomy from where we can make sense of the dispute. In the end, no explanation (or all explanations) of the rules v. standards dispute is left standing. The attempt to tie form to substance is just so much form.

Reasonable suspicion doesn't solve

The reasonable suspicion scope has just expanded- Arizona v Johnson

Searles 15

Steven Searles, Daily Kos member "Black Lives Matter: Reasonable Suspicion, Racial Disparity & the Roberts' Court", *DAILY KOS*, http://www.dailykos.com/story/2015/03/17/1371248/-Black-Lives-Matter-Reasonable-Suspicion-Racial-Disparity-the-Roberts-Court#, 03/17/15//SRawal

The standard merely to stop and detain someone, however, is far easier to meet. That standard is referred to as "Reasonable Suspicion." I know, that sounds pretty vague. Reasonable suspicion of what? And what constitutes a reasonable versus an unreasonable suspicion on the part of a police officer. The Supreme Court of the Unite States ("SCOTUS") first established the basis of the reasonable suspicion standard in the 1968 case of Terry v. Ohio. In the view of the Terry majority, a police officer may stop and detain an individual he or she suspects may have committed (or is about to commit) a punishable crime without violating the Fourth Amendment provide that "in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [stopping and detaining a person]." This reasonable suspicion must not be based on an "inchoate hunch" but must be based on what a reasonable police officer would do. Subsequent case law by SCOTUS established that this suspicion must be associated with a specific individual in Ybarra v. Illinois, where a patron of a tavern was detained and searched by police even though the police merely had a warrant to search the building and no independent foundation for suspecting the defendant of any crime. However, to fully understand how the current Roberts' Court views the issue, we must look at its decision Arizona v. Johnson where it expanded the scope of the reasonable suspicion standard in Terry in a case involving an passenger in a vehicle stopped by police for a minor traffic offense. The defendant was only a passenger, but this did not stop the court from concluding he could be detained and frisked. The police, all of whom were members of a "gang task force" began to question the defendant, and he answered all their questions, including telling the officer who made the stop that he lived in a town "associated with the Crips gang and had previously been imprisoned for one year for burglary. When a female police officer demanded he exit the vehicle for further questioning about his possible gang involvement, the defendant willingly complied. (As an aside, this was probably a smart move on his part, all things considered, since police around the country have shown a marked intolerance, and a tendency to resort to force, when a person shows any sign of non-compliance with their demands.) The police officer contended that his answers to her questions gave her a reason to reasonably suspect he was armed with a weapon, and she frisked him moments after he exited the car. She found a gun on him and he was convicted of unlawful possession. He appealed his conviction on the basis that the police had no just cause to search him. The state of Arizona argued that his own "admissions" following questioning about matters unrelated to the initial traffic stop authorized the cops to pull him out of the car and frisk him based on their reasonable suspicion he was armed. The state appellate court overturned his conviction, holding that that the police officer had no "reason to believe the defendant was engaged in criminal activity" and thus the officer did not have reasonable suspicion to detain and frisk the defendant.

Reasonable suspicion disproportionately affects sex workers and trans people

Ludwig 14

Mike Ludwig, a Truthout reporter, ""Walking While Woman" and the Fight to Stop Violent Policing of Gender Identity", *TRUTHOUT*, http://www.truth-out.org/news/item/23551-walking-while-woman-and-the-fight-to-stop-violent-policing-of-gender-identity, 06/07/14//SRawal

For years, community groups across the country have been challenging police departments to stop their officers from criminalizing and profiling transgender women for being who they are in public. Vague prostitution statues in cities across the country allow police wide discretion in determining "reasonable suspicion" and "probable cause" for searching and arresting suspected sex workers, and transgender women often find themselves in handcuffs for simply "walking while trans" or "walking while woman." A 2005 Amnesty International review of police brutality and profiling directed toward LGBTQ people in the United States found "a strong pattern of police unfairly profiling transgender women as sex workers." Police, advocates say, often target transgender women for arrest based on how they look. In Jackson Heights, police routinely picked up transgender women and later justified the arrests because the women were carrying condoms, according to Make the Road New York. Andrea Ritchie, an anti-profiling advocate and attorney who represents transgender clients who have been allegedly profiled and abused by officers of the New York Police Department, told Truthout that the use of condoms as evidence of prostitution is a good example of "reasonable suspicion" becoming blatant discrimination. "When was the last time you were arrested for carrying condoms?" she asks.

People are invasively searched without reasonable suspicion

Leadership Conference 11

The Leadership Conference, coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, "Restoring a National Consensus: The Need to End Racial Profiling in America", http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf, March 2011//SRawal

The 2009 experience of Elvis Ware, a 36 year-old African-American veteran of Operation Desert Storm, is illustrative of the humiliation and stress experienced by a person who has been a victim of racial profiling. In 2009, police in Detroit, Michigan, conducted a stopand-frisk of Ware. While in a public parking lot, one officer "shoved his bare hand down Ware's pants and squeezed his genitals and then attempted to stick a bare finger into Ware's anus." Other young men of African descent report that the same two officers who stopped Ware conducted similar outrageous and inappropriate searches on them without warrants, probable cause, or reasonable suspicion. In accepting a settlement from the city of Detroit that included monetary damages, Ware said, "I not only wanted justice for myself, but I wanted it for others who were treated this way…. If, by coming forward, I prevent just one person from having to go through this, I have succeeded."115 Ware's humiliation is not unique. Texas State Judge Gillberto Hinajosa, the subject of immigration-related profiling on many occasions, has stated that Southern Texas "feels like occupied territory … It does not feel like we're in the United States of America."116 Such alienation is a common consequence of being profiled. Exposure to racial profiling has behavioral as well as emotional consequences. Many minorities who are entirely innocent of any wrongdoing choose to drive in certain automobiles and on certain routes, or to dress in certain clothes, to avoid drawing the attention of police who might otherwise profile and stop them.117 Or they choose to live in areas where they will not stand out as much, thereby reinforcing patterns of residential segregation.118

Reasonable suspicion means nothing- racial profiling proves

Leadership Conference 11

The Leadership Conference, coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, "Restoring a National Consensus: The Need to End Racial Profiling in America", http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf, March 2011//SRawal

Another example of racial profiling in the stop-and-frisk context is provided by Jackson, Tennessee. In Jackson, police conduct what they term "field interviews" in which they stop, interview, and may photograph pedestrians and bystanders when an officer has "reasonable suspicion to believe a crime has occurred [or] is about to occur or is investigating a crime." A review of "field cards" generated by the field interviews indicates that 70 percent were for African Americans. The population of Jackson is only 42 percent African American. One African-American college student reported that police in Jackson stopped him on the street while he was walking to his grandmother's house. They then followed him onto the porch of her home where they conducted field interviews of him and five other African-American visitors, and threatened to arrest them if they did not cooperate.40 The use of racial profiling in connection with entry into the U.S. in the counterterrorism and immigration contexts is discussed later in this report, but the practice has long been commonplace in the war on drugs at the nation's border crossings and airports. For example, drug courier profiles used by the U.S. Customs Service regularly include race as a factor in guiding law enforcement discretion.41 The case of Curtis Blackwell, a long haul trucker, who tried to cross from Mexico into the U.S. at a border crossing in Lordsburg, New Mexico, is illustrative. On August 15, 2008, Blackwell, an African American, was driving his truck across the border when he was stopped and searched by officers of the New Mexico State Police. The officers accused Blackwell of being under the influence of alcohol or narcotics, despite the fact that he passed every sobriety and drug test administered. His truck was impounded for 24 hours until it was allowed entry into the U.S. Evidence suggests other African-American truckers entering the U.S. from Mexico at this point of entry have also been detained without reasonable suspicion.42 In October 2003, in another case involving an African American who may have "fit" the drug courier profile, state police troopers at Boston's Logan Airport stopped attorney King Downing as he talked on his cell phone. According to Downing, police demanded to see his identification and travel documents. Downing knew he was under no obligation to provide the documents and declined to do so. Police first ordered him to leave the airport, but then stopped him from leaving, surrounded him with officers, and placed him under arrest. At that point, Downing agreed to provide his identification and travel documents. After a 40-minute detention, he was released. Four years later, in a lawsuit brought by Downing, a jury found the police had unlawfully detained him without reasonable suspicion.43

Legal precedents ultimately fail due to debate

Pierre **Schlag**, **1985**, "Rules and Standards,"
https://lawweb.colorado.edu/profiles/pubpdfs/schlag/schlagUCLALR.pdf

A conclusion in a law review article is usually a tidy summation of what has transpired during the course of the reading. The virtue of a conclusion is that it ties together all the various strands of the article and synthesizes the various parts into a sensible bit of legal wisdom, complete, finished, and, in appearance at least, unassailable. There is something comical about this ritual. For if we are convinced of anything, it is that there are no conclusions, that things go on, and that everything will always be revised. A conclusion here would be particularly ironic. After all, this Article is about a dialectic I claim is omnipresent, yet bereft of any synthesis. What to say? Here are a couple of possibilities: The mainstream message is that much of our legal argumentation seems to track a dialectic that is incapable of resolution. The steps in this argumentation are patterned and predictable. We cannot be sure whether the argumentation reflects anything of substance or not. Therefore, it behooves us to be on our guard when we find ourselves making

these arguments and to consider whether they truly do reflect concerns of substance or not. The danger of the dialectic is that we may think we are discovering something about substance, when in fact we are only discovering something about form. A less mainstream conclusion might go like this. Much of legal argument tracks the dialectic. This dialectic cannot be anchored in matters of substance. Indeed, the very attempt to explain this aspect of form in terms of substance succeeds in doing quite the reverse: It puts us on the road to explaining substance by means of form. The short of it is that much of legal argumentation is simply an exercise in the formalistic mechanics of a dialectic which doesn't go anywhere. The point of further study ought to be to ascertain why and how it is that we allow such silly games to have such serious consequences.

No legal weight behind precedents

Neil **Duxbury**, 10-28-**2005**, "The Authority of Precedent: Two Problems," https://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf

The proposition that laws bind, while unlikely to startle anybody, is one which legal philosophers rightly accord serious attention. The binding force of legal rules, the classical legal positivist claims, is attributable to the fact that they are backed by sanctions emanating from a habitually-obeyed authoritative source. Hans Kelsen repeatedly emphasized in process of developing his so-called Pure Theory of Law that these rules or norms are not moral norms: morality merely condones conduct conforming to, and disapproves of conduct contravening, its norms, whereas law is a coercive order which seeks to attach sanctions to behavior which opposes its norms. In this respect, he noted 'the Pure Theory of Law continues in the tradition of nineteenth-century positivist legal theory' – the theory according to which, in the words of John Austin, '[t]he binding virtue of a law lies in the sanction annexed to it.' It is well known that this theory of law as coercive orders was dismantled by H. L. A. Hart in The Concept of Law. Yet, before the theory had come under Hart's scrutiny, at least one of its shortcomings was starkly highlighted by the doctrine of stare decisis. As any law student knows, stare decisis is the idea that precedents ought to be adhered to when, in later cases, the material facts are the same. The doctrine brings with it numerous difficulties – not least that of determining which cases are materially alike. But the difficulty which stare decisis posed for classical legal positivism was very specific. Though a decision of a court must (unless successfully appealed) be accepted by the litigants, and though it may establish a precedent which is more generally binding on the citizenry, it is not immediately clear what it means to say – even though we often do say – that the decision binds future courts. Cross and Harris, in Precedent in English Law, observe that '[t]he peculiar feature of the English doctrine of precedent is its strongly coercive nature.' English judges, unlike their counterparts in many other jurisdictions, 'must have regard to' the previous decisions of higher courts, and 'are sometimes obliged to follow a previous case although they have what would otherwise be good reasons for not doing so.' As a piece of doctrinal description, this statement is unremarkable. But from the perspective of classical legal positivism, it poses a serious difficulty. For what does it mean to say that precedents bind? The answer seems to be that precedents bind because judges consider themselves to be bound by them.

No punishment for not following precedent

Neil **Duxbury**, 10-28-**2005**, "The Authority of Precedent: Two Problems," https://www.mcgill.ca/files/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf

Yet if precedents bind, must there not be an identifiable sanction applicable to a judge who refuses to respect stare decisis? 'If a judge persistently and vociferously declined to follow cases by which he was bound', Cross and Harris reply, it is possible that steps would be taken to remove him from his office, but it would be a mistake to think in terms of such drastic sanctions for the judge's obligation to act according to the rules of precedent. Those rules are rules of practice, and, if it is thought to be desirable to speak of a sanction for the obligation to comply with them, it is sufficient to say that non-compliance might excite adverse comment from other judges. Needless to say, there are not many examples of such comment in the law reports because the obligation to follow a practice derives its force from the fact that the practice is followed with a high degree of uniformity. The idea of the doctrine of precedent creating an occasion for judicial lawbreaking is treated by Cross and Harris with near bewilderment. The question of what ought to be done about a judge who flagrantly abuses the doctrine does not tax them for the simple reason that judges do not behave thus. Although a formal sanction could be applied to a judge for eschewing precedent, the likelihood of this occurring is remote because concerns about reputation and fear of informal criticism motivate judges to treat precedents as binding upon them. There is nothing naïve about Cross and Harris's assessment. The 'rules' of precedent are prudential rules; judges apply them so as to maintain a system of case-law rather than fear breaking them in case they are punished. Where judges do not wish to follow a precedent it is commonly assumed that they will either distinguish the precedent from the present case or, when permissible, overrule the precedent on the basis of an especially compelling reason or set of reasons. Neither judges nor jurists pay much attention to the question of what should happen to the judge who is manifestly disrespectful towards and neglectful of precedent, probably because that judge rarely if ever exists outside fictional literature. For the classical legal positivist, however, the idea that precedents bind future decision makers is intelligible only if there is stipulated a sanction which will be prima facie applicable to those decision makers when they ignore precedents.

Alt causes

Aff doesn't solve strip street searches and police inevitably will commit searches even if it's against the law. It's not the law, it's the police that needs reform

Police State USA [Writer, editor, political activist and liberty advocate. PSUSA has been exposing the police state since 2010 and never runs out of material.] 12-28-**13**

"Officer who forced dozens of anal cavity searches for fun gets only 2 years in prison" Online: "http://www.policestateusa.com/2013/milwaukee-cavity-search-spree/"

MILWAUKEE, WI –A disgusting scandal involving police officers performing illegal anal cavity searches with the intent to "degrade and humiliate" dozens and dozens of victims has come to an apparent conclusion, which some feel amounts to little more than a slap on the wrists for those involved. Between February 2010 and February 2012, a small group of Milwaukee officers took part in a string of serial assaults on subjects pulled off the streets. In many cases, the officers demanded the subjects produce the drugs they assumed were being hidden somewhere on their person. When they were not satisfied with the cooperation from the subjects, an officer would jam his hand into the subject's underpants, touch his genitals, and

insert a finger into his anus on the side of the road. Some of the complaints stated that drugs were planted during these searches. At least one complainant was a juvenile, and one stated that he was fingered so hard that his anus bled afterwards. The group's ringleader was Milwaukee Officer Michael Vagnini, assisted primarily by three other officers; Jeffrey Dollhopf, Brian Kozelek and Jacob Knight. Although 7 officers and one supervisor were originally suspended, the four officers mentioned above were the men the district attorney felt had enough involvement to pursue legal actions against. Officer Vagnini was the the one who directly performed the searches with his hand; the others were present and assisted with detaining the victims, holding them down, provided Vagnini cover while molested them, and then failed to report the crimes to superiors in the department. A Pattern of Abuse For two years the complaints piled up from the victims, with the knowledge of department superiors, including Milwaukee Police Chief Ed Flynn. The chief stated that the department had been aware of the behavior of his officers for "a couple of years," but waited to investigate until the department recognized a pattern. One complainant said he notified the department of Vagnini's abusive tactics as early as 2008. Vagnini and his cohorts were assigned to Milwaukee's District 5, and regularly pulled over drivers on a pretense of not wearing a seatbelt or of having darkly tinted windows, followed by searches without a legal reason, according to prosecutors. Finally, in October 2012, city officials felt charged the officers, and the public began to become aware of the stories. One case was described by the Milwaukee Journal-Sentinel: In one case, a man had gone to check on his aunt's house in the 3500 block of N. 10th St. When he came outside, his vehicle was surrounded by squad cars. Vagnini put his bare hand down the man's pants, touched his scrotum and inserted fingers into his anus, the complaint says. When the man pulled away, Vagnini put him in a choke hold that caused him to slobber onto Vagnini's arm. Vagnini repeatedly told him to "stop resisting" as he pulled back so hard on his neck his feet almost left the ground, the man said. Two other officers held his arms and one put a gun to his head, the complaint says. Vagnini claimed he found crack cocaine inside the man's anus, but the man insisted it "was not on him prior to the search," the complaint says. "When I got the cuffs on, he patted me down," he told WISN-12 News. "But he rushed his hand. He rushed his hand up my butt." Another complaint describes a man being fingered so forcefully that his anus bled. From JSonline: In another search, Vagnini conducted a traffic stop near N. 12th and W. Locust streets, the complaint says. Vagnini handcuffed the driver and asked him for "the drugs." The defendant denied having drugs but actually had hidden drugs inside his anal cavity, according to the complaint. Vagnini put the suspect in a chokehold from behind, released him and then stuck his gloved hand inside the defendant's underwear, "shoving his fingers deeply into the defendant's butt crack and possibly into the defendant's anus," the complaint says. The man was screaming, and as a result of Vagnini's actions the man was bleeding from the anal area for several days, the complaint says. And the stories kept coming forward. Robert Mann, 55, contends that Police Officer Michael Vagnini stopped him as he was walking near N. 31st St. and Atkinson Ave. in June 2011 and without probable cause, pulled down Mann's pants and put his hand in Mann's rectum "in an unsafe, unhygienic, and intentionally humiliating fashion." No drugs were recovered from Mann. [A] juveinile, identified as K.F., was 15 when he was riding in a friend's car that was stopped by police on N. 26th St. in December 2011. According to the suit, he was ordered out of the car before Vagnini reached into the teen's pants, touching his genitalia and his anus while Police Officer Jacob Knight watched. In July 2009, Chavies Hoskin, 28, was stopped while driving on N. 13th St. Vagnini reached into Hoskin's pants and pulled a bag of cocaine from Hoskin's anal area, while Sgt. Jason Mucha and Officer Thomas Maglio watched. Hoskin was charged with the delivery of cocaine. His suit contends that the officers lied in reports, and that Vagnini also falsely testified under oath about how and where he found the cocaine. The Milwaukee Journal Sentinel analyzed the cases of at least 13 victims as of August 2013. Keon Canada was pulled over five times during the summer of 2011 and subjected to butt-cheek searches four times, and that officers opened the front of his pants another time. No drugs were found during any of the stops. A plaintiff identified only as R.P. contends he was twice subjected to improper searches of his anal areas by former officer Michael Vagnini without probable cause, and the during one of stops Vagnini took his watch, despite another officer's warning "you can't do that." R.P. said that when he went to the District Five station immediately following the incident to reclaim his watch and file a complaint, he was denied a complaint form and his watch and warned that police would report him to the FBI. Someone identified only as M.C.claims he was stopped and illegally searched three times in 24 hours during the summer of 2011. No drugs were found. In December 2011 and January 2012, M.C. contends he was again stopped by Vagnini and other officers and on both occasions was struck in the face by Vagnini before being pulled out of a car, held on the ground and subjected to a forceful penetration of his anus. The suit lists three stops of Walter Coleman and buttock searches by Vagnini, including one where Vagnini first put on rubber gloves. In most of the cases, victims said Vagnini used his his bare hands or would pull their underwear up tight, as if doing a wedgie, then use the underwear as a shield between his hand and the anal area. The lawsuit says during the gloved incident, Coleman asked Vagnini if he had a search warrant, and the officer laughed. James Ashford claims he was subjected to six illegal searches over a six month period starting in the summer of 2011. At one point, he, his mother and other relatives met with a District Five lieutenant to complain that Ashford was being harassed. According to the lawsuit, the lieutenant told Ashford he should stay out of certain neighborhoods, and never acknowledged that the officers' actions, including the warrant-less, public rectal searches, were inappropriate, or that the officers would be investigated or disciplined. The Charges After the long official silence, Police Chief Ed Flynn made public condemnations of the charged officers. "Quite frankly, I'm disgusted by the willful actions by some of the officers in our Police Department. And I'm appalled by the willful inaction of some other officers in our police department in failing to stop egregious conduct," said Flynn. In October 2012, the following charges were levied: against Michael Vagnini, 25 charges including a sexual assault charge; against Jeffrey Dollhopf, 3 felony counts of misconduct in public office, 1 felony count of false imprisonment, 1 count of being a party to an illegal cavity search, and 1 count of being a party to an illegal strip search; against Jacob Knight, 1 count of misconduct in public office and 1 count of being a party to the crime of an illegal cavity search; against Brian Kozelek, 2 count of misconduct in public office, 1 count of false imprisonment, and 1 count of

being a party to the crime of an illegal strip search. "Everybody involved has been on the force long enough to know better. There's no way you can justify it as some kind of inadvertent mistake. The allegations are proven beyond a reasonable doubt and show inexcusable conduct," Chief Flynn stated in a press conference. Wisconsin law prohibits police officers from ever being involved in body cavity searches, regardless of probable cause. This kind of abuse is delegated to professionals like doctors and nurses, according to Wisconsin Statute § 968.255 (3). And they may be only performed after a search warrant has been obtained. Not only were the searches illegal according to the Wisconsin legislature, they clearly should be classified as rape according to the DOJ. Rape is: "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." – U.S. Department of Justice This seemed to be acknowledged by the prosecution. "I know Michael Vagnini understood the sexual undertones of what was going on," Assistant District Attorney Miriam Falk said. "It was intended to degrade and humiliate them, and that's what makes it a sexual assault." She said while Vagnini may not obtained sexual gratification from penetrating his victims' anuses, the victims felt violated nonetheless. Yet as part of a plea deal, prosecutors agreed to drop the sexual assault charges since Vagnini agreed to plead no contest to four felony charges and four misdemeanors. Vagnini will no longer have to register as a sex offender. In fact, all of the perpetrators were given plea deals and given light sentences. Officer Jeffrey Dollhopf, 42, will face a $300 fine and and was ordered to 100 hours of community service for his involvement in the assaults. Since he pleaded no contest to disorderly conduct as a party to the crime, most of his charges were wiped out. As part of his deal, he agreed to resign from the department. He spent one full year on paid leave from the department. Officer Brian Kozelek, 34, was given a similar deal. After a full year of paid vacation, he now faces a $300 fine and a mere 20 hours community service. He also agreed to voluntarily resign his position at the department. Officer Jacob Knight, 32, will actually face a small amount of jail time. He was sentenced to 20 days in the House of Correction, a $300 fine and 60 hours of community service after an extended amount of paid time off. As for Officer Michael Vagnini, his record of molesting innocent people, illegal detainment, illegal searches, penetrating orifices for fun, framing people with false evidence and ruining their lives has come to a close. After terrorizing his community for years in a most disgusting and egregious way, he will face just over 2 years behind bars — 26 months. Faith Restored? Do these sentences restore faith in the justice system and the Milwaukee Police Department, as some claim? Attorney Jonathan Safran, representing some of the victims, said he's "tired of the excuses" about training and supervision. "… The concern is that it goes beyond just these officers. We have allegations of a number of other officers in a number of other districts doing some of the same kinds of things." Of the sentencing of Officer Knight, Safran said, "I'm not sure if it's strong enough." Vagnini's own lawyer said Vagnini's aggressive tactics were no secret within the department and the court system, saying the whole system encouraged and rewarded his crime fighting tactics to get drugs off the streets. "He's left holding the bag for everybody," Michael Steinle told the court, citing Vagnini's dedication to fighting crime. If what the defense and prosecuting attorneys say is true, the corruption in Milwaukee may go a lot deeper than just the 4 officers who have been officially charged. A deeper cleaning of the department may be in order, and only the Milwaukee mayor can see that it happens. His contact information is provided below. One of the ironies of this story is that sadistic, violent freaks who physically abuse the public are given lighter sentences than many of the very people whose lives were ruined and were dragged into cages for the crime of possessing arbitrary plants and substances, harming no one but themselves. And why should twisted individuals get lighter sentences for these acts due to their wearing a badge and a uniform? If a gang of strange men approaches a person, accosts them, threatens them with violence, detains them against their will, and penetrates their orifices with parts of their bodies, that should be considered rape or sexual assault, and those involved should be considered accomplices. That's what would happen to a normal person without a badge. "Official misconduct" is only the tip of the iceberg for these monsters. It should be noted that even if a few corrupt cops are no longer a part of the police force, the very same oppressive and unjust drug laws remain in place for future cops to abuse and destroy innocent, non-violent lives with. There's a lot to be disturbed with after reading this case, and the problems will not go away without serious overhaul of the department, the laws, and the legal system itself.

Reformism Bad

Reformism fails in the context of the criminal justice system—it's better to just start anew

David **Bliven**, 12-11-**14** [Attorney David Bliven graduated with honors from Syracuse University in 1993 with a B.A. in Sociology. He went on to serve as a judicial intern and statistician with the NYS Commission on City Court Judicial Reallocation with the Office of the Deputy Chief Administrative Judge. David Bliven then attended law school at New York Law School, where he graduated in 1997 with honors and ranked within the top 15% of his class.] "Radical ways to reform policing" Online: "http://socialistworker.org/2014/12/11/radical-ways-to-reform-policing"

I WAS listening to the news the other day and heard that former New York City Mayor Rudolph Giuliani--who I prefer to call something that is unprintable in a family newspaper--see the

documentary Giuliani Time if you want to know why--advocated the implementation of body cameras for police officers. I distinctly recall being called a "bleeding-heart liberal" by my law school professor for advocating the same thing. Had Rudy become a progressive, or just lost his mind? My initial instinct was to say that "anything Giuliani is for, I'm against." But not so fast. This seemingly progressive talk is coming from many quarters, in an effort to placate the budding movement for fundamental reform of the criminal injustice system. Many politicians are calling for "retraining," "community policing" and "racial sensitivity programs" for police officers. While implementing such reforms would certainly be something (along the lines of slightly better than nothing), they're akin to polishing a turd, putting lipstick on a pig or applying make-up to Rudolph Giuliani. The criminal system of injustice is rotten to the core, and like rotten food, one shouldn't stick it back in the fridge hoping it gets better, or trim off the edges of mold thinking it's still good enough to eat. One should just chuck the system in the trash, and start anew.

1NC

T— “curtail”

1. Interpretation: curtail does not mean to abolish

Goldberg 83 Steven Goldberg, Associate Professor of Law, Georgetown University Law Center;

Washington Law Review APRIL, 1983 58 Wash. L. Rev. 343 SYMPOSIUM ON ENERGY ISSUES IN THE PACIFIC NORTHWEST: UNCONSCIONABILITY IN A COMMERCIAL SETTING: THE ASSESSMENT OF RISK IN A CONTRACT TO BUILD NUCLEAR REACTORS. lexis

> Indeed, thorough interpretation will require a court to examine the hell-or-high-water clause carefully in the context of the entire contract. The clause does not, for example, speak of "termination" of the projects even though that term is used elsewhere in the agreement. n11 Indeed, the clause, rather than speaking of "termination" or "cancellation," speaks only of "reduction or curtailment . . . in whole or in part." n12 These words might cover the ending of the projects, but it is worth noting that as basic a source as Black's Law Dictionary defines curtail as "to shorten, abridge, diminish, lessen, or reduce; and . . . has no such meaning as abolish." n13

2. Violation: The plan abolishes the blanket policy of strip searching all arrestees upon entering jail facilities in the US.

3. The affirmative interpretation is bad for debate—

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big.

4. T IS A VOTER— because the opportunity to prepare promotes better debating

Neoliberalism K

The aff is symptom reduction at best—strip searches are a by-product of the “investments” that prisons make in the prisoner. Prisoners will continue to be exploited by the prison industrial complex even post-plan.

Lawston 08

(Jodie Michelle Lawston**,** Chair and Professor of Women's Studies at Cal State San Marcos. Her research interests center on the issues of women’s incarceration, immigrant detention, political and social activism, and most recently, women’s health.

"Introduction: Women, The Criminal Justice System, And Incarceration: Processes Of Power, Silence, And Resistance," Nwsa Journal, http://www.jstor.org/stable/pdf/40071269.pdf) AC

The combination of the warehousing of "women on the margins" who have endured gender-specific physical, sexual, and emotional abuse prior to prison, with the gender-specific physical, sexual, emotional and health related abuses that occur in prisons across the nation, is a raw illustration of the power of a patriarchal prison system that only serves to punish, oppress, and silence women. Notwithstanding, it would be erroneous to assume that the prison system is a separate, unique space in society where sadistic oppression is unleashed. **The prison system is a microcosm of society at large** (Lawston, forthcoming). Prisons are unique sites of condensed and concentrated forms of oppression that originated in the historical and contemporary processes of social, racial, economic and political injustice (Lawston forthcoming 2009). Although prisoners are out of sight, they play a critical role in the organization of our society. Foucault's concept of the political technology of the body crystallizes the relationship between the body and the state that is particularly suggestive for our understanding of prisons:

[T]he body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs. This political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination; but on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection . . . the body becomes a useful force only if it is both a productive body and a subjected body (1979, 25-26).

The U.S. prison system exemplifies Foucault's insights rather poignantly. In this passage, Foucault explains how the relations of power continuously deploy an array of technologies that render bodies productive in the service of capital. Foucault's historical materialist formulation of the subjectivation and subjection of the body by the state demonstrates how incarcerated bodies become meaningful because the technologies of the prison system mark them, discipline them, and correct them. For example, the images of orange jumpsuits, prisonershuffling in shackles, and inmates peering from behind iron bars are images that are widely disseminated in society. Additionally, people in mainstream society joke about "the strip search." Foucault asserts that the body is forced to perform ceremonies and to emit signs. Stripping a person's body naked, compelling that person to bend over in a prone and entirely exposed position, is in fact a state ritual that symbolizes complete subjection of the prisoner's body to the vigilant eye of the state.

Foucault's use of the word "investment" is particularly provocative. Parading prisoners in bright orange jumpsuits, shackling them, and **stripsearching them** are actions that **represent an investment**. **Society reaps a profit from these incarcerated bodies**, both economically and symbolically. It is not only that the privatization of the prison system produces millions of dollars in profit for corporations like the Correction Corporation of America (CCA) and Wackenhut (Gilmore 2007), but also the laughably low wages of prison labor produces millions of dollars of profit for corporations like Starbucks, Victoria's Secret, and Dell. Equally important, according to Foucault's formulation, every prisoner that is incarcerated is a stern warning to anyone who may think of speaking out and rebelling against social, economic, and political oppression.

Criminal justice and prison systems that operate under the neoliberal system will inevitably target black and brown bodies because of the way neoliberalism has historically marginalized and subjugated economically disadvantaged communities.

Wacquant 10

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"Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity"

http://disciplinas.stoa.usp.br/pluginfile.php/264179/mod_resource/content/1/Wacquant_Crafting%20the%20neoliberal%20state.pdf) AC

In the third place, ''devices for normalization'' anchored in the carceral institution have not spread throughout the society, in the manner of capillaries irrigating the entire body social. Rather, the widening of the penal dragnet under neoliberalism has been remarkably discriminating: in spite of conspicuous bursts of corporate crime (epitomized by the Savings and Loans scandal of the late 1980s and the folding of Enron a decade later), it has affected essentially the denizens of the lower regions of social and physical space. Indeed, the fact that the social and ethnoracial selectivity of the prison has been maintained, nay reinforced, as it vastly enlarged its intake demonstrates 11 This is particularly glaring in the country's second largest carceral system (after the Federal Bureau of Prisons), the California Department of Corrections, in which grotesque overcrowding (the state packs 170,000 convicts in 33 prisons designed to hold 85,000) and systemic bureaucratic dysfunction combine to make a mockery of any pretense at ''rehabilitation'' (Petersilia, 2008). Crafting the Neoliberal State 205 that penalization is not an all-encompassing master logic that blindly traverses the social order to bend and bind its various constituents. On the contrary: it is a skewed technique proceeding along sharp gradients of class, ethnicity, and place, and it operates to divide populations and to differentiate categories according to established conceptions of moral worth. At the dawn of the twenty-first century, America's urban (sub)proletariat lives in a ''punitive society,'' but its middle and upper classes certainly do not. Similarly, efforts to import and adapt U.S.-style slogans and methods of law enforcement—such as zero tolerance policing, mandatory minimum sentencing, or boot camps for juveniles—in Europe have been trained on lower-class and immigrant offenders relegated in the defamed neighborhoods at the center of the panic over ''ghettoization'' that has swept across the continent over the past decade (Wacquant, 2009b).

The impact is extinction – neoliberal social organization ensures extinction from resource wars, climate change, and structural violence – only accelerating beyond neoliberalism can resolve its impacts

Williams & Srnicek 13

(Alex, PhD student at the University of East London, presently at work on a thesis entitled 'Hegemony and Complexity', Nick, PhD candidate in International Relations at the London School of Economics, Co-authors of the forthcoming Folk Politics, 14 May 2013, http://criticallegalthinking.com/2013/05/14/accelerate-manifesto-for-an-accelerationist-politics/)

At the begin-ning of the second dec-ade of the Twenty-First Cen-tury, **global civilization faces a new breed of cataclysm**. These com-ing apo-ca-lypses ridicule the norms and organ-isa-tional struc-tures of the polit-ics which were forged in the birth of the nation-state, the rise of cap-it-al-ism, and a Twen-ti-eth Cen-tury of unpre-ced-en-ted wars. 2. **Most significant is the break-down of the planetary climatic system**. In time, **this threatens the continued existence of the** present global **human population**. Though this is the most crit-ical of the threats which face human-ity, **a series of** lesser but **potentially equally destabilising problems exist along-side** and inter-sect with **it**. **Terminal resource depletion, especially in water and energy** reserves, **offers the prospect of mass starvation, collapsing economic paradigms, and new hot and cold wars**. **Continued financial crisis has led governments to embrace the** para-lyz-ing **death spiral policies of austerity, privatisation of social welfare services, mass unemployment, and stagnating wages. Increasing automation in production processes** includ-ing 'intel-lec-tual labour' **is evidence of the secular crisis of capitalism, soon to render it incapable of maintaining current standards of living** for even the former middle classes of the global north. 3. In con-trast to these ever-accelerating cata-strophes, **today's politics is beset by an inability to generate the** new ideas and **modes of**

organisation necessary to transform our societies to confront and resolve the **coming annihilations**. While crisis gath-ers force and speed, polit-ics with-ers and retreats. In this para-lysis of the polit-ical ima-gin-ary, the future has been cancelled. 4. Since 1979, **the hegemonic global political ideology has been neoliberalism**, found in some vari-ant through-out the lead-ing eco-nomic powers. In spite of the deep struc-tural chal-lenges the new global prob-lems present to it, most imme-di-ately the credit, fin-an-cial, and fiscal crises **since 2007 – 8, neoliberal programmes have** only **evolved** in the sense of deep-en-ing. **This continuation** of the neo-lib-eral pro-ject, or neo-lib-er-al-ism 2.0, **has begun to apply another round of structural adjustments**, most sig-ni-fic-antly in the form of encour-aging new and aggress-ive incur-sions by the private sec-tor into what remains of social demo-cratic insti-tu-tions and ser-vices. **This is in spite of the immediately negative** eco-nomic and social **effects of such policies**, and the longer term fun-da-mental bar-ri-ers posed by the new global crises.

The alternative articulates a "counter-conduct" – voting neg pushes towards a cooperative conduct *that organizes individuals around a collectively shared* commons *– affirming this conduct creates a new heuristic that de-couples government from the demand for competition and production*

Dardot & Laval 13

(Pierre Dardot, philosopher and specialist in Hegel and Marx, Christian Laval, professor of sociology at the Universite Paris Ouest Nanterre La Defense, *The New Way of the World: On Neoliberal Society*, pgs. 318-321)

This indicates to what extent we must take on board in our own way the main lesson of neo-liberalism: **the subject is always to be constructed**. **The whole question is** then **how to articulate subjectivation with resistance to power**. Now, precisely this issue is at the heart of all of Foucault's thought. However, as Jeffrey T. Nealon has recently shown, part of the North American secondary literature has, on the contrary, stressed the alleged break between Foucault's research on power and that of his last period on the history of subjectivity.55 According to the 'Foucault consensus', as Nealon aptly dubs it, the successive impasses of the initial neo-structuralism, and then of the totalizing analysis of panoptical power, led the 'last Foucault' to set aside the issue of power and concern himself exclusively with the aesthetic invention of a style of existence bereft of any political dimension. Furthermore, if we follow this de-politicizing reading of Foucault, the aestheticization of ethics anticipated the neo-liberal mutation precisely by making self-invention a new norm. In reality, far from being oblivious of one another, the issues of power and the subject were always closely articulated, even in the last work on modes of subjectivation. If one concept played a decisive role in this respect, it was 'counter-conduct', as developed in the lecture of 1 March 1978.56 This lecture was largely focused on the crisis of the pastorate. It involved identifying the specificity of the 'revolts' or **'forms of resistance of conduct'** that are the correlate of the pastoral mode of power. If such forms of resistance are said to be 'of conduct', it is because they are forms of resistance to power as conduct and, as such, **are themselves forms of conduct opposed to** this **'power-conduct'**. **The term 'conduct'** in fact **admits of two meanings**: **an activity that consists in conducting others**, or **'conduction'**; **and the way one conducts oneself under the influence of this activity of conduction**.57 **The idea of 'counter-conduct'** therefore **has the advantage of directly signifying a 'struggle against the procedures implemented for conducting others', unlike the term 'misconduct', which only refers to the passive sense of the word**.58 **Through 'counter-conduct', people seek both to escape conduction by others and to define a way of conducting themselves towards others**.¶ **What relevance might this observation have for** a reflection on **resistance to neo-liberal governmentality**? It will be said that the concept is introduced in the context of an analysis of the pastorate, not government. **Governmentality**, at least **in its** specifically **neo-liberal form**, precisely **makes conducting others through their conduct towards themselves its real goal**. **The peculiarity of** this conduct towards oneself, **conducting oneself as a personal enterprise, is that it immediately and directly induces a certain conduct towards others**: **competition with others**, regarded as so many personal enterprises. Consequently, counter-conduct as a form of resistance to this governmentality must correspond to a conduct that is indivisibly a conduct towards oneself and a conduct towards others. One cannot struggle against such an indirect mode of conduction by appealing for rebellion against an authority that supposedly operates through compulsion external to individuals. If 'politics is nothing more and nothing less than that which is born with resistance to governmentality, the first revolt, the first confrontation',59 it means that ethics and politics are absolutely inseparable.¶ To the subjectivation-subjection represented by ultra-subjectivation, we must oppose a subjectivation by forms of counter-conduct. **To neo-liberal governmentality as a specific way of conducting the conduct of others, we must** therefore **oppose a no less specific double refusal**: **a refusal to conduct oneself towards oneself as a personal enterprise and a refusal to conduct oneself towards others in accordance with the norm of competition**. As such, the double refusal is not 'passive disobedience'.60 For, **if it is true** that the **personal enterprise's**

relationship to the self immediately and directly determines a certain kind of relationship to others – **generalized competition** – **conversely, the refusal to function as a personal enterprise**, which is self-distance **and a refusal to line up in the race for performance, can only practically occur on condition of establishing cooperative relations with others, sharing and pooling**. In fact, **where would be the sense in a self-distance severed from any cooperative practice**? At worst, a cynicism tinged with contempt for those who are dupes. At best, simulation or double dealing, possibly dictated by a wholly justified concern for self-preservation, but ultimately exhausting for the subject. Certainly not a counter-conduct. All the more so in that **such a game could lead the subject, for want of anything better, to take refuge in a compensatory identity**, which at least has the advantage of some stability by contrast with the imperative of indefinite self-transcendence. **Far from threatening the neo-liberal order, fixation with identity**, whatever its nature, **looks like a fall-back position for subjects weary of themselves**, for all those who have abandoned the race or been excluded from it from the outset. **Worse, it recreates the logic of competition at the level of relations between 'little communities'**. **Far from being valuable in itself**, independently of any articulation with politics, **individual subjectivation is bound up at its very core with collective subjectivation**. In this sense, sheer aestheticization of ethics is a pure and simple abandonment of a genuinely ethical attitude. **The invention of new forms of existence can only be a collective act**, **attributable to the** multiplication and **intensification of cooperative counter-conduct**. A collective refusal to 'work more', if only local, is a good example of an attitude that can pave the way for such forms of counter-conduct. In effect, it breaks what André Gorz quite rightly called the 'structural complicity' that binds the worker to capital, in as much as 'earning money', ever more money, is the decisive goal for both. It makes an initial breach in the 'immanent constraint of the "ever more", "ever more rapidly"'.61¶ **The genealogy of neo-liberalism** attempted **in this book teaches** us that **the new global rationality is** in **no** wise an **inevitable fate shackling humanity**. Unlike Hegelian Reason, it is not the reason of human history. **It is itself wholly historical** – that is, **relative to strictly singular conditions that cannot legitimately be regarded as untranscendable**. The main thing is to understand that nothing can release us from the task of promoting a different rationality. That is why the belief that the financial crisis by itself sounds the death-knell of neo-liberal capitalism is the worst of beliefs. It is possibly a source of pleasure to those who think they are witnessing reality running ahead of their desires, without them having to move their little finger. It certainly comforts those for whom it is an opportunity to celebrate their own past 'clairvoyance'. At bottom, it is the least acceptable form of intellectual and political abdication. Neo-liberalism is not falling like a 'ripe fruit' on account of its internal contradictions; and traders will not be its undreamed-of 'gravediggers' despite themselves. Marx had already made the point powerfully: 'History does nothing'.62 **There are only human beings who act in given conditions and seek through their action to open up a future for themselves**. **It is up to us to enable a new sense of possibility** to blaze a trail. The **government** of human beings **can be aligned with horizons other than those of maximizing performance, unlimited production and generalized control**. **It can sustain itself with self-government that opens onto different relations with others than** that of **competition between 'self-enterprising actors'**. The **practices of 'communization' of knowledge, mutual aid and cooperative work can delineate the features of a different world reason. Such an alternative reason cannot be better designated than by the term reason of the commons**.

Case

Harms

Absent strip searches, prisons would turn to significantly less effective detection measures such as body scanners. that makes drug smuggling even easier and leads to increased instances of prisoner deaths

Taelor **Bentley**, a Law Street Media Fellow, 6-24**-2015,**

"How Do We Solve the Drug Overdose Problem in California Prisons?," Law Street (TM), http://lawstreetmedia.com/news/solve-drug-overdose-problem-california-prisons/

Officials have hopes that these new methods will lead to a decrease in the death rate. But despite officers' opinions that the efforts are discouraging drug smuggling, reports show that might not

be the case, and that instead these policies just create problems for visitors. There have been more than 6,000 scans on visitors and employees at eleven different prisons and no drugs were found. Mohamed Shehk, an Oakland-based spokesman for Critical Resistance, stated, "The statistics — $8 million, 6,000 scans and nothing to show for it — show that these are intended to intimidate and criminalize people who are going to see their loved ones inside."

More than 150 California inmates have died due to drug overdoses since 2006, with a high of 24 deaths in 2013. Sharing needles, which often leads to the spread of Hepatitis C infections, killed 69 inmates in 2013 alone. Corrections Secretary Jeffrey Beard is determined to change this high rate and is modeling California's new procedures after those that were successful in the Pennsylvania Corrections Department, which he led for a decade. Pennsylvania's annual rate of drug or alcohol deaths per 100,000 inmates is one, while California's is eight per 100,000 inmates.

Increased drug activity leads to more prison violence— turns case

*Washington Times, **1-27**-2010*

"Drugs inside prison walls" http://www.washingtontimes.com/news/2010/jan/27/drugs-inside-prison-walls/?page=all

"The imagination and creativity of people under lock and key boggles the mind," said Dr. H. Westley Clark, director of the federal Center for Substance Abuse Treatment, who suggested that the cost of creating drug-free prisons nationwide would be prohibitive.

Corrections officials say much of the prison drug trade is controlled by gangs — and one result is sky-high prices. Hawaii's Deputy Director of Corrections Tommy Johnson says the going price for heroin behind bars is sometimes 10 times the street price.

In California, gang-related drug activity is the No. 1 cause of prison violence, according to Mike Ruff, a corrections department special agent.

"Something that appears to be a riot between different gangs is not necessarily because they're rivals — it's more because of a drug deal gone bad," he said. "All of the gangs are actively involved in narcotics."

Mr. Ruff cited some of the gangs' favored smuggling tactics — drugs passed from a visiting wife or girlfriend via a seemingly passionate kiss and drugs secreted in legal documents that are supposed to be exempt from thorough searches in prison mailrooms.

Alt causes to high instances prison rape

Flyn L. **Flesher 2007**

("Cross-Gender Supervision in Prison and the Constitutional Right of Prisoners to Remain Free from Rape"

https://www.wcl.american.edu/endsilence/documents/CrossGenderSupervisioninPrisonsandtheConstitutionalRightofPrisonerstoRemainFreeFromRape.pdf)

Multiple factors increase the frequency of rape in women's prisons. Poor training of prison guards and abandonment of rehabilitation goals also increase the frequency of prison rape,42 as do failures to investigate and prosecute prison rape.43 Overcrowding of prisons and an inability to sufficiently staff prisons to oversee large populations serve to exacerbate the problem.4 4 Professor of Correctional Law James Robertson has noted that "the very layout of many prisons renders their architecture an accessory to rape" by making detection of sexual attacks difficult.

Solvency

Current policies aimed at protecting prisoners from sexual abuse aren't enforced— means that aff won't solve either

Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW*, http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 44-48//SRawal

In the United States, **sexual abuse by guards in women's prisons is so notorious and widespread that it has been described as "an institutionalized component of punishment behind prison walls.**"1 **Women in prisons2 across the United States are subjected to diverse and systematic forms of sexual abuse: vaginal and anal rape; forced oral sex and forced digital penetration; quid pro quo coercion of sex for drugs, favors, or protection; abusive pat searches and strip searches; observation by male guards while naked or toileting; groping; verbal harassment; and sexual threats**.3 Guards and prisoners openly joke about prisoner "girlfriends" and guard "boyfriends." Women prisoners become pregnant when the only men they have had contact with are guards and prison employees; often they are sent to solitary conªnement—known as "the hole"—as punishment for having sexual contact with guards or for getting pregnant.**4 Such open and obvious abuses would seem relatively easy for a prison administration to detect and prevent if it chose to do so. Prisons owe an afªrmative legal duty to protect their inmates against abuse.5 Congress and forty-four states have criminalized all sexual contact between guards and prisoners, regardless of consen**t.6 **Nonetheless, within women's prisons guards routinely commit serious sexual offenses against the women in their custody. Government administrators know that such abuse is occurring**7 and acknowledge their duty to prevent it.8 However, **they have generally neglected to do much about it**, as **most prisons have failed to adopt institutional and employment policies that effectively prevent or reduce custodial sexual abuse**.9 In most workplaces, an employee who had sex on the job would be ªred. In prison, **a report of custodial sexual abuse is more likely to result in punishment or retaliation against the prisoner than in disciplinary consequences for the guard.**10 **One might expect the law to furnish incentives for prisons to control such unlawful acts by their employees,** as it does for other civil defendants**. It does not**.11 Instead, as I demonstrate in this Article, a network of prison law rules—the Prison Litigation Reform Act of 1995 ("PLRA"),12 governmental immunities, and constitutional deference— work together to confer near-complete immunity against prisoners' claims. In the United States, both male and female prisoners are stereotyped as black;13 more than two thirds of women in U.S. prisons are African American or Latina.14 In this Article, I consider how the gendered racialization of women prisoners informs legal and institutional indifference to their treatment in prison. Like black women under slavery,15 **women in contemporary prisons are subjected to institutionalized sexual abuse, while the law refuses to protect them or provide redress.**

Their Miller 2k evidence assumes that such there aren't policies in place to prevent sexual abuse but our more recent evidence indicates that there are a series of measures in place aimed at doing so. However, these measures are rarely enforced. Means plan won't solve either.

Plan is hands-off approach to sexual violence that fails to solve

Buchanan 10

(Kim Shayo Buchanan, Associate Professor of Law and Gender Studies at USC Gould School of Law)

"Our Prisons, Ourselves: Race, Gender and the Rule of Law on JSTOR," Yale Law & Policy Review

http://www.jstor.org/stable/41308525) AC

Although the survey data do not explain the variation in sexual victimization rates among institutions, such differences may reflect differences in institutional practices. Two recent national commissions have documented the institutional measures required to prevent sexual and physical violence. These measures are well known to many correctional administrators.96 Some preventive measures, such as reducing prison overcrowding and rethinking architectural design,97 are outside the immediate control of prison administrators and require governmental cooperation. But correctional officials know that sexual abuse can be greatly reduced by improved practices of institutional governance, including: the use of reliable, objective security classification measures so that prisoners are housed with other inmates who are about as dangerous as they are;98 direct supervision of inmates by guards;99 prevention of physical violence;100 zero tolerance policies for sexual violence;101 immediate and thorough investigation of every allegation of sexual abuse;102 the use of modern surveillance technology;103 and internal and external monitoring.104 To the extent that prison administrators and staff maintain a hands-off approach to sexual violence in their institutions, they are electing a mode of institutional governance that they know falls short of institutional best practices.

Abuses will continue- prisoners can't effectively access legal redress

Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW*, http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 70-73//SRawal

With few, if any, exceptions, prisoners' civil claims against correctional authorities for toleration of sexual abuse have succeeded only when a large number of women testify to widespread abuses, and some guard witnesses break ranks to corroborate the prisoners' accounts that severe custodial sexual abuse was both widespread and publicly known within the prison.199 When prison administrators seek to restrict male guards' access to women prisoners in order to protect the prisoners against sexual abuse, courts generally have upheld these institutional policies against guards' employment discrimination claims,200 at least at the appellate level.201 However, **when a prisoner brings civil claims on her own behalf, they are generally screened out or rejected.**202 Indeed, **one commentator argues that juries are so reluctant to award any damages to prisoners that they will not on basis that prisoner was "not credible" because she had formed a "plan" to get a transfer by reporting sexual activity with corrections officers; the court** found some of this activity not to have happened because it was uncorroborated, and **stated that other activity "could only reasonably be described as consensual**" because the prisoner "never tried to caught [the guards] off, scream, or yell"). 70 Harvard Civil Rights-Civil Liberties Law Review [Vol. 42 do so unless they believe the defendant has acted with such malice that punitive damages are appropriate.203 Even when prisoners are able to prove that they have been raped, juries may tend to "lowball prisoners' nonwage damages as an expression of disregard for them."204 For example, in Morris v. Eversley, 205 a jury convicted a guard of sexually assaulting a female prisoner based on DNA evidence. **A civil jury awarded the prisoner only $500 in compensatory damages and $7,500 in punitive damages.2**06 The district court judge found the verdict generally inadequate, and ordered a new trial. The new jury awarded $1,000 for compensatory damages and $15,000 for punitive damages. The judge, apparently

frustrated by this paltry award, wrote: I was baf°ed that the ªrst jury awarded such low amounts, and yet **the second jury did not award much more**. **It is hard to imagine that Morris could be made whole for the damages she suffered, including the loss of her dignity, by a mere $500 or $1,000 in compensatory damages**. . . . **[A] prisoner**, even a former prisoner, **is unable to recover a fair measure of damages**.207 **Such inadequate jury awards re°ect the discredited prejudicial racial and gender stereotypes by which low-status women, especially black women, prostitutes, and prisoners, are viewed as less likely to be harmed by sexual assault**. Outside of the prison context, damage awards for sexual assault are typically much higher**. A recent survey of civil actions for sexual assault resolved in state appellate courts between 2001 and 2004 found that damage awards in sexual assault cases outside prison can range from nothing to well over one million dollars**. But in cases involving institutional liability, "a signiªcant number of cases award compensatory damages of $100,000 to $200,000." Ellen M. Bublick, Tort Suits Filed by Rape and Sexual Assault Victims in Civil As Bublick observes, "[i]nadequate damage awards may be a particular issue when the victim and the assailant are acquaintances or partners," as they are by deªnition in cases of custodial sexual abuse 1. **The Prison Litigation Reform Act The Prison Litigation Reform Act209 ("PLRA") was expressly designed to deter prisoner lawsuits**. It was introduced in 1995 to respond to congressional concern about the dramatic increase in prisoner litigation between 1980 and the mid-1990s—an increase that, as commentators have noted, coincided with a dramatic increase in the incarcerated population in the United States.210 **The PLRA was not intentionally designed to block lawsuits for custodial sexual abuse; rather, it was designed to address the perceived problem of jailhouse lawyers who brought frivolous lawsuits**. In 1995, during the Senate debate over the bill, Senator Bob Dole cited a notorious prisoner lawsuit in which a prisoner complained that the prison served chunky, rather than creamy, peanut butter.211 Numerous other frivolous suits, such as claims arising from an unsatisfactory prison haircut and a desire for a particular brand of sneakers, were also used during the PLRA debates as examples of the pressing need for special barriers to prisoner litigation.212 During the congressional debates, Senator Joe Biden pointed out that the PLRA would erect "too many roadblocks to meritorious prison lawsuits."213 He urged Congress not to "lose sight of the fact that some of these lawsuits have merit—some prisoners' rights are violated."214 Senator Biden pointed out that hundreds of women prisoners had been sexually abused by dozens of guards, openly and for years, in Washington, D.C., prisons. He noted that this practice changed only after their class action was successful.215 Despite Senator Biden's warnings, no amendment was adopted to protect the right of prisoners to sue in the event of sexual abuse by guards. The PLRA is a status-based law that excludes almost all prisoner claims from the courts.216 Like historical doctrines designed to deter rape average sentence given to Black women's assailants is two years. The average sentence given to white women's assailants is ten years." Crenshaw, Sexual Harassment, supra note 44, at 1471. complainants, black witnesses, and married women from bringing white men to court, the PLRA establishes unique hurdles that are nearly impossible for prisoner plaintiffs to overcome. The most damaging hurdle imposed by the PLRA is its grievanceexhaustion requirement.217 Like the marital privacy doctrine that excluded wives' claims from the courts in order to protect "family government,"218 this provision values the peace of mind of those in power over the safety of those who are in their custody. **The grievance-exhaustion provision requires inmates to exhaust internal prison grievance procedures before they may bring their claims to an outside authority, even if the procedures are complex, inefªcient, unfair, or incapable of offering a remedy for the prisoner's claim.219 If the prisoner has failed to do so, the litigation is dismissed**. **Thus a prison is virtually insulated from prisoner litigation to the extent that its grievance process is complex and time-consuming, its deadlines for ªling a grievance are brief,220 and the threat of retaliation deters prisoners from using the process at all**. In practice the grievance-exhaustion requirement "invites technical mistakes resulting in inadvertent noncompliance with the exhaustion requirement, and bar[s] litigants from court because of their ignorance and uncounselled procedural errors."221 Unreasonably quick grievance deadlines evoke the "fresh complaint" requirements of traditional rape doctrine.222 In New York, for example, the Department of Corrections imposes a fourteen-day limit for ªling any prisoner grievance, unless the grievance authority determines that "mitigating circumstances" justify the delay.223 If a **prisoner is in a "consensual" sexual relationship with a guard, she is unlikely to express a grievance until well after the guard becomes threatening or abusive, thus missing the deadline**.224 If she misses the grievance deadline, her litigation is dismissed**. Furthermore, prison grievance procedures offer no prospective relief to protect the prisoner before she is raped**. If a guard has merely threatened to assault the prisoner, offered a quid pro quo for sex, or groped her— or if she did not think to preserve a DNA sample during her rape—the grievance process will do nothing.225 Even though ªling a grievance is futile in such circumstances, **the PLRA still requires the prisoner to report the abuse to her abuser's colleagues through an often-humiliating disciplinary procedure**226 **that is likely to result in retaliation**. In addition to its grievance-exhaustion requirement, **the PLRA further hinders prisoner litigation by prohibiting any prisoner lawsuit "without a prior showing of physical injury**."227 Some courts have raised this barrier even further by requiring that the physical injury be at least as serious as an injury that would meet the Eighth Amendment's "de minimis harm" requirement.228 **Presumably, vaginal or anal rape would sufªce**.229 On its face, however, **the physical injury requirement appears to bar prisoner claims for sexual abuse if**

no physical injury results.230 For example, the text of this provision appears to bar claims that a prisoner was forced to perform or submit to oral sex, was digitally penetrated, or was coerced into sexual compliance through threats or inducements without a beating.

Other Cards

Neolib

Neoliberalism is the reason why women of color are disproportionately affected by the war on drugs.

Lawston 08

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"Introduction: Women, The Criminal Justice System, And Incarceration: Processes Of Power, Silence, And Resistance," Nwsa Journal, http://www.jstor.org/stable/pdf/40071269.pdf) AC

The majority of women in prison are incarcerated for nonviolent drug or property offenses, with drug offenses being the largest source of growth for the women's prison and jail population. Of course, it is precisely the war on drugs that is responsible for the astounding increase in the numbers of women, like Jan, who are confined. While the war on drugs has disproportionately impacted communities of color, Mauer, Potler and Wolf (1999, 2) argue that "the set of law enforcement and sentencing policies and practices that have been enshrined under this approach have had a dramatic and disproportionate impact on women." Women drug offenders, particularly those of color, are now far likelier to be arrested, convicted, and incarcerated than they were prior to the war on drugs (Diaz Cotto 2007; Sudbury 2005; Johnson 2003; Bloom and Chesney-Lind 2000; Owen 1998; Chesney-Lind 1997). A 1995 study by the Sentencing Project found that from 1986 to 1991, the number of black female drug offenders sentenced to state prisons increased by 828 percent, the number of Latina drug offenders increased by 328 percent, and the number of white female drug offenders increased by 241 percent (Mauer and Huling 1995). The reasons for the drug war's disproportionate impact on women include the following: women are more likely than men to commit drug offenses, **they often become involved in the drug economy out of economic necessity** or due to coercion or force from a male partner, they lack any information that would help them in the adjudication process because they occupy the lower rungs on the drug trafficking ladder, **they do not have the economic capital to hire a competent attorney**, or they refuse, because of loyalty or fear, to testify against their male partners who are engaged in drug trafficking (Diaz Cotto 2007; Johnson 2003). Because mandatory drug sentences "fail to consider extenuating circumstances pertinent to women's lives"(Johnson 2003, 47), women involved in any way in the drug trade are prosecuted to the full extent of the law. In this issue, both Traci Schlesinger and Marylee Reynolds explore the gendered impact of the drug war and mandatory sentences. Moreover, Marylee Reynolds maps out the ways in which the drug war has gone global, due to U.S. imperialistic pressure and cultural influence. As Reynolds argues, Canada and countries in Latin America and Western Europe have enacted drug and mandatory sentencing laws that not only disproportionatelyaffect women, but increase reliance on incarceration.

Mass incarceration is a response to high levels of social insecurity created by the competitive nature of neoliberalism

Wacquant 10

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Prize Fellow, and has won numerous grants including the Fletcher Foundation Fellowship and the Lewis Coser Award of the American Sociological Association, June 2010

"Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity"

http://disciplinas.stoa.usp.br/pluginfile.php/264179/mod_resource/content/1/Wacquant_Crafting%20the%20neoliberal%20state.pdf) AC

First, the fast and furious bend toward penalization observed at the fin de sie`cle is not a response to criminal insecurity but to social insecurity. To be more precise, the currents of social anxiety that roil advanced society are rooted in objective social insecurity among the postindustrial working class, whose material conditions have deteriorated with the diffusion of unstable and underpaid wage labor shorn of the usual social ''benefits,'' and subjective insecurity among the middle classes, whose prospects for smooth reproduction or upward mobility have dimmed as competition for valued social positions has intensified and the state has reduced its provision of public goods. Garland's notion that ''high rates of crime have become a normal social fact—a routine part of modern consciousness, an everyday risk to be assessed and managed'' by ''the population at large,'' and especially by the middle class, is belied by victimization studies. Official statistics show that law breaking in the United States declined or stagnated for 20 years after the mid-1970s before falling precipitously in the 1990s, while exposure to violent offenses varied widely by location in social and physical space (Wacquant, 2009b:144–147). Relatedly, European countries sport crime rates similar to or higher than that of the United States (except for the two specific categories of assault and homicide, which compose but a tiny fraction of all offenses), and yet they have responded quite differently to criminal activity, with rates of incarceration one-fifth to one-tenth the American rate even as they have risen.

There is an alternative— countries that have resisted the spread of neoliberalism have also successfully avoided creating a prison-industrial complex like that of the United States.

Wacquant 10

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Finally, neoliberalism correlates closely with the international diffusion of punitive policies in both the welfare and the criminal domains. It is not by accident that the advanced countries that have imported, first, workfare measures designed to buttress the discipline of desocialized wage work and, then, variants of U.S.-style criminal justice measures are the Commonwealth nations that also pursued aggressive policies of economic deregulation inspired by the ''free-market'' nostrums come from the United States, whereas the countries that remained committed to a strong regulatory state curbing social insecurity have best resisted the sirens of ''zero tolerance'' policing and ''prison works.''16 Similarly, societies of the Second world, such as Brazil, Argentina, and South Africa, which adopted super-punitive penal planks inspired by U.S. developments in the 1990s and saw their prison populations soar as a result, did so not because they had at long last reached the stage of ''late modernity,'' but because they have taken the route of market deregulation and state retrenchment.17 But to discern these multilevel connections between the upsurge of the punitive Leviathan and the spread of neoliberalism, it is necessary to develop a precise and broad conception of the latter. Instead of discarding neoliberalism, as Garland (2001:77) does, on account of it being ''rather too specific'' a phenomenon to account for penal escalation, we must expand our conception of it, and move from an economic to a fully sociological understanding of the

Phenomenon.

Queer Pessimism

Use of court rulings perpetuates heteronormativity— judges assume only male guards would potentially assault female inmates

Miller 1

(Teresa A. Miller, Associate Professor of Law, University at Buffalo School of Law, 1-20-2001, "Keeping The Government'S Hands Off Our Bodies: Mapping A Feminist Legal Theory Approach To Privacy In Cross-Gender Prison Searches," Buffalo Criminal Law Review, http://www.jstor.org/stable/10.1525/nclr.2001.4.2.861?Search=yes&resultItemClick=true&searchText=strip&searchText=searches&searchText=prison&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dstrip%2Bsearches%2Bprison%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone **)** AC

Failing to consider how sexuality complicates the privacy analysis in cross-gender search cases provides a powerful example of how courts fail to contextualize privacy. Judges construct a doctrine that overlooks the needs of—and consequently under-protects—lesbian, bisexual, and transgendered women.36 A heterosexual presumption lurks within the doctrine of cross-gender searches. Judges limit their privacy analysis of surveillance in prisoners' living quarters—where they may be observed naked while showering, toileting, and undressing—to searches conducted by guards of the opposite sex. When judges place limits on cross-gender surveillance of naked prisoners by guards of the opposite sex, they assume that its is degrading to be view unclothed by a stranger of the opposite sex only.37This presumes that the relevant actors are heterosexual and precludes the application of a privacy analysis in situations where guards gaze upon the naked bodies of same-sex prisoners or intrusively touch their bodies.38 This assumption was recently acknowledged by the Seventh Circuit Court of Appeals on two occasions.39 However, because prisons are sites of complex and transitional sexualities, judges must factor sexual orientation into their gender analysis if they are to interpret privacy in a manner that deals realistically with the contours of life in prison. Until they do, gender stereotypes within the doctrine of cross-gender searches will remain a shaky foundation upon which to support women's privacy.

The heternormative, hypermasculinized nature of prisons and their policies ignores the sexual violence faced by queer bodies and ensures that it continues even post-plan

Buchanan 10

(Kim Shayo Buchanan, Associate Professor of Law and Gender Studies at USC Gould School of Law)

"Our Prisons, Ourselves: Race, Gender and the Rule of Law on JSTOR," Yale Law & Policy Review

http://www.jstor.org/stable/41308525) AC

The dominant pop-cultural narrative portrays prison rape as "what happens to white boys unfortunate enough to wind up behind bars despite the odds."44 Comedians and other public figures publicly joke that high-profile white-collar criminals, such as Bernie Madoff and Kenneth Lay, will be anally raped when they go to prison.45 In 2004, the Attorney General of California, Bill Lockyer, sparked a controversy when he declared: "I would love to personally escort [Kenneth] Lay to an 8-by-io cell that he could share with a tattooed dude who says, 'Hi, my name is Spike, honey.'"46 Such jokes imply, none too subtly, that prison rape is part of the punishment for criminal wrongdoing. At the same time, they send a message to the listener: If **you don't want to get raped, you better obey the law.** In mainstream cultural narratives about prison rape, whether in comedy, dramatic film, or in the news, the "prison rapist" is often, though not invariably, black, and the victim is almost always white.47 News articles, for example, present the threat of rape in coded - yet somehow thrilling - racial terms. Recent news articles invite the reader to indulge a light frisson of horror (or excitement) at the prospect of prison rape by "heavily tattooed gang members with shaved heads and a penchant for beating and raping wimps who haven't thrown a punch since that haymaker in primary school."48 "You," the imagined reader, are addressed as a vulnerable, nonviolent, and essentially law-abiding citizen, but you find yourself arrested for "petty fraud or drunk driving."49 You are told that you're "about to meet" the real criminals: the "seriously hard-core dudes at county jail."50 The Los Angeles Times asks its imagined reader: "Could you defend yourself? Or would you be victimized and face years of therapy?"

In this Part, I address several misconceptions arising from the pop-culture narrative of prison rape. First, in men's prisons, rape is less common than the mainstream narrative suggests. Nonetheless, the myth that prison rape is ubiquitous and interracial pervades pop culture and influences public policy in ways that reveal the race and gender dynamics of the outside world. Moreover, the perpetrators are not always the perverted criminals or tattooed gang members of popular stereotype: All recent surveys that asked about sexual abuse by nonprisoners found that correctional staff abuse prisoners far more often than prisoners do. Furthermore, the main targets of prison rape are not straightidentified, middle-class drunk drivers and white-collar criminals. The victims of prison rape are usually targeted for being unmasculine: They tend to be gay, bisexual, transgendered, young, small, weak, or effeminate. Recent victimization survey data also suggest that victims of rape in prison may be disproportionately nonwhite.

Finally, prison sexual abuse is not inevitable. Correctional authorities recognize that it can be prevented through alternative, lawful strategies of institutional governance. Although the mainstream narrative implies that prison rape is ubiquitous,52 it is almost wholly preventable: The prevalence of sexual abuse varies widely among institutions. The 2007 National Inmate Survey (NIS), conducted by the Bureau of Justice Statistics (BJS), found that approximately one-third of jails had sexual victimization rates "indistinguishable from zero."53 The BJS' 2008- 2009 NIS found sixteen men's and four women's facilities where inmates reported no incidents of sexual victimization.54 Inother jails and prisons, by contrast, the NIS found that from 13% to nearly 16% of inmates reported sexual victimization.55 The NIS and other recent victimization surveys indicate overall prevalence rates of about 4%.56 This risk of rape is not distributed equally across the prison population. Once a man is sexually assaulted, he becomes a target for further sexual abuse.57 According to the 2008-09 NIS, prior sexual abuse was the single inmate characteristic most predictive of further sexual victimization by either inmates or staff.58 Both fellow prisoners and staff tend to **treat victims as though they deserve abuse for having failed as men.**59 Anthropologists Mark Fleisher and Jessie Krienert found that **inmates believe that only "weak" men worry about rape**60 - although it seems plausible that "strong" prisoners might hesitate to admit to any such fear. A prisoner's conformity to conventional norms of manliness greatly decreases the likelihood that he will be targeted for sexual assault: Nonstraight sexual orientation and prior sexual abuse are the two characteristics most predictive of sexual abuse by either inmates or staff.61 Thus straight-identified men - especially the middle-class, middle-aged white-collar criminals of the pop-cultural narrative - are not the primary targets of sexual abuse in prison. Prisoners are more often targeted for being unmasculine: small, weak, young, disabled, naive, pretty, effeminate, or womanish.62 Correctional officers, courts, prisoners, advocates, and survey data agree: Gay, bisexual, transgender, and effeminate prisoners face greatly elevated risks of sexual abuse.63 The 2007 NIS found that 18.5% of gay inmates and 9.8% of men of "other" sexual orientation reported having been sexually abused in jail in the past six months, compared to 2.7% of straight-identified men.64 In a recent survey of a statewide probability sample of inmates in California prisons, criminologist Valerie Jenness, a criminologist at the University of California, Irvine, and her colleagues found that 67% of GBT inmates reported sexual victimization in prison, compared to 2% of straight men.

The 'heterosexual defense' of institutions sweeps sexual violence against queer bodies under the rug and effectively marginalizes them

Buchanan 10

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"Our Prisons, Ourselves: Race, Gender and the Rule of Law on JSTOR," Yale Law & Policy Review

http://www.jstor.org/stable/41308525) AC

In Section II.A, I demonstrate that guards and prison administrators routinely ignore constitutional, statutory, and institutional rules that nominally prohibit sexual harassment and abuse. Instead, they enforce norms of masculinity in their most extreme and brutal forms. Guards and administrators often require the prisoner to "be a man" by fighting off his assailants. If the prisoner is unable to protect himself, he is often told that he does not deserve their protection because he is "gay." This practice requires prisoners to prove their manhood by fighting, on pain of rape.

In Section II.B, I describe the heterosexual defense in Title VII jurisprudence. Many federal courts depart from ordinary statutory and doctrinal rules to enforce norms of masculinity similar to those enforced in prison. In spite of Supreme Court doctrine that would seem to preclude such reasoning, these courts often find that severe, pervasive, and unwelcome male-male sexual talk and touching by straight-identified men is permissible under Title VII on the basis that it is not "because of sex." Either the conduct is not sexual because the harasser says he is straight, or, because the harasser thinks the targeted man is (or seems) gay, the harassment occurred because of "sexual orientation," not sex. This heterosexual defense**, which contradicts the courts' doctrinal approach to man-woman sexual harassment**, effectively authorizes straight men to sexually harass gay or effeminate men, while prohibiting gay men's same-sex sexual harassment as a Title VII violation.

Prison violence highlights detriments of heteronormativity and rape culture that are usually glossed over outside of prison walls

Buchanan 10

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This pattern of male-male sexual harassment is not limited to the Title VII workplace. It is seen in many other settings, such as policing,206 the military,207 fraternities and sports teams,208 school bullying,209 and other hierarchical, largely male contexts, including men's prisons.210 These "hypermasculine" environments share certain institutional features, which, sociologists have found, greatly increase the likelihood that men will sexually harass and assault others211**: organizational tolerance for sexual harassment and a rigid, widely shared hypermasculine sex-role ethos by which violence is manly, danger is exciting**, some women deserve to be raped, and "effeminate" men deserve to be ridiculed.212 Similarly, many young men who are "at an age of establishing their own sexual identities" engage in antigay sexual harassment when they are in hypermasculine environments where such behavior is tolerated.213 As we have seen, this happens among the millions of mostly young men held in prison as well.214 **In a hypermasculine environment, the straight-identified same-sex harasser conforms to conventional gender norms that equate masculinity with dominance**, as long as he denies any sexual gratification from the sexual talk and touching he inflicts on the other man.215 In the outside world, of course, most people agree that homosocial "horseplay" or hazing goes too far if it escalates to rape - although it sometimes does.216 Nonetheless, the gender dynamics of same-sex sexual harassment are shared between prison and the outside world. The perpetrators are usually straight-identified217 and target their victims for being (or seeming) unmanly, disabled, transgender, or gay.218 But, unlike in some prisons, sexual assault is non-normative in the cultural mainstream.

Cultural anthropologists Mark Fleisher and Jessie Krienert contend that prisoners participate in a "cultural logic" in which, they claim, social norms and behavior are "radically different from free-society standards."219 Free society, they say, views sexual violence as an "abhorrent, unjustifiable act[]."220 In "inmate culture," they report, it is presumed that that a victim could prevent rape if he or she really wanted to; that victims may report sexual assault "to garner attention" or "to falsely blame" an alleged assailant; that victims may be to blame for having incurred financial debts to the assailant; or that victims may have "sexually enticed" the assailant "by flirting and then fail[ing] to fulfill a silent promise of a sexual affair."221 This "inmate culture," they point out, presumes that "if rape occurs, fault lies with the victim."222 But these beliefs are not deviant. They are traditional. Prisoners share these beliefs with guards and many other denizens of the law-abiding world. They are some of the classic "rape myths" that gave rise to the feminist movement for rape law reform and to the continuing critique of the laws of rape and sexual harassment in the outside world.223 Outside as in prison, jurors and other fact-finders tend to assume that any man who reports sexual abuse must be gay, because "a man who is not gay will never consent to sex with another man."224 Like unchaste women, gay men have transgressed gender norms. Like unchaste women, gay men are often presumed to consent to sex with any and all men, regardless of the circumstances or the degree of violence used.225 Like unchaste women, "men who are sexually assaulted may be accused of having 'wanted it' and confronted with the incorrect belief that men cannot be assaulted against their will."226 In prison as outside, "the raped man becomes subject to many of the stereotype surrounding the rape of women - he is lying, must have asked for it, probably enjoyed it, and so on."227 Thus employers and authority figures may excuse antigay sexual harassment on the basis that gay men deserve to be abused. For example, when boys who are out as gay seek protection from school officials who bear a legal responsibility to protect them, these officialsometimes refuse to do so, laugh at the victim,228 and blame the battering and harassment on the young man for being gay.229 In one case, a thirteen-year-old middle-school student was attacked in front of twenty students in a science classroom. Two boys "held [him] down and performed a mock rape on [him], exclaiming that [he] should enjoy it."230 The principal told the victim and his parents that they should "expect" such behavior because "he is 'openly' gay."231 When the beatings and harassment intensified in high school, a school administrator "laughed and told [him] that [he] deserved such treatment because he is gay."232 In another case, a school official just laughed when a gay student reported that other students had beaten him up and threatened to lynch him.233 The principal refused to protect the young man, telling him to "keep quiet about his sexual orientation" and "stop acting like a fag,"234 instead. Thus, as Don Sabo and his coauthors point out, "[t]he prison code is very familiar to men in the United States because it is similar to the male code that reigns outside of prison."235 In the outside world as in prison, sexual harassment masculinizes the harasser and feminizes the target, regardless of their sex. Men who are sexually harassed or assaulted often experience the violence as emasculating.237 Harassers aggrandize their own masculinity as "sexual aggressiveness and conquest" and degrade their victims as feminine by enforcing their "sexual vulnerability and availability."238 Gay-baiting is an important means of imposing gender conformity among men in the outside

world: **"Heterosexuality is an especially rigid norm, and much policing is done by labeling one who deviates from the norm as being 'gay'** or a 'fag/"239 Like prisoners, free "men who transgress gender norms by exhibiting insufficient masculinity are maligned as gay," regardless of their actual sexual orientation.240 Same-sex harassers often "explicitly question the target's sex, thereby expressing their disdain for persons who diverge from appropriate standards of masculinity [T]argets are ostracized and ridiculed by harassers who object to their failure to conform, in appearance and demeanor, to prescribed gender roles."241 Men are targeted for being gay, or they are "presumed to be homosexual when they are the subject of explicit sexual advances."242 Outside as inside, to be gay is to have failed as a man; failure to act like a "real man" raises suspicions of gayness regardless of the man's actual desires.243 Meanwhile, straight men's sexual harassment of less manly men conforms to widely held gender values that, among other things, "instruct males that masculinity must be aggressively acquired by controlling people and resources."244 A manly man is aggressively heterosexual and is "expected to be the initiator of sexual relations."245 He should be able to use violence to defend himself when necessary. He can protect himself and others; he does not need to seek protection. The classification of prison rapists as "straight" may seem dissonant in light of contemporary understandings of sexual identity. But, until recent decades, many Americans viewed the man who penetrates another man as the straight one. As Elizabeth Kramer observes: Turn-of-the-century Americans considered only men who behaved in an effeminate manner and were the passive partner in sexual intercourse to be homosexual. "Normal" men were able to engage in sexual intercourse with effeminate men, often called "fairies," without risk of being identified as homosexual so long as they played only the active role in sex. In fact, using a "fairy" sexually became an effective means to enhance one's masculinity. Similarly, . . . male rapists of men were not seen as gay because they chose to assault men, but were rather perceived as more masculine.246 Today, despite the advances of gay liberation, many men who have sex with men do not consider themselves to be gay. Many of them see penetration as a manly act and being penetrated as "gay."247 In his recent study of men's samesex racial preferences in online dating, Russell Robinson found that, even among gay-identified men in the outside world, bottoms (those being penetrated) are stigmatized, while tops are framed as real men - and black men are stereotyped as tops.248 Thus even today, many free men, like prisoners, associate "gayness" with effeminacy and straightness with masculinity, regardless of sexual orientation. The most significant difference between prison masculinities and the masculinities enacted in hypermasculine environments on the outside - such as the military, police and firefighters, fraternities, men's sports and other maledominated places of work and play - is that these free masculinities are socially affirmed.249 Prison masculinities, by contrast, are stigmatized.250 Nonetheless, **hypermasculine cultures both inside and outside prison call upon men to use violence to establish a straight, masculine identity**. Dominant prisoners who penetrate other men present themselves - and are seen by many others in prison - as "dispassionate, and their partners [a] re merely receptacles to ensure sexual gratification."251 Twentieth-century prison sex researchers accepted this reasoning, asserting that prison rapists "experienced no sexual pleasure whatsoever. Instead, the prisoner rapes to prove he has power - power to dominate his prey."252 Free men, too, use violence as an important, though by no means the only, method to express masculinity. Men serving in the police or military, as well as pop-culture action heroes, routinely engage in socially approved violence. For example, as Helen Rogan has observed, in the military as elsewhere in social life, "'combat' is a synonym for 'power,'"253 and Kenneth Karst has noted that both serve as markers of manhood and full citizenship.254 Violence is also a normative means by which heterosexual men are expected to resist sexual advances by other men. In the free world as inside, a real man is expected to "fight off' his attacker.255 Police, employers, parents, and principals often refuse to help harassed men and boys on the basis that, if they are gay, they do not deserve protection, and if they are straight, they should fight.256 As one shop-floor supervisor put it: "[I]f [the plaintiff] were a 'real man,' he would address the matter in a manner other than by filing a sexual harassment complaint."257 Some courts have accommodated this cultural convention through the rightly excoriated "homosexual panic" defense.258 Because the Supreme Court's Title VII jurisprudence, discussed below, has expressly left room for socially approved intermale "roughhousing,"259 the allegedly unmanly targets of sexualized workplace hazing are often unprotected against severe, pervasive, and unwelcome sexual talk and touching by straight-identified men.260 They have to "take it like a man."261 A

real man should fight.

Alts (from Visuality/Identity Generic File)

The alternative is to burn this world to the ground—we must rage against systems of normativity

Mary Nardini Gang 09 (Mary Nardini Gang [The Mary Nardini Gang are criminal queers from Milwaukee, Wisconsin.]. “Toward the Queerest Insurrection.” Queer Jihad, 2009. http://zinelibrary.info/files/QueerestImposed.pdf)//ALepow

Some will read “queer” as synonymous with “gay and lesbian” or “LGBT”. This reading falls short. While those who would fit within the con- structions of “L”, “G”, “B” or “T” could fall with- in the discursive limits of queer, queer is not a stable area to inhabit. Queer is not merely another identity that can be tacked onto a list of neat social categories, nor the quantitative sum of our identities. Rather, it is the qualitative position of opposition to presentations of stability - an identity that problematizes the manageable limits of identity. Queer is a territory of tension, defined against the dominant narrative of white-hetero-monogamous-patriarchy, but also by an affinity with all who are marginalized, otherized and oppressed. Queer is the abnormal, the strange, the dangerous. Queer involves our sexuality and our gender, but so much more. It is our desire and

fantasies and more still. Queer is the cohesion of everything in conflict with the heterosexual capitalist world. **Queer is a total rejection of the regime of the Normal.** As queers we understand Normalcy. **Normal, is the tyranny of our condition; reproduced in all of our relationships**. Normalcy is violently reiterated in every minute of every day. **We understand this Normalcy as the Totality**. The Totality being the interconnection and overlap- ping of all oppression and misery. **The Totality is the state.** It is capitalism. It is civilization and empire. The totality is fence-post crucifixion. It is rape and murder at the hands of police. It is "Str8 Acting" and "No Fatties or Femmes". It is Queer Eye for the Straight Guy. It is the brutal lessons taught to those who can't achieve Normal. It is every way we've limited ourselves or learned to hate our bodies. We understand Normalcy all too well. When we speak of social war, we do so because purist class analysis is not enough for us. What does a marxist economic worldview mean to a survivor of bashing? To a sex work- er? To a homeless, teenage runaway? How can class analysis, alone as paradigm for a revolution, promise liberation to those of us journeying beyond our assigned genders and sexualities? The Proletariat as revolutionary subject marginalizes all whose lives don't fit in the model of heterosexual-worker. **We must create space wherein it is possible for desire to flourish. This space, of course, requires conflict with this social order.** To de- sire, in a world structured to confine desire, is a tension we live daily. We must understand this tension so that we can become powerful through it - we must understand it so that it can tear our confinement apart. This terrain, born in rupture, **must challenge oppression in its entirety**. This of course, means total negation of this world. We must become bodies in revolt. We need to delve into and indulge in power. We can learn the strength of our bodies in struggle for space for our desires. In desire we'll find the power to destroy not only what destroys us, but also those who aspire to turn us into a gay mimicry of that which destroys us. **We must be in conflict with regimes of the normal. This means to be at war with everything. If we desire a world without restraint, we must tear this one to the ground.** We must live be- yond measure and love and desire in ways most devastating. We must come to understand the feeling of social war. We can learn to be a threat, we can become the queerest of insurrections.

Queerness can never exist within civil society—it is always forced to assimilate into normativity

Mary Nardini Gang 09 (Mary Nardini Gang [The Mary Nardini Gang are criminal queers from Milwaukee, Wisconsin.]. "Toward the Queerest Insurrection." Queer Jihad, 2009. http://zinelibrary.info/files/QueerestImposed.pdf)//ALepow

In the discourse of queer, we are talking about a space of struggle against this totality - against normalcy. By "queer", we mean "social war". And when we speak of queer as a **conflict with all domination**, we mean it. See, we've always been the other, the alien, the criminal. The story of queers in this civilization has always been the narrative of the sexual deviant, the constitutional psychopathic inferior, the traitor, the freak, the moral imbecile. We've been excluded at the border, from labor, from familial ties. We've been forced into concentration camps, into sex slavery, into prisons. The normal, the straight, the american family has always **constructed itself in opposition to the queer**. Straight is not queer. White is not of color. Healthy does not have HIV. Man is not woman. The discourses of heterosexuality, whiteness and capitalism reproduce themselves into a model of power. **For the rest of us, there is death**. In his work, Jean Genet1 asserts that the life of a queer, is one of **exile** - that all of **the totality of this world is constructed to marginalize and exploit us**. He posits the queer as the criminal. He glorifies homosexuality2 and criminality as the most beautiful and lovely forms of conflict with the bourgeois world. He writes of the secret worlds of rebellion and joy inhabited by criminals and queers. Quoth Genet, "Excluded by my birth and tastes from the social order, I was not aware of its diversity. Nothing in the world was irrelevant: the stars

on a general's sleeve, Now they don't critique marriage, military or the state. Rather we have campaigns for queer assimilation into each. Their politics is advocacy for such grievous institutions, rather than the annihilation of them all. "Gays can kill poor people around the world as well as straight people!" "Gays can hold the reigns of the state and capital as well straight people!" "We are just like you". Assimilationists want nothing less than to construct the homosexual as normal - white, monogamous, wealthy, 2.5 children, SUVs with a white picket fence. This construction, of course, reproduces the stability of heterosexuality, whiteness, patriarchy, the gender binary, and capitalism itself. If we genuinely want to make ruins of this totality, we need to make a break. **We don't need inclusion** into marriage, the military and the state. **We need to end them**. No more gay politicians, CEOs and cops. We need to swiftly and immediately articulate a wide gulf between the politics of assimilation and the struggle for liberation. simultaneously struggled against capitalism, racism and patriarchy and empire. **This is our history**.

Aff fails/Alt first

The kritik is a prerequisite

O'Donnell'04

(3-1-2004, Ian O'Donnell, Professor of Criminology @ University College Dublin, Ireland, former Director of the Irish Penal Reform Trust, Oxford University Press "PRISON RAPE IN CONTEXT on JSTOR," http://www.jstor.org/stable/23638614)

Wordey (2002: 107-15) made a number of suggestions for prevention, including single cell accommodation, improved training of staff and supervision by staff, separation of potential victims and predators. Knowles (1999: 280) advocated separation by race, a simplistic approach that ignores the problem of intra-racial sexual violence. **Lockwood** (1980: 142) saw the only real solution in the eradication of subcultural violence outside prisons, considering prison-specific approaches as, at best, symptom reduction.

Prison Reform CP

Poor pay and lack of training increases likelihood of corruption

Erin **Fuchs**, 6-22-**2015**

"America's prison guards are the 'ugly stepchildren' of the criminal justice system ," Business Insider, http://www.businessinsider.com/why-are-prison-guards-corrupt-2015-6

Poor pay and low hiring standards in America's prisons make guards more susceptible to corruption than others in the justice system, experts have told Business Insider.

America's correction officers do tough and dangerous jobs with little compensation, recognition, or hope for advancement.

Guards make significantly less money than police officers and generally have significantly less training. New York state correction officers have eight weeks of formal training, while state police in New York have an intensive, 26-week course.

Many go into corrections as a last resort.

"It's been referred to as the bottom rung in the career ladder in criminal justice. This is considered dirty work," criminal justice professor Chris Menton told Business Insider for a previous article.

CP is politically popular

Newt **Gingrich and** Van **Jones,** 12-5**-2014**

"It's time to reform our failed prison system," CNN, http://www.cnn.com/2014/12/05/opinion/gingrich-jones-prison-system/

Newt has talked about the need for "confidence-building measures" between the President and Republicans in Congress. The idea is that we should work on easier things first, so that we can work on harder things next.
Transforming our nation's failed prison system looks like it could be easier now than anyone expected. Leaders in both parties agree on the need and direction for reform.
They recognize that locking up millions of people for very long periods of time at ballooning costs is not a wise response to nonviolent crime. Warehousing nonviolent offenders for years behind bars has been an economic, moral and human catastrophe.

The United States has 5% of the world's population, but 25% of its incarcerated population. During the past four decades, the rate of incarceration in the U.S. has more than quadrupled, costing us more than $80 billion a year. There are now roughly 2.3 million people in prison or in jail, which is nearly one in every 100 Americans.

Today in a Florida prison, a 19-year-old man is serving a 15-year mandatory minimum sentence for drug possession. His incarceration will cost taxpayers $60,000 a year. He will receive no job training, no education and no drug treatment. He will leave prison beaten down. He'll carry the stigma and the barriers that come with being a felon, making it difficult for him to find a job and more likely that he will end up back in prison.

As a corrections system, this makes no sense. We must rethink our approach from the ground up. And for federal crimes, **we can start by building on bipartisan reforms that are spreading across the country at the state level**.

In the true spirit of federalism, **states have led the way in passing reforms that protect public safety, more effectively punish and correct nonviolent offenders, save taxpayers money and ensure hardened and violent criminals remain behind bars.**

In Georgia, Gov. Nathan Deal has implemented a bold overhaul of the state's criminal justice system, slashing prison spending and reducing harsh penalties for nonviolent offenses. The result has been a 20% reduction over five years in the number of African-American men incarcerated.

In Texas, Gov. Rick Perry has been so successful at using probation, parole and sentencing reform to both reduce the prison population while also reducing crime that people have termed his approach the "Texas Model."

Out west, California recently passed one of the most transformational examples of bipartisan criminal justice reform. Proposition 47, the "Safe Neighborhood and Schools Act," was a sensible measure to reduce incarceration for nonviolent crimes and to increase investments in crime prevention, treatment and education.

The initiative changed six low-level offenses, including simple drug possession, from felonies to misdemeanors, and will save California hundreds of millions of dollars each year in prison spending that wasn't working, reinvesting those savings into mental health and drug treatment, K-12 schools and victim services.

While there is a lot to learn from the policy reforms brought about by Prop 47, there may be even more to learn from its politics.

The initiative had the support of crime survivors, victims groups, business groups and 1,500 clergy across the state. Everyone from rapper Jay Z and the ACLU to Sen. Rand Paul and Grover Norquist lined up behind the measure. (We both endorsed it, too.) Conservative California businessman B. Wayne Hughes Jr. was the single largest individual donor to the effort, giving more than $1.25 million.

Because of its broad-based support, Proposition 47 passed by a huge margin of 59-41 percent. It even won in some conservative strongholds, such as Orange County and Riverside County.

California isn't the only place where criminal justice reform did well on the ballot. Deal, and senators such as John Cornyn and Cory Booker were re-elected by big margins, campaigning in part on their criminal justice reform efforts. And in New Jersey, voters passed a state constitutional amendment reforming the bail system that was championed by both Republican Gov. Chris Christie and the Drug Policy Alliance.

Eliminate Cross Gender Supervision CP

CP Text: The USFG should eliminate cross-gender supervision policies in all federal prisons.

CP solves better— empirics prove

Flyn L. **Flesher 2007**

("Cross-Gender Supervision in Prison and the Constitutional Right of Prisoners to Remain Free from Rape"

https://www.wcl.american.edu/endsilence/documents/CrossGenderSupervisioninPrisonsandtheConstitutionalRightofPrisonerstoRemainFreeFromRape.pdf)

Ending or limiting cross-gender supervision policies would assuredly have a "ripple effect" on prison populations,1 8 1 but that effect would be a highly positive one. Such elimination or limitation would allow female prisoners to live free from fears of sexual violence at the hands of male guards. The only negative effect of ending or limiting cross-gender supervision policies is that it could lead to a drop in the number of jobs available to women in the prison system if legislatures chose to abandon such policies in both female and male prison facilities.8 2 Nevertheless, the government's duty to protect prisoners' Eighth Amendment rights surely outweighs any obligation it may have to preserve jobs for female prison guards. Finally, easy, obvious alternatives exist to cross-gender supervision policies that accommodate female prisoners' rights to remain free from rape.'83 For example, prisons could accommodate these rights and still satisfy security concerns by instituting policies that substantially limit the access of male prison guards to female prisoners to include only distant supervision. 4 Prisons could also choose only to hire guards of the same sex as the prisoners. 85 The fact that some prisons have adopted such policies in the past serves as evidence that these policies are both obvious and relatively easy to implement.

In Helling v. McKinney, the Supreme Court held that a prisoner could sue for an injunction under the Eighth Amendment to prevent injuries before they happened."8 6 The Court refused to distinguish between current harms suffered by prisoners and harms that prisoners would suffer in the future if they did not receive relief."8 7 Before granting injunctive relief to a prisoner, he must show not only that his present conditions of confinement create a risk but that the risk is "so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk. In other words, the prisoner must show that the risk of which he complains is not one that today's society chooses to tolerate.'" Plaintiffs can easily satisfy this part of the analysis since rape is without question an unspeakable crime of violence that society does not tolerate.'8 9 The primary hurdle for a female inmate requesting such an injunction would be proving the causal link between cross-gender supervision policies and the risk of rape at the hands of male prison guards. The Tenth Circuit in Hovater v. Robinson expressed a fear that holding prison administrators responsible for harms resulting from cross-gender supervision would imply that all male guards pose a danger to the bodily integrity of all female inmates. 9 ' While the proposition that all men would inevitably sexually assault female inmates if given the chance is clearly false, leaving male guards alone with female inmates is sufficiently dangerous to warrant an injunction against such practices. Some studies from the 1990s address this causal link and reach the conclusion that the risk is severe, but they fail to provide rigorous statistical evidence supporting this conclusion. ' In at least one class action suit, the plaintiffs showed the risks of psychological and other harms inherent in cross-gender supervision through expert testimony. 192 Similar expert testimony could prove fruitful for plaintiffs attempting to show the risk of rape inherent in such supervision. In some class action suits, plaintiffs have met their burden of proof through the testimony of numerous prison inmates regarding rapes at the hands of guards.193 Such testimony would also bolster plaintiffs' claims when seeking an injunction against cross-gender supervision policies.

Finally, statistical evidence bolsters the claims of female inmates seeking injunctions against cross-gender supervision. First, although it is by no means dispositive, one should note that ninety-nine percent of those arrested or convicted of rape are male,'" and male staff are reportedly the perpetrators of "the overwhelming majority of complaints of sexual abuse by female inmates against staff."1'95 These statistics at the very least imply that same-sex supervision policies pose a lesser risk than cross-gender supervision policies. Second, pursuant to the Prison Rape Elimination Act of 2003, the Bureau of Justice Statistics of the United States Department of Justice must provide a "comprehensive statistical review and analysis of the incidence and effects of prison rape.'"96 Although the first report under this statute sheds little light on the causes of prison rape, 97 future reports may provide more information that plaintiffs could use to show the effects of cross-gender supervision on the frequency of prison rape. Assuming that a plaintiff or class of plaintiffs meets the burden of proving that cross-gender supervision policies lead inevitably (or at least are a substantial factor that leads to) the rape of female inmates, correct application of current federal law necessitates granting relief to plaintiffs. Upon

making such a finding, courts must reach the conclusion that cross-gender supervision policies either are a violation of prisoners' rights to remain free from rape by public officials or are policies that create an atmosphere tolerant of such violations. If so, then the plaintiff has a cognizable civil claim under 42 U.S.C. § 1983, under which she can request an injunction.'98 When addressing the plaintiffs § 1983 claim, the court must subject the policies either to strict scrutiny or to the Turner standard of review. As stated in the previous section, such policies cannot withstand either level of scrutiny.

Elections DA

Correctional industry and unions opposed to plan
Deborah **Sontag**, 5-12-20**15**

"Push to End Prison Rapes Loses Earlier Momentum," New York Times, http://www.nytimes.com/2015/05/13/us/push-to-end-prison-rapes-loses-earlier-momentum.html?_r=0

“I am encouraged by what several states have done, discouraged by most and dismayed by states like Texas,” said Judge Reggie B. Walton of United States District Court for the District of Columbia, who was appointed chairman of the now-disbanded commission by Mr. Bush.

Some commissioners fault the Justice Department for failing to promote the standards vigorously. Others blame the correctional industry and unions for resisting practices long known to curb “state-sanctioned abuse,” as one put it. All lament that Congress has sought to weaken the modest penalties for noncompliance, and that five governors joined Mr. Perry last year in snubbing the standards.

“**There’s a whole kind of backlash**, which is very depressing,” said Jamie Fellner, a former commissioner who is senior counsel for the United States program of Human Rights Watch. “It’s 12 years since the law passed. I mean, really. We’re still dealing with all these officials saying, ‘Trust us. We’ll take care of it’?”

Case

Harms

Strip searches key to ensure security
Will **Kryder**, 5-3-**2005**

"Why the Supreme Court Thinks Strip Searches Are Constitutional," The Atlantic, http://www.theatlantic.com/national/archive/2012/04/why-the-supreme-court-thinks-strip-searches-are-constitutional/255648/

As Harcourt wrote after the decision, "Notice, of course, the difference -- or paradox -- with last week's Supreme Court arguments about economic liberty and the health care mandate. The American ideal of a hands-off government seems to apply only in the context of economic liberty." Justice Kennedy's opinion in*Florence* concluded, "Courts must defer to the judgment of correctional officials that the inspections served not only to discover but also to deter the smuggling of weapons, drugs, and other prohibited items."

And why would correctional officials have reason to suspect a worst-case scenario, even with the most innocuous infractions? "One of the terrorists involved in the September 11 attacks was stopped and ticketed for speeding just two days before hijacking Flight 93."

Prisons Case Neg

Notes

If the aff overturns either *Bell v. Wolfish* or *Florence v. Board of Chosen Freeholders*, that's incoherent—both of those decisions were in the context of strip searches, not body cavity searches. They're distinct (see cards in the file).

Case

Body Cavity Searches Rare in FEDERAL Prisons—No Spillover/T Substantial

Body cavity searches are extremely rare in federal prisons

Richards 15 Jonathan Richards, former inmate, FederalPrisons.Org (a prisoner lobby group) March 2015 **Federal Prison**: A Comprehensive Survival Guide FOURTH EDITION http://federal-prison.org/view-free-sample/

In extreme cases where there is strong evidence indicating that an inmate poses a serious security threat and is in possession of contraband, a manual body cavity search may be performed. This procedure involves the probing of bodily orifices using fingers and instruments. There are strict rules regarding manual body cavity searches, and it is **extremely unlikely** that you will be subject to such a search.

Circumvention

Prison officials circumvent—the plan has no enforcement or implementation power

Rosenberg 08

(Gerald N., published September 15, 2008, University of Chicago Press, The Hollow Hope: Can Courts Bring About Social Change? Second Edition, Associate Professor of Political Science and Lecturer in Law at UChicago, pgs 308-309)

Lack of Implementation Power. The third constraint that must be overcome come **is the courts' lack of implementation powers.** As Bronstein points out, implementation and enforcement of prison reform decrees rests "primarily in the hands of prison officials" (Bronstein 1977, 44) who, like other professionals, do not like having their professional competence challenged. When courts issue orders requiring prison reform, many administrators see them as doing just that. The problem, of course, is not only that prison officials "often continue to fight for the status quo" (Bronstein 1977, 44), but also that courts lack the tools to insure implementation. Although this is not unusual, the less visible nature of prisons as compared to other governmental agencies which have been the targets of litigation makes implementation even more problematic. Since prison access is regulated for safety reasons, information on conditions and the progress of implementation is difficult to obtain. As Jacobs points out, "even under the best of circumstances," the court "must depend upon the institution's staff for information as to whether a decree is being followed" (Jacobs 1980, 452). The staff, of course, may be uncooperative. Indeed, when California corrections administrators were asked, in a survey, if they could "comply with court orders through changes which meet the letter of the court order, but not its spirit, and thereby frustrate the intent of the court," a whopping 87 percent said yes (Project 1973, 530). **As one administrator put it in a follow-up interview, "we can usually get around anything"** (Project 1973, 531). Administrators simply play an indispensable role in the success of prison reform. As the assistant attorney general in charge of corrections in Washington state put it, "the key to relief will be commitment by defendants to comply with the letter and the spirit of the order" (Collins 1984, 342). The necessity of support from prison administrators, and their ability to withhold that support, makes overcoming the implementation constraint particularly problematic." There is also a related issue of staff support below the top administrative level. Since it is the staff who will actually carry out any reform decree, their attitude is vitally important. Yet the staff, operating in a potentially dangerous environment, may have little interest or incentive in reforming their procedures, , **especially if the**

reforms are perceived as lessening their authority. A New York study found that the typical corrections officer "opposes prison reform as a threat to ~~his~~ physical security" (New York State 1974, 17). The California correctional administrators' survey just referred to, found "many administrators" stating that the "greatest administrative challenge regarding the effect of change on the staff was having to `sell' the staff on every new policy" (Project 1973, 502). Indeed, the survey found that "staff morale is the operational factor which consistently shows the greatest negative effect" of court-ordered reform (Project 1973, 575).

{DON'T READ THIS WITH PREA STUFF BELOW} Prison reform fails because prisons are secret—PREA reforms prove

Moody 11

(Stan, 4/4/11, MoodyReport, "Prison Rape Reform makes for Strange Cell-Fellows," Stan has a BS from University of Maine, did his post graduate study @ the George Washington University School of Law, https://moodyreport.wordpress.com/2011/04/04/prison-rape-reform-makes-for-strange-cell-fellows/, 8/2/15, SM)

New Prison Rape Standards:∂ Agreed by the various parties is that the Prison Rape Elimination Act that institutes reforms on April 4, 2011, has no enforcement mechanism and is light on criminal penalties. **At fault is the shroud of secrecy that encases the prison system,** discouraging reporting of rape and encouraging further abuse of victims. Pat Nolan, vice president of Prison Fellowship, points out that in a culture that does not welcome transparency, **rules providing no outside enforcement simply continue policies of secrecy and cover-up**.∂ "The prisons have been monitoring themselves; now we see what's happening," Nolan was quoted in the article as saying. "We need those outside eyes checking on what they're doing and holding them accountable for stopping this." Costs of such safeguards as electronic surveillance fail to factor in moneys spent on settling legal claims as rapes come to light.

Historically there have been ineffective responses to violations of court orders—prison officials are able to get away with basically everything

Ekland-Olson and Martin 88

(Sheldon, Steve, 1998, Law and Society Review, "Organizational Compliance with Court-Ordered Reform," http://www.jstor.org/stable/pdf/3053440.pdf, 8/3/15, SM)

C. **Ineffective Responses to Violations of Court Orders**∂ During the early phases of the Ruiz litigation, TDC officials∂ were repeatedly charged with violations of protective orders∂ designed to limit harassment of inmates involved in the suit. By∂ July 1976 officials at one prison unit had been subjected to three∂ court hearings at which evidence indicated repeated violations of∂ court orders. These violations ranged from rather petty harassments∂ (including not issuing underwear to inmates; restricting access∂ to the law library to early morning hours in uncomfortable∂ quarters; and subjecting the inmate-plaintiffs to numerous strip∂ searches, including digital rectal exams, when such searches were∂ not normally conducted), to more severe charges of brutality (including∂ the use of Mace on inmates securely locked in their cells).∂ After one hearing, Judge Justice found for the inmate-plaintiffs∂ on a number of very specific charges and issued a thirty-point∂ set of orders regarding the handling of legal correspondence, cell∂ searches, rectal searches, the use of Mace, and triple celling when∂ open cells were available. On appeal, the state's attorneys did not∂ question the factual findings, and the Fifth Circuit found that the∂ named plaintiffs had been subjected to "intimidation, coercion,∂ punishment and discrimination" (Ruiz v. Estelle, 550 F.2d 238 (5th∂ Cir. 1977)).∂ Some seven months after this hearing, prison officials once∂ again found themselves charged with similar violations. This time∂ they agreed to remedy the problem by removing illegitimate disciplinary∂ charges from the affected inmates' records. They also∂ agreed that the officers involved would be reprimanded. However,∂ the only disciplinary action taken was initiated at the insistence of∂ the plaintiffs' attorneys and consisted of a written reprimand from∂ Estelle to an assistant warden, which read in part, "I realize there∂ was no more intent on your part than mine to violate any of the∂ court's Order, I know we will renew efforts to see such violation∂ does not occur again. Consider us both reprimanded by this document"∂

(correspondence from W. J. Estelle to D. Christian, July 1,∂ 1976). Rather than subjecting themselves to harsh criticism for repeated∂ violations of court orders, **the warden and assistant warden∂ most directly involved seemed to enhance their standing with∂ high-level administrators**. The warden was promoted to assistant∂ director and named warden of the year. The assistant warden was∂ promoted to warden shortly thereafter. The newly appointed warden∂ would be the subject of repeated accusations of brutality as evidence∂ was gathered in the Ruiz trial in later years.

Prison officials will circumvent—courts have no ability to ensure compliance

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

The adjudication process also leaves little room of judges to review the implementation and impact of their decisions (Horowitz 51). The ability and capacity for judges to monitor how or if their orders are complied with is limited. Further complicating the issue of compliance is the fact that judges measure compliance by whether their orders are obeyed, not whether the person who is responsible for implementing the order has the ability to implement the order (Horowitz 51). Courts are especially limited in their ability to monitor the unintended consequences of compliance with their decisions. Even if a judge recognizes the unintended consequences of their decision, that judge has no way of returning to the issue unless a plaintiff files another case (Horowitz 52).

Courts cannot unilaterally implement prison reform—prison officials only create a façade of compliance without actually changing prison practices

Sturm 90

(Susan, 1990, University of Pennsylvania Law Review, "Resolving the Remedial Dilemma: Strategies of Judicial Intervention in Prisons," Susan has a BA from Brown and a JD from Yale, she is the George M. Jaffin Professor of Law and Social Responsibility @ Columbia Law School, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3801&context=penn_law_review, 8/3/15, SM)

2. The Director and the Limits of Assuming Control∂ The director attempts to achieve compliance by assuming direct∂ control over aspects of remedial formulation and prison management.3∂ 59 However, the court cannot unilaterally implement administrative∂ reform, and it lacks the capacity to use administrative control∂ to alter organizational behavior structures. The court functions∂ outside the prison system's hierarchy and has little direct contact∂ with or control over many of those whose cooperation is necessary to∂ achieve compliance. The court's power to hire and fire, or otherwise∂ to exercise direct administrative control, lies at the margins of the∂ boundaries of the court's legitimate authority and is subject to legal∂ challenge. The director's range of activity is defined by the scope of∂ the legal violation, further limiting its potential to influence the conduct∂ of prison officials.3 60∂ The director's assumption of control challenges the strong commitment∂ to autonomy that pervades the prison system.3 6 ' By∂ attempting to assume control, the court creates incentives to chal-lenge the its authority and resist its intervention. Prison officials∂ exploit the court's desire to achieve compliance by creating the∂ appearance of compliance without actually changing prison practices.3∂ 6 2 Alternatively, these officials may respond to judicial oversight∂ by formalizing their contact with the court, hardening their∂ commitment to their positions, and challenging the court's activities∂ on appeal.3 63 This response delays the implementation process, is∂ likely to halt the momentum of the reform effort, and may lead the∂ court to reduce its involvement and defer to those in the prison.∂ By assuming direct responsibility

for compliance, the director∂ also enables prison officials to disclaim responsibility for initiating∂ reform and to minimize their involvement in the reforms undertaken∂ by the court .∂ 3 ' The judge's political independence enables her to∂ initiate reforms that would be politically risky for insiders to initiate∂ directly. However, risk-averse officials have incentives to distance∂ themselves publicly from reform initiatives and may refuse to take∂ the steps necessary to ensure success. Those hostile to court intervention∂ may abdicate responsibility for developing new techniques∂ and approaches to maintain order within judicially-defined boundaries,∂ and may even attempt to undermine the court's compliance∂ efforts. Any resulting disruption can be blamed on the court and∂ used to prove the illegitimacy of the court's role. The predictable∂ public controversy is likely to divert attention from the underlying∂ prison conditions and undercut the public pressure to undertake∂ change.∂ The director also fails to motivate non-parties, such as the legislature∂ and the parole board, to assume responsibility for their role in∂ perpetuating the prison problems. The director's assumption of∂ control challenges the authority of the state and thus creates incentives for outsiders to resist cooperation.

New PREA Regulations Solve Most Rape Concerns

Their 1AC Miller evidence says,

male correctional officers had sex with female prisoners including vaginal, anal and oral rape

and

]¶ **Body searches and surveillance of naked female prisoners in particular have been tied to sexual misconduct and rape at the hands of male guards.**

BUT

New PREA regulations prohibit crossgender strip and body cavity searches and implements training

NCDSV 12

(8/8/12, National Center on Domestic and Sexual Violence, "Implementing The Prison Rape Elimination Act: A Toolkit for Jails," http://www.ncdsv.org/images/TMG-CIPP_ImplementingThePREAToolkitForJails_8-8-2012.pdf, 7/26/15, SM)

Limits to Cross-Gender Viewing and Searches Standard 115.15 provides extensive guidance regarding the conduct of searches. **Cross-gender strip and visual body cavity searches are prohibited** except in exigent circumstances9 or when performed by medical practitioners. The standard also places a prohibition on cross-gender pat-down searches of female inmates (absent exigent circumstances). This prohibition does not take effect until August 20, 2015, for jails with a rated capacity of more than 50 inmates or until August 20, 2017, for jails with a rated capacity of 50 or fewer inmates**. In addition, facilities cannot search or physically examine a transgender or intersex inmate solely to determine the inmate's genital status.** The agency must also train staff to conduct pat-down searches of cross-gender, transgender, and intersex inmates in a professional and respectful manner. The standard also requires jails to implement policies and procedures that allow inmates to shower, change clothes, and perform bodily functions without staff members of the opposite gender viewing them, absent exigent circumstances or instances when the viewing is incidental to routine cell checks. These policies and procedures also require staff members of the opposite gender to announce their presence when entering an inmate housing unit. DOJ provides further guidance for this standard by noting that the prohibition against staff viewing inmates of the opposite sex includes staff members that monitor cameras (p. 40). The DOJ also notes that the ban on cross-gender searches does not, in and of itself, create or establish a bona fide occupational qualification (BFOQ) that could result in employment discrimination on the basis of sex (pp. 54-55). The DOJ addresses many concerns related to the housing and treatment of transgender and intersex inmates (pp. 55-59).

PREA regulations mandate documentation and special training for strip searches

ACLU 14

(1/30/14, ACLU, "End the Abuse: Protecting LGBTI Prisoners from Sexual Assault Regulations," https://www.aclu.org/files/assets/prea/012014-ACLU-PREA-Regulations.pdf, 7/26/15, SM)

The final PREA regulations are codified at 28 C.F.R. 115. The full text and summary of changes was published in the Federal Register at 77 FR 37105. This is also available online here: https://www.federalregister.gov/ articles/2012/06/20/2012-12427/national-standards-toprevent-detect-and-respond-to-prison-rape. The regulations are organized with definitions at the beginning, 28 C.F.R. 115.5, 28 C.F.R. 115.6, and then separated by the standards for different types of facilities, prisons (28 C.F.R. 115.11 et seq.), lockups (28 C.F.R. 115.111 et seq.), community confinement facilities (28 C.F.R. 115.211 et seq.), and juvenile detention facilities (28 C.F.R. 115.311 et seq.). The full text of key LGBTI provisions is below. CROSS-GENDER SEARCHES §§ 115.15, 115.115, 115.215, 115.315 Limits to crossgender viewing and searches. a. The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. b. As of August 20, 2015, or August 21, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. c. **The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender patdown searches of female inmates**. d. The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit. e. The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. f. The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. TRAINING §§ 115.31, 115.231, 115.331 Employee training a. The agency shall train all employees who may have contact with inmates on: … 9. How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates;

PREA coordinator and review team ensure compliance with sexual harassment prevention standards

ACLU 14

(1/30/14, ACLU, "End the Abuse: Protecting LGBTI Prisoners from Sexual Assault Regulations," https://www.aclu.org/files/assets/prea/012014-ACLU-PREA-Regulations.pdf, 7/26/15, SM)

AUDITS & OVERSIGHT §§ 115.11, 115.111, 115.211, 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator. a. An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. b. An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities. c. Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. §§ 115.86, 115.186, 115.286, 115.386 Sexual abuse incident reviews. a. The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. b. Such review shall ordinarily occur within 30 days of the conclusion of the investigation. c. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. d. The review team shall: 1. Consider whether

the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; 2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; 3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; 4. Assess the adequacy of staffing levels in that area during different shifts; 5 . Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and 6. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager. e. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

Body Cavity Searches Necessary

Even if they can be intrusive, body cavity searches are still necessary for security purposes—even Justice Breyer, dissenter in the Florence case, agrees

Totenberg 12

(Nina, 4/2/12, NPR, "Supreme Court OKs Strip Searches For Minor Offenses," recipient of the American Judicature Society's award honoring her work in journalism and law, winner of the Carr Van Anda Award from the Scripps School of Journalism, http://www.npr.org/2012/04/02/149866209/high-court-supports-strip-searches-for-minor-offenders, 7/20/15, SM)

The Dissent The dissenters, led by Justice Stephen Breyer, argued that when a detainee is brought in on a minor charge that involves neither violence nor drugs, correctional officials should have to cite some reason to justify a strip search, as opposed to a less invasive screening with a metal detector or even an inspection of a detainee in his or her underwear. There are some 700,000 arrests for such minor offenses each year, and most of those arrested are brought before a judge and released pending resolution of their case. But an undetermined number have found themselves behind bars because there is no judge on duty, because of a bureaucratic snafu, or an error — as in this case. Breyer noted that people have been detained and strip-searched for offenses as minor as driving with an inoperable headlight, having outstanding parking tickets, violating a dog leash law, and riding a bike without an audible bell. None of these people could have anticipated being arrested, he said, and none would likely have hidden weapons inside their body cavities. **But Kennedy said that given the number of total arrests each year — 13 million — it would be unworkable for correctional officials to exempt one class of prisoner from strip searches.** Indeed, he added, **even people detained for minor offenses can turn out to be "the most devious and dangerous criminals**." He cited, for instance, the case of Timothy McVeigh, the Oklahoma City bomber, who was detained initially for driving without a license plate.

Random body cavity searches are necessary to find contraband, and there's no way to determine when searches are "reasonable"

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

The difficulties of operating a detention center must not be underestimated by the courts. Turner v. Safley, 482 U. S. 78, 84–85 (1987). Jails (in the stricter sense of the term, excluding prison facilities) admit more than 13 million inmates a year. See, e.g., Dept. of Justice, Bureau of Justice Statistics, T. Minton, Jail Inmates at Midyear 2010—Statistical Tables 2 (2011). The largest facilities process hundreds of people every day; smaller jails may be crowded on weekend nights, after a large police operation, or because of detainees arriving from other jurisdictions. **Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face**. The Court has confirmed the

importance of deference to correctional officials and explained that a regulation impinging on an inmate's constitutional rights must be upheld "if it is reasonably related to legitimate penological interests." Turner, supra, at 89; see Overton v. Bazzetta, 539 U. S. 126, 131–132 (2003). But see Johnson v. California, 543 U. S. 499, 510–511 (2005) (applying strict scrutiny to racial classifications). The Court's opinion in Bell v. Wolfish, 441 U. S. 520 (1979), is the starting point for understanding how this framework applies to Fourth Amendment challenges. That case addressed a rule requiring pretrial detainees in any correctional facility run by the Federal Bureau of Prisons "to expose their body cavities for visual inspection as a part of a strip search conducted after every contact visit with a person from outside the institution." Id., at 558. Inmates at the federal Metropolitan Correctional Center in New York City argued there was no security justification for these searches. Officers searched guests before they entered the visiting room, and the inmates were under constant surveillance during the visit. Id., at 577–578 (Marshall, J., dissenting). There had been but one instance in which an inmate attempted to sneak contraband back into the facility. See id., at 559 (majority opinion). The Court nonetheless upheld the search policy. It deferred to the judgment of correctional officials that the inspections served not only to discover but also to deter the smuggling of weapons, drugs, and other prohibited items inside. Id., at 558. The Court explained that **there is no mechanical way to determine whether intrusions on an inmate's privacy are reasonable.** Id., at 559. The need for a particular search must be balanced against the resulting invasion of personal rights. Ibid. Policies designed to keep contraband out of jails and prisons have been upheld in cases decided since Bell. In Block v. Rutherford, 468 U. S. 576 (1984), for example, the Court concluded that the Los Angeles County Jail could ban all contact visits because of the threat they posed: "They open the institution to the introduction of drugs, weapons, and other contraband. Visitors can easily conceal guns, knives, drugs, or other contraband in countless ways and pass them to an inmate unnoticed by even the most vigilant observers. And these items can readily be slipped from the clothing of an innocent child, or transferred by other visitors permitted close contact with inmates." Id., at 586. There were "many justifications" for imposing a general ban rather than trying to carve out exceptions for certain detainees. Id., at 587. Among other problems, it would be "a difficult if not impossible task" to identify "inmates who have propensities for violence, escape, or drug smuggling." Ibid. This was made "even more difficult by the brevity of detention and the constantly changing nature of the inmate population." Ibid. The Court has also recognized that deterring the possession of contraband depends in part on the ability to conduct searches without predictable exceptions. In Hudson v. Palmer, 468 U. S. 517 (1984), it addressed the question of whether prison officials could perform random searches of inmate lockers and cells even without reason to suspect a particular individual of concealing a prohibited item. Id., at 522–523. The Court upheld the constitutionality of the practice, recognizing that "'[f]or one to advocate that prison searches must be conducted only pursuant to an enunciated general policy or when suspicion is directed at a particular inmate is to ignore the realities of prison operation.'" Id., at 529 (quoting Marrero v. Commonwealth, 222 Va. 754, 757, 284 S. E. 2d 809, 811 (1981)). Inmates would adapt to any pattern or loopholes they discovered in the search protocol and then undermine the security of the institution. 468 U. S., at 529. These cases establish that correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities. See Bell, 441 U. S., at 546 ("[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of retained constitutional rights of both convicted prisoners and pretrial detainees"). The task of determining whether a policy is reasonably related to legitimate security inter- ests is "peculiarly within the province and professional expertise of corrections officials." Id., at 548. This Court has repeated the admonition that, "'in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations **courts should ordinarily defer to their expert judgment in such matters.**'" Block, supra, at 584–585; Bell, supra, at 548.

Strip searches are critical for safety, disease and injury treatment

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

Correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process. The admission of inmates creates numerous risks for facility staff, for the existing detainee population, and for a new detainee himself or herself. The danger of introducing lice or contagious infections, for example, is well documented. See, e.g., Deger & Quick, The Enduring Menace of MRSA: Incidence, Treatment, and Prevention in a County Jail, 15 J. Correctional Health Care 174, 174– 175, 177–178 (2009); Bick, Infection Control in Jails and Prisons, 45 Healthcare Epidemiology 1047, 1049 (2007). The Federal Bureau of Prisons recommends that staff

screen new detainees for these conditions. See Clinical Practice Guidelines, Management of Methicillin-Resistant Staphylococcus aureus (MRSA) Infections 2 (2011); Clinical Practice Guidelines, Lice and Scabies Protocol 1 (2011). Persons just arrested may have wounds or other injuries requiring immediate medical attention. It may be difficult to identify and treat these problems until detainees remove their clothes for a visual inspection. See Prison and Jail Administration: Practice and Theory 142 (P. Carlson & G. Garrett eds., 2d ed. 2008) (hereinafter Carlson & Garrett).

Strip searches find possible gang threats—reasonable basis to justify inspection for tattoos and other signs of gang affiliation

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

Jails and prisons also face grave threats posed by the increasing number of gang members who go through the intake process. See Brief for Policemen's Benevolent Association, Local 249, et al. as Amici Curiae 14 (hereinafter PBA Brief); New Jersey Comm'n of Investigation, Gangland Behind Bars: How and Why Organized Criminal Street Gangs Thrive in New Jersey's Prisons . . . And What Can Be Done About It 10–11 (2009). "Gang rivalries spawn a climate of tension, violence, and coercion." Carlson & Garrett 462. The groups recruit new members by force, engage in assaults against staff, and give other inmates a reason to arm themselves. Ibid. Fights among feuding gangs can be deadly, and the officers who must maintain order are put in harm's way. PBA Brief 17. These considerations provide a reasonable basis to justify a visual inspection for certain tattoos and other signs of gang affiliation as part of the intake process. The identification and isolation of gang members before they are admitted protects everyone in the facility. Cf. Fraise v. Terhune, 283 F. 3d 506, 509–510 (CA3 2002) (Alito, J.) (describing a statewide policy authorizing the identification and isolation of gang members in prison).

thBody cavity searches key to find weapons, drugs, and alcohol

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

Detecting contraband concealed by new detainees, furthermore, is a most serious responsibility. Weapons, drugs, and alcohol all disrupt the safe operation of a jail. Cf. Hudson, 468 U. S., at 528 (recognizing "the constant fight against the proliferation of knives and guns, illicit drugs, and other contraband**"). Correctional officers have had to confront arrestees concealing knives, scissors, razor blades, glass shards, and other prohibited items on their person, including in their body cavities**. See Bull, 595 F. 3d, at 967, 969; Brief for New Jersey County Jail Wardens Association as Amicus Curiae 17–18 (hereinafter New Jersey Wardens Brief). They have also found crack, heroin, and marijuana. Brief for City and County of San Francisco et al. as Amici Curiae 9–11 (hereinafter San Francisco Brief). The use of drugs can embolden inmates in aggression toward officers or each other; and, even apart from their use, the trade in these substances can lead to violent confrontations. See PBA Brief 11.

Inmates commit over 10,000 assaults every year—even everyday items can be used as weapons or tools

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

There are many other kinds of contraband. The textbook definition of the term covers any unauthorized item. See Prisons: Today and Tomorrow 237 (J. Pollock ed. 1997) ("Contraband is any item that is possessed in violation of prison rules. Contraband obviously includes drugs or weapons, but it can also be money, cigarettes, or even some types of clothing"). Everyday items can undermine security if introduced into a detention facility: "Lighters and matches are fire and arson risks or potential weapons. Cell phones are used to orchestrate violence and criminality both within and without jailhouse walls. Pills and medications enhance suicide risks. Chewing gum can block locking devices; hairpins can open handcuffs; wigs can conceal drugs and weapons." New Jersey Wardens Brief 8–9. Something as simple as an overlooked pen can pose a significant danger**. Inmates commit more than 10,000 assaults on correctional staff every year and many more among themselves**. See Dept. of Justice, Bureau of Justice Statistics, J. Stephan & J. Karberg, Census of State and Federal Correctional Facilities, 2000, p. v (2003).

Even inmates serving time for minor offenses are a threat—gangs can coerce them into bringing contraband into the prison

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

Contraband creates additional problems because scarce items, including currency, have value in a jail's culture and underground economy. Correctional officials inform us "[t]he competition . . . for such goods begets violence, extortion, and disorder." New Jersey Wardens Brief 2. Gangs exacerbate the problem. They "orchestrate thefts, commit assaults, and approach inmates in packs to take the contraband from the weak." Id., at 9–10. This puts the entire facility, including detainees being held for a brief term for a minor offense, at risk. Gangs do coerce inmates who have access to the outside world, such as people serving their time on the weekends, to sneak things into the jail. Id., at 10; see, e.g., Pugmire, Vegas Suspect Has Term to Serve, Los Angeles Times, Sept. 23, 2005, p. B1 ("Weekend-only jail sentences are a common punishment for people convicted of nonviolent drug crimes . . ."). These inmates, who might be thought to pose the least risk, have been caught smuggling prohibited items into jail. See New Jersey Wardens Brief 10. Concealing contraband often takes little time and effort. It might be done as an officer approaches a suspect's car or during a brief commotion in a group holding cell. Something small might be tucked or taped under an armpit, behind an ear, between the buttocks, in the instep of a foot, or inside the mouth or some other body cavity.

Banning blanket strip searches will increase amount of contraband—interactions between inmates

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

Even if people arrested for a minor offense do not themselves wish to introduce contraband into a jail, they may be coerced into doing so by others. See New Jersey Wardens Brief 16; cf. Block, 468 U. S., at 587 ("It is not unreasonable to assume, for instance, that low security risk detainees would be enlisted to help obtain contraband or weapons by

their fellow inmates who are denied contact visits"). This could happen any time detainees are held in the same area, including in a van on the way to the station or in the holding cell of the jail. If, for example, a person arrested and detained for unpaid traffic citations is not subject to the same search as others, this will be well known to other detainees with jail experience. A hardened criminal or gang member can, in just a few minutes, approach the person and coerce him into hiding the fruits of a crime, a weapon, or some other contraband. As an expert in this case explained, "**the interaction and mingling between misdemeanants and felons will only increase the amount of contraband in the facility if the jail can only conduct admission searches on felons**." App. 381a. Exempting people arrested for minor offenses from a standard search protocol thus may put them at greater risk and result in more contraband being brought into the detention facility. This is a substantial reason not to mandate the exception petitioner seeks as a matter of constitutional law.

Body Cavity Searches Effective

People detained for minor offenses have historically tried to smuggle contraband into prisons

Supreme Court 12

(4/2/12, Supreme Court of the United States, "FLORENCE v. BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF BURLINGTON ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT," http://i.cdn.turner.com/cnn/2012/images/04/02/10-945.pdf, 7/20/15, SM)

People detained for minor offenses can turn out to be the most devious and dangerous criminals. Cf. Clements v. Logan, 454 U. S. 1304, 1305 (1981) (Rehnquist, J., in chambers) (deputy at a detention center shot by misdemeanant who had not been strip searched). Hours after the Oklahoma City bombing, Timothy McVeigh was stopped by a state trooper who noticed he was driving without a license plate. Johnston, Suspect Won't Answer Any Questions, N. Y. Times, Apr. 25, 1995, p. A1. Police stopped serial killer Joel Rifkin for the same reason. McQuiston, Confession Used to Portray Rifkin as Methodical Killer, N. Y. Times, Apr. 26, 1994, p. B6. One of the terrorists involved in the September 11 attacks was stopped and ticketed for speeding just two days before hijacking Flight 93. The Terrorists: Hijacker Got a Speeding Ticket, N. Y. Times, Jan. 8, 2002, p. A12. Reasonable correctional officials could conclude **these uncertainties mean they must conduct the same thorough search of everyone who will be admitted to their facilities**. Experience shows that people arrested for minor offenses have tried to smuggle prohibited items into jail, sometimes by using their rectal cavities or genitals for the concealment. They may have some of the same incentives as a serious criminal to hide contraband. A detainee might risk carrying cash, cigarettes, or a penknife to survive in jail. Others may make a quick decision to hide unlawful substances to avoid getting in more trouble at the time of their arrest. This record has concrete examples. Officers at the Atlantic County Correctional Facility, for example, discovered that a man arrested for driving under the influence had "2 dime bags of weed, 1 pack of rolling papers, 20 matches, and 5 sleeping pills" taped under his scrotum. Brief for Atlantic County et al. as Amici Curiae 36 (internal quotation marks omitted). A person booked on a misdemeanor charge of disorderly conduct in Washington State managed to hide a lighter, tobacco, tattoo needles, and other prohibited items in his rectal cavity. See United States Brief 25, n. 15. San Francisco officials have discovered contraband hidden in body cavities of people arrested for trespassing, public nuisance, and shoplifting. San Francisco Brief 3. There have been similar incidents at jails throughout the country. See United States Brief 25, n. 15.

Body cavities are effective—73 instances of contraband found in a 5 year period in one county jail

Ha 11

(Daphne, 2011, Fordham Law Review, "Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness," associate in litigation and complex commercial litigation @ Dechert LLP, a global specialist law firm, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4723&context=flr, 7/23/15, SM)

As previously discussed, in Bull, the Ninth Circuit joined the circuit split created by the Eleventh Circuit.265 Jail administrators in Bull said that "based on their experience, 'the greatest opportunity for the introduction of drugs and weapons into the jail occurs at the point when an arrestee is received into the jail.'"266 They also produced evidence that strip searches at the county jail uncovered seventy-three instances of illegal drugs and drug paraphernalia in arrestees' body cavities between April 2000 and April 2005.267 Drugs, drug paraphernalia, and weapons were found in body cavities even in cases involving minor non-violent offenses like public drunkenness and public nuisance.268

Deterrence

The presence of strip searches deter inmates from smuggling contraband in body cavities

Volokh 10

(Eugene, 2/9/10, The Volokh Conspiracy, "Ninth Circuit Upholds Jail's Routine Strip Search / Visual Body Cavity Search Policy," professor of free speech law, copyright law, criminal law @ UCLA School of Law, clerked for Justice Sandra Day O'Connor on the Supreme Court and for Judge Alex Kozinski on the US Court of Appeals for the Ninth Circuit, http://volokh.com/2010/02/09/ninth-circuit-upholds-jails-routine-strip-search-visual-body-cavity-search-policy/, 7/20/15, SM)

Admittedly, this practice instinctively gives us the most pause. However, assuming for present purposes that inmates, both convicted prisoners and pretrial detainees, retain some Fourth Amendment rights upon commitment to a corrections facility, we nonetheless conclude that these searches do not violate that Amendment. The Fourth Amendment prohibits only unreasonable searches, and under the circumstances, we do not believe that these searches are unreasonable. The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record, and in other cases. **That there has been only one instance where an MCC inmate was discovered attempting to smuggle contraband into the institution on his person may be more a testament to the effectiveness of this search technique as a deterrent than to any lack of interest on the part of the inmates to secrete and import such items when the opportunity arises**. We do not underestimate the degree to which these searches may invade the personal privacy of inmates. Nor do we doubt, as the District Court noted, that on occasion a security guard may conduct the search in an abusive fashion. Such abuse cannot be condoned. The searches must be conducted in a reasonable manner. But we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can ever be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can. (I realize that the dissent argues, focusing on the last two sentences of this excerpt, that Bell "set the justification for strip searches at something less than probable cause, but declined to explicitly specify the level of suspicion." But I don't think that's right, given the entire passage, which expressly upheld a blanket policy with no requirement of individualized suspicion and no categorical exemption of certain supposedly safer classes of inmates.)

Courts Bad

Issues of prison management should be dealt with by corrections officials, not the court—Supreme Court case proves

(Donald B., Tony West, Leondra R. Kruger, Nicole A. Saharsky, Barba L. Herwig, and Edward Hemmelfarb, Supreme Court, "Albert W. Florence, Petitioner v. Board of Chosen Freeholders of the County of Burlington, et al, on Writ of Certiorari to the United States Court of Appeals for the Third Circuit: Brief for the United States as Amicus Curiae Supporting Respondents," Verrilli is the Solicitor General Counsel of Record, http://www.americanbar.org/content/dam/aba/publishing/previewbriefs/Other_Brief_Updates/10-945_respondentamcuusa.authcheckdam.pdf, 7/22/15, SM)

The Court in Wolfish emphasized that "wide-ranging deference" must be afforded to corrections officials. 441 U.S. at 547. The preservation of institutional security, the Court explained, is "[c]entral to all other corrections goals," and judgments about how to achieve that goal "are peculiarly within the province and professional expertise of corrections officials." Id. at 546, 548 (citation omitted). 4. Since Wolfish, this Court has repeatedly affirmed that **courts should play a "very limited role** * * *** in the administration of detention facilities**." Block v. Rutherford, 468 U.S. 576, 584 (1984). "[P]rison officials," and not the courts, "are to remain the primary arbiters of the problems that arise in prison management." Shaw v. Murphy, 532 U.S. 223, 230 (2001). Courts should "afford[] considerable deference to the determinations of prison administrators" as they "deal with the difficult and delicate problems of prison management." Thornburgh v. Abbott, 490 U.S. 401, 407-408 (1989).

Plan Can't Solve All Transphobia

There are a myriad of transphobic instances in prisons that the aff cannot solve—rape by other inmates, hormone denial, verbal harassment, sexual coercion

Sontag 15

(Deborah, NYT, "Transgender Woman Cites Attacks and Abuse in Men's Prison," investigative reporter for NYT, http://www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison.html, 7/25/15, SM)

ROME, Ga. — Before she fell on hard times and got into trouble with the law, Ashley Diamond had a wardrobe of wigs named after her favorite divas. "Darling, hand me Aretha" or Mariah or Madonna, she would say to her younger sister when they glammed up to go out on the town. Ms. Diamond, 36, had lived openly and outspokenly as a transgender woman since adolescence, much of that time defying the norms in this conservative Southern city. But on the day she arrived at a Georgia prison intake center in 2012, the deliberate defeminizing of Ms. Diamond began. Ordered to strip alongside male inmates, she froze but ultimately removed her long hair and the Hannah Montana pajamas in which she had been taken into custody, she said. She hugged her rounded breasts protectively. Looking back, she said, it seemed an apt rite of initiation into what became three years of degrading and abusive treatment, starting with the state's denial of the hormones she says she had taken for 17 years. But on Friday, Ms. Diamond and, through her, all transgender inmates won the unexpected support of the Justice Department, which intervened on her behalf in the federal lawsuit she filed against Georgia corrections officials in February. "During intake, I kept saying: 'Hello? I'm trans? I'm a woman?' " Ms. Diamond recounted in a phone conversation from prison a few weeks ago. "But to them I was gay. I was what they called a 'sissy.' So finally I was like: 'O.K., I'm a sissy. Do you have a place where sissies can go and be O.K.?' " They did not provide one, she said. A first-time inmate at 33 whose major offense was burglary, Ms. Diamond was sent to a series of high-security lockups for violent male prisoners. She has been raped at least seven times by inmates, her lawsuit asserts, with a detailed accounting of each. She has been mocked by prison officials as a "he-she thing" and thrown into solitary confinement for "pretending to be a woman." She has undergone drastic physical changes without hormones. And, in desperation, she has tried to castrate and to kill herself several times. "My biggest concern is that she survives to get out of prison,

which I worry about every day," said Stephen Sloan, a counselor who treated her at Baldwin State Prison and whose pleas that Ms. Diamond be restarted on hormones were ignored. In her lawsuit, Ms. Diamond asks the court to direct prison officials to provide her hormone therapy, to allow her to express her female identity through "grooming, pronoun use and dress," and to provide her safer housing. She also seeks broader changes in policy and practice. And the Justice Department, in its support, declared hormone therapy to be necessary medical care, saying Georgia, and other states, must treat "gender dysphoria" like any other health condition and provide "individual assessment and care." Georgia's Department of Corrections has declined to comment about the case. As a matter of policy, it also denied The New York Times's request to interview Ms. Diamond in person at Georgia State Prison, where she was moved a few weeks ago in apparent retaliation for her lawsuit, she claims. Georgia State had more sexual assaults between 2009 and 2014 than all but one other state prison. Since her arrival there, Ms. Diamond has survived an attempted rape in a stairwell, dealt with inmates exposing themselves and masturbating in front of her, and faced relentless sexual coercion, she said last week in an emergency motion seeking an immediate transfer to a safer institution. Though Ms. Diamond believes she is championing a cause larger than herself, she has expressed increasing despair. She sobbed continually during a recent visit from her lawyer, and in the phone interview, she said: "Every day I struggle with trying to stay alive and not wanting to die. Sometimes I think being a martyr would be better than having to live with all this." Last year, Ms. Diamond smuggled video snippets out of prison, and a friend posted them on YouTube. In them, her head wrapped in a white turban, she struck a lighter and more defiant tone, hoping that recent television portrayals of transgender characters might generate concern for her plight. "While it seems like the whole world is obsessed with 'Orange Is the New Black,' I'm living it," she said.

Transgender individuals face sexual and verbal harassment in prisons—the aff cannot solve for all instances of transphobia

John and Stipe 15

(Elton, Michael, 4/14/15, The Guardian, "The silence on abuse of transgender inmates in US prisons is deafening," http://www.theguardian.com/commentisfree/2015/apr/14/silence-abuse-transgender-inmates--us-prisons-is-deafening, 7/24/15, SM)

Ashley Diamond, a transgender inmate who was denied medically necessary hormones by the Georgia correctional system, was raped seven times, called a "he-she thing", and thrown into solitary confinement for "pretending" to be a woman. Last week, the United States Justice Department weighed in on her lawsuit and found that Georgia's "freeze-frame" policy – which denied trans inmates the chance to begin or expand hormone treatment in prison – constituted "cruel and unusual punishment" and violated the United States Constitution. This horrific treatment illustrates the broader policy changes we desperately need to ensure that no one in a correction setting - or any setting, for that matter - is denied their human or civil rights because of their gender identity or sexual orientation. Today, transgender women in male prisons are 13 times more likely than the general prison population to be sexually assaulted while incarcerated. Nearly two-thirds of trans inmates report sexual assault. And more often than not, assaults go unreported in part because the perpetrators are prison guards, wardens and staff. This is a disgrace. Sadly, it's not the first time we've heard of prisoners being mistreated because of their sexual orientation. Until recently, HIV-positive prisoners in South Carolina who were convicted for minor offenses were segregated and held alongside inmates on death row. The Elton John AIDS Foundation was proud to support the ACLU's legal action that ended this despicable policy. The silence from Georgia prison officials on transgender abuse is deafening. A new policy that initiates individualized assessments of gender dysphoria will improve medical care for trans people, but it does nothing for the verbal and physical abuse that women like Ashley Diamond regularly face in correctional facilities. The Justice Department was right to take a stand in favor of the rights of transgender prisoners to medical hormone treatment. Now, it's time for the DOJ to take a stand against the brutality and sexual assault that transgender prisoners face in our correctional facilities. There is a troubling lack of awareness in correctional facilities about the nuances of gender identity and the well-being of trans women inmates in male prisons. Too often, prisons chip away at the very identity of these women by using male pronouns, confiscating their bras and – as in Ashley's case – denying medically necessary hormone therapy (she'd been undergoing hers for nearly 20 years). We must understand the effects these practices have and put a stop to them.

Trans individuals in prison are still being housed in the wrong facilities—that makes rape more likely

Hess 15

(Amanda, 1/6/15, Slate, "Protecting Trans Prisoners," http://www.slate.com/articles/double_x/doublex/2015/01/leslieann_manning_lawsuit_a_transgender_woman_sues_the_sullivan_correctional.1.html, 7/24/15, SM)

In 1991, a young trans woman named Dee Farmer sued Indiana correctional officers after she was placed in a men's prison, and raped there. It's now been more than 20 years since the Supreme Court heard Farmer's case and unanimously decided that the officers' "deliberate indifference" to her safety violated the Eighth Amendment, which prohibits cruel and unusual punishment. And more than a decade has passed since Congress unanimously passed the Prison Rape Elimination Act, which outlines special steps that prisons must take to prevent sexual assault against their most vulnerable residents. And yet, in prisons from Oregon to Georgia, Texas to Pennsylvania, trans women like Manning are still reporting brutal rapes at the hands of other inmates and prison guards. A 2009 study of sexual assault in California state prisons found that **trans inmates are 13 times more likely to be sexually assaulted than other prisoners**. As many as 50 percent of trans people in California facilities report being raped while incarcerated. And while trans people make up a small percentage of the U.S. population—the Williams Institute at the UCLA School of Law estimates that there are 700,000 trans people in the country—the dynamics of discrimination place them at a high risk of ending up incarcerated. A 2011 survey undertaken by the National Center for Transgender Equality found that 21 percent of trans women in its sample reported being locked up in their lifetimes. PREA was meant to eliminate prison rape by increasing officer and video supervision of facilities, limiting intimate cross-gender searches, training officers around sexual assault issues, and forcing facilities to take special care of vulnerable prisoners like Manning. But at this point, it remains a largely symbolic act. Though it was passed in 2003, it wasn't implemented until 2012, and facilities weren't subjected to audits until August of 2013. States that fail to comply with PREA risk losing 5 percent of federal grants from the Department of Justice, but the penalty only applies to state-run facilities; though technically covered by PREA, municipal and county jails don't risk losing any funds if they don't shape up. Nevertheless, Texas Sen. John Cornyn is pushing for legislation that would gut PREA's authority to leverage financial penalties on the states even further, an initiative that's supported by both prison industry lobbyists and, surprisingly, by anti-rape advocacy group RAINN, which believes the penalty can end up denying services to inmates. And several states, including Idaho, Texas, and Arizona, have already publicly refused to comply with PREA at all, happily surrendering their chunk of federal funding in exchange for the freedom to craft their own policies—or to simply ignore the problem. For those not willing to part with their funding, some federal guidelines for preventing prison rape are vague by design. PREA tells prisons or jails that when they decide where to house trans inmates, "an agency may not simply assign the inmate to a facility based on genital status," but must make the decision on "a case-by-case basis" to "ensure the inmate's health and safety." The determination must also take into account "the inmate's own views regarding his or her own safety." The case-by-case rule ostensibly acknowledges that trans prisoners don't all have the same safety needs, and that facilities don't all operate the same way. But Chase Strangio, a staff attorney with the ACLU, says that the lack of specifics on these "individualized" assessments can also allow facilities to justify their decisions however they choose. And right now, Strangio says, "it's hard to imagine that there's any meaningful assessment going on." Though some local jails, like Washington, D.C.'s, have begun housing trans women with other women, the vast majority of trans women are still being housed in men's facilities—a decision made based on their sex at birth—and not in women's prisons, in accordance with their gender identity. Susan Hazeldean, director of Cornell University Law School's LGBT Clinic and one of Manning's lawyers, says that in New York state prisons, housing assignments for trans prisoners typically go like so: "It says 'male' on your birth certificate, so we're just going to throw you in this men's prison, and good luck to you."

Strip search ≠ body cavity searches

Strip searches are distinct from body cavity searches—they can't solve their advantages

Cornell Law 08

(3/25/08, Cornell University Law School, "New York Court of Appeals: The People and c., Respondent, v. Azim Hall, Appellant," https://www.law.cornell.edu/nyctap/I08_0048.htm, 7/21/15, SM)

There are three **distinct** and increasingly intrusive types of bodily examinations undertaken by law enforcement after certain arrests and **it is critical to differentiate between these categories of searches**. A "strip search" requires the arrestee to disrobe so that a police officer can **visually** inspect the person's body. The second type of examination — a "visual body cavity inspection" — occurs when a police officer looks at the arrestee's anal or genital cavities, usually by asking the arrestee to bend over; however, the officer does not touch the arrestee's body cavity. In contrast, a "manual body cavity search" includes some degree of touching or probing of a body cavity that causes a physical intrusion beyond the body's surface.2

Body cavity searches involve touching and probing, whereas a strip search is only visual inspection

Washington State Legislature 01

(2/1/01, Washington State Legislature, "Searches and Seizures," http://apps.leg.wa.gov/rcw/default.aspx?cite=10.79&full=true, 7/21/15, SM)

10.79.070 Strip, body cavity searches — Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 10.79.060 through 10.79.110. (1) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person. (2) "Body cavity search" means the touching or probing of a person's body cavity, whether or not there is actual penetration of the body cavity. (3) "Body cavity" means the stomach or rectum of a person and the vagina of a female person. (4) "Law enforcement agency" and "law enforcement officer" include local departments of corrections created pursuant to *RCW 70.48.090(3) and employees thereof. [1983 1st ex.s. c 42 § 2.] Notes: *Reviser's note: RCW 70.48.090 was amended by 2007 c 13 § 1, changing subsection (3) to subsection (4). Effective date -- Severability -- 1983 1st ex.s. c 42: See notes following RCW 10.79.060. 10.79.080 Strip, body cavity searches — Warrant, authorization, report. (1) No person may be subjected to a body cavity search by or at the direction of a law enforcement agency unless a search warrant is issued pursuant to superior court criminal rules. (2) No law enforcement officer may seek a warrant for a body cavity search without first obtaining specific authorization for the body cavity search from the ranking shift supervisor of the law enforcement authority. Authorization for the body cavity search may be obtained electronically: PROVIDED, That such electronic authorization shall be reduced to writing by the law enforcement officer seeking the authorization and signed by the ranking supervisor as soon as possible thereafter. (3) Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency. (4) A law enforcement officer requesting a body cavity search shall prepare and sign a report regarding the body cavity search. The report shall include: (a) A copy of the written authorization required under subsection (2) of this section; (b) A copy of the warrant and any supporting documents required under subsection (1) of this section; (c) The name and sex of all persons conducting or observing the search; (d) The time, date, place, and description of the search; and (e) A statement of the results of the search and a list of any items removed from the person as a result of the search. The report shall be retained as part of the law enforcement agency's records. [1983 1st ex.s. c 42 § 3.] Notes: Effective date -- Severability -- 1983 1st ex.s. c 42: See notes following RCW 10.79.060. 10.79.090 Strip, body cavity searches — Medical care not precluded. Nothing in RCW 10.79.080 or this section may be construed as precluding or preventing the administration of medical care to persons requiring immediate medical care or requesting medical care. [1983 1st ex.s. c 42 § 4.] Notes: Effective date -- Severability -- 1983 1st ex.s. c 42: See notes following RCW 10.79.060. 10.79.100 Strip, body cavity searches — Standards for conducting. (1) **Persons conducting a strip search shall not touch the person being searched except as reasonably necessary to effectuate the strip search of the person.**

Strip searches are visual, body-cavity searches are physical

APT 12

Strip searches refer to the removal of some or all of a person's clothing in order to permit a **visual inspection** of all parts of the body, **without physical contact**. Procedures may vary but prisoners are usually required to take off their clothes and to provide an unobstructed view of possible hiding places. They may be asked to open their mouth, and to bend and cough. Men may be asked to lift their penis and testicles, while women may have to spread their legs for inspection of the genital area. Body-cavity searches (or invasive or intimate searches) are a **physical examination of body orifices** (such as vagina or anus). This type of search includes rectal and pelvic examination, and is physically and psychologically the most intrusive method.

Body cavities and strip searches are distinct—only strip searches involve manipulation and undressing

Providence Police Department 4/5/15 ("Strip Searches and Body Cavity Searches," Headquarters, Chief of Police Colonel Hugh T/. Clements, Jr., signed by Commissioner Departments of Public Safety, //rck)

DISCUSSION For the purpose of this General Order, the following definitions shall apply:

Strip Search - Any search of an individual which requires the manipulation and/or removal of some or all of the individual's clothing in order to permit a visual inspection of undergarments and/or any and all skin surfaces, including but not limited to the genital area, buttocks, anus, and female breasts. Body Cavity Search - Any search of the body cavities of an individual, including, in some instances, internal organs such as the stomach cavity.

Other Cards

Current policies aimed at protecting prisoners from sexual abuse aren't enforced— means that aff won't solve either

Buchanan 07

Kim Shayo Buchanan, Associate professor of Law and Gender Studies at USC Gould School of Law who specializes in constitutional law, international and comparative human rights law, prisoners' rights, reproductive rights, race, gender and sexuality, "Impunity: Sexual Abuse in Women's Prisons", *HARVARD LAW REVIEW,* http://www.law.harvard.edu/students/orgs/crcl/vol42_1/buchanan.pdf, Vol 42, 2007, pp. 44-48//SRawal

In the United States, **sexual abuse by guards in women's prisons is so notorious and widespread that it has been described as "an institutionalized component of punishment behind prison walls.**"1 **Women in prisons2 across the United States are subjected to diverse and systematic forms of sexual abuse: vaginal and anal rape; forced oral sex and forced digital penetration; quid pro quo coercion of sex for drugs, favors, or protection; abusive pat searches and strip searches; observation by male guards while naked or toileting; groping; verbal harassment; and sexual threats**.3 Guards and prisoners openly joke about prisoner "girlfriends" and guard "boyfriends." Women prisoners become pregnant when the only men they have had contact with are guards and prison employees; often they are sent to solitary conªnement—known as "the hole"—as punishment for having sexual contact with guards or for getting pregnant.**4 Such open and obvious abuses would seem relatively easy for a prison administration to detect and prevent if it chose to do so**. **Prisons owe an afªrmative legal duty to protect their inmates against abuse.5 Congress and forty-four states have criminalized all sexual contact between guards and prisoners, regardless of consen**t.6 **Nonetheless, within women's prisons guards routinely commit serious sexual offenses against the women in their custody**. **Government administrators know that such abuse is occurring**7 and acknowledge their duty to prevent it.8 However, **they have generally neglected to do much about it**, as **most prisons have failed to adopt institutional and employment policies that effectively prevent or reduce custodial sexual abuse**.9 In most workplaces, an employee who had sex on the job would be ªred. In prison, **a report of custodial sexual abuse is more likely to result in punishment or retaliation against the prisoner than in disciplinary consequences for the guard.**10 **One might expect the law to furnish incentives for prisons to control such unlawful acts by their employees,** as it does for other civil defendants**. It does not**.11 Instead, as I demonstrate in this Article, a network of prison law rules—the Prison Litigation Reform Act of 1995 ("PLRA"),12 governmental immunities, and constitutional deference— work together to confer near-complete immunity against prisoners' claims. In the United States, both male and female prisoners are stereotyped as black;13 more than two thirds of women in U.S. prisons are African American or Latina.14 In this Article, I consider how the gendered racialization of women prisoners informs legal and institutional indifference to their treatment in prison. Like black women under slavery,15 **women in contemporary prisons are**

subjected to institutionalized sexual abuse, while the law refuses to protect them or provide redress.

Off-Case

T–Its

A. Interpretation: Its means belonging to

Oxford English Dictionary, 2013
http://www.oed.com/view/Entry/100354?redirectedFrom=its#eid

its, adj. and pron. Pronunciation: /ɪts/ A. adj. As genitive of the pronoun, now possessive adjective. Of or belonging to it, or that thing (Latin ejus); also refl., Of or belonging to itself, its own (Latin suus).The reflexive is often more fully its own, for which in earlier times the own, it own, were used: see own adj. and pron. B. pron. As possessive pronoun. [Compare his pron.2] The absolute form of prec., used when no n. follows: Its one, its ones. rare.

USFG is the national government

Oran's 2K Oran's Dictionary of the Law 2K Daniel Oran and Mark Toski, eds ebook p. 193

Federal

1.A federal union is two or more states uniting into one strong central government with many powers left to the states.

2. The U.S. federal government is the national, as opposed to state, government. 3. For the various federal agencies that are not listed here or by name, look under their initials at the start of the letter.

B. Violation: the plan curtails surveillance in LOCAL jails, not federal prisons—jails are run by the county, prisons are operated by the federal government

Criminal Law Lawyer Source 08

(12/8/08, Criminal Law Lawyer Source, "Difference between Prison and Jail," http://www.criminal-law-lawyer-source.com/terms/jail-prison-difference.html, 7/21/15, SM)

Jails are locally operated places of incarceration — usually **the county runs the jail**. There are about 3,600 jails in the U.S. **Prisons are operated by** the state government, or by **the federal government** (the federal Bureau of Prisons). Since jails are within the county where the individual was arrested, the jail isn't very far away. A state or federal prison could be very far away from a convicted person's home and family. There are only about 100 federal prisons, detention centers, and correctional institutions in the U.S.

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including surveillance of jails explodes the topic because it allows affs that curtail local surveillance instead of federal surveillance.

C. T IS A VOTER because the opportunity to prepare promotes better debating

Additional cards

Jails are run by local jurisdictions, prisons are run by the federal government

Economist 14

(3/13/14, Economist, "America's prison population: Who, what, where, and why," http://www.economist.com/blogs/democracyinamerica/2014/03/americas-prison-population, 7/24/15, SM)

THE United States not only incarcerates a lot of people, it also has a bewildering array of places to put them. There are, of course, jails and prisons: jails are usually run by local jurisdictions (cities or counties) and house either convicted criminals serving short sentences or people awaiting trial. Prisons, or penitentiaries, are run by states or the federal government, and house convicts serving longer sentences. But there are also juvenile-detention facilities, military prisons, immigration-detention and civil-commitment centres (used for court-ordered treatment of the mentally ill; they can be inpatient or outpatient) as well as jails and prisons in Indian and overseas territories, most of which are administered by different government entities. This keeps data on the overall size of America's incarcerated population, as well as information about their crimes, quite fragmented.

T-Substantial

A. Interpretation: Substantial is 2%

Word and Phrases 1960

> 'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App.

B. Violation—there are 102 federal prisons out of 7,442 correctional facilities—that's 1.3%

Wagner and Sakala 14

(Peter, Leah, Prison Policy Initiative, "Mass Incarceration: The Whole Pie," http://www.prisonpolicy.org/reports/pie.html, 8/1/15, SM)

On the other hand, piecing together the available information offers some clarity. This briefing presents the first graphic we're aware of that aggregates the disparate systems of confinement in this country, which hold more than 2.4 million people in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails, and 79 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in the U.S. territories.

The affirmative should have to defend changes that affect a substantial number of facilities, not just a hundred federal prisons.

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big. Including affs that curtail surveillance ONLY applying to a hundred prisons allows for small, squirrely affs—that kills negative ground.

At best they're effects T and that's a voter:

makes them unpredictable—the aff could take an infinite number of steps to reach the topical action

justifies vague plan texts—that kills negative ground and explodes the research burden

explodes limits—the negative would have to prepare for a large number of aff cases that would only be topical through solvency

C. T IS A VOTER because the opportunity to prepare promotes better debating

Queer Pessimism K

1NC

The Prison industrial Complex operates far beyond the walls of the prison to capture queerness. And it isn't broken its working well – endless cycles of reform make a façade of freedom while simultaneously reproducing the cycle of anti-queer violence that happens within it.

Stanley 11 – (Eric A., Ph.D. in History of Consciousness, UC Santa Cruz, UC President's Postdoctoral Fellow at UCSD edited by Eric A. Stanley and Nat Smith, *Captive Genders: Trans Embodiment and the Prison Industrial Complex*)

Trans/gender-non-conforming and queer people, along with many others, are born into webs of surveillance. The gendering scan of other children at an early age ("Are you a boy or a girl?") places many in the panopticon long before they enter a prison. For those who do trespass the gender binary or heteronormativity, physical violence, isolation, detention, or parental disappointment become some of the first punishments. As has been well documented, many trans and queer youth are routinely harassed at school and kicked out of home at young ages, while others leave in hopes of escaping the mental and physical violence that they experience at schools and in their houses. Many trans/queer youth learn how to survive in a hostile world. Often the informal economy becomes the only option for them to make money. Selling drugs, sex work, shoplifting, and scamming are among the few avenues that might ensure they have something to eat and a place to sleep at night. Routinely turned away from shelters because of their gender presentation, abused in residential living situations or foster care, and even harassed in "gay neighborhoods" (as they are assumed to drive down property values or scare off business), they are reminded that they are alone. Habitually picked up for truancy, loitering, or soliciting, many trans/queer people spend their youth shuttling between the anonymity of the streets and the hyper-surveillance of the juvenile justice system. With case managers too overloaded to care, or too

transphobic to want to care, they slip through the holes left by others. Picked up—locked up—placed in a home—escape—survive—picked up again. The cycle builds a cage, and the hope for anything else disappears with the crushing reality that their identities form the parameters of possibility.10 With few options and aging-out of what little resources there are for "youth," many trans/queer adults are in no better a situation. Employers routinely don't hire "queeny" gay men, trans women who "cannot pass," butches who seem "too hard," or anyone else who is read to be "bad for business." Along with the barriers to employment, most jobs that are open to folks who have been homeless or incarcerated are minimum-wage and thus provide little more than continuing poverty and fleeting stability. Back to where they began—on the streets, hustling to make it, now older—they are often given even longer sentences. While this cycle of poverty and incarceration speaks to more current experiences, the discursive drives building their motors are nothing new. Inheriting a long history of being made suspect, trans/queer people, via the medicalization of trans identities and homosexuality, have been and continue to be institutionalized, forcibly medicated, sterilized, operated on, shocked, and made into objects of study and experimentation. Similarly, the historical illegality of gender trespassing and of queerness have taught many trans/queer folks that their lives will be intimately bound with the legal system. More recently, the HIV/AIDS pandemic has turned the surveillance technologies inward. One's blood and RNA replication became another site of susceptibility that continues to imprison people through charges of bio-terrorism, under AIDS-phobic laws. Living through these forms of domination are also moments of devastating resistance where people working together are building joy, tearing down the walls of normative culture, and opening space for a more beautiful, more lively, safer place for all. Captive Genders remembers these radical histories and movements as evidence that our legacies are fiercely imaginative and that our collective abilities can, and have, offered freedom even in the most destitute of times.11 In the face of the overwhelming violence of the PIC, abolition—and specifically a trans/queer abolition—is one example of this vital defiance. An abolitionist politic does not believe that the prison system is "broken" and in need of reform; indeed, it is, according to its own logic, working quite well. Abolition necessarily moves us away from attempting to "fix" the PIC and helps us imagine an entirely different world—one that is not built upon the historical and contemporary legacies of the racial and gendered brutality that maintain the power of the PIC. What this means is that abolition is not a response to the belief that the PIC is so horrible that reform would not be enough. Although we do believe that the PIC is horrible and that reform is not enough, abolition radically restages our conversations and our ways of living and understanding as to undo our reliance on the PIC and its cultural logics. For us, abolition is not simply a reaction to the PIC but a political commitment that makes the PIC impossible. To this end, the time of abolition is both yet to come and already here. In other words, while we hold on to abolition as a politics for doing anti-PIC work, we also acknowledge there are countless ways that abolition has been and continues to be here now. As a project dedicated to radical deconstruction, abolition must also include at its center a reworking of gender and sexuality that displaces both heterosexuality and gender normativity as measures of worth.12

Violence against queerness results in the annihilation of identity—this is a form of soul murder

Yep, Lovaas, and Elia 03 Professors, San Francisco University (Gust, Karen, and John, Journal of Homosexual Studies, Vol. 45, No. 2/3/4, pp. 18,)

These are the internal injuries that individuals inflict upon themselves. Very early in life children learn from interpersonal contacts and mediated messages that deviations from the heteronormative standard, such as homosexuality, are anxiety-ridden, guilt-producing, fear-inducing, shame-invoking, hate-deserving, psychologically

blemishing, and physically threatening. Internalized homophobia, in the form of self-hatred and self-destructive thoughts and behavioral patterns, becomes firmly implanted in the lives and psyches of individuals in heteronormative society. Exemplifying the feelings and experiences of many people who do not fit in the heteronormative mandate, Kevin Jennings (1994) tells us his personal story: I was born in 1963. . . . [I] realized in grade school that I was gay. I felt absolutely alone. I had no one to talk to, didn't know any openly gay people, and saw few representations of gays in the media of the 1970s. I imagined gay people were a tiny, tiny minority, who had been and would always be despised for their "perversion." Not once in high school did I ever learn a single thing about homosexuality or gay people. I couldn't imagine a happy life as a gay man. So I withdrew from my peers and used alcohol and drugs to try to dull the pain of my isolation. Eventually, at age seventeen I tried to kill myself, like one out of every three gay teens. I saw nothing in my past, my present, or (it seemed) my future suggesting that things would ever get any better. (pp. 13-14) Heteronormativity is so powerful that its regulation and enforcement are carried out by the individuals themselves through socially endorsed and culturally accepted forms of soul murder. Soul murder is a term that I borrow from the child abuse and neglect literature to highlight the torment of heteronormativity (Yep, 2002). Shengold (1999) defines soul murder as the "apparently willful abuse and neglect of children by adults that are of sufficient intensity and frequency to be traumatic . . . [so that] the children's subsequent emotional development has been profoundly and predominantly negatively affected" (p. 1). Further explaining this concept, Shengold (1989) writes, "soul murder is neither a diagnosis nor a condition. It is a dramatic term for circumstances that eventuate in crime–the deliberate attempt to eradicate or compromise the separate identity of another person" (p. 2, my emphasis). Isn't the incessant policing and enforcement, either deliberately or unconsciously, by self and others, of the heteronormative mandate a widespread form of soul murder?

The alternative is to burn this world to the ground—we must rage against systems of normativity

Mary Nardini Gang 09 (Mary Nardini Gang [The Mary Nardini Gang are criminal queers from Milwaukee, Wisconsin.]. "Toward the Queerest Insurrection." Queer Jihad, 2009. http://zinelibrary.info/files/QueerestImposed.pdf)//ALepow

Some will read "queer" as synonymous with "gay and lesbian" or "LGBT". This reading falls short. While those who would fit within the con- structions of "L", "G", "B" or "T" could fall with- in the discursive limits of queer, queer is not a stable area to inhabit. Queer is not merely another identity that can be tacked onto a list of neat social categories, nor the quantitative sum of our identities. Rather, it is the qualitative position of opposition to presentations of stability - an identity that problematizes the manageable limits of identity. Queer is a territory of tension, defined against the dominant narrative of white-hetero-monogamous-patriarchy, but also by an affinity with all who are marginalized, otherized and oppressed. Queer is the abnormal, the strange, the dangerous. Queer involves our sexuality and our gender, but so much more. It is our desire and fantasies and more still. Queer is the cohesion of everything in conflict with the heterosexual capitalist world. Queer is a total rejection of the regime of the Normal. As queers we understand Normalcy. Normal, is the tyranny of our condition; reproduced in all of our relationships. Normalcy is violently reiterated in every minute of every day. We understand this Normalcy as the Totality. The Totality being the interconnection and overlap- ping of all oppression and misery. The Totality is the state. It is capitalism. It is civilization and empire. The totality is fence-post crucifixion. It is rape and murder at the hands of police. It is "Str8 Acting" and "No Fatties or Femmes". It is Queer Eye for the Straight Guy. It is the brutal lessons taught to those who can't achieve Normal. It is every way we've limited ourselves or learned to hate our bodies. We understand Normalcy all too well. When we speak of social war, we do so because purist class analysis is not

enough for us. What does a marxist economic worldview mean to a survivor of bashing? To a sex work- er? To a homeless, teenage runaway? How can class analysis, alone as paradigm for a revolution, promise liberation to those of us journeying beyond our assigned genders and sexualities? The Proletariat as revolutionary subject marginalizes all whose lives don't fit in the model of heterosexual-worker. We must create space wherein it is possible for desire to flourish. This space, of course, requires conflict with this social order. To de- sire, in a world structured to confine desire, is a tension we live daily. We must understand this tension so that we can become powerful through it - we must understand it so that it can tear our confinement apart. This terrain, born in rupture, must challenge oppression in its entirety. This of course, means total negation of this world. We must become bodies in revolt. We need to delve into and indulge in power. We can learn the strength of our bodies in struggle for space for our desires. In desire we'll find the power to destroy not only what destroys us, but also those who aspire to turn us into a gay mimicry of that which destroys us. We must be in conflict with regimes of the normal. This means to be at war with everything. If we desire a world without restraint, we must tear this one to the ground. We must live be- yond measure and love and desire in ways most devastating. We must come to understand the feeling of social war. We can learn to be a threat, we can become the queerest of insurrections.

Links

Our discursive record of violence done against prisoners produces an epistemology that haunts the neoliberal-carceral state's legalistic discourse of "freedom" and "justice" even beyond a court decision – any legalistic attempt to bracket our discussion is the same political move that allows the law to possess and legitimize the violence of the carceral state.

Dillon 13 (Stephen, "Fugitive Life: Race, Gender, and the Rise of the Neoliberal-Carceral State," May 2013, Stephen Dillon, assistant professor of Queer Studies, holds a B.A. from the University of Iowa and a Ph.D. in American Studies with a minor in Critical Feminist and Sexuality Studies from the University of Minnesota.//RJ)

Many accounts of sexual violence committed against women in prison concern exceptional cases where a guard violated the law or other inmates perpetrate the violation. In this the case, **sexual violence was performed by the state in the name of the safety of the state**. As the captain put it, the state simply has the right to sexually assault those in their custody. Whether the cavity search is authorized by the consent of the prisoner or not, **consent is not available to the captive who is always already subject to the systems of violence and force available to the prison.** As Angela Davis observes, **if strip searches and cavity searches were performed by men** in plain clothes **on the street,** there would be no question that an act of sexual violence was taking place.515 Yet, **the body of the prisoner is ontologically a threat to the state and the public, and thus violence performed on the captive body preempts the violence the prisoner is perpetually waiting to unleash**. Simply, a rape is not a rape—it is safety and security. This particular act of state violence did not occur because prisoners are "juridical non-people" as Dylan Rodríguez would have it.516 Instead, sexual violence was authorized and performed by the

law and through the law. The women were even given the non-choice of signing a legal document authorizing the terror that was coming regardless of their forced consent. Torres and Rosenberg were viewed as legal subjects who could authorize their own violation. For example, when Amnesty International wrote the FBP about the assault, the Associate Director responded: Regarding the particular search conducted of Ms. Torres and Susan Rosenberg prior to their transfer to Lexington, our careful review indicates that the search was not punitive nor outside of agency policy. This very isolated occurrence involved a search that was performed in a professional manner by a qualified physician's assistant.517 The sexual assault was the law, policy, and procedure of the prison. It was professional and part of the larger system of the prison's humane care of the prisoner. Like the unimaginable violence at Guantánamo, the women at Lexington were not beyond the safety of the law—they were **possessed by it.** Rosenberg countered state violence and terror: "I found a new way to survive by reading and writing and thinking with purpose."518 Her lawyer told her to write down the forms of violation, pain, and horror that were too numerous to catalogue during their visits, were so unimaginable they could not be conveyed by speech, or were simply unspeakable. Rosenberg's lawyer framed this process as building an archive that would contradict the state's account of Lexington and thus would produce a different conception of the truth. Rosenberg writes: "Write it down, for the record. I half believed that keeping a record was a futile effort, and she half believed it would be of use in fighting for justice, but that sentence became a signal between us, a way to reference acts of violence too difficult to discuss."519 **The "record" in this formulation was a legal account that could potentially contest the state in court, but it was also an alternative record of events that could live on in places and times beyond the state's determination of what is real and true.** In this way, **writing became a way of producing an epistemology that haunts the neoliberal-carceral state's discourses of freedom, equality, and justice.** Writing became a way to document the violence of the law—violence the law itself could not register.

Prison reforms continue the violent policing of gender and sexuality by the state while neglecting to bring the failings of the system to the forefront of their work. The law does not treat everyone equally and it never will absent the destruction of the state.

Ware 11 (Ware, Wesley [Wesley Ware is the founder of BreakOUT!, a project of the Juvenile Justice Project of Louisiana (JJPL) that fights for justice for lesbian, gay, bisexual, transgender, and queer/questioning youth in the juvenile justice system and the author of the recently released report, Locked Up & Out: Lesbian, Gay, Bisexual, and Transgender Youth in Louisiana's Juvenile Justice System. Wes serves on the Advisory Board for the Equity Project, a national initiative to bring fairness and equity to LGBT youth in juvenile delinquency courts. At JJPL, he coordinated the investigation for a class-action lawsuit on behalf of youth detained in an abusive youth jail in New Orleans and monitors the conditions of three state-run youth prisons in Louisiana.]. 2011 "Rounding Up the Homosexuals: The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth" in "Captive Genders: Trans Embodiment and the Prison Industrial Complex" Pg. 77 (Eds. Smith & Stanley) 2011 AK press. Accessed: 7/17/2015. http://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf)//ALepow

However, with the juvenile justice system's intent to provide "treatment" to young people, many queer/trans youth inherit the ideology that they are "wrong" or in need of "curing," as evidenced by their stories. As sexual and gender transgressions have been deemed both illegal and pathological, queer and trans youth, who are some of the most vulnerable to "treatments," are not only subjected to incarceration but also to harassment by staff, conversion therapy, and physical

violence.[6] Moreover, with the juvenile justice system often housed under the direct authority of state correctional systems and composed of youth referred directly from state police departments, it should not be surprising that young people locked up in the state juvenile system, 80 percent of whom are black in Louisiana,[7] are often actually destroyed by the very system that was created to intervene. Worse than just providing damaging outcomes for youth once they are incarcerated, this rehabilitative system funnels queer and trans/gendernon-conforming youth into the front doors of the system. Non-accepting parents and guardians can refer their children to family court for arbitrary and subjective behaviors, such as being "ungovernable."[8] Police can bring youth in for status offenses, offenses for which adults cannot be charged, which often become contributing factors to the criminalization of youth. Charges can range from truancy to curfew violations to running away from home. Like in the adult criminal justice system, queer and trans youth can be profiled by the police and brought in for survival crimes like prostitution or theft. Youth may be referred for self-defense arising from conflict with hostile family members or public displays of affection in schools that selectively enforce policies only against queer and trans youth. Although youths' rights were greatly expanded in 1967 when the Supreme Court decided that the juvenile system was not operating according to its original intent,[9] youth continue to struggle in the courts with fewer protections than adults. Defense lawyers for youth, who are sometimes the only advocates young people have in court, have at times confused their role, advocating for what they believe to be the "best interest" of the youth rather than defending their client's "expressed interest." Juvenile court judges with little accountability have similarly expanded their role with the intent to provide services, through incarceration, to every youth that comes through their courtrooms. In this effort to rehabilitate "deviant" children and without the right to a jury trial for delinquent offenses, the issue of guilt versus innocence can fall to the wayside. Further aggravated by the public's fear of youth sexuality and our desire to control 80 young people and their bodies, juvenile court presents a unique opportunity to destroy the lives of queer and trans/gender-non-conforming youth. The agenda of juvenile court then, for queer and trans youth at least, often becomes to "rehabilitate" youth into fitting heteronormative and gendertypical molds. Guised under the "best interest of the child," the goal often becomes to "protect" the child—or perhaps society—from gender-variant or non-heterosexual behavior. While not as explicit as the sumptuary laws (laws requiring people to wear at least three items of gender-appropriate clothing) or sodomy laws of the past that led to the Compton's Riots and Stonewall Rebellion, the policing of sexuality and state regulation of gender has continued to exist in practice—perhaps nowhere more than in juvenile courts. In many ways, the system still mirrors the adult criminal justice system, whose roots can be traced to slavery, the commodification of bodies as free labor, institutionalized racism, and state regulation of low-income people of color, immigrants, and anyone deemed otherwise "deviant" or a threat to the political norm. Combined with the Puritan beliefs that helped spark the creation of juvenile courts, it becomes clear that, borrowing the words of Audre Lorde, queer and trans youth of color "were never meant to survive." In fact, one youth in a Louisiana youth prison responded to the number of queer and trans youth incarcerated by stating, "I'm afraid they're rounding up the homosexuals." Once locked up, queer and trans youth experience

the same horrors that their adult counterparts in the system do, but magnified by a system designed to control, regulate, and pathologize their very existence. In Louisiana's youth prisons, queer and trans youth have been subjected to "sexual-identity confusion counseling," accused of using "gender identity issues" to detract from their rehabilitation, and disciplined for expressing any gender-non-conforming behaviors or actions. Youth are put on lockdown for having hair that is too long or wearing state-issued clothing that is too tight. They are instructed how to walk, talk, and act in their dorms and are prohibited from communicating with other queer youth lest they become too "flamboyant" and cause a disturbance. They are excessively punished for consensual same-sex behavior and spend much of their time in protective custody or in isolation cells. In meetings with representatives from the Juvenile Justice Project of Louisiana, directors of youth jails have referred to non-heterosexual identities as "symptoms" and have conflated youth adjudicated for sex offenses with youth who are queer. In addition, 81 when advocates asked what the biggest problem was at a youth prison in Baker, Louisiana, guards replied, "the lesbians." Even more troubling, unlike the adult criminal justice system where individuals either "ride out their time" or work toward "good time" or parole, youths' privileges in prison and eventual release dates are often determined by their successful completion of their rehabilitative programming, including relationships with peers and staff. Thus, youth who are seen as "deviant" or "mentally ill," or who otherwise do not conform to the rules set forth by the prison, often spend longer amounts of time incarcerated and are denied their opportunity for early release. For queer and trans/gender-non-conforming youth, this means longer prison terms. In fact, in the last four years of advocacy on behalf of queer and trans youth in prison in Louisiana at the Juvenile Justice Project of Louisiana, not one openly queer or trans youth has been recommended for an early release by the Office of Juvenile Justice. While protections afforded to youth in the juvenile justice system like a greater right to confidentiality are extremely important for youth, they can also be another strike against queer and trans youth seeking to access resources or support networks while inside. Like queer and trans adults in the criminal justice system who have difficulty receiving information that "promotes homosexuality," youth are unable to access affirming information during a particularly formative time in their lives, which can already be plagued with confusion and questioning. The right to confidentiality for youth in prison can result in their being prohibited from communicating with pen pals or seeking services from community organizations. Other rights are afforded to adults but not to minors, such as accessing legal counsel to challenge the conditions of their confinement. Youth under 18 must rely on their guardians to assist with filing a civil complaint, despite the fact that many queer and trans youth have had difficulty with their families prior to their incarceration—and that those family members may have contributed to their entering into the system in the first place. This barrier also holds true for transgender youth who are minors and seeking healthcare or hormones. These youth may need the approval from a guardian or judge in order to access these services—or approval from a guardian in order to file a civil complaint to request them. Meanwhile, as state institutions are placing queer and trans/gendernon-conforming youth behind bars and effectively silencing their voices, prominent gay activists are fighting for inclusion in the very systems that criminalize youth of color (such as increased sentencing

for hate crimes) 82 under the banner of "we're just like everybody else." A far stray from the radicalism of the early gay rights movement, mainstream "gay issues" have become focused on the right to marry and "don't ask, don't tell" policies in the military, despite the fact that queer youth of color have consistently ranked these at the bottom of their list of priorities of issues that impact their lives.10 Likewise, the public "face of gay" as white, middle-class men has become a further detriment to queer and trans youth in prison, particularly in the South where queer youth of color are often not "out," and individuals, like in all areas of the country, have difficulty discussing the two issues at the center: race and sexuality.11 As a result of the invisibility of so many incarcerated queer and trans youth, especially youth of color, juvenile justice stakeholders in the South often mistake queer and trans youth to be white, vulnerable youth usually charged with a sex offense, if they acknowledge them at all. As a result, they assume that any concern for these youth to be coming from white advocates who believe that queer and trans youth have been funneled into a system made for "poor black children;" in other words, into a system that is "OK for some children, but not for others." We must be clear about why we do this work—it is not because some children belong locked away at night and others do not—it is because no child should be behind bars. Further, the data tells us that queer and trans youth in detention are equally distributed across race and ethnicity, and comprise 15 percent of youth in detention centers. So far, the data has been consistent among youth in different regions in the United States, including the rural South.12 Since queer and trans youth are overrepresented in nearly all popular feeders into the juvenile justice system—homelessness, difficulty in school, substance abuse, and difficulty with mental health13—the same societal ills, which disproportionately affect youth of color—it should not be surprising that they may be overrepresented in youth prisons and jails as well. Since incarcerated youth have so few opportunities to speak out, it is critically important for individuals and organizations doing this work to keep a political analysis of the failings of the system at the forefront of the work—particularly the inherent racial disparities in the system—while highlighting the voices of those youth who are most affected and providing vehicles through which they can share their stories. Despite the targeting and subsequent silencing of queer and trans/ gender-non-conforming youth in youth prisons and jails across Louisiana, young people have developed creative acts of resistance and mechanisms 83 for self-preservation and survival. By failing to recognize the ways that young people demonstrate their own agency and affirm each other, we risk perpetuating the idea of vulnerable youth with little agency; victims rather than survivors and active resisters of a brutal system. Perhaps the most resilient of all youth in prison in Louisiana, incarcerated queer and trans youth have documented their grievances, over and over again, keeping impeccable paper trails of abuse and discrimination for their lawyers and advocates. When confronted by the guards who waged wars against them, one self-identified gay youth let it be known, "You messin' with the wrong punk." Although prohibited from even speaking publicly with other queer youth in prison, queer and trans youth have formed community across three youth prisons in the state, whispered through fences, and passed messages through sympathetic staff. They have made matching bracelets and necklaces for one another, gotten each other's initials tattooed on their bodies, and written letters to each other's mothers. They have supported each other by alerting advocates when one of them was on lockdown or in trouble and unable to call. Trans-feminine youth have gone to lockdown instead of cutting their hair and used their bed sheets to design curtains for their cells once they got there. They have smuggled in Kool-Aid to dye their hair, secretly shaved their legs, colored their fingernails with markers, and used crayons for eye shadow. When a lawyer asked her trans-masculine client to dress more "feminine" for court, knowing that the judge was increasingly hostile toward gender-non-conforming youth, her client drew the line at the skirt, fearlessly and proudly demanding that she receive her sentence in baggy pants instead. Queer and trans/gender-non-conforming youth have made us question the very purpose of the juvenile justice system and holding them behind bars in jails and prisons made for kids. By listening to their voices it becomes apparent that until we dismantle state systems designed to criminalize and police young people and

variant expressions of gender and sexuality, none of us will be free. And to my younger client recently released from a youth prison, yes, the world is more beautiful now. Welcome home.

The law has been historically used to criminalize queer, Trans, and gender non-conforming bodies. Reforms are unable to solve for the underlying hetero and cis normative roots of the prison industrial complex and merely result in the continuation of an unethical system*

Lamble 11 (Lamble, S. [S. Lamble has been involved in social justice, antipoverty and prisoner solidarity work in Ontario, Canada and London, England. Lamble currently teaches at Birkbeck Law School, University of London and is a founding member of the Bent Bars Project, a collective which coordinates a letter writing program for queer, Trans and gender-non-conforming prisoners in Britain.]. 2011 "Transforming Carceral Logics: 10 Reasons to Dismantle the Prison Industrial Complex Through Queer/Trans Analysis and Action" in "Captive Genders: Trans Embodiment and the Prison Industrial Complex" Pg. 235 (Eds. Smith & Stanley) 2011 AK press. Accessed: 7/17/2015. http://theloon2013.wikispaces.com/file/view/Stanley-Eric-Captive-Genders-Trans-Embodiment-and-Prison-Industrial-Complex.pdf)//ALepow

1. Queer, trans, and gender-non-conforming people have been historically subject to oppressive laws, gender policing, and criminal punishment—a legacy that continues today despite ongoing legal reforms. Law enforcement officials (including police, courts, immigration officers, prison guards, and other state agents) have a long history of targeting, punishing, and criminalizing sexual dissidents and gender-non-conforming people.12 While many overtly homophobic and transphobic laws have been recently overturned in Canada, the United States, and Britain, the criminalization and punishment of queer and trans people extends well beyond formal legislation.13 State officials enable or participate in violence against queer, trans, and gender-non-conforming communities by (a) ignoring everyday violence against queer and trans people; (b) selectively enforcing laws and policies in transphobic and homophobic ways; (c) using discretion to over-police and enact harsher penalties against queer and trans people; and (d) engaging in acts of violence, harassment, sexual assault, and discrimination against queer and trans people.14 While some police departments are increasingly putting on a "gay-positive" public face, the problem of state violence against queer and trans people nonetheless persists and has been well documented by numerous police- and prison-monitoring groups.15 This ongoing legacy of violence should make queer and trans people both cautious of the state's power to criminalize our lives and wary of the state's claim to protect us from harm. Although some people believe that we can train transphobia out of law enforcement agents or eliminate homophobic discrimination by hiring more LGBT prison guards, police, and immigration officials, such perspectives wrongly assume that discrimination is a "flaw" in the system, rather than intrinsic to the system itself. Efforts to make prison and police institutions more "gay-friendly" perpetuate the myth that such systems are in place to protect us. But as the uneven history of criminalization trends in Canada, the United States, and Britain so clearly demonstrate (that is, the way that the system targets some people and not others), the prison industrial complex is less about protecting the public from violence and more about controlling, labeling, disciplining, Captive Genders 240 and in some cases killing particular groups of people—especially those who potentially disrupt the social, economic, and

political status quo.16 While the state might stop harassing, assaulting, and criminalizing some people within queer and trans communities (namely those upwardly mobile, racially privileged, and property-owning folks), the criminal system will continue to target those within our communities who are deemed economically unproductive, politically threatening, or socially undesirable. As people who have historically been (and continue to be) targeted by this unjust system, queer, trans, and gender-non-conforming communities must move away from efforts to make the prison industrial complex more "LGBT-friendly" and instead fight the underlying logic of the system itself.

Attempts to reform prisons will always fail because prisons require and foster violence as part of their punitive function—prisons are sites of physical, social, and civil death, and a continuation of the system is a continuation of these issues

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4. Prisons are harmful, violent, and damaging places, especially for queer, trans, and gender-non-conforming folks. Prisons are violent institutions. People in prison and detention experience brutal human rights abuses, including physical assault, psychological abuse, rape, harassment, and medical neglect. Aside from these violations, the act of putting people in cages is a form of violence in itself. Such violence leads to extremely high rates of self-harm and suicide, both in prison and following release.35 These problems are neither exceptional nor occasional; violence is endemic to prisons. It is important to bear in mind that prison violence stems largely from the institutional structure of incarceration rather than from something supposedly inherent to prisoners themselves. Against the popular myth that prisons are filled with violent and dangerous people, the vast majority of people are held in prison for non-violent crimes, especially drug offenses and crimes of poverty.36 For the small number of people who pose a genuine risk to themselves or others, prisons often make those risks worse. In other words, prisons are dangerous not because of who is locked inside, but instead prisons both require and foster violence as part of their punitive function. For this reason, reform efforts may reduce, but cannot ultimately eliminate, prison violence. The high number of deaths in state custody speaks to the devastating consequences of imprisonment. Between 1995 and 2007, the British prison-monitoring group Inquest documented more than 2,500 deaths in police and prison custody.37 Homicide and suicide rates in Canadian prisons are nearly eight times the rate found in non-institutional settings.38 In the United States between 2001 and 2006, there were 18,550 adult deaths in state prisons,39 and between 2003 and 2005, there were an additional 2,002 arrest-related deaths.40 It is extremely rare for state officials to be held accountable for these deaths. For example, among the deaths that Inquest has documented in Britain, not one police or prison officer to date has been held criminally responsible.41 Deaths in custody are symptomatic of the daily violence and harm that prisoners endure. Queer, trans, and gender-non-conforming people are subject to these harms in specific ways: • High risk of assault and abuse: Queer, trans, and gender-non-conforming people are subject to widespread sexual assault, abuse, and other gross human rights

violations, not only from other prisoners, but from prison staff as well.42 Captive Genders 244 • Denial of healthcare: Many prisoners must fight to even see a doctor, let alone get adequate medical care. Trans people in particular are regularly denied basic medical needs, especially surgery and hormones. Many prisons have no guidelines for the care of trans and gender-variant persons, and even where guidelines exist, they are insufficient or not followed.43 Inadequate policy and practice on HIV/AIDS and Hep C prevention is another major health problem in prison, where transmission rates are exceptionally high.44 These risks increase dramatically for trans people, who already experience high rates of HIV/AIDS.45 This combination of high transmission risks, poor healthcare provision, inadequate sexual health policies, and long-term health effects of imprisonment (including shorter life expectancies), mean that prison is a serious health hazard for queer and trans people. • Subject to solitary confinement and strip-searching: Trans and gender-non-conforming prisoners are regularly placed in solitary confinement as a "solution" to the problem of sex-segregated prisons. Even when used for safety purposes, "protective custody" constitutes a form of punishment, as it usually means reduced access to recreational and educational programs, and increased psychological stress as a result of isolation. Trans and gendernon-conforming people are also frequently subject to humiliating, degrading, abusive, and overtly transphobic strip-searches.46 • High risk of self-harm and suicide: Queer and trans people, especially youth, have higher rates of suicide attempts and self-harm. Such risks increase in prison and are heightened in segregation, particularly when prisoners are isolated from queer and trans supports.47 These risks are not limited to incarceration but continue after release. A study in Britain for example, found that men who leave prison were eight times more likely to commit suicide than the general population, and women released from prison were thirty-six times more likely to commit suicide.48 The prison system is literally killing, damaging, and harming people from our communities. Whether we consider physical death caused by self-harm, medical neglect, and state violence; social death caused by subsequent unemployment, homelessness, and stigmatization; or civil death experienced through political disenfranchisement and exclusion from citizenship rights, the violence of imprisonment is undeniable

Gender and sexual norms are at the very heart of the prison industrial complex—a reform of the system can never solve the institutional necessity of prisons to reinforce, perpetuate, and entrench these norms

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3. Prisons reinforce oppressive gender and sexual norms. Prisons reinforce gender and sexual norms in three key ways: First, sex-segregated prisons restrict people's right to determine

and express their Captive Genders 242 own gender identity and sexuality. Because most prisons divide people according to their perceived genitals rather than their self-expressed gender identity, prisoners who don't identify as "male" or "female" or who are gender-non-conforming are often sent to segregation or forced to share a cell with prisoners of a different gender, often with little regard for their safety. In Britain, even trans people who have obtained a Gender Recognition Certificate (a state document that legally recognizes a person's self-defined gender) have been held in prisons with people of a different gender.27 By segregating institutions along sex/gender lines, prisons work to make invisible, isolate, and stigmatize those bodies and gender identity expressions that defy imposed gender binaries.28 Second, gender segregation in prisons plays a key role in "correctional" efforts to modify prisoner behavior in accordance with gender norms. Historically, women's prisons were designed to transform "fallen" women into better wives, mothers, homemakers, and domestic servants, whereas men's prisons were designed to transform males into disciplined individuals, productive workers, and masculine citizens.29 These gendered goals persist today, particularly in the division of prison labor. For example, when a new mixed-gender prison was built in Peterborough, England in 2005, all parts of the institution were duplicated to provide separate male and female areas, except for the single kitchen, where women were expected to do all the cooking.30 The current trend toward so-called "gender responsive" prisons is likewise framed as a measure to address the specific needs of female prisoners, but usually works to discipline, enforce, and regulate gender norms.31 Moreover, gender-responsive prison reforms are increasingly used to justify building new prisons (without closing existing ones), thereby furthering prison expansion.32 Third, sexual violence plays a key role in maintaining order and control within prisons, a tactic that relies on oppressive sexual and gender norms.33 Sexual violence in prison, including harassment, rape, and assault, is shockingly widespread and often institutionally condoned. According to Stop Prisoner Rape, 1 in 5 males and 1 in 4 females face sexual assault in US prisons.34 To call attention to the enforcement of gender/ sexual norms in prison is not to suggest that prison culture is uniform across or within institutions, or that prisoners are more sexist, homophobic, or transphobic than non-prisoners. Rather, prisons as institutions tend to reinforce, perpetuate, and entrench gender/sex hierarchies and create environments in which sexual violence flourishes.

Reasonable Suspicion Standard CP

Notes

Reasonable suspicion=officials have to have reasonable suspicion that the prisoner is carrying contraband

It would probably be defined by the following:

- Inmate's previous history with contraband

- Inmate's conduct inside the prison
- Nature of offense
- Circumstances surrounding arrest
- Criminal record
- Evidence of major offense
- Detection of suspicious objects beneath clothing

1NC

Text: The Supreme Court of the United States should rule that a blanket policy of strip searching all arrestees admitted to a jail facility without a standard of reasonable suspicion is unconstitutional on that grounds that it violates the Fourth Amendment of the United States Constitution.

The reasonable suspicion standard strikes the proper balance between security and privacy—their 1AC author

Laufer 12 (Laufer, Amanda [Amanda Laufer is a J.D. Candidate, 2012, Seton Hall University School of Law; B.A., 2009, Cornell University.]. 2/13/2012, "The Pendulum Continues to Swing in the Wrong Direction and the Fourth Amendment Moves Closer to the Edge of the Pit: The Ramifications of Florence v. Board of Chosen Freeholders," Seton Hall Law Review Vol. 42: 383, accessed: 7/13/2015. http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1423&context=shlr)//ALepow

Based on the various lower courts' approaches, it is evident that there is a significant level of confusion over the constitutionality of strip searches of individuals arrested for minor offenses. The circuit courts are irreconcilably divided over whether the Fourth Amendment permits suspicion-less strip searches of individuals arrested for minor offenses. Recognizing the constitutional import of Florence's suit, the Supreme Court granted certiorari in Florence v. Board of Chosen Freeholders on April 4, 2011.256 The Court heard oral arguments on October 12, 2011.257 Thereafter, the Court will likely set a uniform standard to evaluate Fourth Amendment challenges to strip-search policies of arrestees of minor offenses in detention facilities outside of the post-contact visit context.258 In ruling on this issue, the Court should reverse the Third Circuit and adopt the approach that the majority of circuit courts take: it is unreasonable and unconstitutional for a correctional facility to strip search a person arrested for a minor offense **unless authorities have "reasonable suspicion" that the individual is concealing a weapon or other contraband**. **The Supreme Court should adopt the "reasonable suspicion" approach because it strikes the proper balance between a jail's legitimate justifications for strip searches and the severe intrusion into the privacy interests of individuals** arrested for minor offenses. Since the Supreme Court has been silent on the issue for over thirty years, and the record is well developed in this case, it appears that Florence is an ideal vehicle to resolve this conflict among the circuits. The problem for the plaintiffs, however, is the current composition of the Supreme Court. The jurisprudence of the Fourth Amendment varies depending on who is on the bench.259 The current Supreme Court, under Chief Justice John G. Roberts's leadership, is the most conservative Court in decades.260 In his book, The Evolution of the Fourth Amendment, Thomas McInnis explains that the Roberts Court has ruled on ten cases involving the Fourth Amendment in the past three terms.261 McInnis found several commonalities in these cases, namely the use of the reasonableness approach and victories for the government.262 Accordingly, individuals who challenge the government's action in Fourth Amendment cases "will have a high hurdle to overcome, because the presumption exists among at least five members of the Court that the governmental interest in law enforcement . . . will usually trump the individual's interest in privacy."263 Arguably, four of the six most conservative justices out of the forty-four who have been on the bench since 1937 are currently serving, including Chief Justice Roberts, Justice Alito, Justice Scalia, and Justice Thomas.264 McInnis further explained that Chief Justice Roberts and Justices Alito and Thomas are all consistent conservative voices who are not likely to use the Fourth Amendment to narrow the government's power to search and seizure. Their votes, along with Justice Scalia's, provide a solid bloc of four votes which will usually support the government's power to search and seize. 265 In addition to this conservative force, Justice Kennedy, the swing Justice sitting on the Roberts Court, is considered to be one of the ten most conservative justices on the bench since 1937.266 McInnis notes that "[t]he direction of the Court's Fourth Amendment jurisprudence when there are close cases will temporarily hinge on the votes of Justice Kennedy."267 In the cases in which the Court split last term, Justice Kennedy sided with the conservatives in nine out twelve cases.268 Furthermore, the additions of neither Justice Kagan nor Justice Sotomayor are likely to affect the ideological balance of the Court, as both Justices replaced other liberals, namely Justice Stevens and Justice Souter.269 Although the plaintiff class in Florence could not have waited to petition the Court until the ideology shifted towards a more liberal approach, based on the strong conservative leanings of the Roberts Court it is unlikely that the Court

will rule in plaintiffs' favor. As previously noted, the plaintiffs may have been better off bringing their claims in state court.270 Nonetheless, since the Supreme Court has already granted certiorari on the case, only time will tell whether the ideologies of the Roberts Court hold true. VII. CONCLUSION In Florence, The Third Circuit erred in upholding a blanket stripsearch policy of all arrestees charged with minor offenses upon their admission to both BJC and ECCF. In 1979, the Supreme Court, in Bell v. Wolfish, examined a policy at MCC mandating strip searches of all inmates after contact visits. The Court articulated a balancing test that became the central inquiry in analyzing the constitutionality of strip searches. In Bell, the Court held that the strip-search policy could be conducted on less than probable cause because the security interests of the facility outweighed the privacy interests of the inmates. Due to the ambiguity of the Court's decision in Bell, lower courts did not have much guidance on how to apply the holding to strip-search policies in contexts outside of post-contact visits. Nonetheless, over the past thirty years, the overwhelming majority of circuit and district court decisions used Bell as a guidepost and adopted the reasonable suspicion standard in evaluating the constitutionality of strip-search policies in the booking context.

The reasonable suspicion standard can still detect contraband but significantly decreases the number of people searched—solves their impacts

Liptak 12

(Adam, 4/2/12, NYT, "Supreme Court Ruling Allows Strip Searches for Any Arrest," Adam is the Supreme Court correspondent for the NYT, http://www.nytimes.com/2012/04/03/us/justices-approve-strip-searches-for-any-offense.html, 7/24/15, SM)

Justice Kennedy said one person arrested for disorderly conduct in Washington State "managed to hide a lighter, tobacco, tattoo needles and other prohibited items in his rectal cavity." Officials in San Francisco, he added, "have discovered contraband hidden in body cavities of people arrested for trespassing, public nuisance and shoplifting." Justice Breyer wrote that there was very little empirical support for the idea that strip searches detect contraband that would not have been found had jail officials used less intrusive means, **particularly if strip searches were allowed when officials had a reasonable suspicion** that they would find something. For instance, in a study of 23,000 people admitted to a correctional facility in Orange County, N.Y., using that standard, there was at most one instance of contraband detected that would not otherwise have been found, Judge Breyer wrote. Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined Justice Breyer's dissent.

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The Supreme Court's failure to uphold the reasonable suspicion standard causes the 1AC's impacts—their 1AC author

Keeton and Eren 15 (Vincent Andre and Colleen, "Strip Searching in the Age of Colorblind Racism: The Disparate Impact of Florence vs. Board of Chosen Freeholders of the Country of Burlington," CUNY Law School, http://crimworkshop.ws.gc.cuny.edu/files/2014/09/Keeton-Eren-Florence-v-Board-of-Chosen2.pdf, Keeton is a professor of criminal justice and criminology at City University of New York and Eren has a pHd from City University of New York Graduate Center and is currently an assistant professor at CUNY Laguardia, her work focuses primarily on issues of criminal justice // EMS).

In 2012 the Supreme Court of the United States decided Florence v. Board of Chosen Freeholders of the County of Burlington. The Court held that full strip searches, including cavity searches, are permissible regardless of the existence of basic reasonable suspicion that the arrestee is in possession of contraband that typically accompanies search jurisprudence. The Court further held that full strip searches are constitutionally permissible even for arrests for minor offenses irrespective of the circumstances surrounding the arrest. With Florence the Court has sanctioned the overreach of state power and extended to law enforcement and corrections officers the unfettered discretion to conduct graphically invasive suspicion-less strip searches. The Court's dereliction of duty is enough to concern all citizens. However, this phenomenal lapse in judicial oversight's impact will not be felt equally in the age of what Bonilla Silva has termed color blind racism. We argue, it will inevitably subject minorities, particularly blacks and Hispanics, to the blanket authority of law enforcement to harass and

humiliate based on a perfunctory arrest predicated on the slightest of infractions. Between 2004 and 2011 in NYC alone the NYPD conducted 4.4 million Terry stops of which blacks and Hispanics constituted a shocking 84%. If we naturally extend this practice of targeting minorities nationwide it becomes clear that the Court has given implicit approval to law enforcement to wage war on the civil rights of minority citizens. This paper will analyze the rationale and policy implications particularly for people of color in light of Florence. We will also propose policies to counterbalance the projected collateral consequences. INTRODUCTION According to the U.S. Supreme Court (hereinafter "Court" or "the Court"), "a prisoner is not wholly stripped of his constitutional protections when imprisoned for crime."1 Despite this admonition, the Court has historically exercised a deferential policy when it comes to jails and prisons. Though the incarcerated have theoretically retained basic constitutional rights, the Court has been more willing in the correctional setting, to leave the governance of jails and prisons to administrators.2 Prior to the 1960s, this high degree of deference and discretion given to correctional facilities typically resulted in gross abuses of the constitutional rights of the incarcerated.3 Since the 1960s, the Court has become more willing to intervene in correctional settings4 , but still shows an expansive degree of deference and largely allows jails and prisons to operate with autonomy.5 Nowhere is this unwillingness to intervene in the scope of operational policy of correctional facilities more obvious than in strip search policy. In this area the court has been particularly willing to defer to the administrative staff of correctional facilities while turning a deaf ear to the pleas of the arrested and incarcerated for relief, from Bell v. Wolfish (1979)6 wherein the Court deferred to the expertise of correctional facilities in their blanket rule of conducting a visual search of the body cavities of every inmate having contact with an individual from outside the facility, 7 to the Court's most recent pronouncement in Florence v. Board of Freeholders (2012) 8 wherein the Court held that severity of offense and the reasonable suspicion standard does not exempt any arrestee from the blanket rule that all arrestees are subject to a policy of strip searches prior to exposure to general population. 9 The Court's decision in Florence, which grants immense discretionary power to the administrators of correctional facilities and further diminishes the reasonable suspicion standard and privacy interests of individual arrestees and the incarcerated, 10 will have disastrous consequences and embolden law enforcement particularly in their interactions with people of color. This paper, while reviewing the history of the precedential Supreme Court cases in this area, will also focus on the policy implications of the Courts holding in Florence on the minority communities within the context of a society which has entered a socio-historical period characterized by color-blind racism. To date, this element has been largely missing from discussion of Florence. While acknowledging that security in correctional facilities must be maintained, and that some deference in this pursuit is necessary, this paper will argue that **the Court's failure to uphold a reasonable suspicion standard of possession** in the correctional setting **will disproportionately impact communities of color**. Part I of this paper will analyze the Court's most important case-law in this area leading to Florence including Bell v. Wolfish (1976)11, Block v. Rutherford (1984)12, Hudson v. Palmer (1984)13 and Turner v. Safley (1987)14. Part II will review the procedural and factual history of Florence and discuss the Court's rationale. Part III will analyze Florence in the context of the larger Criminal Justice system within the theoretical context of colorblind racism, and describe the past and future impact of strip searches to be had on racial minorities. This section will argue that a general policy of strip searching disadvantages minorities due to their overrepresentation at every stage of the criminal justice process. Part IV will be a discussion of policy recommendations. This section will make several claims, including that not only should personal privacy trump the use of invasive strip searches except in cases of reasonable suspicion, but the Court must not retreat to a position of deferential acquiescence when exercising judicial oversight of correctional institutions. Rather**, the Court must vigilantly uphold the reasonable suspicion standard to ensure the proper balance between institutional security concerns and individual privacy interests**. Additionally, we make policy recommendations for law enforcement agencies in the event to mitigate the negative collateral consequences of the Florence ruling.

Absent a reasonable suspicion standard, strip searches are conducted discriminately—their 1AC author

Gleiberman 13 (Gleiberman, Nina [Nina Gleiberman J.D. Candidate, 2014, University of Maryland Francis King Carey School of Law.]. 2013. "Florence v. Board of Chosen Freeholders: Maintaining Jail Security While Stripping Detainees of Their Constitutional Rights," Maryland Law Review Endnotes Vol. 72:81, accessed: 7/17/2015. http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1027&context=endnotes

In Florence, the Supreme Court granted correctional facilities nearly unlimited power to create and implement regulations. Although the Court's decision resolved a significant circuit split, the decision will likely lead to abuse in the correctional system. In the past, "[t]he Supreme Court has repeatedly granted considerable deference to corrections officials in reviewing of jail administration policies." 163 **In the absence of a reasonable suspicion standard for strip searches**, however, such searches are conducted in an indiscriminate manner, not only in the context of detainees searched during intake procedures at correctional institutions, but also in the context of school searches and gender-based searches.164 In addition, the Supreme Court's practice of deferring to correctional officials has been overly broad and poorly defined, causing confusion among lower courts and resulting in a circuit split.165 Even though the Court's decision may increase the effectiveness of safety procedures at correctional facilities, the Florence decision will ultimately result in the erosion of

constitutional protections afforded to detainees. One of "[t]he most remarkable aspect[s] of the [Florence] ruling was the Court's [heavy] reliance on the expertise of corrections officials, without any scrutiny of their [judgment] in developing a prison's strip search policy." 166 With unlimited deference, correctional facilities are likely to implement "more invasive policies, which will decrease the incentive for prisoners to bring . . . constitutional challenges" to their treatment.167 The post-Bell cases focused on whether detainees have any privacy rights under the Fourth Amendment, and the Supreme Court has strictly limited the scope of the Fourth Amendment as it applies in correctional facilities. 168 In Hudson, Justice Stevens in a concurring and a dissenting opinion, argued that the Court's policy of deference encouraged it to "overlook[] the purpose of a written Constitution." 169 **The Court's decision in Florence abrogated the reasonable suspicion standard for conducting strip searches, thus turning a blind eye to the Fourth Amendment rights of detainees.**

The reasonable suspicion standard would ensure that arrestees in prison for minor charges are not subjected to strip searches

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(Daphne, 2011, Fordham Law Review, "Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness," associate in litigation and complex commercial litigation @ Dechert LLP, a global specialist law firm, http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4723&context=flr, 7/23/15, SM)

The justification for a strip search must be strong in order to outweigh the high scope of intrusion involved.335 Thus, a law enforcement officer should only strip search a detainee suspected of concealing contraband, such as after a drug- or weapon-related arrest, or when a detainee's criminal record includes recent drug or weapons possession. Strip searches cannot be allowed on individuals arrested for traffic offenses or for non-violent misdemeanors that do not involve drugs. Such a policy would ensure that arrestees like Mary Bull, Leigh Fleming, and Charli Johnson are not subjected to traumatizing strip searches after being arrested for minor charges like disturbing the peace, and when they lack criminal records suggesting they are likely to smuggle contraband.336

New requirements for body cavity searches under reasonable suspicion solve all their offense

Washington Department of Corrections 14 ("Body Cavity Search," 10/27, //rck)

A body cavity search must be authorized by both the Superintendent and the Chief Medical Officer/designee when they have determined: [4-4193] 1. With reasonable suspicion, that the offender is concealing contraband internally, [4-4193] 2. That the concealment constitutes an imminent threat to life or security, [4-4193] 3. That all other means, including a dry cell search, have been exhausted or are inappropriate, and [4-4193] 4. From a medical perspective, the search can be done safely and in a clinically appropriate manner and setting. To assist in establishing reasonable suspicion, non-invasive and minimally invasive procedures (e.g., blood tests, x-rays) may be ordered by a duly licensed practitioner, without offender consent, to help determine the presence and risk of contraband. C. The Superintendent will ensure the establishment of reasonable suspicion, reviewing all documentation before authorizing a body cavity search, and will document the review and approval on DOC 21-998 Body Cavity Search Authorization. D. The Chief Medical Officer/designee will review all relevant clinical and other information to determine that doing a body cavity search is safe from a medical perspective and to specify any clinical requirements for doing such a search. E. The Chief Medical Officer/designee's approval can be given verbally and will be documented by signature on DOC 21-998 Body Cavity Search Authorization within one business day after verbal approval. 1. In an emergency situation, if the Chief Medical Officer cannot be contacted, the Facility Medical Director (FMD)/designee will act in place of the Chief Medical Officer. II. Body Cavity Search Procedure A. A Unit Supervisor, Shift Commander, or Shift Sergeant will monitor the body cavity search procedure to ensure an effective search, procedural compliance, and proper documentation of the event. B. All participants in a body cavity

search process will be the same gender as the offender. C. A strip search of the offender must be conducted before beginning the body cavity search process per DOC 420.310 Searches of Offenders. D. The body cavity search process will be video recorded, except for the actual search of the body cavity,starting with all events leading to the search. The video recorder will remain on through the entire search process. The video recording should begin with an opening statement by one of the assigned custody escorts, made out of the presence of the offender, indicating: 1. Date and time, 2. Name and DOC number of the offender, 3. Names of all employees/contract staff involved, and 4. Special instructions.

Their evidence doesn't assume recent mandates of reasonable suspicion—authorization, same sex searches

Law Enforcement Legal Update 7/5/15 (Robert C. Phillips, Deputy District Attorney (Ret.) "Searches with Less Than Probable Cause," http://www.legalupdateonline.com/4th/650, //rck)

No strip search or visual body cavity search may be conducted without prior written authorization of the supervising officer on duty, with such authorization specifying the articulable facts and circumstances upon which the reasonable suspicion determination was made by the supervisor. An arrest for the misdemeanor offense of being under the influence of a controlled substance, per H&S § 11550, does not justify a later visual body cavity search at the jail prior to being taken into the general jail population, despite this statute to the contrary, absent any specific articulable facts amounting to a reasonable suspicion that the arrestee does in fact possess a controlled substance. P.C. § 4030(h): No person (nor a minor, prior to a disposition hearing) arrested for an infraction or a misdemeanor offense shall be subjected to a "physical body cavity search" except under the authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search. Touching Prohibited P.C. § 4030(j): Persons conducting a "strip search" or a "visual body cavity search" shall not touch the breasts, buttocks, or genitalia of the person being searched. Physical Body Cavity Searches P.C. § 4030(k): "Physical body cavity searches" may be conducted only: Under sanitary conditions. Only by a physician, nurse practitioner, registered nurse, licensed vocational nurse or emergency medical technician Level II, licensed to practice in this state. Sex of Searchers P.C. § 4030(l): All persons conducting or otherwise present for a "strip search," or a "visual" or "physical body cavity search," except for physicians or licensed medical personnel, shall be of the same sex as the person being searched.

Reasonable suspicion standard is crucial to solve disease and assaults

AELE Monthly Law Journal 13 (Jail & Prisoner Law Section, February 2013, "An Update on Jail Strip Searches of General Population Detainees," http://www.aele.org/law/2013all02/2013-02MLJ301.pdf //rck)

Factors that often make it difficult to single out particular detainees for enhanced scrutiny represented by a strip search include the brevity of many individual's confinement, the constantly changing composition of the inmate population, and the unknown existence, perhaps even among those arrested for minor offenses to be violent, attempt to escape, or to smuggle in drugs. Correctional officials must be allowed, the majority believed, to create reasonable search policies to both detect and deter contraband. They found that the strip searches conducted at the two county jails complained of were reasonable and not an exaggerated response to security concerns. In addition to detecting contraband, strip searches can also aid in detecting health problems ranging from lice to contagious infections, some of which can be deadly and/or difficult to treat and contain. Strip searches can also detect gang tattoos and insignia. Further, even the introduction of objects that are benign in the outside world, such as money, cigarettes, matches, lighters, and objects that be used in suicide attempts, can create security concerns in the jail environment. The Justices pointed out that inmates nationwide stage over 10,000 assaults on correctional personnel every year, and many more on each other, often using such everyday objects as ball point pens.

Reasonable suspicion outlines clear mandates that sufficiently solve the aff

AELE Monthly Law Journal 13 (Jail & Prisoner Law Section, February 2013, "An Update on Jail Strip Searches of General Population Detainees," http://www.aele.org/law/2013all02/2013-02MLJ301.pdf //rck)

1. Except in extreme emergencies, strip and body cavity searches should only be performed by staff of the same sex as the prisoner. 2. Officers or staff of the opposite sex should not be allowed in the room where the search is being conducted except in the case of some compelling need such as a disturbance, security, an unruly prisoner, etc. 3. The room where the search is conducted should be shielded from outside observation. Consider also the use of translucent screens or 'modesty panels' to ensure some degree of privacy. 4. Any body cavity search that involves actual manual probing of body cavities should normally be done only by qualified medical personnel except in the most urgent circumstances. A prisoner simply showing that he/she could have been secured and not allowed movement while someone was called can blow the argument that you might make that 'nobody was around' out of the water. 5. Staff should always inquire to see if the prisoner has any medical problem or condition that might affect or be affected by the search. Imagine the humiliation of a female 307 prisoner who is menstruating, a male prisoner with a prostate problem, a person with hemorrhoids, etc. Any search that is needed when such a condition exists must take the condition into consideration. 6. Any time a strip or body cavity search is performed, a written record should be made of the fact and the reason(s) for it. Some departments have started or are seriously considering videotaping the search for their own protection. Videotaping is certainly not necessary, but if you consider it take care that the entire process is recorded with no selective editing. The tapes must be carefully stored and access limited. Do not, as one Midwestern city did, allow the tapes to be accessible to other employees for entertainment! 7. There should be a written policy that states when and under what circumstances body cavity and strip searches may be performed and who is authorized to order or approve them. 8. When such searches are being conducted, all employees must conduct themselves in a professional manner. This means no jokes, snide remarks or comments. 9. All prisoners must be made aware of the circumstances under which such searches can and will be done. Ideally as with many other things, if time and circumstances permit, give the prisoner a copy of the regulations (they may be in some kind of prisoner handbook, etc.) and have him/her sign an acknowledgement of receiving it. Keep it on file. Why? It helps to sweep away any argument they may make about an expectation of privacy when you show that they were put on notice right up front. 10. All staff must be trained in how to conduct such searches and the circumstances under which they may be done. Keep records of this activity so you can avoid a policy or procedure claim based on an allegation of failure to train or supervise. 11. Be consistent. If you have a policy that all prisoners who are housed in maximum security are to be strip-searched after visits, that's what it means. If you do not follow your own policy, you may face an argument that your use of these searches is arbitrary and not related to any legitimate governmental purpose. 12. Careful records must be kept of incidents that occur in the facility concerning contraband and/or weapons. A history of incidents and types can be very important in showing the justification for intrusive search policies. 13. Always try to have a witness present when any such search is done. 14. There should be some management oversight, on a periodic basis, to make sure that the standard procedures are followed.

Eighth Amendment CP

Solvency

Body cavity searches could be prohibited via the 8th amendment

James 82

(David C., June 1982, Columbia Law Review, "Constitutional Limitations on Body Searches in Prisons," http://www.jstor.org/stable/pdf/1122214.pdf, 7/20/15, SM)

Cruel and Unusual Punishment A number of courts have analyzed prisoner searches under the eighth amendment's prohibition of cruel and unusual punishment.**41 Since the crueland-unusual-punishments clause is the only provision in the Bill of Rights that pertains on its face to prisoners,42 its protections seem an obvious possible limitation on intrusive searches**.

Its applicability to body cavity searches seems especially apt given its recent broad interpretation by the Supreme Court in Estelle v. Gamble: 43 "[T]he Amendment proscribes more than physically barbarous punishments. . . . [It] embodies 'broad and idealistic concepts of dignity, civilized standards, humanity and decency . . .. 44 Clearly, intrusive body searches implicate "concepts of dignity, civilized standards, humanity and decency" and hence would seem to lie within this ambit of eighth amendment coverage. Courts have, however, seldom applied the cruel-and-unusual punishments clause as broadly as the language in Gamble would suggest. Most eighth amendment decisions have, like Gamble itself, addressed the physical conditions of confinement45 more than the psychological effects of those conditions.46 The circuit court in Wolfish for example, which could hardly be accused of insensitivity to prisoners' rights, believed that "[a]n institution's obligation under the eighth amendment is at an end if it furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety." 47 Nevertheless, even if bodily privacy interests do not fall generically within the purview of the eighth amendment, it seems clear that a particular body search may be "cruel" or "unusual" if conducted in an abusive or otherwise unreasonable manner.48 For example, a valid claim for relief under the eighth amendment has been found where a strip search was unnecessarily prolonged, or the prisoner was left without clothing for an extended period of time.49

The Eighth Amendment solves better than the Fourth Amendment—only amendment that applies to prisoners

Court of Appeals 94

(11/17/94, United States Court of Appeals, Fifth Circuit, "Keith David ELLIOTT, Plaintiff-Appellant, v. Bruce N. LYNN, Secretary, Louisiana Department of Corrections, Defendant-Appellee," http://openjurist.org/38/f3d/188/elliott-v-n-lynn, 7/25/15, SM)

GARWOOD, Circuit Judge, concurring specially: 20 I would hold that the Eighth Amendment, not the Fourth Amendment, is the standard by which a prison inmate's protection against searches by prison authorities is to be measured. In Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), the Court stated: 21 **"A right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order**." Id. at 527, 104 S.Ct. at 3201 (footnote omitted). 22 "Our holding that respondent does not have a reasonable expectation of privacy enabling him to invoke the protections of the Fourth Amendment does not mean that he is without a remedy for calculated harassment unrelated to prison needs.... The Eighth Amendment always stands as a protection against 'cruel and unusual punishments.' " Id. at 529, 104 S.Ct. at 3202. 23 The majority would restrict Hudson to searches of prison cells. That was the setting in which Hudson arose, but its language is not so limited. **Nor is it logical to fracture the Fourth Amendment in this bizarre manner, so that convicted inmates' protection against certain prison searches is measured by the Fourth Amendment while their protection against other such searches is measured by the Eighth Amendment**. See also Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986) (Eighth Amendment applied to inmate shot in quelling of prison riot); Brothers v. Klevenhagen, 28 F.3d 452, 457 (5th Cir.1984) (Fourth Amendment inapplicable to seizure claim of pre-trial detainee); Valencia v. Wiggins, 981 F.2d 1440, 1443-45 (5th Cir.), cert. denied, --- U.S. ----, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993) (same). 24

History proves that the Eighth Amendment has been used to making sweeping, effective changes—also spills over to local level

Clear et al 14

(Todd, George Cole, Michael Reisig, Carolyn Petrosino, published January 1, 2014, American Corrections in Brief, page 288-289)

The Eighth Amendment Amendment Vill: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. The Constitution's prohibition of cruel and unusual punishments has been tied to prisoners' need for decent

treatment and minimal health standards. The courts have applied three principal tests under the Eighth Amendment to determine whether condi- tions are unconstitutional: [I] whether the punishment shocks the general conscience of a civilized society, (2) whether the punishment is unnecessarily cruel, and (3) whether the punishment goes beyond legitimate penal aims. Table 11.3 summarizes some of the major Eighth Amendment cases. Federal courts have ruled that although some aspects of prison life may be accept- able, the combination of various factors—the totality of conditions—may determine that living conditions in the institution constitute cruel and unusual punishment. When courts have found brutality, unsanitary facilities, overcrowding, and inadequate food, judges have used the Eighth Amendment to order sweeping changes and even, in some cases, to take over the administration of entire prisons or correctional systems. Several dramatic cases demonstrate this point. In Georgia, for example, prison con- ditions were shown to he so had that judges demanded change throughout the state." In Ruiz v. Estelle (1980), described more fully in "Focus on Correctional Policy," the court ordered the Texas prison system to address unconstitutional conditions. Judicial supervision of the system continued for a decade. However, the Supreme Court has indicated that unless extreme conditions are found, courts must defer to correctional officials and legislators. Yet the federal courts have intervened in states where institutional conditions or specific aspects of their operation violate the Eighth Amendment. The determination of cruel and unusual took an unexpected turn in a recent controversial decision handed down by a federal judge. The state of Massachusetts was ordered by U.S. District Court Chief Judge Mark L. Wolf to provide an unusual medical procedure for convicted murderer Robert Kosilek. Kosilek, a transsexual, was diagnosed as suffering from a gender identity disorder and thus required sex-reassignment surgery. The court determined that the state's refusal to provide the surgery was a violation of the Eight Amendment's cruel and unusual punishment clause.

The Supreme Court has indicated that the Eighth Amendment could be used to rule aspects of prisons unconstitutional

Jackson 98

(Karoline E., 7/1/98, Indiana Law Journal, "The Legitimacy of Cross-Gender Searches and Surveillance in Prisons: Defining an Appropriate and Uniform Review," partner in the Litigation Department of Barnes & Thomburg LLP, JD from Indiana University School of Law, http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1942&context=ilj, 7/25/15, SM)

B. The Eighth Amendment The Eighth Amendment prohibits cruel and unusual punishment.3 Unlike other constitutional rights that prisoners may possess, the protection afforded by the Eighth Amendment is not limited by the fact of incarceration. The Eighth Amendment exists for the express protection of persons convicted of criminal activity.34 "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause . . . ."" In determining "wantonness" the Supreme Court has applied differing standards of review to prisoners' Eighth Amendment claims depending on the facts of the case. If the inmate alleged excessive use of force by prison guards or officials, the Court has employed a "malice" standard.36 This requires the inmate to prove that the force was applied "maliciously and sadistically for the very purpose of causing harm."" If, however, the inmate alleged that the conditions of confinement amounted to cruel and unusual punishment, the Court has employed a "deliberate indifference" standard. Here the prisoner must be able to show that prison officials were deliberately indifferent to the effect that the conditions would have on the inmates. 8 It is unclear what standard should be used to analyze inmates' claims that allege an Eighth Amendment violation due to a cross-gender search, since the Supreme Court has not yet addressed this specific issue. If the search is seen as a condition of confinement, then an inmate would only have to show deliberate indifference on the part of prison officials.39 However, it is possible that courts could view the concerns surrounding cross-gender searches as more appropriately reviewed under the higher malice standard, even though the facts do not fall within the excessive-use-of-force cases.4 " With this approach inmates face the tougher burden of establishing malice on the part of the officials or guards. Although the Supreme Court has not spoken directly to the issue of crossgender searches, it has stated that "[t]he Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'"" The Court has concluded that **the Eighth Amendment is offended when punishments are "incompatible with 'the evolving standards of decency that mark the progress of a maturing society.**'"42 This view indicates that the psychological effects of the conditions of confinement are implicated in Eighth Amendment reviews.43 However, inmates must be able to present sufficient evidence of psychological pain to establish a cognizable Eighth Amendment claim.'

The Eighth Amendment has been used in the past to rule body cavity searches against trans individuals unconstitutional

Columbia Human Rights Law Review 09

(Columbia Human Rights Law Review, "Chapter 25: Your Right To Be Free From Illegal Body Searches," http://www3.law.columbia.edu/hrlr/jlm/Chapter_25.pdf, 7/26/15, SM)

In regard to body searches, the Eighth Amendment is most often triggered by the manner in which the searches are conducted and, at times, by the purpose of the searches. In Meriwether v. Faulkner, the prisoner had a sex change operation and claimed that guards made her strip to harass her and to see her unusual physical features.109 She also claimed that there were no security reasons to search her.110 **The court said that such searches might violate the Eighth Amendment.** In addition, in McRorie v. Shimoda, the court sustained an Eighth Amendment claim against a prison guard who rammed his baton into the anus of a prisoner during a strip search.111

Fourth Amendment Doesn't Apply

The Fourth Amendment doesn't apply to those in prisons—they have no expectation of privacy

Goring 84

(Darlene C., Fall 1984, Journal of Criminal Law and Criminology, "Fourth Amendment—Prison Cells: IS there a Right to Privacy?" http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6436&context=jclc, 7/20/15, SM)

The fourth amendment protects individual rights to privacy, but its protection is not available to all members of society under all circumstances.8 Most notably, the fourth amendment is not available to pretrial detainees or convicted prisoners to prevent searches or seizures within their prison cells.9 The Supreme Court laid the foundation for this restriction of prisoners' fourth amendment rights in Lanza v. New York 10 when **the Court held that a prison is not an area protected by the Constitutio**n. 1 The Lanza decision noted that because of the continual surveillance of inmates, a prison does not meet the expectation of privacy inherent in a home or an office.12 Although the Court in Lanza was not required to decide the applicability of the fourth amendment to prison inmates, it stated that to give prisoners fourth amendment immunity from search or seizure of their personal property is "at best a novel argument."' 3 The Supreme Court in Katz v. United States14 and Smith v. Maryland'5 established that the applicability of the fourth amendment is contingent upon whether the individual can claim that a "legitimate expectation of privacy" has been invaded by government actions. 16 Justice Harlan's concurrence in Katz stated that the test of reasonableness for prison searches is "whether a prisoner's expectation of privacy in his prison cell is the kind of expectation that 'society is prepared to recognize as "reasonable."' "17 The Supreme Court has determined the reasonableness of prison searches in several different ways. Prior to its decision in Bell v. Wolfish, 18 the Supreme Court applied a case-by-case test of reasonableness to searches conducted by state employees to determine whether they violated the fourth amendment.' 9 The Court decided the reasonableness of each search by balancing the need for the particular search against the personal rights that the search invaded.20 The Court in Bell, however, rejected the case-by-case reasonableness test. Instead, the Court determined the reasonableness of the contested searches in a categorical fashion. The Court argued that "when an institutional restriction infringes a specific constitutional guarantee. . . the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security." 2 1 The Court found that shakedown searches of prison cells help maintain security and preserve internal order and discipline. 22 Relying on the categorical determination that prison searches fulfill the government's objectives regarding prison security, the Supreme Court in Bell held that the shakedown searches of pretrial detainees are reasonable. 23 The Court in Bell also acknowledged the plausibility of the argument that "**a person confined in a detention facility has no reasonable expectation of privacy with respect to his room or cell and that therefore the fourth amendment provides no protection for such a person**." 24

Security of the prison mandates a curtailment of an individual's privacy rights

Verrilli et al 11

(Donald B., Tony West, Leondra R. Kruger, Nicole A. Saharsky, Barba L. Herwig, and Edward Hemmelfarb, Supreme Court, "Albert W. Florence, Petitioner v. Board of Chosen Freeholders of the County of Burlington, et al, on Writ of Certiorari to the United States Court of Appeals for the Third Circuit: Brief for the United States as Amicus Curiae Supporting Respondents," Verrilli is the Solicitor General Counsel of Record, http://www.americanbar.org/content/dam/aba/publishing/previewbriefs/Other_Brief_Updates/10-945_respondentamcuusa.authcheckdam.pdf, 7/22/15, SM)

The court of appeals explained that the touchstone of the Fourth Amendment is reasonableness, a standard that requires "a balancing of the need for the particular search against the invasion of personal rights that the search entails." Pet. App. 8a (quoting Wolfish, 441 U.S. at 559). The court recognized that an individual's "privacy is greatly curtailed" when he is incarcerated in a correctional facility, where "'curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of institutional needs and objectives * * * [,] chief among which is internal security.'" Ibid. (quoting Hudson v. Palmer, 468 U.S. 517, 524 (1984)). The court acknowledged that a visual body-cavity inspection constitutes a "significant intrusion on an individual's privacy," but it also **determined that** the searches at issue were "similar to or less intrusive than those in" Wolfish and were conducted "in a similar manner and place as those in" Wolfish. Id. at 19a-20a (citation omitted). Turning to the jails' justification for the searches, the court of appeals observed that "'[**d]etention facilities are unique place[s] fraught with serious security dangers,**'" Pet. App. 20a (quoting Wolfish, 441 U.S. at 559; second set of brackets in original), and that New Jersey jails, "like most correctional facilities, face serious problems caused by the presence of gangs," ibid. Noting that the "[p]revention of the entry of illegal weapons and drugs is vital to the protection of inmates and prison personnel alike," the court concluded that the jails' interest in preventing smuggling during intake is "as strong as the interest in preventing smuggling after the contact visits at issue in" Wolfish. Id. at 21a. The court of appeals disagreed with petitioner's assertion that arrestees are unlikely to be smuggling con- traband, explaining that "it is not always the case" that arrests are unanticipated and that detainees may "induce or recruit others to subject themselves to arrest * * * to smuggle weapons or other contraband into the facility," especially if certain classes of arrestees may not be strip-searched. Pet. App. 23a. It also rejected petitioner's contention that "jails have little interest in strip searching arrestees charged with non-indictable offenses," explaining that Wolfish "explicitly rejected any distinction in security risk based on the reason for the detention." Id. at 21a. Finally, the court rejected the suggestion that prison administrators could address smuggling through alternative means. The court emphasized that corrections officials must be afforded great deference in ensuring institutional security. Id. at 26a. It further noted that, in any event, the proposed alternatives, such as metal detectors, would not be as effective as the challenged searches in uncovering weapons, drugs, and other contraband. Id. at 27a-28a.4 Judge Pollak dissented. Pet. App. 29a-32a. SUMMARY OF ARGUMENT The Fourth Amendment permits prison and jail officials to conduct visual body-cavity inspections of all detainees who will join the general inmate population. A. The Fourth Amendment protects individuals against unreasonable searches and seizures. Whether a search is reasonable depends on a balance of the individual's privacy interests and the government's justification for the search. In the prison and jail context, privacy rights are necessarily diminished, and corrections offi- cials are afforded wide latitude to ensure the safety and security of their facilities. Consistent with those principles, this Court has upheld a federal detention facility's practice of conducting suspicionless visual body-cavity inspections of all inmates after contact visits with outsiders. Bell v. Wolfish, 441 U.S. 520 (1979). The Court explained that, **without underestimating the degree to which the searches invaded inmates' privacy interests, the institution's compelling interest in preventing smuggling of weapons, drugs, and other contraband outweighed privacy concerns.**

Incarceration limits constitutional rights—includes the Fourth Amendment

(Donald B., Tony West, Leondra R. Kruger, Nicole A. Saharsky, Barba L. Herwig, and Edward Hemmelfarb, Supreme Court, "Albert W. Florence, Petitioner v. Board of Chosen Freeholders of the County of Burlington, et al, on Writ of Certiorari to the United States Court of Appeals for the

Third Circuit: Brief for the United States as Amicus Curiae Supporting Respondents," Verrilli is the Solicitor General Counsel of Record, http://www.americanbar.org/content/dam/aba/publishing/previewbriefs/Other_Brief_Updates/10-945_respondentamcuusa.authcheckdam.pdf, 7/22/15, SM)

2. Incarceration necessarily imposes limits on inmates' constitutional rights, including Fourth Amendment rights. While "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution," Turner v. Safley, 482 U.S. 78, 84 (1987), this Court has recognized that "imprisonment carries with it the circumscription or loss of many significant rights," Hudson v. Palmer, 468 U.S. 517, 524 (1984). That "principle applies equally to pretrial detainees and convicted prisoners." Wolfish, 441 U.S. at 546. A detainee retains only those rights "that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974). Internal security is "chief" among those objectives. Hudson, 468 U.S. at 424. This Court has thus recognized that "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." Wolfish, 441 U.S. at 546. In the Fourth Amendment context, the Court has made clear that "prisoners have no legitimate expectation of privacy" as against certain practices, such as random searches of their cells. Hudson, 468 U.S. at 530; see id. at 526-527 (explaining that "[t]he recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions," including ensuring the safety of personnel, visitors, and inmates, and preventing the introduction of drugs, weapons, and other contraband into the prison). But the Court has also "assum[ed] * * * that inmates, both convicted prisoners and pretrial detainees, retain some Fourth Amendment rights upon commitment to a corrections facility." Wolfish, 441 U.S. at 558. An assessment of the reasonableness of inmate searches therefore must account for the unique nature of incarceration and the legitimate security needs of correctional facilities.

Fourth Amendment rights and surveillance of inmates are incompatible—inmates don't get a right to privacy

Johnson 11

(Aaron, 12/1/11, Duke Journal of Constitutional Law & Public Policy Sidebar, "CRYING WOLFISH: THE UPCOMING CHALLENGE TO BLANKET STRIP-SEARCH POLICIES IN FLORENCE V. BOARD OF CHOSEN FREEHOLDERS," JD from George Washington University Law School, associate @ Lewis Roca Rothgerber, a national law firm, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1077&context=djclpp_sidebar, 7/23/15, SM)

B. The Respondent Jails' Arguments The Respondent Jails offer three reasons why the Court should affirm the Third Circuit and uphold policies requiring strip searches of all arrestees. First, recent Supreme Court jurisprudence holds that the Fourth Amendment does not apply to intake searches of arrestees,89 or applies in only a minimal way.90 Whether the Fourth Amendment applies to a particular expectation of privacy hinges on whether "society is prepared to recognize [that expectation] as reasonable,"91 and recent cases have opined that "a right of privacy . . . is fundamentally incompatible with the close and continued surveillance of inmates and their cells."92 Thus, because it cannot comport with security interests, no right to privacy exists within detention facilities. The Jails backed off this claim during oral arguments, however, by conceding that there should be some level of suspicion to justify a manual body-cavity search.94 This concession implies that inmates retain minimal privacy interests, rather than no privacy interests.

NB—Fourth Amendment Bad

Fourth Amendment standards are too fixed by the judiciary without deference to law enforcement personnel

Court of Appeals 98

(United States Court of Appeals, Seventh Circuit, "Jane PECKHAM, Plaintiff-Appellant, v. WISCONSIN DEPARTMENT OF CORRECTIONS, Patrick J. Fiedler, Terri Landwehr,

Kristine Krenke, and Bradley Gehring, Defendants-Appellees," http://caselaw.findlaw.com/us-7th-circuit/1097326.html, 7/25/15, SM)

Id. at 146. Johnson holds that the eighth rather than the fourth amendment supplies the framework by which to analyze claims that guards needlessly or maliciously examine prisoners' bodies. Yet in this case, three years later, the plaintiff neither asks us to reexamine Johnson nor makes a claim under the eighth amendment. Instead of rejecting plaintiff's claim with a citation to Johnson, my colleagues gainsay that case. They write: "does a prison inmate enjoy any protection at all under the Fourth Amendment against unreasonable searches and seizures? . [W]e think the answer is 'yes,' but we hasten to add that given the considerable deference prison officials enjoy to run their institutions it is difficult to conjure up too many real-life scenarios where prison strip searches of inmates could be said to be unreasonable under the Fourth Amendment." 141 F.3d at 697 (footnote omitted). **This passage is unnecessary, unreasoned, and self-contradictory**. The passage is unnecessary because the majority goes on to say that nothing the prison did violated Peckham's rights "regardless of how one views the Fourth Amendment in this context" (141 F.3d at 697). The lack of need to contradict Johnson renders the passage dictum. The passage is unreasoned because the majority does not say why the answer is "yes." This court is always willing to reexamine its precedents in the light of new arguments, but my colleagues present none. Neither did the parties, who ignored Johnson, so the majority's assertion is uninformed by an adversarial presentation. Nor is Johnson in tension with decisions of a superior tribunal. **Never has the Supreme Court held or even intimated that persons convicted of crime retain any privacy rights** against their captors. Lists of the rights that survive imprisonment, see Hudson, 468 U.S. at 523-24, 104 S.Ct. at 3198-99, and Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974-75, 41 L.Ed.2d 935 (1974), **conspicuously omit privacy, and for good reason**. Rights of seclusion and secrecy vanish at the jailhouse door. A right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order. We are satisfied that society would insist that the prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security. We believe that it is accepted by our society that "[l]oss of freedom of choice and privacy are inherent incidents of confinement." Hudson, 468 U.S. at 527-28, 104 S.Ct. at 3201 (footnote and citation omitted; brackets in original). This is why Hudson and Johnson held that **objections to visual inspections had to be analyzed under the cruel and unusual punishments clause of the eighth amendment**. This is a topic on which the majority and dissent in Johnson were in accord; the judges disagreed about how the eighth amendment affects monitoring by guards of the opposite sex but agreed on the irrelevance of the fourth amendment. Finally, the passage is self-contradictory because it asserts both that prison searches are governed by the fourth amendment and that prison officials retain "considerable deference" to determine the scope of searches. (My colleagues must mean "discretion" rather than "deference", but the idea is clear.) Yet **standards under the fourth amendment are objective, fixed by the judiciary without deference to law enforcement personnel**. See, e.g., Ornelas v. United States, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). A principal reason why both Hudson and Johnson held that claims of this kind must be analyzed under the eighth amendment is that **the cruel and unusual punishments clause builds in deference to prison administrators through a combination of objective and subjective elements**. See also Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). If the only way to use the fourth amendment in strip-search cases is to make it functionally identical to the cruel and unusual punishments clause, then what's the point? Far better to leave the fourth amendment out of the analysis and avoid watering down the role of courts in specifying objective standards. Maybe my colleagues have been led to include this unfortunate passage because they think it evident that the fourth amendment governs throughout the United States. That's undeniable, so of course the fourth amendment "applies" inside the nation's prisons. Sparks v. Stutler, 71 F.3d 259 (7th Cir.1995), so holds when concluding that the fourth amendment interest in bodily integrity recognized by Winston v. Lee, 470 U.S. 753, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985)-which means that surgical invasions of a person's body in search of evidence must be objectively reasonable-does not vanish with conviction and imprisonment. What Hudson and Johnson hold is that convicts lack any reasonable expectation of privacy that may be asserted against their custodians and that searches of cells and other places where contraband may be hidden, including the space under one's clothing, need not be justified by any particular quantum of suspicion. That principle should not be impugned.

Fourth Amendment jurisprudence is informed by traditional notions of sex and gender—perpetuates the objectification and subordination of female bodies

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(I. Bennett, 7/16/14, UC Davis School of Law, Law Review, "Unsexing the Fourth Amendment," Professor of Law @ Brooklyn Law School, JD from Columbia University School of Law, http://lawreview.law.ucdavis.edu/issues/48/3/Articles/48-3_Capers.pdf, 7/25/15, SM)

It is hard to overstate the significance of Mapp v. Ohio,4 which made the exclusionary rule binding on the states5 and has rightfully been called the "most important search-and-seizure decision in history."6 It is also hard to overstate the significance of United States v. Mendenhall,7 which introduced the Fourth Amendment's "free to leave" test.8 In doing so, Mendenhall cast most police-citizen encounters as consensual and thus outside the purview of the Fourth Amendment.9 But there is an aspect of these cases, indeed, of a whole slew of cases, that to date has gone entirely unremarked upon. These cases reveal our concern with traditional notions of sex and gender. More specifically, both cases reveal our concern with what I term "sexy searches," those searches that courts and other decision-makers assume run the risk of sexual impropriety.10 In Mapp, the officers reached into "Miss Mapp's" bosom.11 In Mendenhall, the male DEA agents, rather than searching Sylvia Mendenhall themselves, sought help outside of the DEA, summoning a female "policewoman" to conduct the search.12 In fact, traditional notions of sex and gender inform much of Fourth Amendment practice and jurisprudence. These notions matter with respect to Terry stop and frisks — those limited detentions and pat downs that officers engage in when they have articulable, reasonable suspicion that someone may be engaged in criminal activity, and that the person may be armed and dangerous. They matter with respect to more thorough searches incident to arrest, and how we monitor prisoners. Beyond the criminal arena, they dictate who conducts searches of students in public schools, and even which TSA employee searches which passenger. All of this ties in to the first goal of this Article to show traditional notions of sex and gender inform much of what is considered "reasonable" under the Fourth Amendment. The second goal is normative: to ask what we should make of this reliance on traditional notions of sex and gender? A Fourth Amendment preference for same- gender searches may comport with notions of modesty and societal norms. But at what cost to the Fourth Amendment? And, at what cost to true equality? Look beneath the surface, and a preference for same-gender searches — as reflected in Fourth Amendment decisions and government policies — sends troubling expressive messages. This preference suggests that sexual attraction, as a normative matter, lies in opposite gender touching, not same-gender touching. It communicates that we must shield women's bodies in particular from prying eyes and hands. The effect is a curious one, proscribing heterosexual touching while eroticizing women's bodies and their purported unavailability.13 In recent years, scholars such as Laura Rosenbury and Jennifer Rothman, Melissa Murray, Katherine Franke, Deb Tuerkheimer, and Margo Kaplan have observed that much of the law is sex-negative.14 What an examination of our Fourth Amendment preference for same-gender searches adds is this gloss: it is complicated. Sex is both below the surface, and also front and center. Sexy searches (again, those searches that courts and other decision-makers assume run the risk of sexual impropriety) are fiercely policed, yet, in a way that reveals a preoccupation with the spectacle of sex and that tantalizes with its very forbidden-ness. Our purported concern for modesty, examined more closely, reveals itself as a mechanism for both regulating and eroticizing heterosexual attraction, while closeting other attractions.15 Our concern for privacy, upon closer inspection, reveals itself to be a polite way of perpetuating the objectification and subordination of female bodies, with hierarchy and protection and paternalism embedded in its predicate — that one sex needs greater protection. Our claim of gender parity — the claim that same-gender searches treat the sexes equally — upon closer inspection reveals itself to be a rhetorical strategy as bankrupt as the defense offered to justify separate but equal segregation in the context of race. This Article proceeds as follows. Part I first provides a fuller discussion of Mapp and Mendenhall, two cases where the reliance on traditional notions of sex and gender, and fear of sexy searches, is implicit. Part I then provides an overview of the many areas of Fourth Amendment law and practice where we explicitly worry about sexy searches. Against that backdrop, Part II examines the use of sex and gender to inform Fourth Amendment decisions about the reasonableness of various searches. My argument here is three-fold: that a preference for same-gender searches relies on stereotypes about men as predators and women as vulnerable victims and erases sexual difference; that this preference undermines our anti-discrimination principles; and that this preference reifies and, indeed, over-determines gender difference, and in doing so functions as a type of state-imposed sexual discipline. Part III turns to the related issue of segregated restrooms, or what critical theorist Jacques Lacan aptly called "urinary segregation."16 Part IV then turns to an issue that I suspect informs much thinking about cross-gender searches: race. Finally, Part V argues that it is time to unsex the Fourth Amendment, and sketches out an alternative.

Decisions that uphold Fourth Amendment rights don't matter—no enforcement and never put into practice

Balko 15

(Radley, 5/16/15, The Washington Post, "The Supreme Court's Fourth Amendment irrelevance," https://www.washingtonpost.com/news/the-watch/wp/2015/05/16/the-supreme-courts-fourth-amendment-irrelevance/, 7/26/15, SM)

He makes a convincing argument. But I think there's another factor we need to consider: In the real world, **the decisions that uphold Fourth Amendment rights often don't matter**. That's **because the rulings are generally difficult to enforce.** The exclusionary rule is meant to help deter violations, but it only protects the guilty. And it's far from clear that it's an effective deterrent. For innocent people, an illegal search usually doesn't inflict enough damage to make a lawsuit worthwhile. And even when it does significant damage, the various immunities offered to law enforcement officials and the government entities that employ them make it difficult to even get a case in front of a jury. And once you're there, juries are inclined to side with police officers. Even if you somehow manage to win an award of damages, that money will almost always be paid by the taxpayers who fund the government that employs the offending law enforcement officers, not the officers themselves. So there's no real deterrent here, either. A couple of recent stories illustrate these problems in action. First, we have a report in the Chicago Tribune looking at the use of DUI checkpoints in various counties across Illinois. The Supreme Court upheld DUI checkpoints in the 1990 case Michigan v. Sitz, finding that the value of preventing drunk driving outweighed the Fourth Amendment violations of randomly stopping motorists to see if they're intoxicated. (The court relied on an inflated, misleading statistic about DUI deaths to reach this conclusion, but that's another matter.) The court didn't really consider whether checkpoints were actually all that effective at catching drunk drivers. (The Michigan Supreme Court ruled that they were not — the U.S. Supreme Court ruled that their actual empirical effectiveness isn't the right test.) The court has struck down checkpoints for most other reasons, including to check for narcotics, expired licenses and other crimes and violations. The court found that so long as drunk driving is the primary stated reason for the checkpoint, the police can go ahead and issue other citations, should they find them. You can probably guess what has happened since. Police departments across the country have been using the roadblocks to generate revenue from traffic offenses. They'll claim that drunk driving is the "primary purpose," but it's clear from what transpires at the checkpoints that this isn't the case. The Tribune report is only the latest of countless media outlets across the country to document this, although this time we have the added wrinkle that local police agencies are also getting hefty federal grants to run these checkpoints. The Tribune reports: The implicit theory is that local police departments certainly would not keep taking public money to pay for safety programs that don't work. Except apparently they do keep taking money for this tradition, and have modest results to show for it. If you are a white driver in a white neighborhood, Chicago police almost never stop you, although the city's minority drivers have been found to be the least likely population to be driving drunk. Thanks to the statistical sleuths at the Chicago Tribune studying Illinois Department of Transportation data, we now know that police departments across Lake County also have staged hundreds of checkpoints, spent millions and have caught … almost no one. During the five years in question, Waukegan police spent $478,000 to nab 890 DUIs at the local checkpoints. That's just 12 percent of the 7,672 citations issued at those pit stops. The vast bulk of those citations are for burned out taillights, insurance lapses, unbuckled seat belts and license violations. Further, it means Waukegan police spent $537 to ring up each DUI arrest. By comparison, Gurnee spent much less, but also got a much quieter bang for the bucks. Gurnee spent $56,000 for 42 DUI arrests, which constituted 4 percent of the 935 total citations. None of the 200-plus jurisdictions studied statewide came off as models of efficiency in the statistics, but Lake County was particularly pale. The report goes on like that. Vernon Hills? It spent $2,356 for a goose egg. No DUIs, although officers there did issue four citations for other violations . . . Lake County Sheriff's Department, $7,044 for 7 DUI arrests which was 6 percent of 123 citations. South Barrington, $16,299 for 10 DUIs and 290 citations (3 percent). Fox Lake, $11,995 for 4 DUI nabs among 212 citations (2 percent). Lake Zurich, $50,988.58 for 76 DUI arrests, 11 percent of 807 citations. Grayslake/Hainesville, $37,367 for 36 DUI arrests, 7 percent of 501 tickets. Nobody did particularly well. Sobriety checkpoints have become the most intrusive and expensive-to-run minor violation gotchas in the state. This is precisely what the Supreme Court said that police departments couldn't do — use checkpoints to generate revenue. Yet report after report has shown that this is exactly how they're used. The problem is that unless a group like the ACLU files a class action suit, no driver written up for an expired license has the time, money, or interest in filing a lawsuit. It's also far from clear such a suit would be successful. So long as the local police department claims the primary purpose of the checkpoint is to catch drunk drivers, it's difficult to argue otherwise. The Supreme Court is generally reluctant to question the stated intentions of government officials, particularly in law enforcement. And so police agencies across the country continue to violate the intent of the court's ruling in 1990. And most of them do it with funding from the federal government. The other story involves an incident between the U.S. Customs and Border Protection and a young woman who, oddly enough, had aspirations of becoming an officer for that very agency. Jacob Sullum at Reason has the details: Cooke was driving from Norfolk to her boyfriend's house in Ogdensburg, the northern border of which is the St. Lawrence River. If you cross the river, you are in Canada, but Cooke was not crossing the river. She nevertheless became subject to the arbitrary orders of CBP agents by driving through one of the country's many internal immigration checkpoints . . . After presenting her driver's license, Cooke, who surely learned in college that police (and even CBP agents!) need "reasonable suspicion" to detain someone, asks why she was pulled over. "You guys have no reason to be holding me," she says. A male agent who identifies himself as a supervisor has no explanation for the detention, but he says Cooke will have to wait for a drug-sniffing dog to inspect her car. "Well, they'd better be here soon, because if not, I'm calling 911, and this can all be figured

out," Cooke says. "You guys are holding me here against my will." Eventually the female agent who first interacted with Cooke says she seemed nervous—an all-purpose excuse for detaining someone, since people tend to be nervous when confronted by armed government officials. "Why do you want to get in my trunk when you have no right to?" Cooke asks. That question also reflects a potentially disquieting familiarity with Supreme Court decisions related to traffic stops. Just last month, the Court ruled that, in the absence of reasonable suspicion, police may not extend a traffic stop for the purpose of walking a drug-sniffing dog around the vehicle. But the Court also has said that if a dog alerts to a car (or, same thing, a cop claims that the dog alerted), that is enough by itself to supply probable cause for a search, even though there are lots of reasons (including a handler's deliberate or subconscious cues) why a dog might alert to a car that contains no contraband. "If they're not here within 20 minutes, I'm gone," Cooke says. "You can leave," the male agent says. "You can walk down the road right now….Your car's not going anywhere….I'll spike the tires." Cooke and the agent eventually get into an argument about where she's supposed to stand, which ends with her on the ground writhing in pain after getting shot with a stun gun. As Sullum points out, this case is especially relevant because not only did the agents violate Cooke's Fourth Amendment rights, but also Cooke told them they were violating their rights at the time. Not only did they go ahead and detain her anyway, but also it seems likely that her insistence on asserting her rights is what got her shot with a stun gun. There's often a heightened contempt among cops for people who know and assert their rights. The more you cite Supreme Court cases to assert your right during an interaction with law enforcement, the more likely you are to wind up with your face on the pavement. (That contempt doesn't just come from cops — Sullum notes the quote from a local resident interviewed by a local paper about the Cooke incident: "If you have nothing to hide, why be a jerk? Just cooperate.") This seems perverse. **Not only do Supreme Court rulings not prevent law enforcement officials from violating our rights, but also any attempt to use the rulings to defend your rights makes it more likely that you'll get a violent reaction from law enforcement**. Cooke has a better chance of winning a lawsuit than any of those Illinois drivers hit with traffic fines at a DUI checkpoint, but her lawsuit is far from a sure thing. And again, even if she wins, it's unlikely that the agents in question will suffer any consequence. In fact, if those agents are disciplined, it will most likely be because Cooke recorded her interaction with them and was able to generate some media coverage, not because the government agency that employs them was proactively enforcing the Fourth Amendment. (As Sullum points out, the only legal action currently under consideration at present is against Cooke.) **When it comes to the Fourth Amendment, the law as it's laid out in Supreme Court opinions is often quite a bit different than the law on the ground.**

Fourth Amendment decisions fail, four reasons—too flexible, not effective, abuse, can't be enforced

Poulin 91

(Anne Bowen, January 1991, Chicago-Kent Law Review, "The Fourth Amendment: Elusive Standards, Elusive Review," Professor of Law @ Villanova University School of Law, JD from University of Maine School of Law, http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=2817&context=cklawreview, 7/26/15, SM)

The Court of Appeals for the Seventh Circuit reasons that the present framework of analysis, based on defined standards, rests on artificial distinctions and requires inappropriate pigeonholing. 7 Its new approach, concludes the court, offers precision of analysis and of fourth amendment protection. 8 Unfortunately, the new approach assaults fourth amendment protection. Claiming to seek precision, the court threatens to implement standards that reduce the effective protection against unreasonable searches and seizures. The standards adopted in Chaidez and Liaguno **are so flexible that the protection they afford will be too elusive to be effective**. Standards as flexible as those adopted in Chaidez and Liaguno present a number of problems that reduce the effectiveness of fourth amendment protection. **First, they can be expected to reduce the consistency of results. Second, such flexible standard provide a less effective guide to the "on-the-street" conduct of the police. Third, they create increased likelihood of injury to individual rights through error and abuse. Fourth and last, more flexible standards are difficult to supervise.** Judicial supervision of fourth amendment rights has always been problematic. Increasing the flexibility of the governing standards compounds the difficulty. At the same time, standard of review in fourth amendment cases is being relaxed. 9 Even under the prevailing standard of review, and certainly under a relaxed standard, the court may not ensure that such flexible standards are enforced. The court's action is particularly troublesome because it diminishes fourth amendment protection against investigative detentions less intrusive than arrests. The police-individual encounters falling in this category have a significant impact on daily life and affect the individual's sense of personal security from arbitrary government intrusion. Yet the mechanisms adopted by the Seventh Circuit for

monitoring fourth amendment intrusions are less likely than the traditional approach to be effective means of supervising such encounters.

Fourth Amendment is vague, contradictory, and shifting

Harvard Law Review 07

(April 2007, Harvard Law Review, "The Fourth Amendment's Third Way," http://www.jstor.org/stable/pdf/40042626.pdf, 7/26/15, SM)

I. Introduction: Searching for Content Scholars agree on very little concerning the Fourth Amendment, but one of the few propositions that nearly everyone accepts is the almost incomparable incoherence of its doctrine. Professor Lloyd Weinreb calls the jurisprudence **"shifting, vague, and anything but transparent**."1 Professor Akhil Amar criticizes it as "**a vast jumble of judicial pronouncements that is not merely complex and contradictory, but often perverse**."2 Professor Anthony Amsterdam politely observes that "[f**]or clarity and consistency, the law of the fourth amendment is not the Supreme Court's most successful product**."3 This Note confronts a "fundamental question about the fourth amendment" that lies beneath all of its doctrinal puzzles, namely, "what method should be used to identify the range of law enforcement practices that it governs and the abuses of those practices that it restrains."4 It does so, in particular, by examining the relationship between the Fourth Amendment and state law. This Note argues that the Amendment should be interpreted as dynamically incorporating state law, and it explains how this interpretive method injects substantive legal content into the vague constitutional text and reconciles the tension between the Amendment's two clauses.5 It contends that the dynamic incorporation method is pragmatically and normatively superior to the major alternatives while remaining justified by constitutional theory.

Hollow Hope DA

1NC

Even if the courts rule progressive, they will not and cannot enact actual social change – they will leave loopholes and lower institutions will refuse to comply – legal history analysis proves – litigation is a hollow hope

Rosenberg 5 (Dr. Gerald Rosenberg, Associate Professor of Political Science and Lecturer in Law, University of Chicago, B.A., Dartmouth College, 1976; M.A., Oxford University, 1979; J.D., 1983, University of Michigan; Ph.D., 1985, Yale University, "Courting Disaster: Looking for Change in All the Wrong Places", 54 Drake Law Review 795 (2005), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2922&context=journal_articles) //RL

III. THE ILLUSION OF PROGRESS¶ An obvious response to the discussion of the historic role of the Court¶ as a protector of privilege is that history is not destiny. Merely because the¶ Court has acted in defense of privilege for most of its history does not¶ mean it is destined to always so act. Indeed, many people believe the role¶ of the Court fundamentally changed in the post-World War II era. The¶ Court, many claim, became a great defender of the relatively¶ disadvantaged.¶ **While history may not determine the future, structural constraints¶ limit it.** 86 That is, it is more likely than not that the Court will consistently,¶ over time, support conservative outcomes. This is the case for four main¶ reasons. First, the appointment process means that federal judges, and¶ particularly Supreme Court Justices, must be broadly acceptable.¶ Presidents are unlikely to nominate radical Progressives and the Senate is¶ even less likely to confirm such nominees. This is because Progressives¶ lack the political support that would make their appointments broadly¶ acceptable. Second, the Constitution is a conservative document. It¶ protects private control over the allocation and distribution of resources. It¶ does not provide for basic Progressive rights such as employment, health¶ care,

decent housing, adequate levels of welfare, or clean air. Third, the¶ Court is constrained from pushing too far ahead of the positions of the¶ other branches because it needs their support to implement its decisions¶ and is susceptible to sanctions. Fourth, the Court lacks the power to¶ implement its decisions. Thus, even if it overcomes the first three¶ constraints and issues an opinion that furthers the Progressive agenda, that¶ decision is unlikely to be implemented. This point is illustrated with brief¶ discussion of three important cases.¶ 86.¶ argument.¶ See ROSENBERG, supra note 4, at 9-41 for further development of this¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 808 2005-2006¶ Courting Disaster¶ **A. The Victory That Wasn't: Brown v. Board of Education 87**¶ Brown v. Board of Education may be the most well-known and¶ widely celebrated case in Supreme Court history. 88 In declaring that racial¶ segregation of public schools was unconstitutional, the Court repudiated its¶ prior, pro-segregation approach to the Constitution. This was clearly for¶ the good but the question for Progressives is whether Brown made a¶ difference in ending race-based segregation in public schools in particular,¶ and racial discrimination more broadly. The answer is no.¶ **On the most straight-forward level, public schools remained¶ segregated after Brown. A decade after Brown virtually nothing had¶ changed for African-American students living in the eleven states of the¶ former Confederacy that required race-based school segregation by law.**¶ For example, in the 1963-1964 school year, barely one in one hundred¶ (1.2%) of these African-American children was educated in a nonsegregated¶ school. 89 That means that for nearly ninety-nine of every one¶ hundred African-American children in the South a decade after Brown, the¶ finding of a constitutional right changed nothing.90 Change did come to the¶ South, but that occurred only after the Congress acted-providing¶ monetary incentives for desegregation and threatening to cut off federal¶ funds if segregation was maintained. 91¶ More subtly, **there is little or no evidence that supports the claims¶ that Brown gave civil rights salience, pressed political elites to act, pricked¶ the consciences of whites, legitimated the grievances of blacks, or inspired¶ the activists of the civil rights movement**. What Brown did do was energize¶ civil rights opponents and channel resources away from building the civil¶ rights movement.92 In the wake of Brown, resistance to ending segregation¶ increased in all areas, not merely in education but also in voting,¶ transportation, and the use of public places. Brown "unleashed a wave of¶ 87. Brown v. Bd. Of Educ., 349 U.S. 294 (1954).¶ 88. For an extensive exploration of Brown's lack of efficacy, see ROSENBERG,¶ supra note 4, at 42-169.¶ 89. Gerald Rosenberg, Substituting Symbol for Substance: What Did Brown¶ Really Accomplish?, PS: POLITICAL SCIENCE & POLITIcs 205,205, Apr. 2004, at 205.¶ 90. Id.¶ 91. Id. at 205-06.¶ 92. Id. at 207.¶ 2006]¶ HeinOnline -- 54 Drake L. Rev. 809 2005-2006¶ Drake Law Review¶ **racism that reached hysterical proportions**."93 By stiffening resistance to¶ civil rights and raising fears before the activist phase of the civil rights¶ movement was in place, Brown may actually have delayed the achievement¶ of civil rights.¶ Litigation may also have delayed the achievement of civil rights by¶ channeling resources toward litigation and away from political organizing.¶ Progressive reformers always have scarce resources. There was great¶ hostility over both fundraising and tactics between the NAACP and the¶ groups that led the activist wing of the civil rights movement. As Martin¶ Luther King, Jr. complained: "to accumulate resources for legal actions¶ imposes intolerable hardships on the already overburdened. '¶ " 94¶ In sum, Brown's constitutional mandate that racial segregation in¶ public schools end confronted a culture opposed to that change. The¶ American judicial system, constrained by the need for both elite and¶ popular support, was unable to overcome this opposition.¶ B. **The Decision That Didn't: Roe v. Wade** 95¶ In many ways Roe fared better than Brown. That is, the number of¶ legal abortions increased in the years following Roe-though at a slower¶ rate-both numerically and percentage-wise, than in the years immediately¶ preceding the decision. But they did so unevenly, with abortion services¶ widely available in some states and virtually unobtainable in others. What¶ explains both the increase in the number of legal abortions and the uneven¶ availability of the constitutional right Roe proclaimed?¶ The number of legal abortions increased after Roe because there was¶ public support for legal access to abortion, and demand for the service. A¶ national abortion repeal movement was flourishing with widespread¶ support among relevant professional elites and rapidly growing public¶ support. By the eve of the Court's decisions, eighteen states had reformed¶ their restrictive abortion laws to some degree. Indeed, in 1972, the year¶ before the decision, there were nearly 600,000 legal abortions performed in¶ the U.S.96 To the extent that Roe increased women's access to legal¶ 93. ADAM FAIRCLOUGH, To REDEEM THE SOUL OF AMERICA: THE¶ SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. 21¶ (1987).¶ 94. MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT 157 (1963).¶ 95. Roe v. Wade, 410 U.S. 113 (1973). For an extensive exploration of Roe's¶ mixed record of efficacy, see

ROSENBERG, supra note 4, at 175-201.¶ 96. ROSENBERG, supra note 4, at 180 tbl.6.1.¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 810 2005-2006¶ Courting Disaster¶ abortion it did so because a grass-roots political movement had won many¶ legislative victories and had dramatically influenced both elite and public¶ opinion.¶ On the other hand**, Roe faced the same problem as Brown-the¶ existing institutions necessary to implement the decisions (hospitals in the¶ case of abortion) refused to do so**. Indeed, the overwhelming majority of¶ both public and private, short-term, non-Catholic hospitals, have never¶ performed an abortion.97 Like public schools and desegregation, the¶ existing institutions ignored the law. **Constitutional rights were protected¶ under law, but denied in practice.** However, in Doe v. Bolton,98 the¶ companion case to Roe, the Court struck down Georgia's requirement that¶ all abortions be performed in accredited hospitals. 99 This allowed market¶ forces to meet the demand for abortion services by opening abortion¶ clinics. Pro-choice activists, feminists, and doctors, who wanted to expand¶ their practices, were relatively free to respond to the demand. Clinics could¶ and did open to implement the decision.¶ **The problem with market mechanisms is that they implement rights¶ unevenly. This is principally because they are dependent on local beliefs¶ and culture**. In places where political leaders or large segments of the¶ population oppose abortion, it is less likely that such clinics will open.¶ Thus, the availability of abortion services varies widely across the country.¶ Considering that the Court has held that women have a fundamental¶ constitutional right to obtain abortions, the drawbacks to the market¶ mechanism as a way to implement constitutional rights are important. The¶ availability of a market mechanism can help implement Court decisions,¶ but cannot guarantee them.¶ In addition to only providing limited access to legal abortion, Roe,¶ like Brown, appears to have strengthened the losers in the case-the antiabortion¶ forces-and weakened the winners. The fledgling anti-abortion¶ movement grew enormously after Roe and the pro-choice movement that¶ had been able to change laws in eighteen states collapsed. One of the¶ results of the collapse was the lack of pressure on local institutions to¶ provide abortion services. This history suggests that if Roe is overturned¶ there may be a massive mobilization of pro-choice forces. While at least¶ some states may prohibit abortion, these are likely to be states where,¶ under Roe, abortion services are virtually impossible to obtain.¶ 97. Id. at 190.¶ 98. Doe v. Bolton, 410 U.S. 179 (1973).¶ 99. Id. at 194.¶ 2006]¶ HeinOnline -- 54 Drake L. Rev. 811 2005-2006¶ Drake Law Review¶ In sum, the finding of a constitutional right to terminate a pregnancy¶ has not guaranteed access to abortion for women. It derailed the prochoice¶ movement and energized its opponents. As the executive director¶ of a Missoula, Montana, abortion clinic destroyed by arson in 1993 put it:¶ "It does no good to have the [abortion] procedure be legal if women can't¶ get it."'°¶ C. The Opinion That Backfired: Goodridge v. Department of Public¶ Health1 01¶ Goodridge, perhaps more than any other modern case, highlights the¶ folly of Progressives turning to litigation in the face of legislative hostility.¶ In Goodridge, the Supreme Judicial Court of Massachusetts held that the¶ state could not deny marriage licenses to same-sex couples. 0 This decision¶ followed an earlier decision of the Hawaii Supreme Court that the state's¶ refusal to recognize same-sex marriages, absent a compelling justification,¶ violated the state constitution's guarantee of equal protection of the laws,103¶ and a decision of the Vermont Supreme Court that essentially forced the¶ Vermont legislature to enact civil unions. 1°4¶ The result of these judicial victories has been nothing short of¶ disastrous for the right to same-sex marriage. **The people of Hawaii¶ effectively overturned their court's decision by constitutional amendment.¶** Then, in 1996, the U.S. Congress passed the so-called Defense of Marriage¶ Act denying all the federal benefits of marriage to same-sex couples.10 5¶ Many states followed suit, and as of the 2004 election, at least thirty-nine¶ states had adopted measures designed to prevent the recognition of samesex¶ marriage. 106 Even worse, there was a movement to limit marriage to¶ heterosexual couples by amending both the federal and state constitutions.¶ While a federal amendment has yet to be passed by Congress, every¶ constitutional amendment presented to state voters has been approved-in¶ 100. Gerald N. Rosenberg, The Real World of Constitutional Rights: The¶ Supreme Court and the Implementation of the Abortion Decisions, in CONTEMPLATING¶ COURTS 390, 417 (Lee Epstein ed., 1995) (quotation and emphasis omitted).¶ 101. Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 (Mass. 2003). For an¶ extensive exploration of the impact of the attempt to win the right to same-sex¶ marriage through litigation, see GERALD N. ROSENBERG, THE HOLLOW HOPE (2d. ed.¶ forthcoming 2007).¶ 102. Goodridge, 798 N.E.2d at 948.¶ 103. Baehr v. Lewin, 852 P.2d 44, 67-68 (Haw. 1993).¶ 104. Baker v. State, 744 A.2d 864, 867 (Vt. 1999).¶ 105. 28 U.S.C. § 1738C (2000).¶ 106. See, e.g., ALA. CODE § 30-1-19 (LexisNexis Supp. 2005).¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 812 2005-2006¶ Courting Disaster¶ almost all cases by lopsided majorities. As 2004 came to a close, more than¶ one-third of all states, representing close to one-quarter of the American¶ population, had banned same-sex marriage by constitutional amendment.¶ With several constitutional amendments on ballots in 2006, and perhaps in¶

2008, more states are likely to join the list.¶ What happened? The answer is simple. Same-sex marriage¶ proponents had not built a successful movement that could persuade their¶ fellow citizens to support their cause and pressure political leaders to¶ change the law. Without such a movement behind them, winning these¶ court cases sparked an enormous backlash. They confused a judicial¶ pronouncement of rights with the attainment of those rights. The battle for¶ same-sex marriage would have been better served if they had never¶ brought litigation, or had lost their cases. Now, they must either convince¶ majorities in more than one-third of the states to remove the constitutional¶ prohibitions on same-sex marriage that have just been added or hope that¶ the U.S. Supreme Court will strike down prohibitions on same-sex¶ marriage as unconstitutional. This is a daunting task-one that ought not¶ to have been faced.¶ IV. **WHEN WILL THEY EVER LEARN**? RETURNING TO PAST¶ UNDERSTANDINGS¶ **The sad story of the turn to litigation by same-sex marriage¶ proponents illustrates the current Progressive failure to understand that¶ successful social change requires building social movements**. From Brown¶ to Roe to Goodridge the Progressive agenda was hijacked by a group of¶ elite, well-educated and comparatively wealthy lawyers who uncritically¶ believed that rights trump politics and that successfully arguing before¶ judges is equivalent to building and sustaining political movements.¶ **Litigation is an elite, class-based strategy for change. 107 It is premised on¶ the notion that it is easier to persuade similarly educated and wealthy¶ lawyers who happen to be judges of certain liberal principles than to¶ organize everyday citizens. That might be true but without broad citizen¶ support change will not occur.**¶ Litigation substitutes symbols for substance. The collapse of the pro-¶ 107. As Alexis de Tocqueville noted more than a century and a half ago,¶ lawyers are elitist by training. He wrote: "hidden at the bottom of a lawyer's soul one¶ finds some of the tastes and habits of an aristocracy.... [American lawyers] conceive a¶ great distaste for the behavior of the multitude and secretly scorn the government of¶ the people." ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 243 (J.P. Mayer &¶ Max Lerner eds., George Lawrence trans., Harper & Row 1966) (1848).¶ 20061¶ HeinOnline -- 54 Drake L. Rev. 813 2005-2006¶ Drake Law Review¶ choice movement after Roe is a perfect illustration as it remains the case¶ that for many women abortion services are difficult to find. Similarly, the¶ growing re-segregation of the nation's public schools is occurring at a time¶ when Brown has achieved almost mythical, symbolic status. The danger of¶ celebrating a symbol is that it can lead to a sense of self-satisfaction and¶ insensitivity to actual practice. Seen in this light, Brown is "little more than¶ an ornament, or golden cupola, built upon the roof of a structure found¶ rotting and infested, assuring the gentlefolk who only pass by without¶ entering that all is well inside. '10 8 Celebrating legal symbols encourages us¶ to look to legal solutions for political and cultural problems. Without¶ political support, court decisions will not produce social change. To¶ valorize lawyers and courts encourages reformers to litigate for social¶ change. But if political support is lacking, the effect of this vision is to limit¶ change by deflecting claims for reform away from substantive political¶ battles, where success is possible, to harmless legal ones where it is not. In¶ this way, courts play a deeply conservative ideological function in defense¶ of the status quo. When social reformers succumb to the "lure of¶ litigation" they forget that deep-seated social conflicts cannot be resolved¶ through litigation.¶ Today, there is some hope that Progressives may be turning away¶ from litigation as a strategy for change. The cause, alas, is not a re-learning¶ of historical lessons and an understanding of the limitations on courts and¶ the need for political mobilization. Rather, it is a realization that the¶ current Supreme Court is unlikely to promote progressive principles. If¶ this were the only effect of a conservative Court it would be a good thing.¶ The problem, of course, is that even if courts are limited in their ability to¶ help Progressives, they have more room to do damage. Courts are not¶ symmetrically constrained from furthering both progressive and¶ conservative change. This is because typically Progressives are asking¶ courts to require change while Conservatives are supporting the status quo.¶ Further, it is easier to dismantle Progressive programs than to create them.¶ For example, with Justice Alito replacing Justice O'Connor, affirmative¶ action plans may be found to be unconstitutional. We are now in a position¶ where courts can be an obstacle to change.¶ None of this means that law is irrelevant or that courts can never¶ further the goals of the relatively disadvantaged. For the civil rights¶ 108. Michael E. Tigar, The Supreme Court 1969 Term-Foreword: Waiver of¶ Constitutional Rights: Disquiet in the Citadel, 84 HARV. L. REV. 1, 7 (1970). Tigar¶ wrote these words specifically about the Warren Court's criminal rights decisions but¶ they are more generally applicable.¶ [Vol. 54¶ HeinOnline -- 54 Drake L. Rev. 814 2005-2006¶ Courting Disaster¶ movement, for example, courts played an important role in keeping the sitin¶ movement going, ending the Montgomery bus boycott by providing the¶ boycotters with leverage, furthering school desegregation by threatening to¶ cut off federal funds under Title VI, and upholding affirmative action¶ programs. But in each case courts were effective because a political¶ movement was supporting change. The analysis does mean that courts¶ acting alone, as in Brown or Goodridge, are structurally constrained from¶ furthering the goals of the relatively disadvantaged.¶ **As Progressives look to**

the future, they must understand that¶ American courts are not all-powerful institutions. They were designed with¶ severe limitations and placed in a political system of divided powers. To¶ rely on litigation rather than political mobilization, as difficult as it may be,¶ misunderstands both the limits of courts and the lessons of history. It¶ substitutes symbols for substance and clouds our vision with a naive and¶ romantic belief in the triumph of rights over politics. And **while romance¶ and even naivete have their charms, they are no substitute for substantive¶ change.**

Historically, the Supreme Court has not been very successful on prison reform

Rosenberg 08

(Gerald N., published September 15, 2008, University of Chicago Press, The Hollow Hope: Can Courts Bring About Social Change? Second Edition, Associate Professor of Political Science and Lecturer in Law at UChicago, Kindle Location 4219)

Changes in Prisons The results of prison litigation are not entirely clear. While one school of thought believes that the "collective result of this litigation has been nothing less than the achievement of a legal revolution within a decade" (Orland 1975, 11), the key question is whether this "legal revolution" translated into a revolution in prison conditions. The careful scholar will want to know what changes occurred and whether they can be credited to the courts. In the material that follows I suggest that change varied and that the presence of the constraints and the conditions best explains why litigation worked in some places and not in others. Overall, the consensus view is that, while some changes have been made, serious problems remain. Although litigation has sometimes succeeded in eliminating the "most severe overcrowding and the most painful and onerous conditions," the contribution of the courts has been "strictly limited" to "only" those achievements (Angelos and Jacobs 1985, 112). Improvements in prisoner health have been reported (Brakel 1986, 64), as has the lessening of the likelihood of "arbitrary abuse" (Turner 1979, 640), but prison overcrowding crowding continues to be a serious problem.6 One study of four prison reform cases concluded that while "the court orders eliminated the worst abuses and ameliorated the harshest conditions," they failed to deal with "underlying issues and problems" and "were directed more toward symptoms than causes" (Harris and Spiller 1976, 25, 26).7 As James Jacobs puts it, "there seems to be no agreement on which side is winning" (Jacobs 1980, 430).6 There are also the issues of prison construction and the expenditure of funds for the corrections system. Here, the essential argument is that courts have put prison reform on the political agenda and forced states to expend resources to correct constitutionally deficient conditions. The executive director of the American Civil Liberties Union's (ACLU) National Prison Project has argued that prison litigation "exposes the sordid conditions in our prisons to public scrutiny" (Bronstein 1984b, 324).' And Justice Brennan, writing in 1981, stated that "the courts have emerged as a critical force behind efforts to ameliorate inhumane conditions." He found it "clear that judicial intervention has been responsible, not only for remedying some of the worst abuses by direct order, but also for 'forcing' the legislative branch of government to reevaluate correction policies and to appropriate funds for upgrading penal systems" (Rhodes v. Chapman 1981, 359). Scholars who have closely examined the link between judicial action and prison construction are less sanguine (Finn 1984; Hopper 1985; Peirce 1987). Even ACLU prison litigator Bronstein has noted that "**most prison construction is not in response to law suits" but rather "in response to a real need, or at least a perceived need**" (Bronstein 1984a, 346). Similarly, studies of the effect of judicial action on expenditures have also found mixed results (Harriman and Straussman 1983; Taggart 1989). A recent study found that "judicial intervention does not ensure a budgetary response" and concluded that "spending is shaped in large measure by forces much more compelling and forceful than a single discrete event such as a court order" (Taggart 1989, 267, 268; cf. Feeley 1989). Finally, there is the issue of prison violence. Although court-ordered reform form is aimed in general at improving the treatment of prisoners, and specifically at reducing arbitrary use of force, there is some evidence suggesting that **such reform leads to an increase in prison violence**, at least in the short run. 10 Additional factors such as "changes in society" (Project 1973, 494), growing prison populations, and younger, less tractable inmates, have had an effect (Brakel 1986, 6). But overall, as a former Texas prison guard put it, "while prisoners in many institutions now have enhanced civil rights . . . they live in a lawless society at the mercy of aggressive inmates and cliques" (Marquart and Crouch 1985, 584). And by 1986, Brakel concluded that the "contemporary wisdom in corrections is that despite more than a decade of close scrutiny and mandated reforms, many prisons are less safe than they were in the pre-reform days" (Brakel 1986, 6). In sum, then, it appears that change has been uneven. Many of the worst conditions have been improved to at least minimal standards, but problems still abound. The task that remains is to explain why the change has been so uneven-why there was some change, but only some.

Courts lack implementation powers, especially in the context of prison reform

Rosenberg 08

(Gerald N., published September 15, 2008, University of Chicago Press, The Hollow Hope: Can Courts Bring About Social Change? Second Edition, Associate Professor of Political Science and Lecturer in Law at UChicago, pgs 308-309)

Lack of Implementation Power. The third constraint that must be overcome come **is the courts' lack of implementation powers.** As Bronstein points out, implementation and enforcement of prison reform decrees rests "primarily in the hands of prison officials" (Bronstein 1977, 44) who, like other professionals, do not like having their professional competence challenged. When courts issue orders requiring prison reform, many administrators see them as doing just that. The problem, of course, is not only that prison officials "often continue to fight for the status quo" (Bronstein 1977, 44), but also that courts lack the tools to insure implementation. Although this is not unusual, the less visible nature of prisons as compared to other governmental agencies which have been the targets of litigation makes implementation even more problematic. Since prison access is regulated for safety reasons, information on conditions and the progress of implementation is difficult to obtain. As Jacobs points out, "even under the best of circumstances," the court "must depend upon the institution's staff for information as to whether a decree is being followed" (Jacobs 1980, 452). The staff, of course, may be uncooperative. Indeed, when California corrections administrators were asked, in a survey, if they could "comply with court orders through changes which meet the letter of the court order, but not its spirit, and thereby frustrate the intent of the court," a whopping 87 percent said yes (Project 1973, 530). **As one administrator put it in a follow-up interview, "we can usually get around anything"** (Project 1973, 531). Administrators simply play an indispensable role in the success of prison reform. As the assistant attorney general in charge of corrections in Washington state put it, "the key to relief will be commitment by defendants to comply with the letter and the spirit of the order" (Collins 1984, 342). The necessity of support from prison administrators, and their ability to withhold that support, makes overcoming the implementation constraint particularly problematic." There is also a related issue of staff support below the top administrative level. Since it is the staff who will actually carry out any reform decree, their attitude is vitally important. Yet the staff, operating in a potentially dangerous environment, may have little interest or incentive in reforming their procedures, , **especially if the reforms are perceived as lessening their authority**. A New York study found that the typical corrections officer "opposes prison reform as a threat to ~~his~~ physical security" (New York State 1974, 17). The California correctional administrators' survey just referred to, found "many administrators" stating that the "greatest administrative challenge regarding the effect of change on the staff was having to `sell' the staff on every new policy" (Project 1973, 502). Indeed, the survey found that "staff morale is the operational factor which consistently shows the greatest negative effect" of court-ordered reform (Project 1973, 575).

2NC—Prison Specific

Courts can't produce significant prison reform—prison officials won't change without political influence

Rosenberg 08

(Gerald N., published September 15, 2008, University of Chicago Press, The Hollow Hope: Can Courts Bring About Social Change? Second Edition, Associate Professor of Political Science and Lecturer in Law at UChicago, pgs 308-309)

The second constraint on courts' ability to produce significant social reform is the need for political support. Prison re- form issues are "essentially political" (Bronstein 1977, 27, 44), and prison reform is

"highly dependent upon the political processes" (Resnick i984, 348). When political leaders are willing to act, this constraint can be over- come. When they do nothing, or oppose court decisions, little change occurs. The reasons for this are relatively straightforward. First, **unless prison officials are pushed by political leaders there is "little incentive" for them to "take the risks inherent in changing the current structure"** (Note 1979, 1067). Without the support of political leaders, prison officials lack the resources to make many changes and risk their jobs in trying. Ameliorating conditions, improving services, hiring more guards, and building more prisons all cost money, and that money can come only from the legislature and the executive branch. Thus, overcoming the lack of political support was a trickier problem, and one that reformers have not been able to solve uniformly.

Courts are generalist institutions—don't have specialties in prison reform

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

However, Horowitz is quick to caution that there are also disadvantages of going to the courts, and he speaks at length about these disadvantages. He begins by arguing that the **courts are generalist institutions that are not geared toward making specialist decisions and policies**. Judges receive training in the law and the judicial process, but beyond that, they do not have a specialty. (Horowitz 25). Yet judges are required to not only process large amounts of specialized information, but they also must determine which specialized information is more accurate since judges will often hear conflicting testimony from expert witnesses who have a bias to one side or the other (Horowitz 26).

Interpreting population has the ability to distort the decision—can fail to comply or make cosmetic changes to give the appearance of compliance

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

A better understanding of how Rosenberg's constraints work can be derived from the Model of Judicial Implementation and Impact outlined by Bradley Canon and Charles Johnson. Canon and Johnson explain that when a court makes a decision there are different "populations" that work at different levels of the implementation process. The population at the top is the decision maker or the court that issuing the order. Just below the decision maker is the interpreting population. Consisting primarily of judges in the lower courts, the members of the interpreting population are responsible for interpreting the decision of the higher courts and explaining what the decision means to a given case. It is up to the implementing population to carry out the decision as interpreted by a judge or other member of the implementing population. At the bottom of this model is the consuming population, which is the group for which the policy is intended to impact (Canon and Johnson 16 – 21). **At each level, the populations have the ability to distort the decision that was made by the decision maker.** Judges, as members of the interpreting population, may simply refuse to apply the decision of a higher court, avoid taking cases that would require them to apply the decisions of higher courts on procedural grounds, or use their power to interpret the meaning of the decision of a higher court as it applies to the case before them and thereby limit the application of the decision (Canon and Johnson 38 – 42). Members of the implementing population, which can include members of the

bureaucracy and the legislature, also interpret judicial decisions, and as such they may interpret a judicial decision as not applying to them. There are also times when **members of the implementing population fail to make organizational changes to comply with the decision or they make "cosmetic" changes to give the appearance of conformity with the order** (Canon and Johnson 61 – 72). The efficacy of a court decision is also affected by those who are directly impacted by decision (the consuming population) in that if members of the consuming population are unclear how a right or restriction defined by a court applies to them, then their reactions to the court order may be inconsistent with the courts' intentions (Canon and Johnson 104 – 105).

Supreme Court's attitude has been deference to prison officials—can't reverse that perception

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

History of the Court Ordered Prison Reform Throughout most of the country's history, the courts used the hands – off doctrine to avoid hearing suits brought by prisoners. The Supreme Court defended the hand – off doctrine in three different ways. First, the Supreme Court wanted to avoid the separation of powers issues that their involvement could cause since the executive branch is responsible for the administration of prisons. Secondly, judges acknowledged that they were not penology experts and consequently they were not in a good position to make penal policy. Thirdly, there was fear about how judicial intervention would affect the administration of prisons (Palmer and Palmer 260). The hands of doctrine fostered a culture of extreme deference to prison officials in which prison officials were often allowed to literally get away with murder.

2NC—General

Courts don't solve—inability to hear cases about the underlying issue and decreasing public support

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008 , Kindle location 231)

The view of courts as unable to produce significant social reform has a distinguished pedigree reaching back to the founders. Premised on the institutional structure of the American political system and the procedures and belief systems created by American law, it suggests that the conditions required for courts to produce significant social reform will seldom exist. Unpacked, packed, the Constrained Court view maintains that courts will generally not be effective producers of significant social reform for three reasons: the limited nature of constitutional rights, the lack of judicial independence, and the judiciary's inability to develop appropriate policies and its lack of powers of implementation. The Limited Nature of Rights The Constitution, and the set of beliefs that surround it, is not unbounded. Certain rights are enshrined in it and others are rejected. In economic terms, private control over the allocation and distribution of resources, the use of property, is protected (Miller 1968). "Rights" to certain minimums, mums, or equal shares of basic goods, are not. Further, judicial discretion is bound by the norms and expectations of the legal culture. These two parameters, believers in the Constrained Court view suggest, present a problem for litigators pressing the courts for significant social reform because most such litigation is based on constitutional claims that rights are being denied.; An individual or group comes into a court claiming it is being denied some benefit, fit, or protection from arbitrary and discriminatory

action, and that it is entitled to this benefit or that protection. Proponents of the Constrained Court view suggest that this has four important consequences for social reformers. First, they argue, it limits the sorts of claims that can be made, for not all social reform goals can be plausibly presented in the name of constitutional rights. For example, there are no constitutional rights to decent housing, adequate levels of welfare, or clean air, while there are constitutional rights to minimal governmental interference in the use of one's property. This may mean that "practically significant but legally irrelevant policy matters may remain beyond the purview of the court" (Note 1977, 436). Further, as Gordon (1984, 111) suggests, "the legal forms we use set limits on what we can imagine as practical outcomes." Thus, the nature of rights in the U.S. legal system, embedded in the Constitution, may constrain the courts in producing significant social reform by preventing them from hearing many claims. A second consequence from the Constrained Court perspective is that, even where claims can be made, social reformers must often argue for the establishment of a new right, or the extension of a generally accepted right to a new situation. In welfare rights litigation, for example, the Court was asked to find a constitutional right to welfare (Krislov 1973). This need to push the courts to read the Constitution in an expansive or "liberal" way creates two main difficulties. Underlying these difficulties is judicial awareness of the need for predictability in the law and the politically exposed nature of judges whose decisions go beyond the positions of electorally accountable officials. First, the Constitution, lawyers, judges, and legal academics form a dominant legal culture that at any given time accepts some rights and not others and sets limits on the interpretation and expansion of rights. Judicial discretion is bound by the beliefs and norms of this legal culture, and decisions that stray too far from them are likely to be reversed and severely criticized. Put simply, courts, and the judges that compose them, even if sympathetic to social reform form plaintiffs, may be unwilling to risk crossing this nebulous yet real boundary.' Second, and perhaps more important, is the role of precedent and what Justice Traynor calls the "continuity scripts of the law" (Traynor 1977, 11). Traynor, a justice of the California Supreme Court for twenty-five years, Chief Justice from 1964 to 1970, and known as a judge open to new ideas, wrote of the "very caution of the judicial process" (1977, 7). Arguing that "a judge must plod rather than soar," Traynor saw that the "greatest judges" proceed "at the pace of a tortoise that steadily makes advances though it carries the past on its back" (1977, 7, 6). Constrained by precedent and the beliefs of the dominant legal culture, judges, the Constrained Court view asserts, are not likely to act as crusaders. Third, supporters of the Constrained Court view note, as Scheingold (1974) points out, that to claim a right in court is to accept the procedures and obligations of the legal system. These procedures are designed, in part, to make it difficult for courts to hear certain kinds of cases. As the Council for Public Interest Law (CPIL) puts it, doctrines of standing and of class actions, the so-called political question doctrine, the need to have a live controversy, and other technical doctrines can "deter courts from deciding cases on the merits" (CPIL 1976, 355) and can result in social reform groups being unable to present their best arguments, or even have their day in court. Once in court, however, the legal process tends to dissipate significant social reform by making ing appropriate remedies unlikely. This can occur, McCann (1986, 200) points out, because policy-based litigation aimed at significant social reform is usually "disaggregate(di ... into discrete conflicts among limited actors over specific individual entitlements." Remedial decrees, it has been noted, "must not confuse what is socially or judicially desirable with what is legally required" (Special Project 1978, 855). Thus, litigation seldom deals with "underlying issues and problems" and is "directed more toward symptoms than causes" (Harris and Spiller 1976, 26). Finally, it has long been argued that framing issues in legally sound ways robs them of "political and purposive appeal" (Handler 1978, 33). In the narrow sense, the technical nature of legal argument can denude issues of emotional, widespread appeal. More broadly, there is the danger that litigation by the few will replace political action by the many and reduce the democratic nature of the American polity. James Bradley Thayer, writing in 1901, was concerned that reliance on litigation would sap the democratic process of its vitality. He warned that the "tendency of a common and easy resort" to the courts, especially in asking them to invalidate acts of the democratically accountable branches, would "dwarf the political capacity of the people" (Thayer 1901, 107). This view was echoed more recently by McCann, who found that litigation-prone activists' "legal rights approach to expanding democracy has significantly narrowed their conception of political action itself" (McCann 1986, 26). Expanding the point, McCann argued that "legal tactics not only absorb scarce resources that could be used for popular mobilization ... [but also] make it difficult to develop broadly based, multiissue grassroots roots associations of

sustained citizen allegiance" (McCann 1986, 200). For these reasons, the Constrained Court view suggests that the nature of rights in the U.S. constrains courts from being effective producers of significant social reform. Thus, Constraint I: The bounded nature of constitutional rights prevents courts from hearing or effectively acting on many significant social reform claims, and lessens the chances of popular mobilization.

Courts don't solve—lack of enforcement power

Rosenberg 08 (Gerald N. Rosenberg, Associate Professor of Political Science and Lecturer in Law at UChicago, The Hollow Hope 2nd edition published 2008 , Kindle location 266)

For courts, or any other institution, to effectively produce significant social reform, they must have the ability to develop appropriate policies and the power to implement them. This, in turn, requires a host of tools that courts, according to proponents of the Constrained Court view, lack. In particular, successful implementation requires enforcement powers. Court decisions, requiring people to act, are not self-executing. But as Hamilton pointed out two centuries ago in The Federalist Papers (1787-88), courts lack such powers. Indeed, it is for this reason more than any other that Hamilton emphasized the courts' character as the least dangerous branch. Assuaging fears that the federal courts would be a political threat, Hamilton argued in Federalist 78 that the judiciary "has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments" (The Federalist Papers 1961, 465). Unlike Congress and the executive branch, Hamilton argued, the federal courts were utterly dependent on the support of the other branches and elite actors. In other words, for Court orders to be carried out, political elites, electorally accountable, must support them and act to implement them. Proponents of the Constrained Court view point to historical recognition of this structural "fact" of American political life by early Chief Justices John Jay and John Marshall, both of whom were acutely aware of the Court's limits.12 President Jackson recognized these limits, too, when he reputedly remarked about a decision with which he did not agree, "John Marshall has made his decision, now let him enforce it." More recently, the unwillingness of state authorities to follow court orders, and the need to send federal troops to Little Rock, Arkansas, to carry them out, makes the same point. Without elite support port (the federal government in this case), the Court's orders would have been frustrated. While it is clear that courts can stymie change (Paul 1960), though ultimately not prevent it (Dahl 1957; Nagel 1965; Rosenberg 1985), the Constitution, in the eyes of the Constrained Court view, appears to leave the courts few tools to insure that their decisions are carried out. If the separation of powers, and the placing of the power to enforce court decisions in the executive branch, leaves courts practically powerless to insure that their decisions are supported by elected and administrative officials, then they are heavily dependent on popular support to implement their decisions. If American citizens are aware of Court decisions, and feel duty-bound to carry them out, then Court orders will be implemented. However, proponents of the Constrained Court view point out that survey data suggest that the American public is consistently uninformed of even major Supreme Court decisions and thus not in a position to support them (Adamany 1973; Daniels 1973; Dolbeare 1967; Goldman and Jahnige 1976). If the public or political elites are not ready or willing to make changes, the most elegant legal reasoning will be for naught. This constraint may be particularly powerful with issues of significant social reform. It is likely that as courts deal with issues involving contested values, as issues of significant social reform do almost by definition, they will generate opposition. In turn, opposition may induce a withdrawal of the elite and public support crucial for implementation. Thus, proponents of the Constrained Court view suggest that the contested nature of issues of significant social reform makes it unlikely that the popular support necessary for implementation mentation will be forthcoming.

Comprehensive reform can never happen—correcting the problem at hand always is forefronted

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

Horowitz also argues that the adjudication process also limits the courts effectiveness in several ways. Judicial decisions focus on creating a remedy for the right that was violated in a particular case (Horowitz 34**). The larger implications of a decisions, alternatives, and considerations of what makes good public policy take a back seat to correcting the problem at hand.** Furthermore, the facts of a given case are limits for judges and they prevent judges from implementing comprehensive reform with a single decision. These limits tend to force judicial policy to be made one small piece at a time (Horowitz 35). Horowitz also points out that the method of fact - finding makes the finding of social fact difficult - social fact being defined as "patterns of behavior on which policy must be based" (45). In the adversarial system, there are two parties, each making their best case before a judge who spends the hearing acting as mediator between these two extreme sides. At the end of the hearing the judge must make a decision after hearing two extreme sides of a story. The adversarial system is more adept at finding historical or adjudicated facts than finding what the larger implications of a policy will have, in part because there is no voice that presents a moderate or centrist point of view in the adjudication process (Horowitz 47).

Courts have no ability to ensure compliance

Garvock 05

(Heather L., Eastern Michigan University Digital Commons, "The Courts and the Politics of Prison Reform," Heather practices in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit, JD from Wayne State University, http://commons.emich.edu/cgi/viewcontent.cgi?article=1046&context=honors, 7/26/15, SM)

The adjudication process also leaves little room of judges to review the implementation and impact of their decisions (Horowitz 51). The ability and capacity for judges to monitor how or if their orders are complied with is limited. Further complicating the issue of compliance is the fact that judges measure compliance by whether their orders are obeyed, not whether the person who is responsible for implementing the order has the ability to implement the order (Horowitz 51). Courts are especially limited in their ability to monitor the unintended consequences of compliance with their decisions. Even if a judge recognizes the unintended consequences of their decision, that judge has no way of returning to the issue unless a plaintiff files another case (Horowitz 52).

Court Stripping DA

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Courts involving in national security issues leads to blowback

Chesney 9 (Robert, Prefessor at UT, "National Security Fact Deference," //rck)

This leaves the matter of secrecy. Secrecy relates to the collateral consequences inquiry in the sense that failure to maintain secrecy with respect to national security information can have extralitigation consequences for government operations—as well as for individuals or even society as a whole—ranging from the innocuous to the disastrous. Without a doubt this is a significant concern. But, again, it is not clear that deference is required in order

to address it. Preservation of secrecy is precisely the reason that the state secrets privilege exists, of course, and it also is the motive for the Classified Information Procedures Act, which establishes a process through which judges work with the parties to develop unclassified substitutes for evidence that must be withheld on secrecy grounds.222 3. Institutional Self-Preservation Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception—on the part of the public, the government, or judges themselves—of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response. This concern traditionally finds expression through the political question doctrine, which in its prudential aspect functions to spare judges such risks. But just because a court determines that a case or an issue is justiciable does not mean that the institutional self-preservation concern has gone away or that a judge has lost sensitivity to it. National security fact deference provides a tempting opportunity for judges to accept the responsibility of adjudication while simultaneously reducing the degree of interbranch conflict and hence the risk of political blowback. We cannot expect judges to attribute deference decisions to this motivation, of course, but we must account for the possibility—even the likelihood—that such concerns will play some role.

When Congress is bypassed, they backlash and strip courts of their jurisdiction

Donald S. **Dobkin**, 20**07** (Donald S. Dobkin is a lawyer with a Master's degree in law from Northwestern University), "Court Stripping and Limitations on Judicial Review of Immigration Cases," http://cdm16501.contentdm.oclc.org/cdm/ref/collection/federal/id/30

Congressional "court stripping," or the attempt to take jurisdiction away from courts to review matters of all types, is not new. Jurisdiction-stripping proposals were advanced in Congress as early as 1830. Between 1953 and 1968, over sixty bills were introduced into Congress to restrict federal court jurisdiction over particular topics. The 1970s and 1980s saw efforts to strip the courts of jurisdiction in busing, abortion, and school-prayer cases. Sen. Jesse Helms once proposed a bill to strip the federal courts of jurisdiction to review school-prayer cases. Barry Goldwater, upon learning of the Helms bill, dismissed the proposal as the equivalent of "outlawing the Supreme Court." Congress has for years attempted to strip courts of their jurisdiction to review actions of federal law-enforcement agencies and state courts in order to reverse decisions they do not like, punish judges, or even avoid future rulings they may not like. Federal courts, which have been essential in expanding and preserving individual rights, are now being barraged by congressional attempts to strip the courts of their power to review. Congress's decisions about the courts' jurisdiction, including appellate jurisdiction, have considerable effects on their caseloads, although not always in ways that might have been anticipated. Nowhere has this trend been more apparent than in Congress's legislation in the immigration area. With the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), a Republican Congress and the Clinton administration fundamentally altered judicial review of immigration matters. Despite this legislation restricting judicial review, the caseload at the U.S. Court of Appeals has

risen markedly, so much so that immigration cases now comprise 18 percent of the federal appellate civil docket.

Court Stripping leads to the collapse of the judicial system

Michael J. **Gerhardt**, Summer 20**05**, " The Constitutional Limits to Court Stripping," http://law.lclark.edu/live/files/9695-gerhardtpdf

Referring to the Court's decision in Martin v. Hunter's Lessee, Justice Oliver Wendell Holmes remarked, "I do not think the United States would come to an end if we [judges] lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States." Without the authority to review state court judgments on federal law recognized in Martin (and ever since), there would be no means by which to ensure uniformity and finality in the application of federal law across the United States. This would be particularly disastrous for constitutional law. Federal rights, for instance, would cease to mean the same thing in every state. States could dilute or refuse to recognize these rights without any fear of reversal; they would have no incentive to follow the same constitutional law. Indeed, many state court judges are subject to majoritarian pressure to rule against federal rights, particularly those whose enforcement would result in a diminishment of state sovereignty. The Fourteenth Amendment would amount to nothing if Congress were to leave to state courts alone the discretion to recognize and vindicate the rights guaranteed by the Fourteenth Amendment. Judicial review within the federal courts is indispensable to the uniform, resolute, and final application of federal rights protected by the Fourteenth Amendment. However, this Act, limiting jurisdiction over the Defense of Marriage Act, allows the highest courts in each of the fifty states to become the courts of last resort within the federal judicial system for interpreting, enforcing, and adjudicating certain claims under the Fifth and Fourteenth Amendments. The Act allows different state courts to reach different conclusions regarding the viability of various claims differently, without any possibility of review in a higher tribunal to resolve conflicts among the states. Thus, the Act precludes any finality and uniformity across the nation in the enforcement and interpretation of the affected rights. An equally troubling aspect of this Act is its implications for the future of judicial review. The Constitution does not allow Congress to vest jurisdiction in courts to enforce a law, but prohibit it from considering the constitutionality of the law that it is enforcing. The Task Force of the Courts Initiative of the Constitution Project unanimously concluded that "the Constitution's structure would be compromised if Congress could enact a law and immunize that law from constitutional judicial review." For instance, it would be unconstitutional for a legislature to assign the courts to enforce a criminal statute but preclude them from deciding the constitutionality of the law. It would be equally unlawful to immunize any piece of federal legislation from judicial review. If Congress could immunize its laws from the Court's power of judicial review, then Congress could use this power to insulate every piece of federal legislation from Supreme Court review. If Congress could immunize all federal laws from federal judicial review, it would eviscerate the Court's power to say what the law is with respect to the constitutionality of those laws. And, if Congress had the power to immunize all of its laws from judicial review, it is unclear why it then could not also immunize all or some state laws from judicial review by the Supreme Court. The end result would be the destruction of the Supreme Court's power of judicial review. In addition, courts must have the authority to enjoin ongoing violations of constitutional law. For example, Congress may not preclude courts from enjoining laws that violate the First Amendment's guarantee of freedom of speech. If an Article III court concludes that a federal law violates constitutional law, it would shirk its duty if it failed

to declare the inconsistency between the law and the Constitution and proceed accordingly. Proposals to exclude all federal jurisdiction would, if enacted, open the door to another, equally disastrous constitutional result—allowing Congress to command the federal courts on how they should resolve constitutional questions. In United States v. Klein, the Supreme Court declared that it seems to us that it is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power . . . . What is this but to prescribe a rule for the decision of a cause in a particular way? . . . Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department or the government in cases pending before it? We think not. . . . We must think that Congress has inadvertently passed the limit which separates the legislature from the judicial power.

2NC—Link

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2NC—Impact

Bypassing Congress through the courts leads to Court Stripping, which ravages the legal system

Ronald **Weich**, October 20**01**, "Upsetting Checks and Balances," https://www.aclu.org/sites/default/files/FilesPDFs/ACF47C9.pdf

As a practical matter, court-stripping may be self-defeating. Such legislation is typically motivated by congressional anger toward the content of certain court rulings. But removing future jurisdiction over the issue may simply serve to lock in "bad" precedent – a conundrum even some critics of so-called activist judging have acknowledged. Former Judge Bork notes that: Some state courts would inevitably consider themselves bound by the federal precedents; others, no longer subject to review, might not. The best that Congress could hope for would be lack of uniformity. This is a far cry from amending the Constitution or even overruling a case. While it may seem preferable to some to lack uniformity on a particular issue rather than to have a repugnant uniform rule, the government could not easily bear many such cases and certainly could not long endure a complete lack of uniformity in federal law. Thus there are practical limitations on excessive use of the Exceptions Clause. More troublesome is that court-stripping defeats the spirit of the Constitution. The Framers took care to create an independent judiciary to safeguard individual liberty. Removing important issues from the purview of the courts, especially those concerning the rights of unpopular minorities, is a direct assault on these constitutional protections. By the same token, Congress does great harm to the integrity of the federal judiciary when it leaves issues before the courts, but attempts to manipulate how judges may remedy violations of constitutional or statutory rights. Even scholars who believe that the Constitution allows significant congressional control of federal jurisdiction generally agree it would be unwise to invoke it over any significant category of federal law or use it to achieve a desired substantive outcome. Thus Professor Gerald Gunther, writing at the time Congress was considering court-stripping bills in the early 1980s regarding abortion, busing and school prayer, concluded "I would urge the conscientious legislator to vote against the recent jurisdiction-stripping devices because they are unwise and violate the 'spirit' of the Constitution, even though they are, in my view, within the sheer legal authority of Congress." Put another way, "[w]hat may be conceivable in theory would be devastating in practice to the real world system of checks and balances that has enabled our constitutional system to function for 200 years."

Congress can strip courts of authority; even Supreme Court agrees

Martin J. **Katz**, Summer 20**09**, " GUANTANAMO, BOUMEDIENE, AND JURISDICTION-STRIPPING**:** THE IMPERIAL PRESIDENT MEETS THE IMPERIAL COURT," http://www.law.du.edu/documents/directory/publications/Jurisd_Strip_2009_0202.pdf

A. Stripping Jurisdiction from Lower Federal Courts: The first question in the jurisdiction-stripping debate is whether Congress can restrict the jurisdiction of the lower federal courts (district courts and circuit courts) to hear a particular type of case. This question assumes that only the lower federal courts are closed - that the Supreme Court's original and appellate jurisdiction remains intact. Proponents of allowing this form of jurisdiction-stripping point to the text of Article III, which gives Congress the power to "ordain and establish" lower federal courts. The argument is that (1) the Ordain and Establish Clause gave Congress discretion over whether to create lower federal courts, and (2) if Congress could decline to create lower federal courts, then Congress can limit such courts' jurisdiction. Most commentators today seem to accept the basic idea that the Ordain and Establish Clause permits Congress to restrict or even eliminate the jurisdiction of the lower federal courts. Some of these commentators have also suggested that there might be limits on this power. For example, nearly all commentators have suggested that the "ordain and establish" power is limited by substantive provisions elsewhere in the Constitution, such as the Equal Protection Clause; so Congress could not, for example, preclude jurisdiction only over cases brought by African Americans or Catholics. [n19] Also, as noted above, most of the commentators who believe Congress has the power to limit lower federal court jurisdiction assume that some alternative court would remain open to hear the cases in question - an assumption which is likely incorrect in a case like Boumediene. But subject to these two potential limits, [n21] the "traditional view" is that Congress can exercise its "ordain and establish" power to close lower federal courts. The courts, too, [n23] seem largely to accept the "traditional view" - that Congress has the power to restrict lower federal court jurisdiction. The Supreme Court has, on at least five occasions, suggested that Congress can limit lower federal court jurisdiction pursuant to the Ordain and Establish Clause. However, none of these cases appears to have tested the potential [*384] limits on the exercise of this power. As I will discuss below, Boumediene suggests such a limit. B. Stripping the Supreme Court's Appellate Jurisdiction: The second question in the jurisdiction-stripping debate is whether Congress can strip the Supreme Court of its appellate jurisdiction. This question assumes that the lower federal courts, as well as the Supreme Court's original jurisdiction, remain open. The idea that Congress can strip the Supreme Court of its appellate jurisdiction flows primarily from the text of Article III, which gives Congress the power to make "Exceptions, and ... Regulations" to the Supreme Court's appellate jurisdiction. At least some commentators have gone beyond this simple textual argument to suggest a structural purpose underlying this textual provision: that the Framers included this language to provide [*385] Congress with a means to check the power of the Supreme Court. Most commentators accept the idea that the Exceptions Clause permits Congress to exercise such control over the Supreme Court's appellate jurisdiction. However, some notable commentators have suggested that there might be some limits on this power. For example, Professor Hart argued that Congress cannot use this power to destroy the "essential functions" of the Supreme Court, which include maintaining the supremacy and uniformity of federal law. Others have suggested that, at least in certain types of cases, Congress cannot use its Exceptions Clause power in a way that would foreclose all avenues to the Supreme Court. As with the issue of lower court jurisdiction-stripping, the Supreme Court has only occasionally weighed in on the issue of Supreme Court appellate jurisdiction-stripping. The Court has said several times that Congress can use its Exceptions Clause [*386] power to restrict the Court's appellate jurisdiction. However, in repeated dicta, the Court appears to have endorsed one limit on this power: Congress may need to leave open some avenue by which certain types of cases can be litigated in federal court (and possibly the Supreme Court). But the Court never actually struck down a law limiting its appellate jurisdiction on these grounds - until Boumediene.

Court stripping works retroactively, preventing enforcement of laws

Tom **Wicker**, 4-24-19**81**, " In The Nation: Court Stripping," http://www.nytimes.com/1981/04/24/opinion/in-the-nation-court-stripping.html

…The "Court-stripping plan" of the Mssrs. Helms, Crane et al actually goes further. Eliminating the Supreme Court's jurisdiction over whole classes of cases would mean that the Court could not even enforce rulings already made in those areas. Thus, Court-stripping would work retroactively, not just on future cases. This is not an idle threat. No one should discount Jesse Helms's power. Even in the last Congress, the Senate passed

his stripping bill on school prayer; it missed coming to the House floor by only 32 votes (on a petition to discharge it from the Judiciary Committee). In the new, more conservative Congress, and with the tacit support - so far at least - of President Reagan, that particular bill's chances of passage are ominous. So, probably, are those of stripping bills on school busing and abortion. But won't the Supreme Court itself declare such measures unconstitutional? Probably, but if by the time they reach the Court Mr. Reagan has appointed one or two new "conservative" justices, who can tell? And in the meantime, severe damage could be done to what people have thought were constitutional rights. Court-strippers make a constitutional argument, of sorts, based on Article III, Section 2, which makes Supreme Court jurisdiction subject to "such exceptions ... as the Congress shall make." They say the framers adopted this language precisely for situations where the Court might have "usurped" power or misinterpreted the Constitution. If so, nobody explained that intention in the Federalist papers or other writings of the time. Most constitutionalists, including many conservatives, believe the provision was intended for lesser "housekeeping" purposes and deny that it gives Congress authority to prevent the Court from making constitutional interpretations. Representative Robert Kastenmeier of the House Judiciary Committee points out that "to do so would make (members of Congress) the sole judges of what the Constitution is." And former Solicitor General Robert Bork of the Yale Law School says the exceptions clause would have been an "odd way for the framers to have provided for Congressional revision of Court decisions," since it would "create chaos." It would do so by leaving state court decisions on constitutional matters unreviewed by the Supreme Court. Thus, if the states ruled variously on, say, abortion, American citizens in one state could have constitutional rights not enforced in another. And any time Congress didn't like Supreme Court rulings in some area - on gun legislation, for example - it could strip the Court of jurisdiction in that field. In fact, of course, the motivation for Court-stripping is political, not constitutional. Strippers like Mr. Helms and Mr. Crane want to prohibit abortion and school busing and overturn a 17-yearold ruling of the Court on school prayer. But they fear they do not have the votes to pass a constitutional amendment on any of those issues. So they are attempting to muscle their way through a back door Congress has never before been willing to open - not when the same disingenuous arguments were made for Court-stripping during the era of McCarthyism, or when they were put forward after the landmark school desegregation case of 1954. True conservatives should be first among those opposed to this radical power grab.

Court stripping sends a signal that undermines global democracy—lack of respect for federal courts

Gerhardt 05

(Michael, Lewis & Clark Law Review, "The Constitutional Limits to Court-Stripping," http://law.lclark.edu/live/files/9695-gerhardtpdf, 7/27/15, SM)

V. CONSTITUTIONAL STRUCTURE FURTHER BARS CONGRESS FROM∂ ELIMINATING FEDERAL JURISDICTION OVER CLAIMS AGAINST∂ FEDERAL OFFICIALS∂ Another aspect of federalism, to which I have alluded, is that it is not just∂ concerned with protecting the states from federal encroachments. It also∂ protects the federal government and officials from state encroachments. In a∂ classic decision in Tarble's Case,∂ 38 the Supreme Court held that the∂ Constitution precluded state judges from adjudicating federal officials' compliance with state habeas laws. The prospect of state judges exercising∂ authority over federal officials is not consistent with the structure of the∂ Constitution. They could then direct, or impede, the exercise of federal power.∂ The Act, however, allows state courts to do this. By stripping all federal∂ jurisdiction over certain claims against federal officials, the Act leaves only∂ state courts with jurisdiction over claims brought against those officials. It∂ further leaves only to the state courts enforcement of the provisions of the Bill∂ pertaining to federal officials.39 The popular will might lead state judges to be∂ disposed to be hostile to federal claims or federal officials. Hostility to the∂ federal claims poses problems with the Fifth Amendment, while hostility to∂ federal officials poses serious federalism difficulties.∂ Beyond the constitutional defects with the Act,40 it may not be good∂ policy. **It may send the wrong signals to the American people and to people∂ around the world**. It expresses hostility to our Article III courts, in spite of their∂ special function in upholding constitutional rights and enforcing and∂ interpreting federal law**. If a branch of our government demonstrates a lack of∂ respect for federal courts, our citizens and citizens in other countries may have∂ a hard time figuring out why they should do otherwise**. Rejecting proposals to∂ exclude all federal jurisdiction or inferior court jurisdiction for some∂ constitutional claims extends an admirable tradition within Congress and∂ reminds the world of our hard-won, justifiable confidence in the special role∂ performed by Article III courts throughout our history in vindicating the rule of∂ law.

Democracy checks genocide

Mcdoom, Omar Shahabudin, 9-1-20**14**, London School of Economics, UK"Dartmouth Get It," Political Geography, Vol. 42 pg. 34-45 //MV

Second, scholars have argued regime type matters because autocracies and democracies impose different constraints on the exercise of the state's massive power (Harff, 2003, Horowitz, 1976 and Rummel, 1995). Institutionalist and normative causal logics exist. In the institutionalist explanation, autocracies are better able to commit genocide because effective power is often concentrated in a single institution (e.g. the Presidency), whereas in democracies it is often diffused across multiple institutions. In the normative explanation, democracies are less likely to commit genocide because they generally respect human rights and value tolerance, whereas autocracies, especially totalitarian regimes, generally do not. Weaker constraints give the ruling elite stronger control of the state's power. Lastly, scholarship has highlighted elite strategy because the decision to commit genocide often results from the calculation of the privileged few who control the state's power (B. A. Valentino, 2004). Genocide has for instance been considered a survival strategy or a calculated response to a threat posed to the ruling elite's control of the state's power (Figueiredo & Weingast, 1999). Extreme threats generate extreme responses. Together, these three ideas point to the importance of elite control of the state's power. This control matters not only at the national level, but at the local level too. For in localities where the extremist elite's control is weak, resistance to the pressure for violence will be high.

Court stripping kills the Court's reputation, credibility, and legitimacy

Martin 06

(Andrew D., Institutional Games and the US Supreme Court, published by the University of Virginia Press, Andrew is a professor of political science and statistics @ the University of Michigan, faculty associate at the Center for Political Studies in the Institute for Social Search, p. 12)

I begin with the benefits. Assuming that Congress does not respond adversely to a statutory interpretation decision, the Court accrues a policy benefit: it is able to read its policy preferences into law and, perhaps, fundamentally change the course of public policy. But that impact may only be transitory, because it is possible that future presidents and Congresses will amend the statue in question, thus overriding the Court's interpretation. In so doing, the other actors may render the Court's decision meaningless. In contrast, owing to the difficulty of altering them both in the short and long terms, constitutional decisions are less permeable. Accordingly, they have greater policy value to the justices because they also have a prescriptive benefit that statutory decisions do not. When the Court finds a constitutional basis, its decision does not merely hold for the particular law under analysis but also is binding on all future action. Constitutional decisions set the parameters with which the contemporaneous Congress and president—as well as their successors—must comply. ∂ But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even **irrevocably harm its reputation, credibility, and legitimacy**. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as Scott v. Sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling's impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

Legitimacy is key for rule of law and implementation—that turns case

Schapiro 13

(Robert A., 8/5/13, CS Monitor, "Objection! Americans' opinion of Supreme Court can't keep dropping," http://www.csmonitor.com/Commentary/Opinion/2013/0805/Objection!-Americans-opinion-of-Supreme-Court-can-t-keep-dropping)

Public confidence in the judiciary provides a critical foundation for a society committed to the rule of law. As America's unelected justices confront controversial questions, the legitimacy of their decisions depends on public support for the institution. The court must rely on other government officials, including elected leaders and law enforcement officers, to implement its rulings. Examples around the world suggest that obedience to judicial decisions may well depend on the level of respect that the courts enjoy.

Rule of law and strong judiciaries solve war, terror, failed states, econ, effective power projection

Feldman 8

(Noah, 9/25/08, NYT, "When Judges Make Foreign Policy," http://www.nytimes.com/2008/09/28/magazine/28law-t.html, 7/28/15, SM)

Looking at today's problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn't the court defer to the decisions of the elected president and Congress? Aren't judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: **the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world**. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way. For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. We need to build and rebuild alliances — and law has historically been one of our best tools for doing so. In our present precarious situation, it would be a terrible mistake to abandon our historic position of leadership in the global spread of the rule of law. Our leadership matters for reasons both universal and national. Seen from the perspective of the world, the fragmentation of power after the cold war creates **new dangers** of disorder that need to be mitigated by the sense of regularity and predictability that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse

of all. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration's lawyers often insisted that law was a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of "lawfare" as a threat to the United States is based on a misunderstanding of the very essence of how law operates. Law comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker people or states by promising them rules and a fair hearing than by threatening them constantly with force. After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

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AT CASE

AT solvency

Even if the aff abolishes prisons, it doesn't solve the myriad of ways black people are oppressed---it's better to reject reform entirely

Shirley 14 - has been involved in a range of (anti) prison related groups for about eight years. Most recently he's been involved with a project that corresponds with prisoners and solicits and disseminates their news and analysis across North Carolina's prison system, co-authored the book Dixie Be Damned: 300 Years of Insurrection in the American South

(Neal, "Abolition and Dystopia," http://maskmagazine.com/the-alien-issue/struggle/a-few-notes-on-abolition-and-dystopia)//BB

A century and a half ago, a huge social struggle was waged over the question of slavery on this continent. Slave uprisings and mass escapes were increasingly common, and conflicts internal to the ruling class over what kinds of colonial and industrial expansion should take place added to the tension. The American Civil War was a product of the state intervening in this struggle, and it resulted in **new regimes** of bondage and control. ∂ The loophole in the 13th amendment, which abolished slavery "except as a punishment for crime whereof the party shall have been duly convicted," made this abundantly clear, and the politics of Reconstruction even more so. While occupying the former Confederacy, the Union Army itself enforced labor contracts by which Black people were often made to work for their former masters. Former slaves were evicted from lands they had taken over, industrial projects increased in number and scope, and the wage labor and convict lease systems favored by northern capitalists solved the labor problem created by the absence of slavery. Bondage was not destroyed by slavery's abolition – it was democratized.∂ Today, we witness an unprecedented renewal of the discourse of "abolition," now with the idealistic gaze firmly set upon the massive prison-industrial complex that has come to define our lives, in particular those of young men of color. This rhetorical framework, by which "radical" reforms, activism, and technological development will replace prisons and even policing, has emerged not just in the usual mish-mash of liberal and leftist scenes, but in the **very heart of the capitalist State** . Fueled by the financial collapse of 2008 and subsequent budget crises, everyone from Democratic hopefuls to right-wing judges can be heard sounding the call: We need to shrink prisons, move away from "mass incarceration," and develop "alternatives" to prison. All of a sudden, the president and his opposition all sound an awful lot like Angela Davis.∂ The vanguard of this political development is also a technological one: emergent technologies in population analytics, biometrics, genetic mapping, and computing systems suddenly make prison abolition a real possibility for 21st century state and capitalism. Take the booming technology of ankle bracelets, for example. ∂ North Carolina has tripled the use of electronic monitors since 2011. California has placed 7,500 people on GPS ankle bracelets as part of a realignment program aimed to reduce prison populations. SuperCom, an Israeli-based Smart ID and electronic monitor producer, announced in early July 2014 that they were jumping full force into the US market, predicting this will be a $6 billion-a-year global industry by 2018. The praise singers of electronic monitoring are also re-surfacing. In late June 2014, high-profile blogger Dylan Matthews posted a story on Vox Media, headlined "Prisons are terrible and there's finally a way to get rid of them." He enthusiastically argued that the most "promising" alternative "fits on an ankle."∂ The techno-utopian vision here is boundless. One pair of enthusiasts even drafted a document, "Beyond the Bars," that envisions a world where "advanced risk modeling, geospatial analytics, smartphone

technology, and principles from the study of human behavior" allow for a smartwatch to control the movement of entire populations. ∂Maybe this sounds like conspiracy theorist nonsense – like a scene from Hollywood's renewed obsession with dystopian settings – but think about all the developments we've already accepted into daily life that could make this totalizing reality possible: metal detectors at public schools, drug tests at public housing, breathalyzer machines in our cars, police body cameras, mass data collection via cell phones, GPS, halfway houses, community policing substations and permanent police checkpoints at the entrances to certain neighborhoods, city planning courses at universities, DNA mapping...The list is pretty endless, and it doesn't take a paranoid wingnut to start to understand how prisons might actually be abolished. Instead of prison being a discrete, physical place, a "state of exception" from normal life that houses only a small minority of the population, prison would become a nameless normality, something a plurality if not majority of people are interacting with, in some version, every day. Like slavery, imprisonment **would not be destroyed** – it would be **democratized**.∂ None of this goes to say that we shouldn't destroy prisons. Prison and police are the absolute enemy of all liberatory efforts in the 21st century, by desire and necessity. But we would do well not to fall into the same limitations as did slavery's critics in the antebellum United States. However broad its proponents may declare their concerns to be, prison abolitionism, in its name, scope, and vision, is primarily limited to **reforming one aspect** of domination and oppression in this society, not destroying that form of control. And it **offers the state a crucial escape route** through already existent strategies and technologies of profit, punishment, and control.∂We would do better to **reject every reform** and technological solution offered by the economy, **confront rather than accept** the gradualism of activist policy makers, and participate uncompromisingly in **active revolt** wherever it occurs. Developing our own communities of care and solidarity as we rebel against the world around us, offers the only real "alternative to prison." As a discourse, "abolition" has immediate appeal, but the fruit it will most likely bear can already be seen in the reflection of a body camera or heard in the **quiet beeping of an ankle bracelet**.

Back-end mechanisms ensure surveillance continues

Salins and Simpson, 13--Loyola University Chicago School of Law (Lauren Salins and Shepard Simpson, "Efforts to Fix a Broken System: Brown v. Plata and the Prison Overcrowding Epidemic", Loyola University Chicago Law Journal, Lexis)//emchen

C. A Glance at Proactive Reform There are two general ways in which states can proactively, instead of reactively, implement prison reform: "front-end" and "back-end" mechanisms. 253 Front-end mechanisms focus on how to keep non-violent, low-risk offenders from entering the prison system, while back-end efforts focus on how to effectively manage the rehabilitation of prior offenders and prevent them from returning to the system. 254 Front-end efforts **include the diversion** of low risk offenders by increasing reliance on **community service sanctions**, **electronic monitoring, and day reporting centers**, while reducing reliance on requirements such as pre-trial detention, three strikes laws, and habitual offender laws. 255 Back-end mechanisms involve parole eligibility, which is commonly affected by truth-in-sentencing laws, sentence or good-time credit programs, and infirmity-based release. 256

The plan fails—releasing some but not all prisoners leads to a good-bad prisoner mentality which only allows the prison nation to continue

Schenwar, 14—Truthout's editor-in-chief, board of advisors on Waging Non-Violence (Maya, excerpt from the book Locked Down, Locked Out: Why Prison Doesn't Work and How We Can

Do Better, published by Berrett-Koehler, "What if We Abolished Prisons: Can decarceration work?", Alternet, www.alternet.org/books/what-if-we-abolished-prisons)//emchen

Decarceration Nation Lillie Branch-Kennedy of Richmond, Virginia, didn't encounter the matrix of the criminal punishment system by choice. "I wish from the bottom of my heart that I never had to learn firsthand about **America's world record for mass incarceration**, and about Virginia's criminal system that targets and ensnares young black men," says Lillie, who founded the Resource Information Help for the Disadvantaged (RIHD), an advocacy group for Virginia prisoners and their families. Sixty-one percent of state prisoners are black; for every white person incarcerated in Virginia, six black people are behind bars. That number includes Lillie's son Donald. In 2001, Donald—who was attending Virginia State on a scholarship but had recently begun "running with the wrong crowd"—was arrested as an accessory to a robbery. For a crime that would ordinarily carry a sentence of 3 to 8 years, Donald was sentenced to **127**. As the summer before his junior year of college wound to an end, instead of returning to school, Donald was bussed off to prison: Wallens Ridge, a supermax in the Appalachian mountains, a steep eight-hour drive from Lillie's home. With her son caged in twenty-three-hour-a-day lockdown and her life pinned to the commute to see him, Lillie couldn't ignore the system. So she decided to take it on. In addition to coordinating transportation for prisoners' family members (providing monthly van trips to four Virginia state prisons), Lillie steered RIHD toward decarceration advocacy, traveling the state to rally family members against various manifestations of the prison-industrial complex, from "ban the box" campaigns (eliminating criminal background questions from initial employment forms) to ending mandatory-minimum sentencing to bringing back parole, which has been abolished in Virginia since 1995. Lillie's not timid about her commitment to broad-scale decarceration; she rejects a recent Virginia bill aimed at reinstating parole for people convicted of nonviolent crimes only, which entrenches a sort of "good prisoner vs. bad prisoner" mentality. "It's **unfair and discriminatory**," she says. Lillie knows that **no single group can triumph over the prison nation**—and RIHD isn't going it alone. It's part of a growing coalition of local campaigns called Nation Inside, which is sweeping the country by way of ground-level activism, Facebook, Twitter, email, blogs, "storybanks," petitions, and a multifaceted website where new efforts are continually sprouting up.

The plan can't solve the tens of millions of people subject to civil rights violations beyond the prison cell

Chin, 12— Professor of Law, University of California, Davis, School of Law (Gabriel J., 2012, "THE NEW CIVIL DEATH: RETHINKING PUNISHMENT IN THE ERA OF MASS CONVICTION", *University of Pennsylvania Law Review*)//emchen

Therefore, in addition to any incarceration or fine, you are subject to legal restrictions and limitations on your **civil rights**, conduct, employment, residence, and relationships. For the **rest of your life**, the United States and any State or locality where you travel or reside may impose, at any time, additional restrictions and limitations **they deem warranted**. Their power to do so is limited only by their reasonable discretion. They may also require you to pay the expense of these restrictions and limitations. For many people convicted of crimes, the most severe and longlasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities. The **magnitude** of the problem is greater than ever. The commonly used term "mass incarceration" implies that the most typical tool of the criminal justice system is imprisonment. Indeed, there are two million people in American prisons and

jails, a huge number, but one which is dwarfed by the **six-and-a-half million** or so on probation or parole and the **tens of millions** in free society with criminal records. 11 The vast majority of people who have been convicted of crimes are not currently in prison. However, because of their criminal records, they remain subject to **governmental regulation** of various aspects of their lives and concomitant imposition of benefits and burdens. People convicted of crimes are not subject to just one collateral consequence, or even a handful. Instead, hundreds and sometimes thousands of such consequences apply under federal and state constitutional provisions, statutes, administrative regulations, and ordinances.12

The affirmative is circumvented—empirics—and states and local systems of governance can fill in

Chin, 12— Professor of Law, University of California, Davis, School of Law (Gabriel J., 2012, "THE NEW CIVIL DEATH: RETHINKING PUNISHMENT IN THE ERA OF MASS CONVICTION", *University of Pennsylvania Law Review*)//emchen

Borrowing from its English forebears, the United States once had a form of punishment called civil death. Civil death extinguished most civil rights of a person convicted of a crime and largely put that person **outside the law's protection**. Civil death as an institution faded away in the middle of the twentieth century. Policymakers recognized that almost all convicted persons eventually rejoin society, and therefore, it was wise and fair to allow them to participate in society with some measure of equality. This Article proposes that civil death has **surreptitiously reemerged**. It no longer exists under that name, but effectually a new civil death is meted out to persons convicted of crimes in the form of a substantial and permanent change in legal status, operationalized by a network of collateral consequences. A person convicted of a crime, whether misdemeanor or felony,1 may be subject to disenfranchisement2 (or deportation if a noncitizen3), criminal registration and community notification requirements,4 and the ineligibility to live, work, or be present in a particular location.5 Some are not allowed to live outside of civil confinement at all.6 In addition, the person may be subject to occupational debarment7 or ineligibility to establish or maintain family relations.8 While the entire array of collateral consequences may not apply to any given person, the State is always able to add new disabilities or to extend existing limitations. As a practical matter, every criminal sentence contains the following unwritten term: The law regards you as having a "shattered character."9 Therefore, in addition to any incarceration or fine, you are subject to legal restrictions and limitations on your civil rights, conduct, employment, residence, and relationships. For the rest of your life, the United States and any State or locality where you travel or reside may impose, at any time, additional restrictions and limitations they deem warranted. Their power to do so is **limited only by their reasonable discretion**. They may also require you to pay the expense of these restrictions and limitations. For many people convicted of crimes, the most severe and longlasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities. The magnitude of the problem is greater than ever. The commonly used term "mass incarceration" implies that the most typical tool of the criminal justice system is imprisonment. Indeed, there are two million people in American prisons and jails, a huge number, but one which is dwarfed by the six-and-a-half million or so on probation or parole10 and the tens of millions in free society with criminal records. 11 The vast majority of people who have been convicted of crimes are not currently in prison. However, because of their criminal records, they remain subject to governmental regulation of various aspects of their lives and concomitant imposition of benefits and burdens. People convicted of crimes are not subject to just one collateral consequence, or even a handful. Instead, hundreds and sometimes thousands of such consequences apply under federal and state constitutional provisions, statutes, administrative regulations, and ordinances.12

Even if the federal government does not directly facilitate collateral punishments, society would still impose them—they're legal under the Constitution

Chin, 12— Professor of Law, University of California, Davis, School of Law (Gabriel J., 2012, "THE NEW CIVIL DEATH: RETHINKING PUNISHMENT IN THE ERA OF MASS CONVICTION", *University of Pennsylvania Law Review*)//emchen

As one Ohio court recognized in 1848, "[D]isabilities . . . imposed upon the convict" are "part of the punishment, and in many cases the most important part."13 As practically important as collateral consequences are, in a line of cases examining individual restrictions, the Court has held they are subject to extremely limited constitutional regulation. 14 Because collateral

consequences are deemed to be something other than criminal sanctions, they can generally be applied without notice from the court or defense counsel at the time of a guilty plea. 15 Moreover, new ones can be imposed retroactively after plea bargains have been made and sentences fully satisfied.16 There is a little-noticed but significant countertradition. In Weems v. United States17 and Trop v. Dulles,18 the Supreme Court found punishments cruel and unusual under the Eighth Amendment in part because of burdensome and systematic collateral consequences.19 In addition, alongside cases holding that particular collateral consequences were not punishment, other Supreme Court decisions have shaped the right to jury trial, right to counsel, and other aspects of criminal procedure in light of the fact that collateral consequences are at stake in criminal judgments. The Court's cases, then, simultaneously suggest that individual **collateral** consequences are not punishment, but that systematic loss of legal status in the form of actual or potential subjection to an interlocking system of collateral consequences is punishment. This paradox can be reconciled by understanding the degradation of a convict's legal status to be a unitary punishment, the **new civil death**. Exclusively at issue in this Article are legal consequences imposed by state action, not social stigma or status in the sense of reputation or esteem. To illustrate, that some may choose not to hire or marry a person with a criminal record is **not a collateral consequence** of conviction or a part of civil death as used here; however, **legal prohibitions** on hiring or marriage of convicted persons would be.20 In addition, the wisdom, fairness, efficiency, and justice of the new civil death are important topics, but ones beyond the scope of this Article.21 Instead, the primary goal is to show that civil death both exists and is **constitutionally significant**. This Article proceeds in three parts. Part I describes the historical punishment of civil death, its decline, and its revival in the form of a system of collateral consequences imposed by positive law based on criminal conviction. Part I also describes the lenient judicial regulation of these restrictions, which has generally found individual collateral consequences to be "civil" and "regulatory" and thus **not subject to constitutional** limits applicable to criminal punishment. Part II proposes that civil death should be constitutionally cognizable by showing that the systematic loss of legal status, subjecting an individual to numerous collateral consequences, has historically been treated as criminal punishment. In addition, the Supreme Court has frequently recognized the role of criminal convictions in imposing collateral consequences and shaped criminal procedure to account for this reality. Part III proposes a reconciliation of the Court's holdings, showing that while the Court has held that individual collateral consequences are not punishment, it has nevertheless held that systematic loss of legal status is. It also describes some of the implications of understanding a civil death loss of legal status to be an inherent element of criminal, not civil, punishment, or at least that such a loss ought to be a subject of constitutional concern.

AT solvency – cap alt caus / cap k link

Capitalism is the root cause of racism—it's how racism was originally codified into law—turns the case

Heitzeg, 15—Professor of Sociology and Critical Studies of Race and Ethnicity at St. Catherine University (Nancy A., "On the Occasion of the 50th Anniversary of the Civil Rights Act of 1964: Persistent White Supremacy, Relentless Anti-Blackness, and the Limits of the Law", Hamline Journal of Public Law & Policy, Lexis)//emchen

For this reason, in combination with the excessive over-representation of African Americans in the criminal justice system and the prison industrial complex, this analysis will largely focus on the ways in which **the law has been a tool for the oppression** of African Americans via the furtherance of white supremacy and anti-blackness in both law and practice. While race has never reflected any biological reality, it is indeed a powerful social and political construct. In the U.S. and elsewhere, it has served to delineate "whiteness" as the "unraced" norm -- the "unmarked marker" -- while hierarchically devaluing "other" racial/ethnic categories with Blackness always as the antithesis. 13 The socio-political construction of race coincides with the age of exploration, the rise of "scientific" classification schemes, and perhaps most significantly capitalism. In the United States, the solidification of racial hierarchies cannot be disentangled from the [*58] capitalist demands for "unfree" labor and expanded private property. By the late 1600s, race had been a marker for either free citizens or slave property, and colonial laws had reified this decades before the Revolutionary War. 14 The question of slavery was at the center of debates in the creation of the United States and is referenced no less than ten times. 15 By the time of the Constitutional Convention of 1787, the racial lines defining slave and free had already been rigidly drawn -- white was "free" and black was "slave" -- and the result according to Douglass was this: "assume the Constitution to be what we have briefly attempted to prove it to be, radically and essentially pro-slavery". 16 The Three-Fifths Clause, the restriction on future bans of the slave trade and limits on the possibility of emancipation through escape were all clear indications of the **significance of slavery** to the Founders. The legal enouncement of slavery in the Constitution is one of the first of many "racial sacrifice covenants" to come, where the interests of Blacks **were sacrificed for the nation**. 17 The social and constitutional construction of white as free and Black as slave has on-going political and economic ramifications. According to Harris, whiteness not only allows access to property, may be conceived of per se as "whiteness as property". 18 These property rights produce both tangible and intangible value to those who possess it; whiteness as property includes the right to profit and to exclude, even the perceived right to **kill in defense** of the borders of whiteness. 19 As Harris notes: The concept of whiteness was premised on white supremacy rather than mere difference. "White" was defined and constructed in ways that increased its value by reinforcing its exclusivity. Indeed, just as [*59] whiteness as property embraced the right to exclude, whiteness as a theoretical construct evolved for the very purpose of racial exclusion. Thus, the concept of whiteness is built on both exclusion and racial subjugation. This fact was particularly evident during the period of the most rigid racial exclusion, as whiteness signified racial privilege and took the form of status property. 20 Conversely, Blackness is defined as outside of the margins of humanity as chattel rather than persons, and defined outside of the margins of civil society. Frank Wilderson, in "The Prison Slave as Hegemonys (Silent) Scandal," describes it like this: "Blackness in America generates no categories for the chromosome of history, and no data for the categories of immigration or sovereignty. It is an experience without analog -- a past without a heritage." 21 Directly condemned by the Constitution in ways that other once excluded groups (American Indians, women, immigrants, LGBTQ) were not, Blackness as marked by slavery-- as property not person - **creates an outsider status** that makes future inclusion a daunting challenge. 22 Any doubts as to the centrality of white supremacy built on anti-blackness were erased in the case of Scot v. Sanford (1857), where a majority of the Supreme Court denied the citizenship claims of Dred Scott and went further to declare that The Missouri Compromise requirement of balance between free and slave states in the expanding United States was a violation of the due process rights of slave holders. 23 Referring to the legal status of African Americans, Justice Taney's opinion for the majority makes it painfully clear, [*60] They are not included, and were not intended to be

included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government **might choose to grant them**.. 24

AT solvency – courts fail

Courts can't solve – Jim Crow and Supreme Court rulings prove

Butler '13 (Butler, Paul D. Law Professor at Georgetown University Law School. Lawyer. Former Prosecutor. "Authentication Required." The Yale Law Journal. Yale Law School, 2013. Web. <http://site.ebrary.com.proxy.lib.umich.edu/lib/umich/reader.action?docID=10493931>.)

The two decisions diffuse the dissent that might be expected by the existence of a permanent racially defined underclass because they provide an "amusementpark version of social change." 121 In The Racial Origins of Modern Criminal Procedure, 122 Professor Michael Klarman links the development of constitutional criminal procedure to an effort by the Supreme Court to advance racial justice in the South in the era before World War II. He examines four landmark cases in which the Supreme Court held that convictions obtained in mob-dominated trials violated the Fourteenth Amendment right to due process of law, established a right to counsel in capital cases, invalidated a conviction because blacks had been intentionally excluded from the jury, and declared that the right to due process made confessions based on torture inadmissible.123 According to Klarman, "none of these rulings had a very significant direct impact on Jim Crow justice. For example, few blacks sat on southern juries as a result of Norris v. Alabama, and black defendants continued to be tortured into confessing, notwithstanding Brown v. Mississippi."124 Klarman diverges from the critique of rights, however, in his hopeful analysis of the indirect effects of the cases. He advances the possibility that these cases were "more important for their intangible effects: convincing blacks that the racial status quo was not impervious to change; educating them about their rights providing a rallying point around which to organize a protest movement; and perhaps even instructing oblivious whites as to the egregious nature of Jim Crow conditions."125 Finally, Professor William Stuntz noticed certain "perverse"126 effects of criminal procedure: as rights have expanded, things have gotten worse for accused persons. Specifically, "underfunding, overcriminalization, and oversentencing have increased as criminal procedure has expanded."127 The problem is that actors in the criminal justice system can respond to judicial declarations of rights "in ways other than obeying them."128 States reacted to Warren Court criminal procedure holdings by making the substantive criminal law more punitive, to compensate for the rights provided to accused persons. The result was that criminal cases were focused on procedure. Stuntz believes that this caused American criminal justice to "unravel."129 Rather than focus on procedural rights, the Warren Court should have used "the federal Bill of Rights . . . to advance some coherent vision of fair and equal criminal justice."130 Stuntz's critique is not so much a critique of rights as a critique of the Court's reliance on procedural rights specifically. 131 One lesson we might garner from these three commentators is that procedural rights may be especially prone to legitimate the status quo, because "fair" process masks unjust substantive outcomes and makes those outcomes seem more legitimate. In contrast, a right to a minimum wage, while it may legitimate unequal distribution of wealth, substantively improves the condition of the least well-off in material ways.

1nc squo solves – Clinton

Hillary solves the case

Brekhus 4/29 (Brekhus, Keith. Master's Degree in Sociology from the University of Missouri He holds a Master's Degree in Sociology from the University of Missouri. "Hillary Clinton Comes Out Swinging For Reform, Wants To End "Era Of Mass Incarceration"." PoliticusUSA. The Associated Press, 29 Apr. 2015. Web. <http://www.politicususa.com/2015/04/29/hillary-clinton-swinging-reform-era-mass-incarceration.html>.)

During the speech, the Democratic candidate for president spoke about Baltimore and the emergence of clear national pattern, "For yet again, the family of a young black man is grieving a life cut short. Yet again, the streets of American city are marred by violence. By shattered glass, by shouts of anger, and by shows of force. Yet again, a community is reeling. Its fault lines laid bare, and its bonds of trust and respect frayed. Yet again, brave police officers have been attacked in the line of duty. What we have seen in Baltimore should, indeed I think does, tear at our soul. From Ferguson to Staten Island to Baltimore, the patterns have become unmistakable and

undeniable." Clinton provided something of a sneak preview of her speech at a Tuesday night fundraiser in New York City. She told donors that criminal justice reform was needed, and that the nation needed to end its policy of mass incarceration for non-violent drug offenders. Her comments were greeted with enthusiastic applause. She shared her thoughts with the audience, stating: It's heartbreaking. The tragic death of another young African American man. The injuries to police officers. The burning of people's homes and small businesses. We have to restore order and security. But then we have to take a hard look as to what we need to do to reform our system. In Clinton's Wednesday address, she outlined a detailed list of reforms including requiring police officers to wear body cameras, shifting to a treatment rather than an incarceration approach to drug offenders, and increasing funding for mental health programs. Clinton also discussed racial disparities in the current justice system, where African-Americans are disproportionately searched, arrested, and convicted. She also to pointed out that when convicted, black defendants are sentenced to longer prisons sentences on average than whites convicted of the same crimes. Hillary Clinton's willingness to address the deep injustices embedded inside America's criminal justice system is refreshing, particularly against the backdrop of the Baltimore riots. Historically, the easiest path for a politician to take during civil unrest is to court "backlash voters" by talking the tough language of the"law and order" reactionary. Fortunately, rather than exploiting people's base fears to drum up votes, Clinton is opting to take the issue of criminal justice reform head on. By calling for meaningful changes to how the police departments and the courts in America operate, Hillary Clinton is signaling that she intends to shake up the law enforcement Status quo. That call for change is long overdue, and it is refreshing that a major presidential candidate intends to add her voice to the growing chorus demanding criminal justice reform.

1nc squo solves – SAFE

Federal prison reform is coming in the status quo- SAFE justice act takes out all of their offense

Jones, fellow at MIT, 6/25 [Van, fellow at the MIT media lab, political commentator, founder of the Ella Baker Center for Human Rights, which promotes criminal justice reform; Color of Change, which works for racial fairness through its one million members; Green for All, which lifts people out of poverty through green job training and job creation, and; Dream Corps Unlimited/Rebuild the Dream, which promotes innovative policy solutions, also an attorney, CNN, (2015). Opinion: Getting smart about justice - CNN.com. [online] Available at: http://www.cnn.com/2015/06/25/opinions/jones-criminal-justice-reform/ [Accessed 6 Jul. 2015]./VL

Over the past 40 years, the United States has fought the drug war in the worst way possible -- by jailing those who simply needed help with their addiction or mental illness. Meanwhile, we have targeted and disproportionately sentenced black and brown Americans, as well as those from poorer neighborhoods. And we have created a system that costs too much, imprisons too many, and does too little to truly keep us safe. Now, nearly 25% of the entire world's prison population is behind bars right here in the land of the free. The federal prison population in particular has skyrocketed, soaring more than 800% since 1980. With all this in mind, there are three reasons we should all be excited about the SAFE Justice Act. First, the act will safely and smartly reduce our prison population over time. It will refocus our prison system on those who are an immediate threat to others, not people caught in a police sweep with a small amount of marijuana. The act will also reform mandatory minimums to help snag big traffickers -- but without condemning

nonviolent offenders to long prison sentences. Instead, it will expand the use of alternative sentencing like probation, drug courts, and medical treatment for addiction or mental illness. And finally, it will help people get their lives back on track when they get home. It does all this in smart, sensible ways that have already been piloted and proven at the state level. Both red and blue states have shown that you can lower prison populations, reduce costs, and cut crime by instituting evidence-based alternatives to sentencing, giving judges more discretion, and allowing targeted releases of those who are unlikely to offend again. In short, the SAFE Justice Act will bring those who pose no danger back to their families by taking the best of state policy and implementing it at the federal level. That is how our system should work. Second, the act offers a chance at comprehensive justice reform legislation. The reality is that our system of mass incarceration is simply too interconnected and complex to fix piecemeal. It makes little sense, for example, to send people home from prison without changing the way the "felon" label marks them for life -- preventing them from voting, getting jobs, or even having roofs over their heads. Reforming re-entry into the community without revising mandatory minimums for nonviolent drug crimes leaves too many in jail for far too long -- far longer than other advanced nations. Reinvent prisons without transforming policing and sentencing, and you simply replace one generation of the needlessly jailed with another. There are a number of good bills that have been introduced in the Senate that do in fact accomplish pieces of what the SAFE Justice Act does. But to reform an interlocking and tightly woven system, we need comprehensive fixes like this one. Finally, the SAFE Justice Act presents a chance for bipartisan justice reform. Both parties created this mess. Both parties must fix it. Richard Nixon may have declared the war on drugs, and Ronald Reagan may have turned it into a war on the impoverished, but Bill Clinton also helped create today's mass incarceration nightmare. Republicans control both houses of Congress, meaning nothing will move without bipartisan support. Indeed, in the real world, there is no functional difference between holding out for justice reform with no Republicans involved and opposing reform altogether. It is time to come together, because suffering families do not have the luxury of waiting for ideological purity. In states across the nation, leaders have taken a deep breath, stepped across the aisle, implemented serious reforms -- and it has worked. In fact, a range of existing justice reform legislation in the U.S. Senate has bipartisan co-sponsors. Criminal justice is one of the few issues where right and left agree, most recently demonstrated by a huge Bipartisan Summit on Criminal Justice Reform in Washington. That potential is coming together in a big way. Can such promise be fulfilled? I believe there is nobody more trusted to fix the prison system than Bobby Scott. And there is nobody more committed to cheaper, more effective government than Jim Sensenbrenner. If these two men can work together, then so can everyone else.

Solves the aff- this is the largest reform bill in history

Lind 6/25 [Dara, The House may be ready for major, bipartisan criminal justice reforms. [online] Vox. Available at: http://www.vox.com/2015/6/25/8846673/safe-justice-act [Accessed 7 Jul. 2015]./VL

The Safe Justice Act is a collection of dozens of different reforms. Most of them aren't terribly big on their own, but many of them overlap. That makes it really hard to estimate exactly how much the federal prison population would shrink if the bill became law. But its effect would be bigger than anything that's been introduced in Congress so far. Many of the reforms would cut sentences for drug crimes — which reflects a growing consensus that nonviolent drug offenses aren't as bad as violent crimes. Drug prisoners are about half of all federal prisoners (unlike in

states, where violent crime is the biggest cause of incarceration). That means that many of the Safe Justice Act's biggest reforms would target the largest slice of the federal population.

Will pass- incredible amount of bipartisan support from both groups and politicians

Erbentraut 6/26 [Joseph, The Huffington Post, (2015). Bipartisan Criminal Justice Reform Bill Could Cut Crime, Reduce Recidivism And Save Money. [online] Available at: http://www.huffingtonpost.com/2015/06/26/safe-justice-act-criminal-justice-reform_n_7665430.html [Accessed 7 Jul. 2015]./VL

The legislation, titled the Safe, Accountable, Fair, Effective (SAFE) Justice Act, is the outcome of the congressmen's work leading the House Judiciary Committee's Over-criminalization Task Force, which heard testimony from criminal justice experts over the past year and a half, according to a joint news release issued by Scott and Sensenbrenner's offices. The bill, H.R.2944, would apply at the federal level lessons from successful state efforts to reduce recidivism and decrease the number of non-violent inmates in prisons. The bill already boasts 20 additional co-sponsors, including 10 Republicans and 10 Democrats. "We cannot allow our criminal justice system to remain on its current trajectory," Sensenbrenner said in a statement. "It's not only fiscally unsustainable, but morally irresponsible." The comprehensive legislation proposes a broad set of reforms to the U.S. justice system, including increasing the use of sentencing alternatives such as probation for lower-level, non-violent offenders; encouraging judicial districts to operate mental health, veteran and other problem-solving courts; and prioritizing prison space for violent and "career" criminals by expanding the release of geriatric and terminally ill offenders. In addition, the bill would expand earned-time policies to more inmates who participate in programs to reduce their recidivism risk; introduce mental health and de-escalation training programs for prison staff; and require performance-based contracting for halfway houses, among a number of other reforms. The legislation has the support of groups including the NAACP, the Police Foundation, the American Civil Liberties Union, the American Conservative Union and Families Against Mandatory Minimums.

2nc squo solves – SAFE Will Pass

Will pass- top shelf

Harper 6/27 [Casey, The Daily Caller. 2015. 'Congress Set To Take On Criminal Justice Reform This Year'. Accessed July 8 2015. http://dailycaller.com/2015/06/27/congress-set-to-take-on-criminal-justice-reform-this-year//VL

Mark Holden, general counsel and senior vice president at Koch Industries, told The Daily Caller News Foundation Friday that although it's still up in the air, in his conversations congressmen tell him they're optimistic it could pass this year. He agrees, hoping to "strike while the iron is hot." A key provision in the bill would make it more difficult for agencies to create regulations with criminal penalties, and those regulations would sunset after five years if not renewed. "That's the problem," Holden told TheDCNF. "We've decided we want to make criminal a lot of things that aren't criminal, and it's a huge cost, human, societal, fiscal, all around, so yeah I think if that could happen that would be great for everybody. That's a major part of the bill, the reversal of this trend of overcriminalization particularly by regulatory agencies." The bill is expected to significantly shrink the prison population, partially by treating drug criminals much differently than violent and sex criminals. Some drug criminals would have opportunities to have their sentences reduced by going through programs set up for them. "The federal system is really a

dinosaur in the way that it relies almost entirely on prison, and lots of it, to address drug crime," Molly Gill, government affairs counsel for Families Against Mandatory Minimums, told TheDCNF. "The states are much more innovative and recognize that prison is both an expensive and ineffective solution to drug crime." The bill has bipartisan support from 10 Republican original sponsors and 10 Democrat original sponsors, as well as groups as diverse as Koch and the American Civil Liberties Union. "I think there are some great bills in the Senate. but there has been a bunch of them and there isn't one in the way that this one feels like it's a vehicle where they can get all of these different organizations and all of their networks and all of their money and partnerships that exist outside of the house to push this as a vehicle," Matt Haney, director of policy for the criminal justice reform group Cut50, told TheDCNF. Growing discontentment with the criminal justice system has been fueled by a plethora of police brutality cases, a growing resentment toward the drug war, and the financial strain put on states that can no longer afford to house their burgeoning prison populations. "I live in the district where Freddie Gray lived," Rep. Elijah Cummings said in a press conference Thursday. "I live within a few blocks of where he died, and…our country is better than this. What we are doing absolutely no sense. I don't know that the stars will align this way, the way I've got these folks in the room…I don't know whether they will align this way in my lifetime, at least my political lifetime, so lets take advantage of this."

Will pass- assumes gridlock and conservative leadership

Lind 6/25 [Dara, The House may be ready for major, bipartisan criminal justice reforms. [online] Vox. Available at: http://www.vox.com/2015/6/25/8846673/safe-justice-act [Accessed 7 Jul. 2015]./VL

In the year 2015, it is extremely hard to get any sort of bill through Congress. And Sensenbrenner, Scott, and their fellow reformers have a narrow window before the presidential campaign saps Congress of any will to act it has left. So the barriers are pretty high. But this isn't, in itself, supposed to be a polarizing bill. The presence of Sensenbrenner and other old-school Republicans reflects that. And this is something that both houses of Congress have been debating for some time. If House leadership decides to snatch up the Safe Justice Act and bring it to the floor quickly, it might give the Senate enough time to act. Maybe they'll be interested in the provisions that would make it a little harder for the federal government to treat regulatory violations as crimes; that's a pet cause of conservatives, even those who aren't otherwise committed to reforming criminal justice). Still, House leadership might not be interested. But this is the broadest bill that's been introduced during the current wave of criminal justice reform, and it's a marker of just how much consensus there is among reformers in both parties when it comes to reducing federal incarceration.

Will pass: Bipartisan and especially supported by conservatives

Gingrich, Former House Speaker, and Nolan 6/25 [NEWT GINGRICH [Speaker of the House 95-99, House Minority Whip 89-95], PAT NOLAN: How to fix the federal prison system. [online] The Washingtion Times. Available at: http://www.washingtontimes.com/news/2015/jun/25/newt-gingrich-pat-nolan-how-to-fix-the-federal-pri/?page=all [Accessed 5 Jul. 2015]./VL

Of all the hot-button issues that divided conservatives and liberals over the past generation, few sparked more heated debate than crime and punishment. In the past decade, however, that has changed. In a remarkable political turnaround, criminal justice reform has emerged as a rare area

of bipartisan agreement in an otherwise sharply divided Congress. We are delighted that both parties are working together to find solutions to the crisis in our justice system. And we are particularly proud that conservatives have taken a leadership role in the effort. On Thursday, Rep. Jim Sensenbrenner, Wisconsin Republican, and Rep. Bobby Scott, Virginia Democrat, introduced the Safe, Accountable, Fair and Effective Justice Act of 2015 (SAFE), a bill that reforms the criminal justice system from top to bottom. The bill applies lessons learned in the states, and combines many of the best features of congressional proposals on justice reform from the last few years. These reforms come none too soon. Our federal prisons are in crisis, and expanding at a rapid pace. Between 1980 and 2013, the federal incarceration rate jumped 518 percent as we sent more people to prison and kept them there longer.

Even "tough-on-crime/old-school" conservatives support it

Lind 6/25 [Dara, The House may be ready for major, bipartisan criminal justice reforms. [online] Vox. Available at: http://www.vox.com/2015/6/25/8846673/safe-justice-act [Accessed 7 Jul. 2015]./VL

The bipartisan movement for criminal justice reform has been growing and gaining momentum for nearly a decade, with dozens of states cutting prison sentences and adopting "data-driven" rehabilitation policies. Now a group of members of the House of Representatives is trying to get Congress to follow the states' lead, with a bill called the Safe Justice Act — which bundles together a lot of relatively small reforms into a package that could reduce the federal prison population significantly. Over the past couple of years, momentum on criminal justice reform has been in the Senate, which has considered bills such as the Smarter Sentencing Act (to cut congressionally mandated minimum sentences) and the Corrections Act (to allow some inmates to earn time off their sentences while in prison). The Safe Justice Act is bigger than either of those bills — it includes variations on both of them, as well as a lot of other things — but it's also a little more politically cautious. And criminal justice reformers on both the left and the right are extremely excited about it. While Senate efforts at criminal justice reform have exposed a generational split in the Republican Party, in which young reformers like Senators Mike Lee and Rand Paul face off against old-school, tough-on-crime conservatives like Senators Chuck Grassley and Jeff Sessions, the House's bill was written by one of those old-school Republicans — Rep. James Sensenbrenner of Wisconsin — as well as Rep. Bobby Scott (D-VA). Sensenbrenner and Scott think of the Safe Justice Act as a federal version of the criminal justice reform bills that have been taken up in state after state over the past several years, many of them under the mottos of "justice reinvestment" and "smart on crime." In their minds, they're building on what's worked in the states and are in line with reformers' emphasis on "data-driven" and "evidence-based" criminal justice policymaking.

A/T 3%- your empirics don't assume unique factors about the bill, just generic assertions run by an algorithm

GovTrack '15 ["H.R. 2944 — 114th Congress: Sensenbrenner-Scott Over-Criminalization Task Force Safe, Accountable, Fair, Effective Justice Reinvestment Act of 2015." www.GovTrack.us. 2015. July 8, 2015. <https://www.govtrack.us/congress/bills/114/hr2944>/VL

The following factors determined this bill's prognosis: The sponsor is on a committee to which the bill has been referred, and the sponsor is a member of the majority party. ▲ The sponsor is in the majority party and at least one third of the bill's cosponsors are from the minority party. ▲ There is at least one cosponsor from the majority party and one cosponsor outside of the majority

party. ▲ At least two cosponsors serve on a committee to which the bill has been referred. ▼ The bill was referred to House Judiciary. ▼ The bill was referred to House Energy and Commerce. ▼▲ Key: ▲ Correlated with successful bills. ▼ Correlated with unsuccessful bills. ▲▼ Correlated with bills that don't get past committee and with bills that are enacted. Correlation may not indicate causation.

2nc squo solves – SAFE Solvency

Solves the aff- empirics/research

Bobby Scott Media Center 6/25 [2015, Safe, Accountable, Fair, and Effective (SAFE) Justice Act of 2015, Two-page Summary. Accessed 8 July 2015. http://bobbyscott.house.gov/media-center/press-releases/sensenbrenner-scott-introduce-bipartisan-state-tested-criminal-justice/VL

The SAFE Justice Act, like the comprehensive corrections reforms enacted in many states, draws from the large and growing body of research about what works to reduce recidivism, including the following principles:

To deter offending, use swift and certain responses – Research demonstrates that delayed, unpredictable, and severe responses are less effective than swift, certain, and fair sanctions. Swift and certain responses—both punishments and rewards—are more effective because they help offenders see the response as a direct consequence of their behavior and because offenders heavily discount uncertain and distant responses.

States that have implemented swift and certain responses include Washington, Georgia, and West Virginia.

Earned time policies can reduce recidivism – Research demonstrates that rewards and incentives can work to change offending behavior and reduce recidivism. The benefits of earned time policies for inmates and earned compliance credits for offenders under probation or post-release supervision include lower costs (through accelerated release) and lower recidivism (by shifting correctional resources to those offenders who continue to violate rules and break laws).

States that have built earned time into their prison systems include Kentucky, Maryland, and Louisiana. States that have built earned time into their supervision systems include South Dakota, Mississippi, and Arkansas.

For drug offenders, sentence strategically – The most vicious, predatory and high-level drug offenders warrant prison cells to avert the harm they cause to individuals and communities, but research shows that long terms of incarceration for the vast majority of mid-level couriers, distributors and dealers has little impact on public safety. While imprisonment may temporarily disrupt a drug market, the "replacement effect"—whereby new recruits quickly replace those imprisoned for mid-level roles—negates the impact of incarceration on drug price, availability, or related crime. Instead, prison time should be focused on violent or kingpin drug traffickers who are controlling the marketplace.

States that have recalibrated their drug sentencing systems to differentiate higher-level from lower-level offenders include South Dakota, Georgia, and South Carolina.

Focus on high-risk offenders – For many lower-level offenders, especially those whose criminal conduct is driven largely by substance abuse, alternatives like drug and mental health courts,

treatment programs, and intensive supervision both hold offenders accountable and work better to reduce recidivism. In fact, research suggests that for many lower-risk and less serious offenders a prison sentence may actually be responsible for an increase in recidivism by encouraging anti-social ties and breaking bonds at home.

Solves the aff- mandatory minimums and reforms drug laws

Lind 6/25 [Dara, The House may be ready for major, bipartisan criminal justice reforms. [online] Vox. Available at: http://www.vox.com/2015/6/25/8846673/safe-justice-act [Accessed 6 Jul. 2015]./VL

Most changes to prison sentences in Congress have focused on cutting mandatory minimum sentences, which force judges to sentence people to five, 10, or 20 years for certain drug crimes. But across-the-board cuts to mandatory minimums have been met with serious resistance from old-school Republicans, including Senate Judiciary Chair Chuck Grassley (R-IA). The House's solution, via the Safe Justice Act, isn't to reduce the mandatory minimums themselves — but to narrow the range of people who they apply to. Instead of someone who's convicted of trafficking a certain amount of cocaine being automatically sentenced to 10 years, for example, he'd only trigger the 10-year minimum if he were also a leader or organizer of an organization of five or more people. And even then, the bill says that judges can override the mandatory minimum if the defendant doesn't have much of a criminal history, or has a serious drug problem. The bill would also make it possible for more people to be sentenced to probation instead of getting sent to prison. It would allow drug offenders to get probation if they'd been convicted of low-level drug crimes before. It would encourage judges to give probation to first-time low-level offenders. And it would encourage districts to start up drug courts and other "problem-solving courts"; some states have found these are better ways to treat some addicts than prison is. This gives judges a lot more authority to determine how much prison time someone actually needs to serve, given the particulars of his case — or whether he needs something else entirely. Prisoners could get 33 percent off their prison terms for participating in programming Current prisoners whose sentences would have been affected by the bill's front-end reforms could apply to get their sentences reduced that way. But the Safe Justice Act would also give them another way to reduce their sentences: by getting time off for rehabilitation. Under the bill, every federal prisoner would get an individual case plan, based on what particular prison education, work, substance abuse, or other programs are the best fit for his needs. For every month a prisoner follows the case plan, he'd get 10 days off his prison sentence — meaning a prisoner with a perfect behavior record could get his sentence reduced by a third. (Prisoners serving time for homicide, terrorism, or sex crimes aren't eligible for time off, but that's a very small slice of the federal prison population.) The logic is that prisoners who want to rehabilitate themselves, and whose good behavior shows they're succeeding, shouldn't be forced to spend extra time in prison just for prison's sake. The bill goes even further when it comes to probation — which affects many more people than prison. For every month of perfect behavior on probation, the offender would get 30 days off the end of his sentence — essentially cutting the probation term in half. If the offender violated probation, on the other hand, there would be a set of gradually escalating punishments, instead of an automatic ticket back to prison.

Solves the aff and avoids the violent offenders DA

Romero, Executive Director of the ACLU, and Holden, general counsel of Koch Industries, 7/7 [Anthony and Mark, POLITICO Magazine. 2015. 'A New Beginning

For Criminal Justice Reform'. Accessed July 8 2015. http://www.politico.com/magazine/story/2015/07/a-new-beginning-for-criminal-justice-reform-119822.html./VL

First, it begins the process of reversing over-criminalization and the over-federalization of the criminal code. The act forces the federal government to disclose the creation of new criminal offenses — a common-sense action that would clarify just how large the criminal code is and how fast it has grown. It also empowers the victims of federal over-criminalization to seek redress via the Office of the Inspector General. It also contains various reforms to protect against wrongful conviction, reduce pre-trial detentions, and eliminate federal criminal penalties in state jurisdictions, including penalties for actions such as drug possession. Second, it would reform sentencing. Today, mandatory minimums force too many people to plea to lengthy prison sentences — punishments that may not fit the crime. The act seeks to undo this broken system by encouraging judges to offer probation to low-level offenders, while increasing pre-judgment probation. It also would restrict mandatory minimums to specific categories of people — such as high-level members of drug-trafficking organizations rather than street dealers — as originally intended by Congress. Third, it would reduce recidivism. Too often, the criminal justice system's flaws turn federal prisons into revolving doors for repeat offenders. The legislation proposes to address this problem with a number of reforms, including shorter sentences for people who participate in specific educational and vocational programs. These reforms can ensure that people who leave federal prison are better equipped to rejoin their communities and contribute to society. Fourth, it would increase transparency. The bill would require that federal agencies issue regular reports on recidivism rates, prison populations and other key statistics. It also would require that cost analyses be presented to judges prior to sentencing to help them make prudent decisions.

STATES CP

1nc

All 50 states and localities should model New York, New Jersey, and California's decarceration programs:

-----Modify mandatory minimum and truth-in sentencing laws

-----Reform Laws with racially disparate impacts

-----Increase alternatives for juvenile sentencing

-----Reclassify low-level felonies to misdemeanors

-----Remove post-incarceration collateral consequences

Porter, Director of Advocacy at the Innocence Project, '15 [Nicole, former director of the Texas ACLU's Prison & Jail Accountability Project, February 2015, 'The State of Sentencing 2014.' Pg. 13. Accessed 6 July 2015. http://www.sentencingproject.org/detail/publication.cfm?publication_id=583&id=106/VL

During 2014, lawmakers enacted a number of legislative changes to improve criminal justice policy. While the pace has accelerated in recent years, most of these measures will have only a modest impact on the scale of incarceration. It will take more far-reaching measures to markedly reduce the nation's rate of incarceration, which is far above that in other western nations. Given the limited impact of incarceration on crime, there is potential for significant reductions in state prison population. A recent analysis by The Sentencing Project documented prison population declines of 25% in three states -- New York, New Jersey, and California – and found that crime declines in these states generally mirrored or exceeded national declines. Individual circumstances vary by state, but lawmakers should be guided by reforms demonstrated to substantially reduce state prison populations.

The declining prison populations of California, New York, and New Jersey were not simply the result of falling crime rates; rather, prisons were downsized through a mix of policy and practice changes designed to reduce admissions to prison and lengths of stay. Key reforms that contributed to these prison population declines included:

• California's dramatic prison population reduction was primarily driven by the state's effort to comply with a court order to deal with prison overcrowding, including enacting legislative reforms for the state's Realignment plan.

• New York's changes in policy and practice that largely affected enforcement and sentencing for drug offenses in New York City.

• New Jersey officials downsized the state's prison population through a mix of front-end reforms that lowered the number of admissions and back-end reforms that increased rates of parole and reduced parole revocations.

The reality that states have authorized law changes with the intent of lowering prison populations offers a continued opening to address the nation's scale of incarceration. Revising the policy and

practice that has resulted in the largest prison population in the world offers an opportunity to broaden approaches to public safety. These include:

Mandatory sentences and truth-in-sentencing laws that limit parole have not only put more individuals in costly prison cells for longer stretches but have also reduced the discretion of officials to release them on parole. In 2014, several states changed statutory penalties for certain offenses: California reclassified six low level drug and property offenses, eliminating prison as a sentencing option; Florida lawmakers eliminated the mandatory minimum for simple possession of certain illegal prescription drug offenses, and Mississippi legislators modified truth-in-sentencing requirements for persons with violent offenses.

Lawmakers can use their capacity to address sentencing policies known to result in racial disparities. During 2014, California lawmakers targeted statutory penalties found to have a racially disparate impact by equalizing quantity triggers for intent-to-sell powder and crack cocaine offenses. In recent years lawmakers in Missouri, Ohio, and South Carolina have enacted similar measures. Statutory remedies to address racial disparity should also include those such as the Illinois law that repealed a 20 year old statute that required the automatic transfer of 15 and 16 year olds accused of certain drug offenses within 1,000 feet of a school or public housing. The law was found to be racially biased, unnecessary, and unfair, resulting in youth of color comprising 99% of those automatically transferred to adult court.

Officials have worked to reduce the number of juveniles in secure detention by increasing reliance on alternatives like non-secure shelters for youth who can't safely return home, evening reporting centers, and expanded used of evidence-based treatment programs. During 2014, lawmakers in Hawaii and Kentucky enacted comprehensive juvenile justice reforms that included reducing out-of-home placements and prioritizing therapeutic interventions.

In many instances persons with prior criminal records experience stigma long after their conviction. Collateral consequences of a criminal conviction include bans on voting, employment, and housing. During 2014 several states adopted policies to address these issues, including California and Missouri modifying the implementation of the federal felony drug ban. A salient collateral consequence reform was included in California's Proposition 47, a measure that allows for the retroactive reclassification of felony offenses to misdemeanors, removing the civil sanctions associated with felony convictions.

2nc states key

States incarcerate the most inmates in the US

Mitchell, Policy Analyst, and Leachman, Director of State Fiscal Research, '14 [Michael [State Policy Fellow for the Washington State Budget & Policy Center] and Michael [policy analyst for nine years at the Oregon Center for Public Policy (OCPP), community organizer in Chicago] 10/28/14, Center on Budget and Policy Priorities, 'Changing Priorities: State Criminal Justice Reforms And Investments In Education | Center On Budget And Policy Priorities'. Accessed July 7 2015. http://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education.

State corrections systems incarcerate the vast majority of prisoners in the United States. State prisons account for 87 percent of the total prisoner population, with the remaining 13 percent under federal jurisdiction.[2] When one considers the broader population of incarcerated people --

that is, including inmates in local jails either awaiting sentence or serving a term of less than one year -- state prisons account for just under 60 percent of all people behind bars at any given point in time.[3]

State and local reform solves better than the aff does

Guo '15 [Jeff, Reporter, 2/23/15, 'John Legend Is Right: Prisons Are Disproportionately Black. The Worst States Are Some Of The Whitest.'. Washington Post. Accessed July 7 2015. http://www.washingtonpost.com/blogs/govbeat/wp/2015/02/23/john-legend-is-right-prisons-are-disproportionately-black-the-worst-states-are-some-of-the-whitest/.

The American prison system is largely the domain of the states. At any given time, far more people are in state prison or local jails than in federal prison. According to the 2010 Census, only about 11 percent of people behind bars were in federal lockup. (This includes people in detention awaiting trial.) At the federal level, only about 7 percent of convicted prisoners were guilty of a violent crime, while over half are there on drug charges. At the state level, the proportions are reversed. Just over half of people are locked up for violent crimes, while 19 percent are there for property crimes — theft, fraud, etc. — and 16 percent for drug crimes. (These numbers are from a Bureau of Justice Statistics report, which goes on to break down the populations by race.) To put it in perspective, that is still about 46 percent of state prisoners who are behind bars for non-violent crimes. With many states struggling with overcrowding in their prisons, governors across the country are looking for ways to lower their incarceration rates, starting with the large populations of non-violent offenders.

The number of people in state and local jails vastly outnumbers federal prison

The Economist 6/20 [The right choices. [online] Available at: http://www.economist.com/news/briefing/21654578-americas-bloated-prison-system-has-stopped-growing-now-it-must-shrink-right-choices [Accessed 6 Jul. 2015]./VL

No country in the world imprisons as many people as America does, or for so long. Across the array of state and federal prisons, local jails and immigration detention centres, some 2.3m people are locked up at any one time. America, with less than 5% of the world's population, accounts for around 25% of the world's prisoners. The system is particularly punishing towards black people and Hispanics, who are imprisoned at six times and twice the rates of whites respectively. A third of young black men can expect to be incarcerated at some point in their lives. The system is riddled with drugs, abuse and violence. Its cost to the American taxpayer is about $34,000 per inmate per year; the total bill is around $80 billion. Things were not always this way. In 1970 America's state and federal prisons together held just under 200,000 inmates. In 2013, the latest year for which figures are available, the number of people in federal prisons, which hold only people convicted of federal crimes such as drug-smuggling or fraud, was itself more than 200,000 (see chart). There were almost 1.4m more inmates in state prisons; and there were over 700,000 people locked up in jails, some of them serving short sentences, the majority of them awaiting trial. Most of the inmates were men, but at 113 per 100,000 the incarceration rate of black women is higher than the overall incarceration rate in France or Germany. Prison conditions are often poor; many of those locked up have no proper access to training, education or rehabilitation.

State and local prisons make up over 80% of the prison population

Wagner, is an attorney and the Executive Director of the Prison Policy Initiative, 28 May **2014**

(Peter, “Tracking State Prison Growth in 50 States”, pg 1, http://www.prisonpolicy.org/reports/overtime.html)

Most (57%) people incarcerated in the United States have been convicted of violating state law and are imprisoned in a state prison. Another 30% are confined in local jails — which are outside the scope of this briefing — generally either for minor violations of state law or because they are waiting to be tried for charges of violating state law**. Federal-level policy directly accounts for only the 10% of people behind bars in the U.S.;** they have either been convicted of violating a federal law or are being detained by the immigration authorities and are awaiting potential deportation to another country. In the aggregate, these state-level policy choices have been the largest driver of our unprecedented national experiment with mass incarceration, but not every state has contributed equally or consistently to this phenomenon. In the U.S., each state is responsible for making its own policy choices about which people to lock up and how for long. **We can’t end our nation’s experiment with mass incarceration without grappling with the wide variety of state-level criminal justice policies, practices and trends.**

The counterplan solves 7 times better than the aff

The Economist 6/20 [The right choices. [online] Available at: http://www.economist.com/news/briefing/21654578-americas-bloated-prison-system-has-stopped-growing-now-it-must-shrink-right-choices [Accessed 6 Jul. 2015]./VL

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2nc solvency

Alternative treatment is key to reducing prison populations

Mitchell, Policy Analyst, and Leachman, Director of State Fiscal Research, ’14 [Michael [State Policy Fellow for the Washington State Budget & Policy Center] and Michael [policy analyst for nine years at the Oregon Center for Public Policy (OCPP), community organizer in Chicago] 10/28/14, Center on Budget and Policy Priorities, 'Changing Priorities: State Criminal Justice Reforms And Investments In Education | Center On Budget And Policy Priorities'. Accessed July 7 2015. http://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education.

Decriminalize certain activities and reclassify certain low-level felonies. The increased use of prison -- and longer prison sentences -- to punish crimes such as the possession of certain drugs, like marijuana, has contributed heavily to the growth in mass incarceration. Lawmakers should look to reduce or eliminate criminal penalties for such crimes when doing so would not affect public safety. Expand the use of alternatives to prison for non-violent crimes and divert people with mental health or substance abuse issues away from the criminal justice system altogether. Policymakers should assess the range of sentencing alternatives available in their state, such as drug and mental health courts and related treatment, community correction centers, community service, sex offender treatment, and fines and victim restitution. Whenever possible, people whose crimes stem from addiction or mental illness should be diverted into treatment programs rather than sent to prison. These treatment programs should be high-quality and adequately funded.[45]

Alternative Sentencing for juveniles solves

Ghandnoosh, PhD, '15 [Nazgol, research analyst at The Sentencing Project who conducts and synthesizes research on criminal justice policies, February 2015, 'Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System.' Pgs 23-24. Accessed 6 July 2015. http://www.sentencingproject.org/detail/publication.cfm?publication_id=577&id=120/VL

• In Berks County, PA, officials were able to reduce the number of youth in secure detention – most of whom were youth of color – by 67% between 2007 and 2012 in part by increasing reliance on alternatives. These included non-secure shelters for youth who cannot safely return home but did not require locked detention, evening reporting centers, electronic monitoring, and expanded use of evidence-based treatment programs. Because many of these youth had committed technical violations of their probation terms, this broader range of alternatives made it possible to keep them out of detention without harming public safety.

• In 2004, Illinois expanded alternative community programs and decreased reliance on detention. By 2007, detentions had been reduced by 44% across the state's four pilot sites. The sites created a wide variety of programs, including Aggression Replacement Training, Functional Family Therapy, a community restorative board, teen court, and substance abuse treatment. For every $1 spent on the programs, $3.55 in incarceration costs were avoided.

• Other jurisdictions have reduced the proportion of youth of color in detention by adopting graduated sanctions for probation violations. In Rock County, WI, graduated sanctions and incentives for probation violators, such as Aggression Replacement Training and evening reporting, helped drop the percentage of youth of color in the total detention population from 71% to 30%. Similarly, in Union County, NC, the use of graduated sanctions for youth who violated probation helped to decrease the representation of youth of color in the total detention population by 32%.

Reclassifying misdemeanors will reduce prison populations

Mitchell, Policy Analyst, and Leachman, Director of State Fiscal Research, '14 [Michael [State Policy Fellow for the Washington State Budget & Policy Center] and Michael [policy analyst for nine years at the Oregon Center for Public Policy (OCPP), community organizer in Chicago] 10/28/14, Center on Budget and Policy Priorities, 'Changing Priorities: State Criminal Justice Reforms And Investments In Education | Center On Budget And

Policy Priorities'. Accessed July 7 2015. http://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education.

State incarceration rates have risen primarily because states are sending a much larger share of offenders to prison and keeping them there longer. States can reduce their incarceration rates - without harming public safety - by reclassifying low-level felonies to misdemeanors where appropriate, expanding the use of alternatives to prison (such as fines and victim restitution), shortening jail and prison terms, and eliminating prison sentences for technical violations of parole/probation where no new crime has been committed.

A number of states have enacted criminal justice reforms in recent years. Some have reduced prison populations sharply; reforms in New Jersey, New York, and California for example, helped drive down prison populations in each of those states by roughly 25 percent - while crime rates have continued to fall.[1] In most states, though, reforms have not had a large impact on the size of prison populations, which remain extremely high nationally. Moreover, states rarely have directed the savings from reform explicitly to human capital investments (such as education) or low-income neighborhoods.

That releases thousands of inmates

Ghandnoosh, PhD, '15 [Nazgol, research analyst at The Sentencing Project who conducts and synthesizes research on criminal justice policies, February 2015, 'Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System.' Pg. 25. Accessed 6 July 2015. http://www.sentencingproject.org/detail/publication.cfm?publication_id=577&id=120/VL

California voters in November 2014 approved Proposition 47, which reclassifies a number of low-level offenses from felonies to misdemeanors.120 This allows 10,000 incarcerated individuals to petition to have their sentences reduced. Moreover, a significant portion of projected state prison savings each year will be allocated to preventing crime from happening in the first place. This includes investments in mental health and substance abuse treatment, programs to reduce school truancy and prevent dropouts, and support for victim services.

Collateral Consequences causes recidivism

Ghandnoosh, PhD, '15 [Nazgol, research analyst at The Sentencing Project who conducts and synthesizes research on criminal justice policies, February 2015, 'Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System.' Pg. 18 Accessed 6 July 2015. http://www.sentencingproject.org/detail/publication.cfm?publication_id=577&id=120/VL

Reentry is obstructed by the collateral consequences of a criminal conviction. A criminal record creates overwhelming odds against securing steady employment.80 Moreover, those with felony drug convictions are disqualified from receiving federal cash assistance, food stamps, and publicly subsidized housing in many areas.81 Combined with heightened surveillance, these obstacles contribute to three of four people released from prison arrested within 5 years, and half being re-imprisoned.82

2nc federal circumvention

The plan will get circumvented- lack of a radical political climate means systemic changes will not last

Gottschalk, Political Science Professor, '09 [Marie, 5/1/2009, Specializes in American politics, with a focus on criminal justice, health policy, race, the development of the welfare state, and business-labor relations at the University of Pennsylvania. University lecturer for two years in the People's Republic of China, visiting scholar at the Russell Sage Foundation in New York, named a Distinguished Lecturer in Japan by the Fulbright Program, served on the American Academy of Arts and Sciences National Task Force on Mass Incarceration, member of the National Academy of Sciences Committee on the Causes and Consequences of High Rates of Incarceration. The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad. Law & Social Inquiry, 34: 439–472. doi: 10.1111/j.1747-4469.2009.01152.x/VL

By giving structural problems primacy in efforts to end mass incarceration, we are essentially accepting that the extensive US penal system is here to stay for a very long time to come. After all, structural problems call for comprehensive, often expensive, long-term solutions and commitments. Long-term fixes are problematic not just because they take a long time. As Brodeur notes, they are nettlesome because they are harder to sustain from one change of administration to the next. In the case of the United States, the absence of a respected, expert, nonpartisan civil service that maintains policy continuity, despite political shifts, compounds the problem. The focus on structural problems overshadows the fact that about two-thirds of the people in prison are serving time for nonviolent offenses, many of them property or petty drug offenses that would not warrant a sentence in many other countries. It also deflects attention away from the fact that prisons exacerbate many social ills that contribute to crime and poverty and are unlikely to significantly rehabilitate anyone. Other countries that once had exceptionally high incarceration rates, notably Finland, successfully brought down their rates by focusing on changes in penal policy rather than by mounting a sustained attack on structural problems and the root causes of crime (Lappi-Seppälä 2007, 234; Brodeur 2007, 75).

Four decades ago, the United States had many of the same structural problems it has today, but it did not have such an expansive penal system. Since then, the United States has embarked on a war on drugs and a broader war on crime characterized by penal policies and penal conditions unprecedented in modern US history and unheard of or disdained in other developed countries. A deeper commitment to lifting many more people out of poverty is an admirable goal. But by making that the centerpiece of any penal reform agenda, opponents of the carceral state risk losing a sense of urgency.

Criminal justice is fundamentally a political problem, not a crime and punishment problem. The real challenge is how to create the political will and political pressure to pursue and implement these policies. The central question is: "when in all other respects we defend policies based on social equality, full citizenship, solidarity, and respect for reason and humanity, why should we choose to adopt criminal justice policies that show so little appreciation of these very values and principles?" (Lappi-Seppälä 2007, 290).

States will circumvent the plan

Keller 6/29 [Bill, Conservatives for Criminal-Justice Reform. [online] The New Yorker. Available at: http://www.newyorker.com/magazine/2015/06/29/prison-revolt [Accessed 6 Jul. 2015]./VL

The most significant question is whether conservatives are prepared to face the cost of the remedies, from in-prison education and job training to more robust probationary supervision and drug and mental-health treatment. Joan Petersilia, a criminologist who teaches at the Stanford Law School, points to the last great American exercise in decarceration, half a century ago: President Kennedy's Community Mental Health Act, which aimed to reduce by half the number of patients in state mental hospitals. The promised alternatives—hundreds of community care facilities—were never fully funded, and thousands of deeply troubled people were liberated into homelessness. The mentally ill now make up a substantial portion of inmates in state prisons and county jails.'

2nc spill up

Feds model---empirics prove

Alewel, Reporter for NewsChannel 10, 11 December **2013**

(Madison, Congress models new legislation after Texas prison reforms, pg1, http://www.newschannel10.com/story/24198337/congress-models-new-legislation-after-texas-prison-reforms)

Amarillo, TX - Texas prison reforms are **influencing federal legislation** in Congress. United States Senator John Cornyn is modeling the Federal Prison Reform Act after Texas reforms that release non-violent and low-risk offenders back into the community. Overcrowded prisons are a costly burden to taxpayers. A former warden at the Clements Unit in Amarillo said Texas figured that out earlier than most states. "We had two massive waves of prison construction that took our prison beds well over 100,000," said former warden Keith Price. "But once you get to a prison system that size, the cost to keep it running is just phenomenal." About ten years ago, Texas started using a safety risk assessment model to combat overcrowding and overspending. The model assesses the risk level offenders pose to the community just as an insurance company measures a drivers risk on the road. "So a guy that maybe committed a murder 30 or 40 years ago, well maybe he was really dangerous then, but now he's 65," said Price. "Is he really dangerous? He's really sick so the tax payers are spending a fortune on him. So does he really need to be in a high security prison bed? There's probably better places for him."

State prison reforms are changing Federal prison policies now

Pye, Reporter for FreedomWorks, 2 December **2015**

(Jason, Successful conservative reforms could be coming to the federal prison system, http://www.freedomworks.org/content/successful-conservative-reforms-could-be-coming-federal-prison-system)

Republicans and Democrats in both chambers have already come together to introduce legislation that would address the growing costs of incarceration as well as front-end reforms to give judges more discretion as they consider sentences for nonviolent offenders. Another unlikely duo, John Cornyn (R-TX) and Sheldon Whitehouse (D-RI), have teamed up on prison reform. Prisons in the

United States, which has the highest incarceration rate in the world, are severely overcrowded and prison costs have rapidly grown. As noted on Tuesday, the federal Bureau of Prisons' budget nearly doubled between FY 2000 and FY 2013, from $3.668 billion to $6.445 billion, and the annual cost of incarcerating a prisoner has jumped from $21,603 to $29,291 over the same time period. These costs leave little room to in the budget to spend on increasing capacity or modernizing prison facilities. The Bureau of Prisons, for example, has a backlog of major modernization and repair projects at a cost of $348 million, according to a March 2014 report from the Justice Department. This backlog, per the report, doesn't include the "universe of unfunded repair and improvement minor projects." Cornyn and Whitehouse see this as a problem that has to be address sooner rather than later, and they are renewing a partnership that was formed last year. In March 2014, The Senate Judiciary Committee, led by then-Chairman Patrick Leahy (D-VT), overwhelmingly passed Whitehouse's Recidivism Reduction and Public Safety Act (S. 1675), which was amended to include elements of Cornyn's Federal Prison Reform Act (S. 1783). Unfortunately, the resulting bill was never brought to the floor for a vote. But with calls for criminal justice reform growing, Cornyn and Whitehouse, on Tuesday, introduced the Corrections Oversight, Recidivism Reduction, and Eliminating Costs for Taxpayers in Our National System (CORRECTIONS) Act. The CORRECTIONS Act addresses the skyrocketing costs of incarceration by bringing successful prison reforms that have been e**nacted at the state level to the federal prison system.** The measure seeks to reduce the federal prison population by creating a recidivism reduction program that would subject eligible nonviolent offenders to recurring assessments to determine whether they are at a low-, medium- or high-risk of becoming a repeat offender.

State success is modeled by the feds

Halberstam and Hills 1

Daniel, assistant professor law at the University of Michigan Law School specializing in U.S. constitutional law and Roderick, professor of law at the University of Michigan Law School, specializing in U.S. constitutional law, local government law, the law of federalism and intergovernmental relations, The American Academy of Political and Social Science, "State Autonomy in Germany and the United States," 03-2001, Leixs-Nexis Academic

The states may exploit this power to initiate programs as a practical means to counteract Congress's constitutional authority to federalize policy areas. For example, before Congress generates enough political will to legislate in any given area, states may step into the field with their own policy proposals. One result is that state policy initiatives may be quite influential in the federal lawmaking process by **providing the initial impetus** and sometimes even **blueprint for federal action** (Elliot, Ackerman, and Millian 1985). To bypass or overrule the states, not only must Congress often demonstrate that its proposed regulatory scheme is politically desirable, but it must do so by arguing specifically against the continued existence of active state regulation.

Empirics prove- status quo legislation like SAFE has been modeled after the states

Romero, Executive Director of the ACLU, and Holden, general counsel of Koch Industries, 7/7 [Anthony and Mark, POLITICO Magazine. 2015. 'A New Beginning For Criminal Justice Reform'. Accessed July 8 2015. http://www.politico.com/magazine/story/2015/07/a-new-beginning-for-criminal-justice-reform-119822.html./VL

The SAFE Justice Act is the result of this two-year investigation which began in spring 2013 when the House Judiciary Committee unanimously charged the two congressmen to chair a comprehensive review of the problems in America's criminal justice system, as well as an examination of potential solutions. The congressmen started by looking at state reforms that have successfully lowered incarceration rates and the associated cost to taxpayers. Until recently, state prison trends mimicked federal trends, with the relevant statistics rising across the board. In the past decade, however, 27 states have enacted substantial reforms to their criminal justice systems. The results they found are striking. The state imprisonment rate fell 4 percent over the past decade, compared with a 15 percent increase at the federal level. Taxpayers have seen the savings, with states saving at least $4.6 billion in lower prison-related costs. Importantly, 32 states saw a drop in both the percentage of people imprisoned and overall crime rates — a revelation that shows how criminal justice reform doesn't compromise public safety. The SAFE Justice Act would incorporate lessons learned in these states and apply many of them at the federal level. It seeks to address several specific issues with the current criminal justice system. Four areas of reform are particularly promising:

Historical precedent proves punitive prison policy spills over from the state to the federal level

National Research Council '14 [The National Research Council was organized by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government. Functioning in accordance with general policies determined by the Academy, the Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public, and the scientific and engineering communities. The Council is administered jointly by both Academies and the Institute of Medicine. April 2014, The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. Pgs. 101-102./VL

A number of lessons emerge from this look back at the past four decades of changes in sentencing policy. Successive waves of change swept the nation, some affecting all or most states. During the 1970s, experiments with voluntary sentencing guidelines were undertaken in many states, and all but one state enacted mandatory minimum sentence laws typically requiring minimum 1- or 2-year sentences or increases of 1 or 2 years in the sentences that would otherwise have been imposed. During the 1980s, the federal government and nearly every state enacted mandatory minimum sentence laws for drug and violent crimes, typically requiring minimum sentences of 5, 10, and 20 years or longer. During the 1990s, the federal government and more than half the states enacted truth-in-sentencing and three strikes laws. Almost all of the states now have life without possibility of parole laws. Voluntary guidelines and statutory determinate sentencing laws proved ineffective at achieving their aims of increasing consistency and diminishing racial and other unwarranted sentencing disparities. There is little convincing evidence that mandatory minimum sentencing, truth-insentencing, or life without possibility of parole laws had significant crime reduction effects. But there is substantial evidence that they shifted sentencing power from judges to prosecutors; provoked widespread circumvention; exacerbated racial disparities in imprisonment; and made sentences much longer, prison populations much larger, and incarceration rates much higher.

Feds have modeled state prisons reforms- empirics prove

Alewel, Reporter for NewsChannel 10, 11 December **2013**

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AT feds solve the states

States will drag their feet---no chance they follow the aff

Collier, 8—J.D. Candidate, B.A. in Philosophy at Arkansas State University, School of Law at Berkeley (Dusty, Spring 2008, "The "Ideal" Pendulum Swing: From Rhetoric to Reality", Berkeley Journal of Criminal Law, Lexis)//emchen

The inevitable result of a focus on retribution has come to fruition, as California faces its greatest criminal justice challenge to date - overcrowded prisons that threaten to overwhelm the system. The CDCR currently incarcerates more than 160,000 inmates in facilities designed to hold less than half that number. 38 The CDCR has received a fifty-two percent budget increase over the last five years, yet the problems have only grown worse. 39 The health conditions have become so deplorable that, in December 2006, **a federal judge ordered the State to reform the prisons** within six months or face the prospect of a mandatory population cap. 40 Despite this and ample evidence-based recommendations by contemporary reformers, **policy-makers continue dragging their feet**. The Governor reorganized the CDCR in 2005, utilizing the rhetoric of rehabilitation and the need for evidence-based recidivism-reduction [*181] strategies. 41 This came as a relief to many who felt that California's recidivism rate, at seventy percent, had been one of the biggest factors contributing to the over-crowding crisis. 42 Yet in August 2006, when the Governor called a special legislative session to hear a variety of reform proposals, most of the proposals emphasized the need for prison and bed construction, undermining the contention that he truly had rehabilitation in mind. 43 Reform advocates continue to present recommendations to the Governor and the legislature, but those recommendations have typically been ignored. 44 Fortunately for the future of our prisons and our state budget, the problem has reached undeniable proportions and the recommendations must now be taken seriously. One of the most striking features of contemporary reform efforts has been the incredible similarity between the new recommendations and those made some forty years ago by the leading rehabilitation advocates of

the time, particularly Norval Morris, Gordon Hawkins, and Karl Menninger. The following is an analysis of the theories and recommendations of these indeterminate era reform advocates, followed by a comparison to the theories and recommendations of more contemporary reformers. These contemporary reformers have shown empirically what Morris, Hawkins, and Menninger realized intuitively, and the case for a synthesized reform package is thus made.

Theory

Interpretation: We get to fiat US actors

A. Offense

Negative Ground- the state's counterplan is built into the topic by the words federal and its- allowing them to limit them out severely undercuts our ground

Best policy option – debate is about a search for the best policy option this solves all of their fairness and education arguments, if the counterplan is better then the plan then all of their arguments are arbitrary and don't apply

Topic specific education- surveillance functions on both the federal and local level. Absent the states cp, we only learn about half of the topic

Real world – most of us will never become senators but we can always become engaged in local government. States cp's provide unique education.

B. Defense

No ground loss, its predictable- they can still run all of their federalism bad arguments- specifically on prisons affs states cp's are the next logical step. Don't punish us because the aff was lazy

2AC add-ons check- the affirmative could just read add-ons in the 2AC specific to their actor that the counterplan cant solve

Its reciprocal- the USFG is a huge multifaceted organization and not just one actor

Reject the argument, not the team- the punishment paradigm rewards theory over substance, decreasing education. Plus, they can't prove a reason why we jacked their ability to beat the rest of our positions.

Err neg on theory-

Structural side bias – the aff has first and last speech, picks the framework for the debate, and has infinite prep.

Topic specific side bias – infinite things that could be detained and lack of kritik links off of a decrease in authority guts neg ground.

WILDERSON K

1nc

Failure to address and interrogate the fundamental antagonism between blackness and civil society reifies the system of the black prison slave- the very nature of whiteness policies the black body independent of rationality or institutional coherence

Wilderson '3 [2003, Professor of African American Studies at University of California, Irvine, 2003 (Frank, A. B. Dartmouth College (Government/Philosophy); MFA Columbia University (Fiction Writing); Ph.D. University of California, Berkeley (Rhetoric/Film Studies), "The Prison Slave as Hegemony's (Silent) Scandal", Social Justice, Vol. 30 Issue 2, p18-27]

In The Wretched of the Earth, Fanon makes two moves with respect to civil society. First, he locates its genuine manifestation in Europe — the motherland. Then, with respect to the colony, he locates it only in the zone of the settler. This second move is vital for our understanding of Black positionality in America and for understanding the, at best, limitations of radical social movements in America. For if we are to follow Fanon's analysis, and the gestures toward this understanding in some of the work of imprisoned intellectuals, then we have to come to grips with the fact that, for Black people, civil society itself — rather than its abuses or shortcomings — is a state of emergency. For Fanon, civil society is predicated on the Manicheasm of divided zones, opposed to each other "but not in service of a higher unity" (Fanon, 1968: 38–39). This is the basis of his later assertion that the two zones produce two different "species," between which "no conciliation is possible" (Ibid.). The phrase "not in service of a higher unity" dismisses any kind of dialectical optimism for a future synthesis. In "The Avant-Garde of White Supremacy," Martinot and Sexton assert the primacy of Fanon's Manichean zones (without the promise of higher unity), even in the face of American integration facticity. Fanon's specific colonial context does not share Martinot and Sexton's historical or national context. Common to both texts, however, is the settler/native dynamic, the differential zoning, and the gratuity (as opposed to the contingency) of violence that accrues to the blackened position. The dichotomy between white ethics [the discourse of civil society] and its irrelevance to the violence of police profiling is not dialectical; the two are incommensurable whenever one attempts to speak about the paradigm of policing, one is forced back into a discussion of particular events — high-profile homicides and their related courtroom battles, for instance (Martinot and Sexton, 2002: 6; emphasis added). It makes no difference that in the U.S. the "casbah" and the "European" zone are laid one on top of the other. What is being asserted here is an isomorphic schematic relation — the schematic interchangeability — between Fanon's settler society and Martinot and Sexton's policing paradigm. For Fanon, it is the policeman and soldier (not the discursive, or hegemonic, agents) of colonialism that make one town white and the other Black. For Martinot and Sexton, this Manichean delirium manifests itself by way of the U.S. paradigm of policing that (re)produces, repetitively, the inside/outside, the civil society/Black world, by virtue of the difference between those bodies that do not magnetize bullets and those that do. "Police impunity serves to distinguish between the racial itself and the elsewhere that mandates it...the distinction between those whose human being is put permanently in question and those for whom it goes without saying" (Ibid.: 8). In such a paradigm, white people are, ipso facto, deputized in the face of Black people, whether they know it (consciously) or not. Whiteness, then, and by extension civil society, cannot be solely "represented" as some monumentalized coherence of phallic signifiers, but must first be understood as a social formation of contemporaries who do not magnetize bullets. This is the essence of their construction through an asignifying absence; their signifying

presence is manifested by the fact that they are, if only by default, deputized against those who do magnetize bullets. In short, white people are not simply "protected" by the police, they are — in their very corporeality — the police. his ipso facto deputization of white people in the face of Black people accounts for Fanon's materiality, and Martinot and Sexton's Manichean delirium in America. What remains to be addressed, however, is the way in which the political contestation between civil society's junior partners (i.e., workers, white women, and immigrants), on the one hand, and white supremacist institutionality, on the other hand, is produced by, and reproductive of, a supplemental antiBlackness. Put another way: How is the production and accumulation of junior partner social capital dependent upon on an anti-Black rhetorical structure and a decomposed Black body? Any serious musing on the question of antagonistic identity formation — a formation, the mass mobilization of which can precipitate a crisis in the institu- tions and assumptive logic that undergird the United State of America — must come to grips with the contradictions between the political demands of radical social movements, such as the large prison abolition movement, which seeks to abolish the prison-industrial complex, and the ideological structure that underwrites its political desire. I contend that the positionality of Black subjectivity is at the heart of those contradictions and that this unspoken desire is bound up with the political limitations of several naturalized and uncritically accepted categories that have their genesis mainly in the works of Antonio Gramsci, namely, work or labor, the wage, exploitation, hegemony, and civil society. I wish to theorize the symptoms of rage and resignation I hear in the words of George Jackson, when he boils reform down to a single word, "fascism," or in Assata's brief declaration, "i hated it," as well as in the Manichean delirium of Fanon, Martinot, and Sexton. Today, the failure of radical social movements to embrace symptoms of all three gestures is tantamount to the reproduction of an anti-Black politics that nonetheless represents itself as being in the service of the emancipation of the Black prison slave

The prison system is only a manifestation of the grammars of productivity and politics that the affirmative explicitly assumes- they legitimize the structure of antiblackness through their appeal to humanity

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Capital was kick-started by the rape of the African continent, a phenomenon that is central to neither Gramsci nor Marx. According to Barrett (2002), something about the Black body in and of itself made it the repository of the violence that was the slave trade. It would have been far easier and far more profitable to take the white underclass from along the riverbanks of England and Western Europe than to travel all the way to Africa for slaves. The theoretical importance of emphasizing this in the early 21st century is twofold. First, capital was kick-started by approaching a particular body (a black body) with direct relations of force, not by approaching a white body with variable capital. Thus, one could say that slavery is closer to capital's primal desire than is exploitation. It is a relation of terror as opposed to a relation of hegemony. Second, today, late capital is imposing a renaissance of this original desire, the direct relation of force, the despotism of the unwaged relation. This renaissance of slavery, i.e., the reconfiguration of the prison-industrial complex has, once again, as its structuring metaphor and primary target the Black body. The value of reintroducing the unthought category of the slave, by way of noting the absence of the Black subject, lies in the Black subject's potential for extending the demand placed

on state/capital formations because its reintroduction into the discourse expands the intensity of the antagonism. In other words, the positionality of the slave makes a demand that is in excess of the demand made by the positionality of the worker. The worker demands that productivity be fair and democratic (Gramsci's new hegemony, Lenin's dictatorship of the proletariat, in a word, socialism). In contrast, the slave demands that production stop, without recourse to its ultimate democratization. Work is not an organic principle for the slave. The absence of Black subjectivity from the crux of radical discourse is symptomatic of the text's inability to cope with the possibility that the generative subject of capitalism, the Black body of the 15th and 16th centuries, and the generative subject that resolves late capital's over-accumulation crisis, the Black (incarcerated) body of the 20th and 21st centuries, do not reify the basic categories that structure conflict within civil society: the categories of work and exploitation. Thus, the Black subject position in America represents an antagonism or demand that cannot be satisfied through a transfer of ownership/organization of existing rubrics. In contrast, the Gramscian subject, the worker, represents a demand that can indeed be satisfied by way of a successful war of position, which brings about the end of exploitation. The worker calls into question the legitimacy of productive practices, while the slave calls into question the legitimacy of productivity itself. Thus, the insatiability of the slave demand upon existing structures means that it cannot find its articulation within the modality of hegemony (influence, leadership, consent). The Black body cannot give its consent because "generalized trust," the precondition for the solicitation of consent, "equals racialized whiteness" (Barrett, 2002). Furthermore, as Orlando Patterson (1982) points out, slavery is natal alienation by way of social death, which is to say, a slave has no symbolic currency or material labor power to exchange. A slave does not enter into a transaction of value (however asymmetrical), but is subsumed by direct relations of force. As such, a slave is an articulation of a despotic irrationality, whereas the worker is an articulation of a symbolic rationality. A metaphor comes into being through a violence that kills the thing such that the concept might live. Gramscian discourse and coalition politics come to grips with America's structuring rationality — what it calls capitalism, or political economy — but not with its structuring irrationality, the anti-production of late capital, and the hyper-discursive violence that first kills the Black subject, so that the concept may be born. In other words, from the incoherence of Black death, America generates the coherence of white life. This is important when thinking the Gramscian paradigm and their spiritual progenitors in the world of organizing in the U.S. today, with their overvaluation of hegemony and civil society. Struggles over hegemony are seldom, if ever, asignifying. At some point, they require coherence and categories for the record, meaning they contain the seeds of antiBlackness.

Civil Society reconfigures itself to the affirmative's call for freedom- the only alternative is to inject radical incoherence into the system- to dance the dance of death is the only way to delink structures of liberal identitiy and productivity

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Fanon (1968: 37) writes, "decolonization, which sets out to change the order of the world, is, obviously, a program of complete disorder." If we take him at his word, then we must accept that no other body functions in the Imaginary, the Symbolic, or the Real so completely as a repository of complete disorder as the Black body. Blackness is the site of absolute dereliction at the level of

the Real, for in its magnetizing of bullets the Black body functions as the map of gratuitous violence through which civil society is possible: namely, those bodies for which violence is, or can be, contingent. Blackness is the site of absolute dereliction at the level of the Symbolic, for Blackness in America generates no categories for the chromosome of history, and no data for the categories of immigration or sovereignty. It is an experience without analog — a past without a heritage. Blackness is the site of absolute dereliction at the level of the Imaginary, for "whoever says 'rape' says Black" (Fanon), whoever says "prison" says Black, and whoever says "AIDS" says Black (Sexton) — the "Negro is a phobogenic object" (Fanon). Indeed, it means all those things: a phobogenic object, a past without a heritage, the map of gratuitous violence, and a program of complete disorder. Whereas this realization is, and should be, cause for alarm, it should not be cause for lament, or worse, disavowal — not at least, for a true revolutionary, or for a truly revolutionary movement such as prison abolition. If a social movement is to be neither social democratic nor Marxist, in terms of structure of political desire, then it should grasp the invitation to assume the positionality of subjects of social death. If we are to be honest with ourselves, we must admit that the "Negro" has been inviting whites, as well as civil society's junior partners, to the dance of social death for hundreds of years, but few have wanted to learn the steps. They have been, and remain today — even in the most anti-racist movements, like the prison abolition movement — invested elsewhere. This is not to say that all oppositional political desire today is pro-white, but it is usually anti-Black, meaning it will not dance with death Black liberation, as a prospect, makes radicalism more dangerous to the United States. This is not because it raises the specter of an alternative polity (such as socialism or community control of existing resources), but because its condition of possibility and gesture of resistance function as a negative dialectic: a politics of refusal and a refusal to affirm, a "program of complete disorder." One must embrace its disorder, its incoherence, and allow oneself to be elaborated by it if, indeed, ones politics are to be underwritten by a desire to take down this country. If this is not the desire that underwrites ones politics, then through what strategy of legitimation is the word "prison" being linked to the word "abolition+n"? What are this movements lines of political accountability? There is nothing foreign, frightening, or even unpracticed about the embrace of disorder and incoherence. The desire to be embraced, and elaborated, by disorder and incoherence is not anathema in and of itself. No one, for example, has ever been known to say, "Gee-whiz, if only my orgasms would end a little sooner, or maybe not come at all." Yet few so-called radicals desire to be embraced, and elaborated, by the disorder and incoherence of blackness—and the state of political movements in the United States today is marked by this very Negrophobogenisis: "Gee-whiz, if only black rage could be more coherent, or maybe not come at all." Perhaps there is something more terrifying about the foy of black than there is in the joy of sex (unless one is talking sex with a Negro). Perhaps coalitions today prefer to remain in-orgasmic in the face of civil society—with hegemony as a handy prophylactic, just in case. If through this stasis or paralysis they try to do the work of prison abolition, the work will fail, for it is always *work from* a position of coherence (i.e., the worker) on *behalf* of a position of incoherence of the black subject, or prison slave. In this way, social formations on the left remain blind to the contradictions of coalitions between workers and slaves. They remain coalitions operating within the logic of civil society and function less as revolutionary promises than as crowding [y] out scenarios of black antagonisms, simply feeding our frustration. Whereas the positionality of the worker (whether a factory worker demanding a monetary wage, an immigrant, or a white woman demanding a social wage) gestures toward the reconfiguration of civil society, the positionality of the black subject (whether a prison slave or a prison slave-in-waiting) gestures toward the disconfiguration of civil society. From the coherence of civil society, the black subject

beckons with the incoherence of civil war, a war that reclaims blackness not as a positive value but as a politically enabling site, to quote Fanon, of "absolute dereliction." It is a "scandal" that rends civil society asunder. Civil war, then, becomes the unthought, but never forgotten, understudy of hegemony. It is a black specter waiting in the wings, an endless antagonism that cannot be satisfied (via reform or reparation) but that must, nonetheless, be pursued to the death

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Write your own overviews

Turns Case- the affirmative's roots in enlightenment identity are antiblack and coheres white supremacy

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By examining the strategy and structure of the Black subject's absence in, and incommensurability with, the key categories of Gramscian theory, we come face to face with three unsettling consequences: (1) The Black American subject imposes a radical incoherence upon the assumptive logic of Gramscian discourse and on today's coalition politics. In other words, s/he implies a scandal. (2) The Black subject reveals the inability of social movements grounded in Gramscian discourse to think of white supremacy (rather than capitalism) as the base and thereby calls into question their claim to elaborate a comprehensive and decisive antagonism. Stated another way, Gramscian discourse and coalition politics are indeed able to imagine the subject that transforms itself into a mass of antagonistic identity formations, formations that can precipitate a crisis in wage slavery, exploitation, and hegemony, but they are asleep at the wheel when asked to provide enabling antagonisms toward unwaged slavery, despotism, and terror. (3) We begin to see how Marxism suffers from a kind of conceptual anxiety. There is a desire for socialism on the other side of crisis, a society that does away not with the category of worker, but with the imposition workers suffer under the approach of variable capital. In other words, the mark of its conceptual anxiety is in its desire to democratize work and thus help to keep in place and insure the coherence of Reformation and Enlightenment foundational values of productivity and progress. This scenario crowds out other postrevolutionary possibilities, i.e., idleness. The scandal, with which the Black subject position "threatens" Gramscian and coalition discourse, is manifest in the Black subject's incommensurability with, or disarticulation of, Gramscian categories: work, progress, production, exploitation, hegemony, and historical self-awareness. Through what strategies does the Black subject destabilize — emerge as the unthought, and thus the scandal of — historical materialism? How does the Black subject function within the "American desiring machine" differently than the quintessential Gramscian subaltern, the worker.

Link – reform

The affirmative's appeals to reforms excludes the radical prison praxis and its analysis of prison productivity that justifies the system

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degree from Cornell University (1995). “Forced Passages Imprisoned Radical Intellectuals and the U.S. Prison Regime”]

Radical intellectuals who are captives of the state, insofar as they are deWned and categorized as civically dead, are formally deindividuated upon imprisonment. Their presumptive recognition as “individuals” or legal subjects under the juridical mores of U.S. liberalism erode, displaced by a structure of direct subjection to the punitive state. Further, the continuum of subjection that structures this condition can be conceptualized and disaggregated within the Thirteenth Amendment’s signiWcation of a genealogy of antiblack racism, that is, the formative social relations of racial chattel slavery and what Fanon might call the epidermalization of pathology and property. Imprisoned people have no “right” to exist as political beings or social subjects. Often, the state punishes and preempts the political work and affective labor of its captives through physical violence, forced narcotic sedation, isolation, and relocation (often to prisons that are hundreds or thousands of miles away from family, loved ones, and political supporters). 36 – INTRODUCTION What, then, is the significance of political praxis for people whose right to exist has been eliminated? What is an appropriate “methodology” of engagement with this lineage of radical, revolutionary, and liberationist political subjects who are, by force of condition, putative “nonsubjects”? Perhaps these are the very questions that underwrite the permanently troubled relation between the free and the unfree (or the imprisoned and the nonimprisoned), as the structure of political-intellectual “collaboration” begs the question of how “politics” happens at the carceral underside of social formation: imprisoned radical intellectuals are practitioners of a qualitatively different “politics,” precisely because their Weld of engagement is deWned through a relation of direct violence with the state. This condition of confrontation constitutes a discrete modality of praxis that is incommensurable with the myriad forms of political practice in civil society. The condition of praxis overdetermines its political significance, particularly when carried out by juridically dead people: that which is reasonably demanded by the free becomes grounds for punitive sanction against the unfree. Prisoners striking and rebelling for acknowledgment of nonexistent human rights—as in the Attica rebellion of 1971—thus amount to far more than “reformist” struggles against fascistic and localized regimes of domination. Assertions of political personhood by the imprisoned are a constrained attempt to decisively delegitimize the carceral formation’s official attempts to eliminate them from the realm of the “political,” as well as to generate new symbolic and spatial terrain for political struggle against a state regime that consistently militates and militarizes against any such possibility. This is to say that the structuring of unfreedom extinguishes the possibility of legitimate political subjectivity a priori, while constructing a discrete border at which “politics” is presumed subversive in and of itself. At the risk of stating the obvious, I am arguing that the study of and critical engagement with contemporary prison praxis represents a relation of appropriation and translation, structurally dominated by free world (professional and nonprofessional) intellectuals and activists whose necessarily exploitative use of these texts (for there is little material INTRODUCTION – 37 beneWt and much potential punishment in store for their authors) is often endorsed and encouraged by their imprisoned counterparts. The living figure and political specter of the imprisoned political intellectual represents a crisis of meaning for the “methodology” of the nonimprisoned scholar, as well as a fundamental disruption of the free-world activist’s operative assumptions (e.g., bodily mobility, political subjectivity, access to civil society). It is through the lens of this failure of methodology that this book must be read and (re)interpreted.

The affirmative's discourse of bureaucracy and society is antagonistic to the counter-narrative of the radical prisoner which the foundation of the prison state

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Imprisoned radical intellectuals have inhabited and shaped the formation of the U.S. policing, juridical, and punishment apparatuses since the rise of the Goldwater–Nixon "law-and-order" state. This chapter attends to the unique set of historical, spatial, and bodily conditions of possibility for imprisoned radical intellectuals to engage in "praxis," or what Paulo Freire (in the Marxist tradition) famously invoked as the profound political aliveness of "reXection and action on the world" with the purpose of transforming it.1 Through an extraordinary mirroring and rearticulation of the dystopic structure of imprisonment—a regime founded on the symbiosis between the logics of displacement and degradation—this politicalintellectual work inaugurates new vernacular forms, including the construction of new languages of agency, politics, freedom, identity, community, sovereignty, and struggle. These meanings constantly exceed and slip from the grasp of conventional modes of political, academic, and activist CHAPTER 2 "You Be All the Prison Writer You Wish": The Context of Radical Prison Praxis Apparently, they imagine we prisoners who have forever sentences are just supposed to disappear, but unfortunately, it doesn't work that way. —Standing Deer, "Prisons, Poverty, and Power" (1992) I am a bleak heroism of words that refuse to be buried alive with the liars. —Audre Lorde, "Learning to Write" (1986) 75 discourse. Thus, my use of the term "(radical) prison praxis" foregrounds the institutional and historical condition of this lineage of political work as it is constituted and delimited by a carceral structuring of totalizing and legitimated state violence. Radical prison praxis is fundamentally an institutional and discursive antagonism, that is, an insurgent or insurrectionist formation of critique, dissent, and rebellion that (1) elaborates a conception of political subjectivity—its context, possibilities, and historicity—specific to the formation of the prison as a particular regime of power; (2) conceptualizes praxis through the terms with which it is organically linked and historically "belongs" to, a lineage of imprisoned radical intellectuals; and (3) shifts the presumptive political geography of praxis by examining its formation at the site of imprisonment, a disjuncture from the juridical and cultural domains of civil society.

Link/FW

Role of the Judge is to endorse Critical Prison Praxis to rupture the constitutive logic of the prison systems- bureaucratic reforms fail to deconstruct the foundations of violence of prison production

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The Wnal section of this chapter departs from the disciplinary and immanently punitive categories of "prison writing" and "prison education" in order to offer a theoretical elaboration of radical "prison praxis." Contesting the repressive and punitive technologies of prison education and philanthropic ventures, as well as the production of prison writing as a domesticating and contained literary genre, imprisoned radical intellectuals exert pedagogical interventions of their own, within and against these contrived material-discursive spaces. Autonomous, and usually illicit prisoner-organized political education circles have often directly spurred acts of individual and collective defiance on the "inside" (hunger strikes, work stoppages, underground prisoner publications, rebellions), at times generating substantive solidarities with activists and supporters on the "outside." Juanita Díaz-Cotto writes of such underground Latino prison collectives in the 1970s: What distinguishes imprisoned radical intellectuals from other radical and revolutionary "organic intellectuals," however, is that they do not construct their political identiWcations through participation in discrete social movements or political organizations. Rather, their individual formation as imprisoned political subjects occurs in a context of systematized repression that, in turn, forces them to map out new "cognitive territories" within which ways of knowing, feeling, and living the experience of unmediated state violence create new spaces and political trajectories of dissent, radicalism, and antisystemic possibility. This far-reaching, decentered, and counterinstitutional knowledge production initiates an epistemological break with the hegemonic common sense of both civil society and the left, illuminating Ron Eyerman and Andrew Jamison's deWnition of contemporary social movements and collective identities: This theorization offers a crucial epistemological intervention, countering the tendency of many American sociologists to objectify the knowledge production of social movements through the empiricist categorizations of "resource mobilization theory." Eyerman and Jamison suggest a more situated and dynamic conception of "social movements as cognitive praxis": In the U.S. context, where the infrastructural paradigm that guides most current progressive social-change organizations is based on bureaucratic hierarchy, access to foundation patronage, and the "professionalization" of activists themselves, a productive rupturing of the empiricist conception of social movement formation may be in order. To consider, as do Eyerman and Jamison, that social movements are dynamic "processes in formation" implies a theorization of movements that de-emphasizes (though does not dismiss) the empirical "structures" that shape their public sustenance, and instead prioritizes the effectiveness of social movements in producing "forms of activity by which individuals create new kinds of social identities." This approach hedges against the quantiWcation of a social movement's signiWcance and effectiveness through measurement of its chronological "life" or evaluation of its ability to "penetrate" and reform hegemonic social or political institutions. Most important, this paradigm creates a theoretical space for analysis of radical movement formations by distinguishing the historical and political trajectory of social movements from their empirically detectable manifestations in organizations, constituencies, and other forms of institutionalized presence. As Eyerman and Jamison argue, Few recent movements Wt this deWnition better than the decentered, eclectic, and politically dynamic intellectual renaissance among radicals and revolutionaries incarcerated in U.S. prisons since the 1970s. My engagement with the praxis of imprisoned radical intellectuals pivots on this conception of the symbiosis between knowledge production and subject formation—processes immersed in the prison's regime of disarticulation and coercive incoherence—as the primary Welds of political practice for this lineage of activists. For these socially and civically "disappeared" political subjects—many of whom have been imprisoned or serve additional prison time on the basis of their political convictions and social movement activities—the construction of a "cognitive praxis" happens in concert with their imprisoned contemporaries, and in resonance with their

predecessors. This theoretical framing is not to romanticize, simplify, or totalize the intellectual work of imprisoned liberationists, but rather to suggest that their institutional and historical location within the U.S. prison grounds an epistemological formation that speaks directly out of the crisis and conXict that inevitably accompanies the repressive logic of "social order." Radical prison praxis may thus be succinctly conceived as the embodied theoretical practices that emerge from imprisoned liberationists' sustained and historical confrontations with, insurrection against, and dis- or rearticulations of the regimes of (legitimated and illicit) state violence inscribed and signiWed by the regime of the prison. What marks this as a lineage of "radical" praxis is, Wrst, that it is materially situated at the "base" of the state's punitive white-supremacist mode of production. This is to suggest that the production of prison space is a socially constitutive technology, to the extent that the essential fulcrum of American white supremacy is the power and institutional capacity to immobilize, neutralize, or eliminate targeted populations. Insurgencies that emerge from within this fulcrum, then, are substantively radical in their potential to disrupt or destroy a primary productive element of the existing social/carceral formation. Second, radical prison praxis articulates a critique of the United States that disarticulates its presumptive legitimacy and coherence as a juridical, military, social, and moral order. Imprisoned radical intellectuals construct a critical political practice that cannot be easily situated within the disciplinary conventions of civil society or the academy. As Harlow contends, it is the very historicalcondition and political substance of this cognitive antagonism that renders it outside the pale of institutional classiWcation and pedagogy The production of new and institutionally antagonistic languages, ideas, and symbols constitutes a basis for the activity of "new social movements" while simultaneously forming the conditions of possibility for the construction of new political and theoretical trajectories for radical counterhegemonic praxis. In this sense, Melucci's theoretical shift away from the empiricist fetishization of the quantiWable apparatuses and bureaucracies of social movement activity to "the ability to produce information" provides a mode of engagement with imprisoned radicals and revolutionaries who largely lack an infrastructural base and have little or no access to Wnancial resources. Melucci's theoretical problematic further elaborates the ongoing challenge confronting contemporary social movements. Decoupling the notion of "hegemony" from more conventional Marxist articulations, he posits a mobile, slippery conceptualization of social formation and "social order." Most important, his conceptualization of the social formation's "constitutive logic" displaces the classical Marxist notion of a "mode of production." Although Melucci's theorization is constrained by its focus on the nation-state as the unit of analysis and does not attempt to engage sites of underdevelopment, warfare, or state capture (unfreedom), it is useful for its elaboration of knowledge production as a malleable, material social movement practice: Critically departing from Melucci's discussion, we might consider how the prison industrial complex and its requisite regime of violence compose crucial and convergent sites for the "constitutive logic" of the existing social system; that is, they construct a nexus for the production and sustenance of varieties of racialized domestic warfare, the articulation of the neoliberal state, and massive containment of surplused and racially criminalized populations. Melucci's central theoretical problem, the question of whether and how the "constitutive logic" of a social system may be engaged across different localities and institutional sites, sheds light on the potential centrality of imprisoned radical intellectuals as primary critics of (and insurrectionists against) the prison regime and the state/ social formation of which it is an increasingly crucial or "constitutive" component.

The prison complex serves as the nexus for current oppressive models of identity and politics- situating insurrectionist knowledge within that space disrupts the production of domination

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This genealogy is, from its outset, entangled in the essential incommunicability of the violence that it proposes to trace, analyze, and (re)- encounter: as countless captives and prison survivors testify, their formal and totalizing subjection to a regime of legitimated brutality is a condition that largely exceeds communicative possibility, that is, it is a condition beyond words. Still, the echoes and resonances of this lineage of radical intellectuals orchestrate a symphony of Xight from the normative cultural, political, and institutional structures of the United States, decisively disrupting its self-valorizing narratives of freedom and democracy (powerful discourses that increasingly exert, by consensus and by force, a global cache). Inescapable is the social logic of the contemporary U.S. 72 – DOMESTIC WAR ZONES prison, its integral role in organizing and disrupting the matrices and possibilities of everyday human intercourse, and, more crucially, its overwhelming presence in the production of modalities of bodily domination, state and state-sanctioned forms of violence—within and beyond the prison proper—that betray the limits of Foucault's "disciplinary society" and install rituals of spectacular punishment that illuminate the intersections and gaps between various axes of power. The signiWcance of contemporary radical prison praxis—the farranging political-discursive work embodied by imprisoned radical intellectuals that I will outline in the next chapter—is its antagonism to the punitive and disciplinary technologies enmeshing its formation. Invoking Foucault's 1976 reference to the "insurrection of subjugated knowledges" as the catalyst of new forms of locally situated critique, imprisoned radical intellectuals are uniquely situated to offer the beginnings of a material genealogy, as well as an urgent political critique, of the state's capillary extremities, where its most profound techniques of domination emerge. The following chapters elaborate on this bloc and its praxis, the historical contents of which "have been buried or masked in functional coherences or formal systematizations." This is to attempt, in Foucault's terms, a genealogy of the prison regime that proceeds through "a whole series of knowledges that have been disqualiWed as nonconceptual knowledges, as insufWciently elaborated knowledges: naïve knowledges, hierarchically inferior knowledges, knowledges that are below the required level of erudition or scientiWcity."65 The prison's power of domination, while exceeding the staid formalities of the state, simultaneously generates capillary spaces of radical subjectivity and knowledge production that exceed the logical structures of legitimated political-intellectual discourse. Compounding the form and substance of the discourse itself, the praxis of imprisoned radical intellectuals entails the invention of new communicative modalities and strategies, from the production of new political vernaculars to the construction of subversive pedagogical spaces and networks. A genealogy of the prison regime, in the current historical context, traces the outlines of a political crisis of meaning for extant DOMESTIC WAR ZONES – 73 paradigms of social change and transformation, confronting the logic of immobilization and disintegration that deWnes the regime's procession. "If you like, we can give the name 'genealogy' to this coupling together of scholarly erudition and local memories. . . . Genealogies are, quite speciWcally, antisciences. . . . They are about the insurrection of knowledges."66 The prison constitutes the site and moment of radical prison praxis as a crisis for the state: to the extent that imprisoned

intellectuals articulate and mobilize varieties of counterhegemonic or antisystemic power (from collective insurrection and guerrilla combat to "nonviolent" resistance and formal institutional reform demands), they embody a strategic vectoring of political-intellectual insurgency and antiauthoritarian resistance that disrupts—and ultimately reconstitutes—the prison regime's production of dominion. It is the enactment, in other words, of the fundamental—and inescapably political—relation of the very institutionality of the prison itself as a deWnitive zone (dominion) of warfare. There are subjects and populations that, through the materialdiscursive structures of the American social formation, exist as embodied crisis, or Wgures of incoherence.67 The consistent and sometimes ampliWed productions of non- and subhumans (discovered most profoundly in the shifting historical categorizations of blacks and Native Americans) constitute the necessary Wgures of negation and productive Wgures of crisis for the reproduction and coherence of modern Euro-American social formations. In this sense, the birth of Foucault's nineteenthcentury prison can also be understood to incubate a genealogy of human apocalypse within the formation of a putatively inclusivist, modernist disciplinary order. The genesis of this incubated technology of death, what might be considered the rebirthing of the prison as a regime of immobilization and disintegration, is precisely that which is traced by the recent lineage of imprisoned radical intellectuals.

The deaths of the prison system haunts civil society- these death must be brough to the forefront of knowledge to produce effective resistance

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interior geography of the prison—the logic of death can only reproduce its anticipated failure: the provocation of resistance, subversion, opposition, and revolt through the embodied contradiction of trying to make nonsubjects, including and especially the incomplete production of captive subjects who are, in fact, not outside of—and incompletely isolated from—history. The ongoing self-narrative of Hugo "Yogi" Pinell, one of the longest-held political prisoners in the United States, is illustrative. Pinell has been in some variety of solitary conWnement for about three decades, and has not had a contact visit, seen natural sunlight, or made a phone call since the 1970s. Originally imprisoned in 1965, he became a close friend of W. L. Nolen in Soledad State Prison during the early years of his incarceration. After Nolen's assassination and George Jackson's transfer to San Quentin State Prison (with fellow "Soledad Brothers" Fleeta Drumgo and John Clutchette), Pinell ambivalently embraced political leadership among his cohorts: When W. L. got shot down and George got locked up right there in Soledad, I got a chance to talk to him. He said, "I'm going to San Quentin, man, so you keep everybody together here." So when he gave me that responsibility the other guys said, "Hey Yogi, that's beautiful man, shit, we'll listen to you."44 Engaged in heightened confrontation and periodic guerrilla combat with Soledad's famously white-supremacist bloc of guards and administrators, Pinell (of African-Nicaraguan descent) quickly became one of the focal points—a conspicuously targeted black body—for the prison regime's self-production. His history of coerced bodily transfer among different carceral sites bespeaks shifting temporalities of bodily emergency. During a 2001 interview in the Pelican Bay SHU, Pinell articulated a philosophy of subjection that tangles the violence of state torture within a legacy of black-liberationist sacriWce. Pinell provides a situated

and incisive history of the California prison as a carceral war zone: he and Wve others—the "San Quentin Six"—were prosecuted and tortured by the state for the alleged murder "MY ROLE IS TO DIG OR BE DUG OUT" – 217 of three guards and the assault of three others, casualties resulting from the prison insurrection catalyzed by the cold-blooded killing of the widely respected Jackson in August 1971. Recalling his survival of this period, Pinell articulates and revises the context and meaning of radical political practice once overdetermined by a material logic of death: There is a clear sense in which Pinell historicizes as he rearticulates his own tortured body, conceptualizing his survival and suffering as both a protective practice (shielding fellow captives by taking the beatings himself) and a vessel of political education. In the context of this zone of warfare, Pinell fronts himself as fodder for the regime's violence, having been exposed and targeted by the state as a known guerrilla soldier. Whereas his codefendants in the San Quentin Six trial were eventually released from prison (three were acquitted in the trial, and two were convicted but later granted parole), Pinell is the state's chosen holdover, an object lesson for other latent or incipient combatants Wghting the essential structure of the prison standoff. As such, Pinell rethinks the meaning of survival and warfare, life and death, lineage and legacy for one whose condition of existence is to live intimately with ghosts. He reconceptualizes the terms and possibilities Pinell's cohabitation with his comrades' ghostly presence/present distends and distorts the prison regime's logic of death by reembodying the terms of (bodily and ghostly) possession. Within the actively altered terrain of warfare, there is a saturation of spirits, a persistent returning of liberationist combatants killed in action. Sociologist Avery Gordon has contended that the spirits of the dead and disappeared play an integral role in the shaping of the social world, visiting the living and exerting agency on them through the undeniably historical and political work of haunting: Gordon's meditation must be extended, in this sense, to address and encompass the forms of living death invented and massively proliferated by the contemporary social formation, to the extent that the everyday is irreconcilably shadowed, followed, and overdetermined by unacknowledged casualities of war: Gordon's insightful questioning situates the analytic and political premises of engagement with the living lineage of imprisoned radical intellectuals in the context of contemporary domestic warfare. Near the end of our 2001 interview at Pelican Bay, Pinell rearticulates the substance and circulation of lives lost—and recirculated— within this liberationist lineage. After I acknowledge the essential and radical truth of his testimonial, Pinell observes that we are intimately linked by a tacit mandate or obligation, confronting and displacing my rhetorical gestures of valorization (and othering) by calling me closer, perhaps, encouraging my embrace of his living, haunting presence: The regime "breaks" some, physically exterminates others. An uncounted many, only a few of whom are mentioned here, awaken a new and incorrigible political fantasy, which continuously haunts civil society and its resident nonimprisoned activists and intellectuals. The defeat of institutionalized terror, regimented living death, may very well lie in the radically historicized future visions of imprisoned activist-intellectuals such as Pinell and Viet Mike Ngo, whose short piece "Grave Digger" demands political praxis of a kind yet unseen, one that Wnds historical emergency in place of pragmatism's patience, principled hostility where typically lies the capacity for compromise with the power of domination.

AT Rodriguez answers

Freedom isn't free—prison reforms are just white attempts to distance themselves from the inhuman grammar underwriting the whole system of oppression

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Civil society's structure of freedom—however endangered and superficial—is denied and reproduced through the mass incarceration of the unfree "natives," the immediate "beings hemmed in," and specifically structured against the lineage of black slave ontology and the orbiting, approximating forms of enslavement/imprisonment that it yields. Thus, working within the logic of Fanon's terms, it is crucial to absorb that nonimprisoned ("free") people are largely constituted by "(white/multicultural) settlers" and an assimilated "native petite bourgeoisie," who at times disavow their political allegiance to the prison regime, yet who by their very existence—as the nominally free—denied and fortify its domain. Addressing the Algerian "native intellectual" class—the colonized petite bourgeoisie whose political loyalties are cast in doubt during the movement of decolonization—Fanon posits a historically situated transformation of "truth," that is, its embodiment in the native and against the settler (and, perhaps, against the native petite bourgeoisie as well). Writing at the very genesis of the contemporary prison regime in 1971, an anonymous poet in Soledad State Prison (California) prophetically lays bare the structural antagonism of the free–unfree relation in "A Sunny Soledad Afternoon": The overriding bitterness of the piece is a deeply principled one, the hostility toward the status of the "citizen" an expression of the political stakes at hand in the reading, interpretation, and circulation of the imprisoned poet's work by a nominally free audience (the text in which the poem was published, Words from the House of the Dead, was essentially a mimeographed compilation of writing and visual art smuggled from Soledad prison). This invitation to partake in a mind-numbing despair, to become intimate with living death, confronts the free person—particularly the self-identified progressive or radical activist—with the irreconcilable contradiction of embracing a freedom, or even waging a liberation struggle, that does not encompass an abolition of the poet's "sunny" Soledad. The poem's political imagery of shattering bones and emptied stares recalls human holocaust while anticipating the words of imprisoned activist, writer, and political educator Viet Mike Ngo. Ngo, during the original writing of this chapter, was punitively transferred to Avenal State Prison and threatened with an indeterminate sentence in the California SHU as retribution for his public political critiques of, and active legal actions against, the California Department of Corrections for its myriad practices of racialized violence, political retribution, and normalized torture of its captives. Speaking from this moment, he advocates an embrace of the political possibility lodged in an overwhelming condition of existence: Ngo clearly recognizes his condition as the embodiment of ontological death, a (non)existence formed by a fundamental social alienation and manifest in the overwhelming despair of imprisonment, a form of isolation that is at once individual and collective (note Ngo's seamless use of the "we" with the "I"). This is precisely why power and strength, that is, the activity and will to resist and perhaps disarticulate the logic of the regime, arrive through his intimacy with despair. It is Ngo's willingness, in fact his need, to be entangled in (rather than to attempt metaphysical transcendence of) the gravity and breathtaking totality of his condition that

structures his liberationist praxis, a political labor that is by definition desperate both because it is borne of despair and because it is all he has. We are left asking what, exactly, Ngo "has" (possesses) in struggle, in relation to loved ones, political supporters, and extended kin in the free world. Imprisoned radical intellectuals like Ngo mediate a unique political fantasy of radical freedom, a liberation practice that refuses to be deWned against, much less coexist with, coercive structures of human incarceration, immobilization, and disintegration. Former political prisoner Ramona Africa, the sole adult survivor of the 1985 police bombing of the MOVE residence in Philadelphia, recounts an otherwise banal—even absurd—confrontation with the repressive practices that shape and articulate the regime's discursive practices of power. Meaningful to the context of her story/autobiographical allegory is that it recounts a scene from her brief, two-month jailing in 1978 for "contempt of court," rather than a moment from her seven-year FORCED PASSAGES – 251 political incarceration from 1985 to 1992: with the notable exception of Martin Luther King Jr.'s "Letter from a Birmingham Jail" (1963), most insurgent carceral or "political-prisoner" counternarratives are authored from the long-term incarceration site of the prison rather than the short-term or transitory captivity of the local jail. Illustrating the forms of life sustenance that she and other jailed MOVE women sustained as a practice of resistance to the jail's logic of containment and isolation, Africa recalls: Africa's allegory signiWes MOVE's praxis of "life" in and against unnatural or premature death, in this case a living death, or carceral logic of death. The scene of this encounter crystallizes the constitutive centrality of technologies of death against life to the rigorous and relentless shaping of the prison's everyday0. As she communed with other jailed black women through the ritual feeding of seagulls, the guard/captor recognized that this practice was a form of intuitive antisystemic maneuvering and theatrical political pedagogy: amid the industrial waste and pollution of the jail, and squarely within its (often unrecognized) sweep of environmental poisoning and death, the civically dead expropriate the jailer's "slop" (the leftovers of the dead) in order to preserve (defend) natural life. Africa's account enacts and animates the crux of social truth embodied by imprisoned radical intellectuals over the past three decades: a distended passage into—and captivity within—a worldly intimacy with death, adjoining and opposing the mundane everyday of civil society, or the alleged free world.

ABOLITION K

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Slavery was re-institutionalized through the criminal legal system—the only method of defeating racism at its roots is starting with prison abolition—other movements and policies will inevitably fail without abolishing supremist institutions

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***edited for grammar

PART I. INTRODUCTION White supremacy - once writ large in the law via slavery and Jim Crow segregation -- was removed from its legalized pedestal with the Civil Rights Act of 1964, The Voting Rights Act of 1965 and finally, The Fair Housing Act of 1968. 2 The law became "race-neutral" and it now suddenly was illegal to discriminate on the basis on race -- in housing, employment, public accommodations and access to the franchise. Advocates hoped that this legislation would finally bring to fruition the overdue promise of the Civil War Amendments, long subverted via both legislation and judicial interpretation. 3 These strokes of the pen, of course, could not remove bigotry **long steeped in racist archetypes**; nor could this legislation remove [*55] the structural barriers of nearly 400 years of white racial preference and cumulative advantage in the accumulation of wealth and property, access to education and housing, health and well-being, and all matter of social opportunities. 4 Racism, as both white supremacist/anti-black ideology and institutionalized arrangement, remains **merely transformed with its systemic foundations intact**. Segregation in housing and education persists at levels beyond that noted in Brown v. Board of Education, racial wealth gaps grow, and racial disparities in criminal injustice proliferate at a pace that has led to the label "The New Jim Crow". 5 In tragic irony, the Civil Rights Act's requirement of race-neutrality has perhaps ushered in an era of more insidious de facto discrimination that is now denied through "color-blind" rhetoric. A large body of research documents the paradigmatic shift from overt essentialist racism to color-blindness. 6 This style of racism relies heavily on ideological frames and linguistic shifts which allow whites to assert they "do not see race," deny structural racism, claim a level playing field that now victimizes them with "reverse discrimination" and appeals to the "race card," and argue that any discussion of race/racism is, in fact, racist and only serves to foment divisions rather than reflect/redress societal realities. "Color-blind racism" also creates a set of code terms that implicitly indict people of color without ever mentioning race. 7 In the Post-Civil Rights Era, the color-blind paradigm has become deeply ensconced in law and politics. Continued movement towards "race-neutrality" is the hallmark of a series of Supreme Court decisions that deny the role of institutionalized racism and increasingly limit the role of race in constitutional remedies for inequality in matters of affirmative action and educational access, [*56] voting rights, and all matters of criminal injustice. 8 Criminal justice -- as it did post- Reconstruction -- continues to play a central role in the continued subjugation of Blacks, in particular, and will serve as the central example of both past and current patterns of discrimination. On the occasion of the 50th Anniversary of the passage of the Civil Rights Act, we must again raise questions about its ultimate impact on racial justice. While this legislation made a substantial contribution to effectively dislodging white supremacy from the law, the call instead to race-neutrality left anti-blackness unchallenged. The result, buttressed by judicial interpretations that further limit the consideration of race and the proliferation of color-blind rhetoric throughout popular and political discourse, has resulted in a situation of continued subjugation, particularly through the criminal justice system. One must ask -- given Constitutional history, Supreme Court rulings that grind at a snail's pace from the legitimation of slavery and exclusion to segregation to no consideration, and legislative lethargy -- what are the pathways towards racial redress and equal protection of the law? PART II. THE CIVIL RIGHTS ACT IN HISTORICAL AND LEGAL CONTEXT An analysis of the "success" of the Civil Rights Act of 1964 must be centered in a larger discussion of the role of law generally in shaping our constructions of race. The theoretical perspective of Critical Race Theory (CRT), supplemented with the data of the social sciences, guides the analysis here. CRT, from the outset, raised crucial questions as to the ability of law to produce racial equality. In fact, CRT is grounded in "an analysis of how law helped constitute the very racial structure that antidiscrimination law aimed to [*57] regulate." 9 CRT proceeds from the premise that racial privilege and related oppression is deeply rooted in both our history and law, thus making as racism a "normal and ingrained feature of our landscape"; 10 CRT further offers a critique of Civil Rights legal reforms in specific, by noting that these have failed to fundamentally challenge racial inequality. As Bell observes, "the subordination of blacks seems to reassure whites of an unspoken, but no less certain, property right in their whiteness." 11 While all communities of color suffer from racism in general and its manifestation in criminal justice in particular, "Black" has been the literal and figurative counterpart of "white". Anti-black racism is arguably at the very foundation of white supremacy; the two constitute the foundational book-ends for the legal, political and every day constructions of race in the United States. 12 For this reason, in combination with the excessive over-representation of African Americans in the criminal justice system and the prison industrial complex, this analysis will largely focus on the ways in which the law has been a tool for the oppression of African Americans via the furtherance of white supremacy and anti-blackness in both law and practice. While race has never reflected any biological reality, it is indeed a powerful social and political construct. In the U.S. and elsewhere, it has served to delineate "whiteness" as the "unraced" norm -- the "unmarked marker" -- while hierarchically devaluing "other" racial/ethnic categories with Blackness always as the antithesis. 13 The socio-political construction of race coincides with the age of exploration, the rise of "scientific" classification schemes, and perhaps most significantly capitalism. In the United States, the solidification of racial hierarchies cannot be disentangled from the [*58] capitalist demands for "unfree" labor and expanded private property. By the late 1600s, race had been a marker for either free citizens or slave property, and colonial laws had reified this decades before the Revolutionary War. 14 The question of slavery was at the center of debates in the creation of the United States and is referenced no less than ten times. 15 By the time of the Constitutional Convention of 1787, the racial lines defining slave and free had already been rigidly drawn -- white was "free" and black was "slave" -- and the result according to Douglass was this: "assume the Constitution to be what we have briefly attempted to prove it to be, radically and essentially pro-slavery". 16 The Three-Fifths Clause, the restriction on future bans of the slave trade and limits on the possibility of emancipation through escape were all clear indications of the significance of slavery to the Founders. The legal enouncement of slavery in the Constitution is one of the first of many "racial sacrifice covenants" to come, where the interests of Blacks were sacrificed for the nation. 17 The social and constitutional construction of white as free and Black as slave has on-going political and economic ramifications. According to Harris, whiteness not only allows access to property, may be conceived of per se as "whiteness as property". 18 These property rights produce both tangible and intangible value to those who possess it; whiteness as property includes the right to profit and to exclude, even the perceived right to kill in defense of the borders of whiteness. 19 As Harris notes: The concept of whiteness was premised on white supremacy rather than mere difference. "White" was defined and constructed in ways that increased its value

by reinforcing its exclusivity. Indeed, just as [*59] whiteness as property embraced the right to exclude, whiteness as a theoretical construct evolved for the very purpose of racial exclusion. Thus, the concept of whiteness is built on both exclusion and racial subjugation. This fact was particularly evident during the period of the most rigid racial exclusion, as whiteness signified racial privilege and took the form of status property. 20 Conversely, Blackness is defined as outside of the margins of humanity as chattel rather than persons, and defined outside of the margins of civil society. Frank Wilderson, in "The Prison Slave as Hegemonys (Silent) Scandal," describes it like this: "Blackness in America generates no categories for the chromosome of history, and no data for the categories of immigration or sovereignty. It is an experience without analog -- a past without a heritage." 21 Directly condemned by the Constitution in ways that other once excluded groups (American Indians, women, immigrants, LGBTQ) were not, Blackness as marked by slavery-- as property not person - creates an outsider status that makes future inclusion a daunting challenge. 22 Any doubts as to the centrality of white supremacy built on anti-blackness were erased in the case of Scot v. Sanford (1857), where a majority of the Supreme Court denied the citizenship claims of Dred Scott and went further to declare that The Missouri Compromise requirement of balance between free and slave states in the expanding United States was a violation of the due process rights of slave holders. 23 Referring to the legal status of African Americans, Justice Taney's opinion for the majority makes it painfully clear, [*60] They are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.. 24 Given the harsh judicial pronouncements here -- never over-ruled -- the legal status of African Americans remains in many respects, **the after-life of the slave**, still subject to stiff neo-slave forms of total legal social control, i.e. convict lease and the prison industrial complex, **despite Constitutional Amendments**, Federal Civil Rights legislation, and executive measures. PART III. WHITE SUPREMACY, ANTI-BLACKNESS AND THE AFTERLIFE OF SLAVERY IN THE LAW In the post -bellum era, the stain of slavery has been impossible to remove. Constitutional Amendments, Supreme Court rulings, and legislation notwithstanding, the exploitation of captive/caged Black labor continues, largely uninterrupted. As Dillon observes: Slavery's production of social and biological death did not end with emancipation, did not cease with the end of segregation, and refused to heed under civil rights legislation. Its logic and power [*61] exceeds the realm of law. The past comes back not just to haunt, but to structure and drive the contemporary operations of power. 25 The primary mechanism for the perpetual denial of full citizenship has been the criminal law, with its attendant systems of policing and punishment. As Frederick Douglas observed nearly 150 years ago, there is no escaping "the general disposition in this country to nimpute crime to color." 26 Post slavery, the criminalizing narrative has been a central cultural feature of on-going efforts at oppression; from convict lease/plantain prison farms to the contemporary prison industrial complex, the control of black bodies for profit has been **furthered by the criminal justice system**. A substantial body of work documents the post -bellum transformation of Black Codes into Slave Codes, slave patrols into police forces, plantations into prisons, and, in the post-Civil Rights era, into the contemporary prison industrial complex. 27 At no point was the law able to stop this; to the contrary, the law and its enforcement apparatus remain consistent, albeit shifting, centerpieces of white supremacy and anti-Blackness. A. THE POST -BELLUM ERA: CONVICT LEASE AND PLANATION PRISONS In the aftermath of the Civil War, the passage of the 13th, 14th, and 15th Amendments seemed to promise an end the abolition of slavery, due process and equal protection at both state and federal levels, and full citizenship via the franchise (at least for Black men). Angela Y. Davis, in Are Prisons Obsolete?, traces the initial rise of the penitentiary system to the abolition of slavery; "[I]n the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the [*62] possibilities of freedom for the newly released slaves." 28 There was a subsequent transformation of the Slave Codes into the Black Codes and the plantations into prisons. Southern states quickly passed laws that **echoed the restrictions associated with slavery**, re-inscribed the property interests of "whiteness," and criminalized a range of activities of the perpetrator was black. 29 These laws were enforced by former slave patrols turned police agencies, with the assistance of extra-legal militias, and the white citizenry in general, who are merely protected by these same police, but per Wilderson "not simply "protected" by the police, they are -- in their very corporeality -- the police." 30 All this becomes possible because the 13th Amendment -- "Neither slavery nor involuntary servitude shall exist in the United States" -- **contained a dangerous loophole** -- "except as a punishment for crime." This allowed for the conversion of the old plantations to penitentiaries -- the 18,000 acre Louisiana Penitentiary at Angola is a case in point -- and the creation of prison "farms" such as Parchmann in Mississippi and the infamous Tucker Prison Farm and Cummins Prison Farm in Arkansas. 31 Sheriffs, jailors and wardens leased out entire prisons to private contractors who literally worked thousands of prisoners to death in labor camps, on chain gangs, and in prison farms. These prisoners were **largely black**; in the post-Civil War South the racial composition of prison and jail populations shifted dramatically from majority White to majority Black, and in many states increased ten-fold. 32 As Davis notes, "the expansion of the convict lease system and the county chain gang meant that the antebellum criminal justice system, defined criminal justice largely as a means for **controlling black labor**." 33 [*63] The re-institutionalization of slavery via the criminal legal system also served to effectively undo the newly acquired 15th Amendment right to vote. This was legislatively curtailed by the tailoring of felony disenfranchisement laws to include crimes that were supposedly more frequently committed by blacks. In the post-Civil War period, existing felony disenfranchisement laws were expanded dramatically, especially in the South, and modified to include even minor offenses. This legislation, in combination with literacy tests, poll taxes, grandfather clauses and ultimately, the threat of white terror, essentially denied Blacks the right to vote until the mid-twentieth century. The 14th Amendment's promise of due process and equal protection was insufficient to override this continued economic exploitation and civic exclusion. This was due to a series of Supreme Court rulings that interpreted the 14th in support of state's rights, white supremacy, and against Black inclusion. In United States v. Cruikshank (1876), the Supreme Court ruled that that "The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another." 34 This decision, in a case involving the bloody Colfax Massacre, forbade the Federal Government from relying on the Enforcement Act of 1870 to prosecute actions by white paramilitary groups that had been violently suppressing the Black vote. 35 This decision paved the way for nearly a century of unchecked white extra-legal violence and lynching that served to enforce white supremacy in both law and practice. On matters of racial equality, the most famous Supreme Court ruling of the era was Plessy v. Ferguson (1896). 36 Post slavery, white supremacy in the law was accomplished by the introduction of a series of segregationist Jim Crow laws that mandated Black exclusion from white spaces, even in public accommodations. In a challenge to legalized segregation of public transportation in the state [*64] of Louisiana, Plessy argues that these laws have denied him equality before the law. The majority disagrees and sets forth the principle of "separate but equal." Justice Brown (1896) writes for the majority, It is claimed by the plaintiff in error that, in an mixed community, the reputation of belonging to the dominant race, in this instance the white race, is 'property,' in the same sense that a right of action or of inheritance is property. . . We are unable to see how this statute deprives him of, or in any way affects his right to, such property. If he be a white man, and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called 'property.' Upon the other hand, if he be a colored man, and be so assigned, he has been deprived of no property, since he is not lawfully entitled to the reputation of being a white man. 37 The sole dissenter in Plessy sets up the juxtaposition between Jim Crow and color-blindness that frames the contemporary debate on race today. Justice Harlan, while acknowledging the reality of white supremacy, decries its support with the law, but with cold comfort: The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. **Our constitution is color-blind**, and neither knows nor tolerates classes [*65] among citizens. In respect of civil rights, all citizens are equal before the law. 38 Even post-Emancipation, Blacks had no claim to the property rights of whiteness, nor full and equal access to rights of citizenship that entailed. White supremacy and anti-Blackness persisted in law, even in the face of Amendments to the Constitution, which purported to undo the same. B. THE POST-CIVIL RIGHTS ERA, MASS INCARCERATION AND "COLOR-BLINDNESS The Supreme Court ruling in Brown v. the Board of Education of Topeka, Kansas (1954) is often used as the benchmark for chronicling the start of the Civil Rights Movement of the 1950s and 1960s. 39 The Court's unanimous rejection of Plessy's "separate but equal" provided a new Federal framework with which to challenge Jim Crow segregation on the state and local levels. It offered the back drop for the Montgomery bus boycott, the resistance in Birmingham, Bloody Sunday, the voter registration drives of Freedom Summer, and ultimately, passage of the Civil Rights Act of 1964, The Voting Right Act of 1965, the Fair Housing Act of 1968, and the 24th Amendment to the Constitution. 40 While there was hope again that the law itself could be pressed into the service of racial equality, those victories now seem bittersweet. Bell argues that the Brown decision and the ensuing Federal legislation were "silent covenants" of interest-convergence, where "perceived self-interest of whites rather than the racial injustices suffered by Blacks have been the major motivation in racial-remediation policies." 41 Judge Robert L. Carter, one of the attorneys who argued Brown goes further, ". . .the fundamental vice was not legally enforced racial segregation itself; this was a mere [*66] by-product, a symptom of the greater and more pernicious disease - white supremacy." 42 Legally supported segregation was uprooted without dislodging either white supremacy or anti-Blackness, now cloaked in race-neutral rhetoric of "color-blindness". The "color-blind" Constitution and the race-neutral requirement of Federal Civil Rights legislation now serves as convenient cover for the persistence of institutionalized racism. Racially coded but race-neutral rhetoric is widely used in debates over welfare reform, affirmative action, and particularly "law and order" criminal justice policy; 43 in all these cases, the coded racial sub-text reads clearly, and the resultant policies, while purportedly "race neutral," have resulted in disproportionate harm to people of color, especially African

Americans. While race is now widely the text/subtext of political debate, systemic racism still remains largely absent from either political discourse or policy debates of all sorts, including those related to criminal injustice. In the Post-Civil Rights Era, there has been a corresponding shift from de jure racism codified explicitly into the law and legal systems to a de facto racism where people of color, especially African Americans, are subject to **unequal protection of the laws**, excessive surveillance, police terror, extreme segregation, a brutal and biased death penalty, and neo-slave labor via incarceration all in the name of "crime control." 44 "Law and order" criminal justice policies are all guided by thinly coded appeals to white fears of high crime neighborhoods, "crack epidemics," gang proliferation, [*67] juvenile super -- predators, urban unrest, school violence, and more. In all these case, the sub-text reads clearly -- fear of brown and especially Black people. As before, law, policing and punishment are central to the ongoing exclusion of Blacks from civic life. Post slavery, the criminalizing narrative was a cultural feature of on-going efforts at oppression; from convict lease/plantain prison farms to the contemporary prison industrial complex the control of black bodies for profit has been furthered by the criminal justice system. 45 "Slave Codes" become Black Codes and now Black Codes become gang legislation, three-strikes and the War on Drugs in the persistent condemnation of Blackness. 46 As before, the criminal legal system is the primary mechanism for undoing the promised protections of Federal Civil Rights legislation and constitutes again, the major affront to the fulfillment of the 13th, 14th and 25th Amendments. The United States has the highest incarceration rate in the world, with a population of 2.3 million behind bars that constitutes 25% of the world's prisoners. 47 The increased rate of incarceration can be traced to the War on Drugs and the rise of lengthy mandatory minimum prison sentences for drug crimes and other felonies. These policies have proliferated, not in response to crime rate or any empirical data that indicates their effectiveness, due to new-found sources of profit for prisons. 48 As Brewer and Heitzeg (2008) observe: The prison industrial complex is a self-perpetuating machine where the vast profits (e.g. cheap labor, private and public supply and construction contracts, [*68] job creation, continued media profits from exaggerated crime reporting and crime/punishment as entertainment) and perceived political benefits (e.g. reduced unemployment rates, "get tough on crime" and public safety rhetoric, funding increases for police, and criminal justice system agencies and professionals) lead to policies that are additionally designed to insure an endless supply of "clients" for the criminal justice system (e.g. enhanced police presence in poor neighborhoods and communities of color; racial profiling; decreased funding for public education combined with zero-tolerance policies and increased rates of expulsion for students of color; increased rates of adult certification for juvenile offenders; mandatory minimum and "three-strikes" sentencing; draconian conditions of incarceration and a reduction of prison services that contribute to the likelihood of "recidivism"; "collateral consequences"-such as felony disenfranchisement, prohibitions on welfare receipt, public housing, gun ownership, voting and political participation, employment- that nearly guarantee continued participation in "crime" and return to the prison industrial complex following initial release.) 49 The 13th Amendment claim of abolition remains unfulfilled, as the neo- slavery of the prison industrial complex becomes the current vehicle for controlling Black bodies for political and economic gain. The trend towards mass incarceration is marred by racial disparity. While 1 in 35 adults is under correctional supervision and 1 in every 100 adults is in prison, 1 in every 36 Latino adults , 1 in every 15 black men, 1 in every 100 black women, and 1 in 9 black [*69] men ages 20 to 34 are incarcerated. 50 Despite no statistical differences in rates of offending, approximately 50% of all prisoners are black, 30% are white, and 20% are Latino;. 51 These disparities are indicative of differential enforcement practices rather than any differences in criminal participation. This is particularly true of drug crimes, which account for the bulk of the increased prison population. Even though Blacks and whites use and sell drugs at comparable rates, African Americans are anywhere from 3 to 10 times more likely to be arrested, and additionally likely to receive harsher sentences than their white counterparts. 52 It is no mistake that the subtitle of Michelle Alexander's epic indictment of The New Jim Crow is this: Mass Incarceration in the Age of Color-blindness 53 The Drug War, from start to finish, has always been racist: draconian sentences, crack versus powder disparities, police patrol patterns, stop/frisk practices, racial profiling and death at the hands of law enforcement, arrests, convictions, sentencing including death and incarceration, and collateral consequences that include bans on voting, bars to employment, education, housing and economic assistance, and the diminishment of parental rights, all fall heaviest on Blacks. 54 This racial disparity is by design. As Alexander observes criminal justice policies serve to regulate and segregate communities of color in the Post-Civil Rights era: [*70] What has changed since the collapse of Jim Crow has less to do with the basic structure of our society than with the language we use to justify it. In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind. Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. Once you're labeled a felon, the old forms of discrimination--employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service--are suddenly legal. As a criminal you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it. 55 We are still not saved by the 14th Amendment. In the Post-Civil Rights Era, the Supreme Court has followed the color-blind logic of the sole dissenter in Plessy and solidified the race-neutral implications of Federal Civil Rights legislation. Color-blindness as the new legal doctrine begins to emerge -- despite judicial dissent -- in cases involving affirmative action and other remedied to centuries of racial inequality. The Supreme Court adopts the color-blind model in The Board of Regents, University of California v. Bakke (1978), where the ruling is in favor of a white student who claimed racial discrimination in his denial of admission to medical school. 56 If the Constitution is to be color-blind, race can only be considered with "strict scrutiny," even as a remedy for past discrimination. Justices Brennan and Marshall, in separate dissents, point out the flaws of this approach. Brennan observes, [*71] Claims that law must be "color-blind" or that the datum of race is no longer relevant to public policy must be seen as aspiration rather than as description of reality. . . for reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities. Yet we cannot . . . let color blindness become myopia which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by their fellow citizens." 57 Justice Marshall's dissent echoes the warning, one that has now come to pass; For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a state acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier. 58 McCleskey v. Kemp (1987) is perhaps the most significant case of the Post-Civil Rights era with respect to the application of the 14th Amendment as to matter of race. 59 It is here that potential for an interpretation that would allow for real remedies for institutionalized discrimination is presented and denied. The racial disparity that characterizes all criminal justice has been most obvious and contested in the application of capital punishment, especially in the South, where the "killing state" stepped to do what was once the work of extra-legal lynch mobs. 60 After a series of death penalty cases [*72] where the Court ruled that racial discrimination in the application of the criminal laws' ultimate penalty must be addressed, it is here that the Supreme Court in a 5-4 decision clearly defines discrimination as individual not institutionalized. Citing statistical evidence from the now famous Baldus study, McCleskey argued that the application of the death penalty in Georgia was fraught with systemic patterns of racism that transcended but tainted any particular case. Defendants charged with killing white victims were more likely to receive the death penalty, and, in fact, cases involving black defendants and white victims were more likely to result in a sentence of death than cases involving any other racial combination. 61 The majority did not dispute the statistical evidence, but feared the consequences. If the Court accepted McCleskey's claim, then the Equal Protection Clause of the 14th Amendment would apply to patterns of discrimination, to institutionalized racism and sexism, to questions of structured inequality. It could, in fact, be used to challenge the very foundations of the criminal justice system itself, start to finish: laws with disproportionate racial impact, racial profiling and racial bias in police use of force, and prosecutorial discretion. These fears are expressed in Powell's opinion for the majority, "First, McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system. The Eighth Amendment is not limited in application to capital punishment, but applies to all penalties. Thus, if we accepted McCleskey's claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty. Moreover, the claim that his sentence rests on the irrelevant factor of race easily could be extended to apply to claims based on unexplained discrepancies that [*73] correlate to membership in other minority groups, and even to gender. 62 In the majority's view, equal protection of the laws was for individuals, not oppressed groups, and discrimination must be intentional and similarly individual. McCleskey closed off the last best avenue for remedying structural inequality with the law itself, and preserved the color-blind veneer at the expense of racial remedy. Justice Brennan's impassioned dissent makes the implications of this decision clear: At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white. Furthermore, counsel would feel bound to tell McCleskey that defendants charged with killing white victims in Georgia are 4.3 times as likely to be sentenced to death as defendants charged with killing blacks. In addition, frankness would compel the disclosure that it was more likely than not that the race of McCleskey's victim would determine whether he received a death sentence: 6 of every 11 defendants convicted of killing a white person would not have received the death penalty if their victims had been black. While, among defendants with aggravating and mitigating factors comparable to McCleskey's, 20 of every 34 would not have been sentenced to die if their victims had been black. Finally, the assessment would not be complete without the information that cases involving black defendants and white victims are more likely to result [*74] in a death sentence than cases featuring any other racial combination of defendant and victim. Ibid. The story could be told in a variety of ways, but McCleskey could not fail to grasp its essential narrative line: there was a significant chance that race would play a prominent role in determining if he lived or died. . . At the time our Constitution was framed 200 years ago this year, blacks had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect. Only 130 years ago, this Court relied on these observations to deny American citizenship to blacks. Ibid. A mere three generations ago, this Court sanctioned racial segregation, stating that "[i]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane." Plessy v. Ferguson, 163 U.S. 537, 552 (1896). In more recent times, we have sought to free ourselves from the burden of this history. Yet it has been scarcely a generation since this Court's first decision striking down racial segregation, and barely two decades since the legislative prohibition of racial discrimination in major domains of national life. These have been honorable steps, but we cannot pretend that, in three decades, we have completely escaped the grip of a historical legacy spanning centuries Warren McCleskey's evidence confronts us with the subtle and persistent influence of the past. His message is a disturbing one to a society that has formally repudiated racism, and a frustrating one to a Nation accustomed to regarding its destiny as the product of its own will. Nonetheless, we ignore him at our peril, [*75] for we remain imprisoned by the past as long as we deny its influence in the present. 63 Well into the 21st Century, Supreme Court decisions continue to erode Federal Civil Rights legal gains and the ability of the Civil War Amendments to provide racial redress. The doctrine of strict scrutiny itself continues to be eroded further as the current Supreme Court limits its application and as a series of subsequent cases from Grutter v Bollinger (2003) and Gratz v. Bollinger (2003) to Fisher v. University of Texas at Austin (2014) and Shelby County v. Holder (2012) have shown, the Constitution has indeed erected a legal barrier with claims of colorblindness. 64 Worse still, as Crenshaw notes, the shift even beyond color-blindness towards claims of "post-racial pragmatism," This pragmatism jettisons the liberal ambivalence about race consciousness to embrace a colorblind stance even as it foregrounds and celebrates the achievement of particular racial outcomes. In the new post-racial moment, the pragmatist may be agnostic about the conservative erasure of race as a contemporary phenomenon but may still march under the same premise that significant progress can be made without race consciousness. . .. Colorblindness as doctrine not only undermines litigation strategies that rely on race-conscious remediation, but it also soothes social anxiety about whether deeper levels of social criticism, remediation, and reconstruction might be warranted. While colorblindness declared racism as a closed chapter in our history, post-racialism now provides reassurance to those who weren't fully [*76] convinced that this history had ceased to cast its long shadow over contemporary affairs. Post-racialism offers a gentler escape, an appeal to the possibility that racial power can be side stepped, finessed and ultimately overcome by regarding dominance as merely circumstance that need not get in the way of social progress. As post-racialism becomes the vehicle for a colorblind agenda, the material consequences of racial exploitation and social violence-- including the persistence of educational inequity, the disproportionate racial patterns of criminalization and incarceration, and the deepening patterns of economic stratification--slide further into obscurity. 65 More than a century after the Civil War Amendments, 60 years since Brown, 50 years since the Civil Rights Act of 1964, and we are here, with white supremacy and anti-Blackness intact, but now masked, and with slavery (unwilling to die) transformed yet again. Still, the law, unwilling and unable to offer relief, but worse still, at the center of this exclusionary endeavor, from the outset to the present, remains the definer and purveyor of Black social, civil and literal death. PART VI. REMEDIES? Despite centuries of death-defying movements and oft well-intended legislation, the essential story line and structural reality of white supremacy/anti-Blackness remains foundationally intact. While there has been progress for some, enough to reinforce the claims of a post-racial era, the mainstay, the historical sway of a slavery rooted in both racism and profit, lingers, transformed over and again from "the prison of slavery to the slavery of prison." 66 This same phenomena is called by many names. All the powers of the law - Constitutional amendments, Federal Civil Rights legislation, Supreme Court rulings - **have failed to stymie this trend**, and as we have seen, have often allowed and re-enforced the same. [*77] In the Post-Civil Rights era, efforts to resist are complicated by the insidious cover story created by the paradigm of "color-blind" racism and its corresponding entrenchment in now "race-neutral" law. All matter of inequality is masked by claims of legal equality, but nowhere more so than with regard to the extensive and excessive reliance on mass incarceration. 67 Criminality has become conflated nearly entirely with Blackness, and the entire machinery of it rests on an unspoken understanding that the property

rights of "whiteness" rest now (as always) on the exclusion, the caging, and the execution of Black bodies. The law supports this, still. In light of this, what remedies then remain? The usual calls for still more legal reform, perhaps for reparations, the hope for a more radical future Supreme Court reading of McCleskey seem too distant, too abstract, and perhaps too, **destined to fail at addressing the deep roots of the possessive investment in slavery**. 68 Perhaps **the most fruitful approach** is evidenced in the **prison abolition movement**, which explicitly recognizes the contemporary prison industrial complex as an **extension of slavery** and later, convict lease. 69 As such, the call now, as then, must be for abolition. Angela Davis describes the movement as follows: Prison abolition, like the abolition of slavery, is a long-range goal and the handbook argues that an abolitionist approach requires an analysis of "crime" that links it with **social structures, as opposed to individual pathology**, as well as "anticrime" strategies that focus on the provision of social resources. Of course, there are many versions of prison abolitionism--including those that propose to abolish punishment altogether and replace it with [*78] reconciliatory responses to criminal acts. In my opinion, the most powerful relevance of abolitionist theory and practice today resides in the fact that without a radical position vis-a-vis the rapidly expanding prison system, prison architecture, prison surveillance, and prison system corporatization, prison culture, with all its racist and totalitarian implications, will continue not only to claim ever increasing numbers of people of color, but also to **shape social relations** more generally in our society. Prison needs to be abolished as the **dominant mode** of addressing social problems that are better solved by other institutions and other means. The call for prison abolition urges us to imagine and strive for a very different social landscape. 70 Even here, there is the danger that the prison abolition movement will attend to the dismantling of an essential structure of white supremacy without fully grappling at root with the anti-Blackness that serves as corollary. At the time of this writing, the nation is divided again for the most recent in an ongoing spate of "new 21st century version of lynchings". 71 Police and vigilante killings of unarmed Blacks, now occur at the rate of 1 every 28 hours. 72 New research verifies what some have already known with their lives, that Black children are seen, by police and others, as older [*79] by far-- in fact not seen as children as all. 73 New research too suggests that white Americans are more comfortable with punitive and harsh policing and sentencing when they imagine that the people being policed and put in prison are black. This is **mediated by fear**; the idea of black criminals inspires higher anxiety than that of white criminals, pressing white people to want stronger law enforce enforcement. 74 While these sentiments and actions are rooted in the desire to protect the property of "whiteness,' this is always over and against the perceived intrusion of excluded Blackness. In the final analysis, it is the long shadow of anti-Blackness that must be confronted. All legal, political, and social movement efforts to dismantle white supremacist institutions **will fail in lieu of this**. These will be half measures until, at last, there is acknowledgement and embrace of the "Black specter waiting in the wings. . . .that cannot be satisfied (via reform or reparation), but must nonetheless be pursued to the death." 75

The alternative is prison abolition---that solves

Stanley and Spade, 12- (Eric A. Stanley is finishing a PhD in the history of consciousness at the University of California, Santa Cruz, and is editor of the collection Captive Genders: Trans Embodiment and the Prison Industrial Complex,. Dean Spade is assistant professor at the Seattle University School of Law, teaching administrative law, poverty law, and law and social movements) "Queering Abolition Prison, Now?" From American Quarterly, Volume 64, Number 1, March 2012, American Studies Association, JSTOR //droneofark

From many points of the political spectrum people are now willing to argue that the current criminal justice system is "broken." Reformers often suggest prisons are wasteful and do not act as deterrents, while others argue the criminal justice system is racist, classist, homophobic, and more. However, in contrast, an abolitionist analysis argues that the system is not broken but, according to its own logics, it is working perfectly. How has this discussion affected your thinking, and how do you analyze this debate? Spade: It's interesting to think about the parallel conversation going on about whether our immigration system is "broken." These conversations about these two "broken" systems that operate to exile, cage, and torture immigrants, poor people, people of color, and people with disabilities always seem to rely on an idea that we need these systems, we just need to clean them up or fix them up somehow. I think that abolitionists are asking, in a variety of ways, if we can imagine letting go of the idea that some people need to be caged, exiled, or kept out. If we know that the logics that support criminalization and immigration

enforcement are lies—these systems do not keep us safer but actually increase and perform violence, these systems do not improve our economic well-being but actually enhance exploitation and consume enormous resources, these systems do not heal harm but in fact cause and exacerbate harm—then our advocacy cannot and should not participate in those logics by assuming that exile and caging are, indeed, necessary. When we decide that there is no problem that is best solved by exile or caging, we get to ask all the other questions about how we want to actually solve complex, serious problems, some of which we have really well-developed answers to and some of which people are still working to build responses to. Some have clear models that have worked historically or in other places, others require innovative thinking. Abolition is the commitment to engage in those creative processes rather than to continue to [End Page 121] assume the necessity of a set of practices that have always been and will always be, as long as they are in use, harmful, targeted at certain populations because of processes of racialization and gendering, rationalized through patriarchy, ableism, settler-colonialism and white supremacy, and unredeemable.

Link – reform

Piecemeal reform masks the inherent inequality in prison systems and empirically strengthens its ability to punish marginalized peoples.

Law 9 [Victoria, anarchist activist, writer, freelance editor, "Resistance Behind Bars: The Struggles of Incarcerated Women," pg. 166-9, omak]

The soaring increase in prisons, as well as the horrifying conditions within them, has prompted calls for reform. However, it is important to note the historical impact of reform: the prison itself was born from early reformers' calls to replace corporal and capital punishment with the extended loss of liberty. Imprisonment, reformers argued, would provide the opportunity for those convicted of crimes to reform themselves through hard work, silence and solitude. The Walnut Street Jail in Philadelphia opened in 1790 as a Quaker alternative to corporal punishment and execution and was emulated throughout the country.652 Some Historical Background 167 Separate prisons for women were also the result of well-intentioned calls for reform. In 1874, after Quaker reformers Sarah Smith and Rhoda Coffin led a campaign to end sexual abuse of women imprisoned at the (male) Indiana state prison, a separate women's prison was established. Other states followed suit and, by 1940, 23 states had established separate facilities to hold female prisoners.653 Although female prisons were seen as a much-needed reform over locking women in the cellars and attics of male penitentiaries, their existence led to an increase in the number of women sentenced to imprisonment. In Illinois, for example, the most dramatic increase occurred when the prison at Joliet opened a unit specifically for women. Despite the fact that no more than 10 women had ever been incarcerated at one time, the first female-only unit was a 100-cell building built in 1859. During the next decade, the total number of women sentenced to prison tripled.654 Similarly, in New York State, reformer (and commissioner of the New York State Board of Charities) Josephine Shaw Lowell's repeated calls for separate women's prisons resulted in the opening of the state's first reformatory in Hudson in 1887.655 Within two years, Hudson had reached its capacity of 234; under Lowell's urging, the state legislature opened two other reformatories: Albion in 1893 and Bedford Hills in 1901.656 Even in these reformatories, women did not escape punishments that amounted to torture. Clifford Young, the chief inspector of the New York State Commission of Correction, recounted that in 1919 and 1920, women at Bedford Hills who were perceived as "refractory or hysterical . . . were handcuffed with arms behind the back, and with a second pair [of handcuffs] were fastened to the gratings so that their

weight was on the toes or ball of the foot. While in this position their heads were forced down into a pail of water. The management contended that this was 'treatment,' not punishment."657 Both Albion and Bedford Hills continue to exist today: in January 2007, Albion held 1,106 women and Bedford Hills held 812.658 Resistance Behind Bars 168 More recent calls for reforms have taken into account gender differences and issues particular to women. These, too, have strengthened an already-unjust system of incarceration. In 2006, California governor Arnold Schwarzenegger announced that the California Department of Corrections and Rehabilitation (CDCR) had identified 4,500 women who did not need to be imprisoned. Instead of releasing them, however, CDCR proposed building 4,500 new beds in what they called Female Rehabilitative Community Corrections Centers, essentially mini-prisons, in the urban areas where many of these women had lived before arrest.659 The state legislature rejected the proposal, but in 2007 passed a modified version of the bill, AB76, which called for a "Female Offender Reform Master Plan" that would address the needs particular to its imprisoned female population rather than relying on the supposedly gender-neutral (but often designed for men) onesize-fits-all model. This "master plan" did not address the root causes of rising female incarceration: mandatory sentencing, racial profiling, poverty and the feminization of poverty, the lack of support systems for women leaving prison. Instead, the plan called for increased assessment and implementation of "gender specific rehabilitative programs" within existing prisons. Calls for reform have failed to adequately address the factors leading to women's incarceration. Instead, **they mask the inequities and injustices inherent in the prison system and have historically strengthened its capacity and ability to separate and punish those who transgress social mores, particularly the poor, people of color and other marginalized populations**. Even government entities have realized this: in 1973, the same year that Nixon began his efforts to intensify the War on Crime, the National Advisory Commission on Criminal Justice Standards and Goals stated that prisons fail to reduce or deter crime, provide only temporary protection to the community, and change the incarcerated person for the worse. It recommended that society use imprisonment only as a last resort.660 Some Historical Background 169 Just as some have recognized the injustices and brutality of prisons and called for widespread reforms, others have called for the abolition of the entire system. Prisons act not only as sites of social control but also, as demonstrated in the preceding chapters, as state-sanctioned sites of violence against women, particularly women of color, poor women and those who transgress social norms. Incarceration has not decreased crime; instead, "tough on crime" policies have led to the criminalization (or what Christian Parenti and others have referred to as "widening the net") of more activities, leading to higher rates of arrest, prosecution and incarceration while shifting money and resources away from other public entities, such as education, housing, health care, drug treatment, and other societal supports.

Traditional policy reform strategies fail to dismantle the new Jim Crow laws that created the modern prison industrial complex – reforms are circumvented and the foundational racism is maintained

Alexander 10 [Michelle, civil rights lawyer, advocate, legal scholar, and associate professor of law at Stanford Law School, "The New Jim Crow," pp. 14-15, omak]

The recent decisions by some state legislatures, most notably New York's, to repeal or reduce mandatory drug sentencing laws have led some to believe that the system of racial control described in this book is already fading away. Such a conclusion, I believe, is a serious mistake. Many of the states that have reconsidered their harsh sentencing schemes have done so not out of concern for the lives and families that have been destroyed by these laws or the racial dimensions

of the drug war, but out of concern for bursting state budgets in a time of economic recession. In other words, the racial ideology that gave rise to these laws remains largely undisturbed. Changing economic conditions or rising crime rates could easily result in a reversal of fortunes for those who commit drug crimes, particularly if the drug criminals are perceived to be black and brown. Equally important to understand is this: Merely reducing sentence length, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of **African Americans** continue to be arrested and labeled drug criminals, they **will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars.** The system of mass incarceration is based on the prison label, not prison time. Skepticism about the claims made here is warranted. There are important differences, to be sure, among mass incarceration, Jim Crow, and slav ery— the three major racialized systems of control adopted in the United States to date. Failure to acknowledge the relevant differences, as well as their implications, would be a disservice to racial justice discourse. Many of the differences are not as dramatic as they initially appear, however; others serve 14 the new jim crow to illustrate the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time. Ultimately, I believe that the similarities between these systems of control overwhelm the differences and that mass incarceration, like its predecessors, has been largely immunized from legal challenge. If this claim is substantially correct, the implications for racial justice advocacy are profound. With the benefi t of hindsight, surely we can see that piecemeal policy reform or litigation alone would have been a futile approach to dismantling Jim Crow segregation. While those strategies certainly had their place, the Civil Rights Act of 1964 and the concomitant cultural shift would never have occurred without the cultivation of a critical political consciousness in the African American community and the widespread, strategic activism that fl owed from it. Likewise, **the notion that the New Jim Crow can ever be dismantled through traditional litigation and policy-reform strategies that are wholly disconnected from a major social movement seems fundamentally misguided**. Such a movement is impossible, though, if those most committed to abolishing racial hierarchy continue to talk and behave as if a state-sponsored racial caste system no longer exists. If we continue to tell ourselves the popular myths about racial progress or, worse yet, if we say to ourselves that the problem of mass incarceration is just too big, too daunting for us to do anything about and that we should instead direct our energies to battles that might be more easily won, history will judge us harshly. A human rights nightmare is occurring on our watch**. A new social consensus must be forged about race and the role of race in defi ning the basic structure of our society**, if we hope ever to abolish the New Jim Crow. This new consensus must begin with dialogue, a conversation that fosters a critical consciousness, a key prerequisite to effective social action. This book is an attempt to ensure that the conversation does not end with ner vous laughter.

Link – alternatives to prisons

"Alternatives" to prison are cancerous growths that spread beyond the prison walls into the prisoner's everyday life, controlling him through new mechanisms that rest on the same theme of punishment through confinement

Foucault 76 [Michel Foucault was a French philosopher, historian of ideas, social theorist, philologist and literary critic, "Alternatives to the Prison Dissemination or Decline of Social Control?," in Theory, Culture & Society November 2009 vol. 26 no. 6, omak]

Yet, even in these forms of alternatives to the prison one needs to point out several things: they are all a relatively limited extension of the prison outside its boundary. Many of these measures, such as remission, or partial detention, are simply a way of delaying or deferring imprisonment, or a way of diluting the time of imprisonment over a whole period of one's life; they are therefore not a system that abolishes detention. A fundamental issue arises therefore, which is that these new methods that try to punish without imprisonment are basically a new and more efficient way of re-implementing the older functions of the carceral that I noted earlier. The fact of imposing a debt on someone, of cancelling a number of his freedoms, such as those of movement, are other forms of immobilizing him, of making him dependent, of binding him to an obligation to labour or be productive or live in a family. Above all, they are so many more ways of diffusing outside of prisons the functions of surveillance that will henceforth be exercised not on the individual confined to his cell but dispersed across his apparent life of freedom. Besides, an individual who is on probation is one who is under surveillance amidst the plenitude or flow of daily life, in the midst of the constant relations with family, work, and associates; it is a form of control over his salary, how he uses it, how he manages his budget; it is a surveillance over his whole environment. **All these alternatives** to the old forms of incarceration **have** as their function **the aim of disseminating as far as possible all those forms of power that belonged to the prison, to spread them as a cancerous growth beyond the prison walls**. It is truly a penal or carceral surplus-power that is developing, whilst the prison as an institution is diminishing. The castle falls, but there is an attempt to deliver through different mechanisms the social functions, or the functions of surveillance, control and resocialization that the institution-as-prison was meant to ensure. Of course one must not immediately conclude that what is being put in place through these seeming alternatives will be worse than the prison. It is not worse, though one must bear in mind that, in relation to a system of incarceration, there is nothing really alternative in these new methods. It is more a matter of the transmission (démultiplication) of the old carceral functions that the prison implemented in a rather brutal and inefficient way, so that they are now achieved in more flexible, free and also more extensive ways. They are all variations on the same theme of punishment through confinement.

Alternatives to incarceration fail – imprisonment is just shifted to the local level and any reforms are coopted by internal actors

Austin and Krisberg 82 [Dr. James Austin has over twenty-five years of experience in correctional planning and research. He is the former director of the Institute on Crime, Justice and Corrections at George Washington University in Washington, DC. He serves, or has recently served, as director for several large U.S. Department of Justice-funded research and evaluation programs, Barry Krisberg, Ph.D. is the Director of Research and Policy and Lecturer in Residence at the Chief Justice Earl Warren Institute on Law and Social Policy. Prior to joining the Warren Institute, Dr. Krisberg was a Distinguished Senior Fellow at the Berkeley Center for Criminal Justice. Prior to joining BCCJ, Dr. Krisberg was the President of the National Council on Crime and Delinquency from 1983 to 2009, "The Unmet Promises of Alternatives to Incarceration," Crime & Delinquency July 1982 vol. 28 no. 3 374-409, omak]

The foregoing review of the research literature on alternatives to incarceration suggests that their promise remains largely unmet. In each instance, the nonincarcerative options were transformed, serving criminal justice system values and goals other than reducing imprisonment. Sentencing alternatives, such as restitution and community service, are employed to enhance the increasingly criticized sanctions of probation and fines. There is little evidence that sentencing alternatives

have substantially displaced incarceration. Similarly, **postincarceration release programs often escalate the level of control over clients and have served primarily to control populations within prison systems**. Increasing the availability of community facilities has not reduced populations in secure confinement. **Community correction legislation appears less likely to reduce incarceration than to change the location of imprisonment from the state institutions to county jails**. Moreover, initial declines in state prison commitments can be neutralized by other sentencing or release policies that increase prison populations. Although community correction legislation may have redistributed correctional costs and shifted decision making from state to local levels, it is questionable whether it has made a longterm contribution to reduced imprisonment. An analysis of why these nonincarceration schemes have failed must confront the question of goals. In each attempted reform, significant criminal justice actors added other objectives to, displaced, or replaced the orig- inal goals. An even more troubling problem facing reform efforts is the inherent ambiguity in what constitutes successful alternatives to incarceration. Reviews of enabling legislation as well as program descrip- tions illustrate how multiple and often conflicting objectives characterized these reforms.6° Harland notes that advocates of restitution often fail to anticipate conflicts with traditional criminal justice goals and procedures.61 Sentencing occurs within a system dominated by the values of law enforcement, community protection, and punishment. Other values enter the sentencing process during stages of plea negotiation and presentence investigation. Most criminal justice personnel do not endorse the value of reducing incarceration. Quite the contrary, imprisonment itself is valued, and milder forms of punishment such as probation or diversion rest on the threat that incarceration may be applied if the offender fails to conform. **Alternatives are employed to the extent that they fit the structure of power and values within specific criminal justice systems and the variety of goals pursued by actors within the system**. Generally, the values of police, judges, and prosecutors are predominant. In correction, the strongest influence is exercised by administrators of prison and jail systems, who control large budgets and often share law enforcement values. Probation and parole agencies exert less influence 60. James Austin, "Instead of Justice: Diversion" (Ph.D. diss.; University of California at Davis, 1980); Harland, "Court-Ordered Community Service in Criminal Law." 61. Alan T. Harland, "Goal Conflicts and Criminal Justice Innovation: A Case Study," Justice System Journal , than do police, court, and correctional organizations; often they are subordinate parts of judicial or prison bureaucracies. Thus, alternatives as a means to reduce imprisonment are advocated by the less powerful divisions of the criminal justice system-or by private reform organizations with minimal political and economic influence, which must rely on the media and the presentation of to promote decarceration policies and legislation. Within this milieu, alternatives are attractive to law enforcement, court, and prison officials as tools to supplement nonincarcerative sanctions (e.g., probation, fines, and parole). Public opinion opposing the use of socially defined "lenient" alternatives for serious offenders intensifies the system's reluctance to expand the use of alternatives except in crisis situations (e.g., following riots or federal court orders)

Alternatives to incarceration are wildly insufficient and only subject prisoners to other manifestations of the surveillance state

Price, 15-(Joshua M. Price has engaged in advocacy with and for currently and formerly incarcerated people since 2004. For his efforts, the New York State Assembly has awarded him a citation for Outstanding Contribution to Civil Rights of New Yorkers, and the Broome/Tioga (New York) NAACP has named him "Person of the Year.". He teaches in the Department of Sociology at the State University of New York at Binghamton.) "Prison and Social Death" Part

III: Abolition Democracy pt. 10- Conclusion, p. 145-148, Rutgers University Press, print//droneofark

Pushing for incremental changes in agencies and institutions that act with impunity, such as the parole office or the county jail, put us in significant contradiction with a deeper belief that the structure of these institutions was rife with abuse and racism that no measure of reform could possibly remedy without dismantling the institution entirely. Though we met with the sheriff, he always dismissed our concerns out of hand and continued to act with callous disregard for the health and well-being of people held at the county jail. We tried to cooperate with the parole office so that they would not revoke people's parole so often, and instead support successful reentry a bit more, but the parole office treated us with a mixture of bureaucratic indifference and disdain. Both they and the sheriff usually, though not always, framed our relationship in adversarial terms. In pushing for change, we used a rule of thumb that we learned from a group that advocates for transgender people in prison in California. We did not adopt or advocate for any policy or position that would lead to increased expenditure or reliance on the corrections system, including jail health care or parole. We also resisted solutions predicated on expanding surveillance. Avery Gordon has called this "abolitionist reform," or prison reform that aims ultimately toward the eventual abolition of prison, rather than reform that serves as an apologia for the prison system (A. Gordon 2004). Yet unintended consequences can undermine efforts at abolitionist reform. At what point does one (did we) tacitly support jail expansion by advocating for better health care? I am haunted by the thought that we did exactly this. In early 2013, after a series of suspicious inmate deaths around the state, the New York State Attorney General's Office announced an investigation into the health care at fourteen county jails around New York. The investigation may have been prompted in part by activists, especially in Buffalo and perhaps in Binghamton as well. As a result of the investigation, the attorney general ordered several county jails to make changes to their mental health and medical units. Astutely, several sheriffs around the state used this mandate to propose capital-intensive expansions to their respective jails. Our sheriff, for example, requested a multimillion-dollar expansion of the county jail. In February 2014, the Broome County Legislature voted to provide several million dollars to build more bunk space at the jail and enlarge its medical unit. Other New York counties that have recently expanded their jails include Erie, Tomkins, Tioga, and Cortland in the face of small but vocal opposition. In vain we entered the county legislators' chambers, leafleting and carrying banners protesting the expansion. But I knew—we all knew—we were going to lose. I saw the sheriff and several of his upper-echelon staff across the room, standing by the podium, receiving public kudos from the county executive. They could not avoid seeing us with all our noisy posters and hand-painted T-shirts. Their lips were pursed in quiet disapproval. I could see how furious they were with us, but I thought—they've won! They've won. They've triumphed. This is their moment, not ours. Several years of documenting and fighting against deficient prenatal care, the abominable rates of miscarriage, a lack of sympathy or psychological support for the mentally ill, and the lackadaisical diagnostic protocols in our county jail that have been responsible for at least one death (New York State Correction of Commission 2012) has gotten us little, except that the jail budget will now be greater. This mirrors the expansion of prison medical care at the state level, as the New York State Department of Corrections copes with large numbers of mental health patients and an aging prison population. Rozann Greco, a friend who works with me on the advocacy, visits a new medical unit at Fishkill Correctional Facility in New York. She is part of a delegation on aging in prison. They tour the facility, one of five popping up throughout New York State. It specializes in geriatric care. It provides colonoscopies and prostate surgery. It also treats many of the "cognitive deficiencies," as they term it, of incarcerated people. She tells me that at first she was impressed with the level of care and the attention provided by these clinics. The doctors and staff seem serious, competent, and committed. It is well-staffed and the medical facilities seem up-to-date. But then, as she gets back in her car she thinks, with horror, "What happened to compassionate release?" We discuss the experience at length. Is this the future of prisons? Some right wing pundits argue that people receive better medical care in prison than they do on the outside, as a way to show how comfy prisons are. Is this what we have decided to do as a society, invest more in prison health care instead of health care for the poor and the formerly incarcerated? Is this our vision for better health care and responsible investment? Rozann tells me of a man they told her about during her visit. He routinely banged his head against the bars. The medical facility detected he has mental health problems and diagnosed him based on videos made of his behavior. They issued the man a helmet and prescribed a combination of occupational therapy and antipsychosis medication. His behavior, she was told, has improved remarkably. By all accounts, the incarceration of the mentally ill is a significant social challenge, with some estimates as high as one third of inmates evincing some problem of mental illness. Is this our response to the problem of the incarceration of the mentally ill? Issuing them a helmet and a Prozac? My discussion with her depresses me profoundly. (Fieldnotes, 2009) Advocating for reform thus must aim for more, or something other, than better health care; it must promote alternatives to incarceration. But simply advocating for decarceration or alternatives to incarceration is not enough. Chapter 7, which details our skirmishes with the local parole office, underscores that the criminal justice system polices and controls people through other institutions. In an era of mass supervision, a web of governmental and nongovernmental organizations jousts to impose themselves on the lives of the formerly

incarcerated and their families (Robinson, McNeill, and Maruna 2013; McNeill and Beyens 2014; Miller 2014). The nonprofit and the service sector, in other words, begin where parole, probation, and the prison system leave off. Aiming for abolition, even if couched as "abolition reform," proved of limited utility to me in negotiating this reentry industry. I can be more specific. Our organization, the Southern Tier Social Justice Project, tried to push for concrete changes in policy that emerged from the perspectives of the incarcerated, the formerly incarcerated, and their families, and that would be of direct benefit to them. In 2008, we formed a reentry task force with area service organizations, including residential treatment centers for drugs and alcohol and the parole office. The goal was a "one-stop shop," to use the jargon of those in the field—a comprehensive reentry center that would encompass all of a person's needs when he or she came back into town. I went along reluctantly, because I was worried that in forming a task force we were abandoning our work with community people and focusing too much attention on working with middle-class service providers and state agents such as the Office of Parole and the Department of Social Services (DSS). Our efforts were successful insofar as we formed a task force for reentry. As it turned out, the victory was pyrrhic. Once state funds became available, the Department of Social Services quickly moved in and took over the task force. DSS drummed out nearly all of the formerly incarcerated people who had formed the task force. Although we had always strived for democratic and nonhierarchical decision making, the task force became hierarchical and dominated by a white middle-class service sector as well as the Department of Social Services and the Office of Parole. This linked to a deeper problem inside our organizing efforts. The most committed formerly incarcerated people wanted to form a nonprofit, and, they hoped, get jobs as full-time advocates and peer counselors for the formerly incarcerated. This goal was in tension with our organizing for a political movement, since a nonprofit structure tends to impose hierarchy on an organization. The tension, quite frankly, boiled down to a question of time and focus. Becoming a nonprofit meant focusing a lot more on grant writing, which meant attending to the funding agendas of foundations and government agencies (see generally INCITE! 2007). Nonprofits have received a lot of criticism by progressives alert to the possibility of reproducing the logic of capitalism and of oppressive structures of service provision that sap the strength of political projects (see Rodriguez 2006; Spade 2011). As an all-volunteer effort that was unfunded we had several advantages. We were not beholden to anyone except each other and to the incarcerated. No one had a financial stake. On the other hand, had we applied for nonprofit status (501[c]3), we might have had more stability as an organization. Funding and jobs would have allowed committed community members to dedicate themselves full-time to our efforts to support the formerly incarcerated and their families.

Link – mandatory minimums

The plan just subjects prisoners to policing and poverty---focus on prison time instead of the prison system ensures de-politicization, stigma and exclusion

subject to perpetual surveillance by the police, and unable to integrate into the mainstream society and economy

Alexander 10 [Michelle, civil rights lawyer, advocate, legal scholar, and associate professor of law at Stanford Law School, "The New Jim Crow," pp. 93-95, omak]

Because harsh sentencing is a major cause of the prison explosion, one might reasonably assume that substantially reducing the length of prison the new jim crow sentences would effectively dismantle this new system of control. That view, however, is mistaken. **This system depends on the prison label, not prison time.** Once a person is labeled a felon, he or she is ushered into a parallel universe in which discrimination, stigma, and exclusion are perfectly legal, and privileges of citizenship such as voting and jury ser vice are off-limits. It does not matter whether you have actually spent time in prison; **your second-class citizenship begins the moment you are branded a felon**. Most people branded felons, in fact, are not sentenced to prison. As of 2008, there were approximately 2.3 million people in prisons and jails, and a staggering 5.1 million people under "community correctional supervision"—i.e., on probation or parole.89 Merely reducing prison terms does not have a major impact on the majority of people in the system. It is the badge of inferiority— the felony record—that relegates people for their entire lives, to

secondclass status. As described in chapter 4, for drug felons, there is little hope of escape. Barred from public housing by law, discriminated against by private landlords, ineligible for food stamps, forced to "check the box" indicating a felony conviction on employment applications for nearly every job, and denied licenses for a wide range of professions, people whose only crime is drug addiction or possession of a small amount of drugs for rec reational use fi nd themselves locked out of the mainstream society and economy—permanently. No wonder, then, that most people labeled felons find their way back into prison. According to a Bureau of Justice Statistics study, about 30 percent of released prisoners in its sample were rearrested within six months of release.90 Within three years, nearly 68 percent were rearrested at least once for a new offense.91 Only a small minority are rearrested for violent crimes; the vast majority are rearrested for property offenses, drug offenses, and offenses against the public order.92 For those released on probation or parole, the risks are especially high. They are subject to regular surveillance and monitoring by the police and may be stopped and searched (with or without their consent) for any reason or no reason at all. As a result, they are far more likely to be arrested (again) than those whose behavior is not subject to constant scrutiny by law enforcement. Probationers and parolees are at increased risk of arrest because their lives are governed by additional rules that do not apply to everyone 107748_01_1-296_r6sb.indd 94 10/12/11 7:28:16 AM the lockdown 95 else. Myriad restrictions on their travel and behavior (such as a prohibition on associating with other felons), as well as various requirements of probation and parole (such as paying fi nes and meeting with probation offi cers), create opportunities for arrest. Violation of these special rules can land someone right back in prison. In fact, that is what happens a good deal of the time. The extraordinary increase in prison admissions due to parole and probation violations is due almost entirely to the War on Drugs. With respect to parole, in 1980, only 1 percent of all prison admissions were parole violators. Twenty years later, more than one third (35 percent) of prison admissions resulted from parole violations. To put the matter more starkly: About as many people were returned to prison for parole violations in 2000 as were admitted to prison in 1980 for all reasons. Of all parole violators returned to prison in 2000, only one-third were returned for a new conviction; twothirds were returned for a technical violation such as missing appointments with a parole offi cer, failing to maintain employment, or failing a drug test.95 In this system of control**, failing to cope well with one's exile status is treated like a crime.** If you fail, after being released from prison with a criminal record—your personal badge of inferiority—to remain drug free, or if you fail to get a job against all the odds, or if you get depressed and miss an appointment with your parole offi cer (or if you cannot afford the bus fare to take you there), you can be sent right back to prison—where society apparently thinks millions of Americans belong. This disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loïc Wacquant as a "closed circuit of perpetual marginality. Hundreds of thousands of people are released from prison every year, only to fi nd themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to fi nd themselves in precisely the circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status. Reducing the amount of time people spend behind bars—by eliminating harsh mandatory minimums—will alleviate some of the unnecessary suffering caused by this system, but it will not disturb the closed circuit. Those labeled felons will continue to cycle in and out of prison, subject to perpetual surveillance by the police, and unable to integrate into the mainstream society and economy. Unless the number of people who are labeled felons is dramatically reduced, and unless the laws and policies that keep ex-offenders marginalized from

the mainstream society and economy are eliminated, **the system will continue to create and maintain an enormous undercaste.**

Link – policing/surveillance

Money saved from the plan goes to policing and surveillance

Schenwar, 14—Truthout's editor-in-chief, board of advisors on Waging Non-Violence (Maya, excerpt from the book Locked Down, Locked Out: Why Prison Doesn't Work and How We Can Do Better, published by Berrett-Koehler, "What if We Abolished Prisons: Can decarceration work?", Alternet, www.alternet.org/books/what-if-we-abolished-prisons)//emchen

Diana Zuñiga, the statewide field organizer of the forty-organization-strong decarceration coalition Californians United for a Responsible Budget (CURB), talks of how policies that expand the prison nation creep in under the guise of **confronting mass incarceration**. In California, the state is carrying out a process of "realignment," shifting large numbers of incarcerated people from prisons to county jails. The strategy, championed as a route to reducing the state's skyrocketing prison budget and ending the "revolving door" of recidivism, has actually resulted in most counties moving toward jail expansion. Diana is often alarmed to hear CURB's calls for shrinking the prison system echoed by officials calling for "mental health jails" and "social service jails." She says, "We have seen our language **be coopted** so that law enforcement can appear to be doing the 'right thing.'" Diana is pointing to an even more insidious recent trend in addition to the production of "alternative" forms of confinement: A wide range of influential political groups, switching from a push for "tough on crime" legislation to a "right on crime" message, are advocating that money saved from reducing prison populations be spent on heightened policing and surveillance. The Texas-based conservative group Right on Crime touts "reforms" like increasing monitoring and records-keeping on formerly incarcerated people, scaling up the use of private security companies, and zeroing in on "crime hotspots" in cities: poor neighborhoods of color. I broach the subject with Jazz from the Campaign to End the New Jim Crow, who's also been a leader in the struggle to end New York's "stop and frisk" policy. Jazz points to the way that "targeted" policing tends to play out in reality: violence directed at neighborhoods of color, especially black neighborhoods. "Turning our communities into open-air prisons is not the solution to violence," he says.

AT link turn

This should be the framing question of the debate – despite reformism the number of people in prison has grown dramatically because prison is considered a structural condition of life

Davis PhD 3

(Angela Y. "Are Prisons Obsolete?" page 10\\EJH)

The question of whether the prison has become an obsolete institution has become especially urgent in light of the fact that more than two million people (out of a world total of nine million! now inhabit U.S. prisons, jails, youth facilities, and immigrant detention centers. Are we willing to relegate ever larger numbers of people from racially oppressed communities to an isolated existence marked by authoritarian regimes, violence, disease, and technologies of seclusion that produce severe mental instability? According to a recent study, there may be twice as many people suffering from mental illness who are in jails and prisons that there are in all psychiatric hospitals in the United States combined

Prison reform will fail – so long as the prison industrial complex is intact the conditions for imprisonment will be reproduced in order to maintain corporate profits

Davis PhD 3

(Angela Y. "Are Prisons Obsolete?" page 16/17\\EJH)

What, for example, do we miss if we try to think about prison expansion without addressing larger economic developments? We live in an era of migrating corporations. I order to escape organized labor in this country-and thus higher wages, benefits, and so on-corporations roam the world in search of nations providing cheap labor pools. This corporate migration thus leaves entire communities in shambles. Huge numbers of people lose jobs and prospects for future jobs. Because the economic base of these communities is destroyed, education and other surviving social services are profoundly affected. This process turns the men, women, and children who live in these damaged communities into perfect candidates for prison.

I the meantime, corporations associated with the punishment industry reap profits from the system that manages prisoners and acquire a clear stake in the continued growth of prison populations. Put simply, this is the era of the prison industrial complex. The prison has become a black hole into which the detritus of contemporary capitalism is deposited. Mass imprisonment generates profits as it devours social wealth, and thus it tends to reproduce the very conditions that lead people to prison. There are thus real and often quite complicated connections between the deindustrialization of the economy-a process that reached its peak during the 1980s-and the rise of mass imprisonment, which also began to spiral during the Reagan-Bush era. However, the demand for more prisons was represented to the public in simplistic terms. More prisons were needed because there was more crime. Yet many scholars have demonstrated that by the time the prison construction boom began, official crime statistics were already falling. Moreover, draconian drug laws were being enacted, and "three-strikes" provisions were on the agendas of many states.

Decreasing criminalization won't solve – incarceration rates function independently of crime rates

Davis PhD 3

(Angela Y. "Are Prisons Obsolete?" page 11/12\\EJH)

In thinking about the possible obsolescence of the prison, we should ask how it is that so many people could end up in prison without major debates regarding the efficacy of incarceration. When the drive to produce more prisons and incarcerate ever larger numbers of people occurred in the 1980s during what is known as the Reagan era, politicians argued that "tough on crime" stances-including certain imprisonment and longer sentences-would keep communities free of crime. However, the of mass incarceration during that period had little or no effect on official crime rates. In fact, the most obvious pattern was that larger prison populations led not to safer communities, but, rather, to even larger prison populations. Each new prison spawned yet another new prison. And as the U.S. prison system expanded, so did corporate involvement in construction, provision of goods and services, and use of labor. Because of the extent to which prison building and operation began to attract vast amounts of capital-from the construction industry to food and health care provision-in a way that recalled the emergence of the military industrial complex, we began to refer to a "prison industrial complex. "3

AT perm

The permutation opens up space for co-option

Acey,00 (Camile E.S.A. Acey, radical black feminist student activist, UC Berkeley) "This is an Illogical Statement: Dangerous Trends Anti-Prison Activism" Social Justice, Vol. 27, No. 3 (81), Critical Resistance to the Prison-Industrial Complex (Fall 2000), pp. 209-210 //droneofark

Examining the relationship between popular anti-prison rhetoric and the expressed realities of prison life reveals a huge divergence in political locations. Activists often speak about the "state" without specifically defining what they mean by it. Similarly, they think about the "state" ? and by extension "state power" ? in terms of locality (often even pointing to specific buildings). At every moment that power is wielded, it is established, exercised, and reasserted through the invocation of ideological institutions. These institutions subsequently help to violently enclose space?whether through the act of land grabbing or ghettoization. Therefore, when formulating a radical understanding of, and opposition to, state power, it is necessary for us to locate and deconstruct the iterative space from which power flows, recognizing and continually addressing the fact that space (and, by extension, spatial metaphor) is in constant flux. A metaphor for the liberal-democratic ideal is the idea of a working body ? a healthy body with all the organs functioning properly. Some popular anti-prison discourse is similar to the complaint of a sick patient: particular institutions are saying, "this institution (or this organ) is in the way of society (or my body) being fully functional. I need another one." In particular, education is proposed as an organ that can be transplanted into the "sick" society so as to somehow make it well again. This is unproven; more often we find that new institutions installed alongside the old ones do damage more quickly and efficiently. However, this method of activism continues to be employed because of the myth of time ? the time that "heals all wounds" and the time that "will tell." Time is the skin that holds all these faulty organs in. Hope relies on time; however, the trick of time is that while you are waiting for your hope, the current social order is reproducing itself. In developing our critique, what we need to reveal is not only the faults of the body, but also that the body is itself the fault; modern society cannot be saved. As radical anti-prison activists, our aim therefore should be to make people realize this?that (sticking with the metaphor) we must induce a sustained attack in the body, where the only time is emergency time, where the only time is now.

The affirmative precludes further reform and upholds the prison system – improving the system for some implicates the innocence of others – so long as the aff does not solve all penal injustice they legitimize what remains

Malinowski, social worker, 14

(Nick, 6/3/2014, The Huffington Post, "#Justice4Cecily: Do calls for leniency undermine the movement against state violence?" http://www.huffingtonpost.com/nick-malinowski/justice4cecily-do-calls-f_b_5413729.html\\EJH)

What metric do supporters of the carceral system use to prove it as legitimate? Is it the hundreds of patently innocent people executed by the state despite wrongful convictions? Is it the dramatic racial disproportionalities? Is it the world's highest incarceration rate? Is it the fact that 80 percent of criminal cases involve people too poor to pay for their own lawyer -- that nearly bankrupting

the global economy or laundering billions of dollars for organized crime merit less jail time than possession of $10 of marijuana? Is it that Scooter Libby can be absolved of all wrong-doing simply by being pals with the Vice President? Is it the uneven balance between prosecutors and defense attorneys that coerces 98 percent of defendants to plead guilty to avoid the heightened stakes should they dare take their case to trial? Is it that Bronx prosecutors refuse to bring charges against the Corrections Officers at Rikers Island because they might walk off the job? Is it that after dozens of men are released after years and years in prison as the Brooklyn District Attorney's office shifts through the files of discredited police officers, not a single prosecutor, many of whom must have at least been aware of the fraudulent behaviors if not supporting them, has been arrested, fined or even publicly chastised? The law is unjust -- it is primarily an expression of the powerful and a tool used in the service of the status quo. It has served to codify slavery, discrimination, Japanese internment and warrantless surveillance. Believing that the law will serve justice is a set up.

Is seeking leniency from such an institution a tacit acknowledgment of its legitimacy? Does a cry for mercy imply that others are not entitled to this same reward? Shanda Strain, a Manhattan Assistant District Attorney involved in McMillan's prosecution spoke to this sense of exceptionalism. "In essence, [McMillan] has repeatedly argued that the rules should not apply to everyone equally -- that defendants who are politically motivated deserve special treatment." Now, there is no evidence to support Strain's suggestion that the rules, in so far as they apply to what is commonly referred to as the criminal justice system, apply to everyone equally - the very fact that people believed that political pressure could persuade Zweibel towards leniency should put that argument to rest - also race remains among the most significant factors in predicting outcomes from law enforcement contact, to prosecution, to sentencing. But Strain's point remains: is not an organized plea for leniency in a single case a separation, an attempt to persuade toward "exceptionalism"? In seeking leniency by virtue of innocence, we are pitching our advocacy in the terms provided by the state -- a strategy that relies on an alliance with the very object we have challenged as corrupt where we might otherwise argue for the dissolution of a morally bankrupt penal system and the attendant requirement of a re-imagining of other forms of justice.

The calls from journalists and advocates alike to frame McMillan's arrest experience as related to First Amendment rights to protest, in addition to describing her as innocent, cannot be seen as anything other than attempts to separate her from the thousands of arrests that occur each day in the City. If she is deserving of a different type of support and justice than others around her, it is only because those others are not. McMillan's own descriptions of her experience at Rikers Island further cement this divide as her supporters gleefully announced that she had deputized cellmates to write letters on her behalf and that others served as her protectors in the showers. Protectors from who? McMillan doesn't deserve compassion because she was assaulted, because she was innocent, or because she was politically minded or barhopping; she deserves compassion because in the context of our current punishment system, everyone does. A reliance on claims to innocence leads us away from a structural critique, instead implicitly reinforcing the systemic injustice we claim to be fighting against. By exceptionalizing the case we maybe even foreclose the opportunities for our larger goals. As Audre Lorde, Lilla Watson and other feminists have told us: There is no separate survival.

AT pragmatism

Reject their alternative indicts – demands for immediate solutions derail more important conversations about structural causes of problems in favor of shallow piecemeal solutions meant to address white guilt

Leonard PhD 12

(David J., 11/05/2012, The Huffington Post, "So you want to talk solutions? White denial and the change question, http://www.huffingtonpost.com/dr-david-j-leonard/so-you-want-to-talk-solut_b_1850938.html\\EJH)

One of the common responses to discussions about racism and other forms of injustice is the demand for solutions. The commonplace entry into public and private discussions about racism, the efforts to take over comment sections, to silence those who work to highlight inequality with responses like "what's the solution" does not engender solutions but rather works to **derail the conversation**. Usually deployed alongside the descriptor of wining and complaining, this disingenuous demand (as opposed to a desire to figure out the path toward justice) for solutions illustrates the manner that white male privilege operates. In my many years of teaching and writing, the majority of those who felt entitled to have answers NOW and remedies yesterday were white men. The "shut up... stop complaining...give me solutions" reframe is the embodiment of privilege.

Recognizing our forms of denial and challenging our social and racial myopia is the solution. Refusing to accept the lies and distortions, the misinformation and stereotypes is a remedy. However, for those who are desperate for solutions, who feel disappointed with our collective failure to provide a road map toward justice you don't have to look any further, I got you.

Alt solvency

The alternative solves---it's a question of academic starting points

Sudbury, 04- (Julia Sudbury is a Canada Research Council Chair in Social Justice, Equity and Diversity in social work at the University of Toronto.)"A World Without Prisons: Resisting Militarism, Globalized Punishment, and Empire" Social Justice, Vol. 31, No. 1/2 (95-96), Resisting Militarism and Globalized Punishment (2004), pp. 26-28, JSTOR, pdf//droneofark

The globalization of capital is driving prison expansion in four ways. First, it produces surplus populations black, Latino, indigenous, immigrant, and working-class communities in North America, Europe, and Australia that are immobilized and disenfranchised in penal warehouses in the global North. Second, it produces surplus land that, in the absence of other economic development opportunities, generates local demand for corrections dollars in the form of new prison construction. Third, the globalization of the private prison industry spreads the U.S. model of high-tech mass incarceration throughout the world and offers global South governments the mirage of modernity via mass incarceration. Finally, neoliberal economic restructuring under the tutelage of the IMF and World Bank is undermining traditional survival strategies, decimating government services, driving women and men in the global South into the criminalized drug industry, and fueling cross-border incarceration. In addition, global capitalism is deeply implicated in U.S. and allied military interventions worldwide, which frequently target strategic

economic interests and natural resources. These interventions are not limited to wars using U.S. troops. From Israel to Bolivia, U.S. funds are used to pay for military equipment, training, and troops. Women are particularly at risk in the environment of violence and displacement caused when regimes with poor human rights records deploy armed forces against civilian or insurgent populations. One outcome of this vulnerability is the displacement of poor women from traditional forms of survival and their subsequent engagement in the illicit economies of sex work or the drug trade. Women in militarized situations are also at risk of criminalization and incarceration when they take up insurgent positions against repressive regimes. Militarism and globalization thus generate a web of criminalization that in turn fuels the prison building boom and generates profits for the economic interests served by the transnational prison-industrial complex. Penal warehouses for people of African descent, immigrants, indigenous people, and the global poor, as I have outli are central to the new world order. For that reason, even as "small government" is promoted as a prerequisite for competitiveness in the global market, "correc? tions" budgets continue to skyrocket. That is also why prison abolition remains of vital importance in this time of endless war. What does this mean for our research and praxis as scholars and activists? First, much more work needs to be done to unravel the complex interconnections between mass incarceration, militarism, and the global economy. As activists in the heart of empire, our priority should be to make connections between radical social movements. Bridge-building between the anti-globalization, antiwar, and prison abolitionist movements provides critical opportunities for sharing strategies. For example, global anti-sweatshop activism against Wal-Mart and Nike can serve as a model of cross-border activism that could be deployed to challenge private prison corporations such as Wackenhutand Sodexho. Such transnational activism might successfully prevent the spread of U.S.-style private superjails from South Africa through the rest of the continent and from Mexico and Chile throughout the rest of Latin America. In addition, cross-fertilization between movements will encourage activists to address wider issues that are not always made visible in issue-based campaigns. For example, intensified analysis of globalization might encourage prison abolitionists to consider the need for anti-capitalist economic models as a prerequisite for a world without prisons. Similarly, an engagement between antiwar activists and analyses of mass incarceration would generate a deeper understanding of the need to simultaneously challenge militarism abroad and racialized surveillance and punishment at home. An effective challenge to the interlocking systems of militarism, incarceration, and globalization demands the establishment of broad-based, cross-movement coalitions, in the U.S. and internationally. The World Social Forum (WSF) is an important venue where critiques of, and alternatives to, free trade, imperialism, and neoliberalism are developed. Prison abolitionists need to infuse the politics of the WSF with an analysis of the role of the prison-industrial complex in bolstering global capitalism. At the same time, the movement to abolish prisons can learn from the successes of popular movements in the global South such as the Movimento Sim Terra in Brazil and the Ruta Pacifica in Colombia. These broad based movements involve organized labor, women, the homeless, the unemployed, students, rural campesinos, and indigenous communities. They have developed a sophisticated intersectional analysis of globalization, imperialism, and milita? rism, as well as race, gender, class, and nation. Most important, they have been successful in generating mass mobilizations by developing a viable alternative to the Washington Consensus model, prioritizing people and the environment over corporations and profits. These broad-based popular movements pay attention to issues of identity while maintaining a radical analysis of, and opposition to, global capitalism. Activists in the global North have the advantage of witness? ing firsthand the emergence of the transnational prison-industrial complex as an important weapon in the armory of global corporate

and political elites. Radical prison abolitionists, especially grass-roots activists of color, have a great deal to add to the global movement against imperialism and neoliberal capitalism. Our combined analyses demonstrate that to build un outro mundo (a different world), we must first envision a world without prisons.

CRIME DA

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Crime rates are the lowest in decades – prisons are key

Feeney 14 – writer for Time Magazine

Nolan Feeney, 11/10/2014, Time, "Violent Crime Drops to Lowest Level Since 1978", http://time.com/3577026/crime-rates-drop-1970s/, 7/8/2015, \\BD

Violent crime in the U.S. fell 4.4 percent last year to the lowest level **in decades**, the FBI announced Monday.∂ In 2013, there were 1.16 million violent crimes, the lowest amount since the 1978's 1.09 million violent crimes, Reuters reports.∂ All types of violent crimes experienced decline last year, with rape dropping 6.3 percent, murder and non-negligent manslaughter dropping 4.4 percent and robbery dropping 2.8 percent.∂ The rate of violent crime is 367.9 crimes for every 100,000 people, which marked a 5.1 percent decline since 2012. The rate has fallen each year since at least 1994.∂ Possible reasons for the decline include the country's **high incarceration rate**, an aging population and an increased use of security cameras and cell phone videos capturing incidents.

Crime is low now due to prisons – it's comparatively the largest internal link -the aff reverses the trend

Reynolds 2K - director of the Criminal Justice Center at the National Center for Policy Analysis

Morgan Reynolds, 11/1/2000, The Heartland Institute, "Does Punishment Work to Reduce Crime?", https://www.heartland.org/policy-documents/does-punishment-work-reduce-crime, 7/8/2015, \\BD

Does punishment work to reduce crime?∂ The answer seems obvious to most Americans: Yes, of course punishment reduces crime. Punishment converts criminal activity from a paying proposition to a nonpaying proposition (at least sometime), and people respond accordingly.∂ We all are aware of how incentives affect our decisions. Yet controversy over the very existence of a deterrence and incapacitation effect of incarceration has raged in elite circles, including at a House subcommittee meeting at which I testified.∂ Simple, Powerful Logic∂ The logic of deterrence is pretty obvious, and the evidence is **powerful** too. First, consider the September 18 issue of Forbes, which asks John Lott, senior research scholar at Yale Law School and author of More Guns, Less Crime, "Why the recent drop in crime?" His answer: "Lots of reasons--increases in arrest rates, conviction rates, prison sentence lengths." Lott wisely mentions these facts **before turning to other factors** like increased private deterrence through concealed handgun carrying laws and changes in illegal drug markets.∂ Next, consider Daniel Nagin, a Carnegie-Mellon University professor of public policy, who criticized Lott's finding that shall-issue, concealed carry licensing laws exert an independent deterrent effect on crime. "A number of studies have been successful in isolating a deterrent effect," writes Professor Nagin in a 1998 review of the scientific literature on deterrence and incapacitation. "The combined deterrent and incapacitation effect generated by the collective actions of the police, courts, and prison system is very large."∂ In sharp contrast to the situation 10 years ago, experts who assert the contrary fight a rearguard action. Crime rates have fallen 30 percent over the last decade, while the prison and jail population doubled to two million. Most people are able to connect these dots (The New York Times aside). **Nobel Prize-winning economist** Gary Becker points out that the current wave of

home building in our cities stems from these dramatic gains in public safety.∂ During the subcommittee hearing, Marc Maurer of the Sentencing Project cast doubt on the effectiveness of incarceration by claiming there is no association between imprisonment rates and crime reduction in the 50 states. Yet Professor James Fox, the oft-quoted criminologist from Northeastern University in Boston, admitted under questioning that the negative impact of incarceration on criminal activity is **undeniable**. As German philosopher Arthur Schopenhauer said, truth passes through three stages: First, it is ridiculed; second, it is violently opposed; and third, it is accepted as being self-evident.∂ Too Many Prisoners?∂ If the United States, with so many people in prison, still has one of the world's highest crime rates, doesn't this imply that prison does not work?∂ First, our crime rate, especially the property crime rate, isn't so high by international standards any more, though our violent crime rate remains far too high. Second, the nation had to imprison more people in recent years because it failed to do so earlier (although our ill-advised war on drugs inflamed the problem too).∂ It was not as if crime in the U.S. was rising so fast that the rate of imprisonment could not keep up. Rather, the rate of imprisonment fell first by deliberate design. By the time the United States began incarcerating more criminals in the mid-1970s, huge increases were required to bring the risk of imprisonment up to the crime rate. As Charles Murray notes, it's more difficult to reestablish a high rate of imprisonment relative to crime after the crime rate has escalated than to maintain a high risk of imprisonment from the outset. We experienced the same phenomenon in Texas, where crime rocketed up during the 1980s while expected punishment plunged.∂ Both U.S. and Texas experience show that imprisonment can stop a rising crime rate and then gradually push it down.∂ Public opinion strongly supports the use of prisons to give criminals their just desserts. The endorsement of punishment is relatively uniform across social groups. More than three-quarters of the public see punishment as the primary justification for sentencing. Still, the public holds out some hope for rehabilitation, too. About 60 percent express hope that services like psychological counseling, training, and education inside prison will correct personal shortcomings.∂ Punishment, though unpleasant and expensive, supplies the wrongdoer with a major incentive to reform. Even career criminals give up crime because they don't want to go back to prison.

*insert impact

Link – prisons solve

Prisons solve crime – deterrence and incapacitation

Drago et al. 9 – Drago (University of Naples Parthenope, Center for Studies in Economics and Finance, and Institute for the Study of Labor), Galbiati (Centre National de la Recherche Scientifique–EconomiX and Cepremap), Vertova (University of Bergamo and Econpubblica, Bocconi University)

Francesco Drago, Roberto Galbiati, Pietro Vertova, 2009, JSTOR, "The Deterrent Effects of Prison: Evidence from a Natural Experiment", 7/8/2015, \\BD

Using this data set, we exploit the variation in the remaining sentence at the date of the pardon to identify how former inmates' propensity to recommit a crime responds to a policy that exogenously manipulates prison sentences. Our results show that a marginal increase in the remaining sentence reduces the probability of recidivism by 0.16 percentage points (1.3 percent). This means that for former inmates, 1 month less time served in prison commuted into 1 month more in expected sentence **significantly** reduces their propensity to recommit a crime. By further inspecting our data, we can make some interesting comparisons of the behavior of different

categories of former inmates. The effects we find are **fairly homogeneous** across inmates with different individual characteristics. Only individuals convicted to relatively longer sentences do not seem to be deterred, whereas foreign inmates are slightly more responsive than Italians. Young individuals have a behavioral response similar to that of adults.∂ This evidence allows us to make some considerations regarding both policy and theory. First, prison sentences represent **effective** disincentives to individuals' criminal activity. In particular, a policy commuting actual sentences in expected sentences **significantly** reduces recidivism. This suggests that alternative approaches to incapacitation relying on the behavioral response of criminals to disincentives to engage in criminal activity may be effective in reducing crime. Second, given that existing estimates reveal a nonpositive effect of time served on recidivism (Kuziemko 2007), we can draw some quantitative inferences on the possible effect of expected sentences on propensity to recommit a criminal act. For a 7- month period we estimate an elasticity in the propensity to recommit a crime with respect to the average sentence that individuals expect equal to −0.74. This means that increasing the expected sentence by 50 percent should reduce recidivism rates by about 35 percent in 7 months.∂ This paper contributes to the literature providing evidence that potential criminals do respond to a change in prison sentences. The natural experimental setting allows us to solve some fundamental problems involved in identifying individuals' response to a variation in the severity of punishment, which is typically tested by analyzing how crime rates are affected by an increase in criminal sanctions. When we register a drop in crime rates following an increase in criminal sanctions, two explanations compete: the discouragement of criminal behavior is induced by the increase in its relative price (the deterrent effect), or the reduction in crime is mechanically due to the removal of criminals from the community (the incapacitation effect; Levitt 1996; Owens, forthcoming).4 However, it is unclear how much of existing estimates of the effects of an increase in prison sentences may be accounted for by the incapacitation effect (Lee and McCrary 2005). By exploiting the exogenous variation in prison sentences at the individual level generated by the natural experiment, we identify the behavioral response of potential criminals without any possible bias connected to the incapacitation effect and the endogenous response of policy makers.

The aff increases recidivism rates

Drago et al. 9 – Drago (University of Naples Parthenope, Center for Studies in Economics and Finance, and Institute for the Study of Labor), Galbiati (Centre National de la Recherche Scientifique–EconomiX and Cepremap), Vertova (University of Bergamo and Econpubblica, Bocconi University)

Francesco Drago, Roberto Galbiati, Pietro Vertova, 2009, JSTOR, "The Deterrent Effects of Prison: Evidence from a Natural Experiment", 7/8/2015, \\BD

D. Deterrent Effects of Prison Sentences∂ By construction, the residual sentence is equal to the sentence minus the number of months served in prison, which means that time served, residual sentence, and original sentence are collinear. Hence, the estimated effect on recidivism has to be interpreted as the joint deterrent effect of an additional month in the expected sentence and of 1 month less served in prison (i.e., the effect of the policy that commutes 1 month of the actual sentence to be served to 1 month of the expected sentence for future crimes). While the nature of the basic experiment does not allow us to separately identify the impact of the expected sentence on recidivism, it is possible to make some quantitative inferences on this effect given that existing estimates reveal a nonpositive impact of time served on recidivism (Kuziemko 2007).20∂ Assuming a zero effect of time served on recidivism, a reduction of 0.16 percentage points in the

probability of recidivism (see table 2) implies an elasticity of the average recidivism rate to expected punishment (considering the average original sentence plus the average residual sentence) of −0.74. This means that when expected sentences are increased by, for example, 25 percent, the propensity to reoffend in 7 months should decrease by about 18 percent. We do not have data on the average recidivism rate after 12 months, but we know that the recidivism rate after 17 months was 22 percent (see the next subsection). Hence, considering the estimated effect and an annual average recidivism rate between 0.18 and 0.20, we would have an elasticity of the average recidivism rate with respect to sentence length between −0.43 and −0.47. This elasticity is even larger than existing estimates of the elasticity of crime with respect to imprisonment that includes the effect of expected punishment and incapacitation on criminal activity. The biggest estimates of the elasticity of the annual crime rate with respect to the prison population are provided by Levitt (1996), who finds elasticities of −0.40 and −0.30 for violent and property crimes, respectively. This estimate, however, includes both an incapacitation and a deterrent effect. Although it is difficult to make quantitative comparisons with previous studies relying on U.S. aggregate data, a presumable annual elasticity between −0.43 and −0.47 does seem large compared to this evidence.

Even the threat of longer prison sentences decreases recidivism - empirics

Drago et al. 9 – Drago (University of Naples Parthenope, Center for Studies in Economics and Finance, and Institute for the Study of Labor), Galbiati (Centre National de la Recherche Scientifique–EconomiX and Cepremap), Vertova (University of Bergamo and Econpubblica, Bocconi University)

Francesco Drago, Roberto Galbiati, Pietro Vertova, 2009, JSTOR, "The Deterrent Effects of Prison: Evidence from a Natural Experiment", 7/8/2015, \\BD

In this paper we contribute to the **empirical** literature on the study of criminal punishment by providing evidence that individuals vary their criminal activity in response to a change in prison sentences. Our research design exploits the natural experiment provided by the Collective Clemency Bill passed by the Italian Parliament in July 2006. The institutional features of the bill imply, for all the individuals released upon the approval of the bill, an exogenous variation in prison sentences at the individual level. This experimental setting allows us to identify the deterrent effect of a change in prison sentences separately from its incapacitation effect and from the possible endogenous reactions of policy makers to crime. Our findings show that a policy that commutes actual sentences in expected sentences significantly reduces inmates' recidivism. Moreover, the results provide credible evidence that a 1- month increase in expected punishment lowers the probability of committing a crime. This corroborates the theory of general deterrence. The results indicate a large deterrent effect of expected punishment. However, from a policy perspective, caution should be used in concluding that sentences should be increased for any kind of crime. Indeed, it is not clear whether these results can be extended to individuals who have never received prison treatment. Finally, without the provision in the bill that introduces the mechanism of residual sentences, recidivism rates would have been much higher. This suggests that inmates given probation should have a lower propensity to recommit a crime, given that if they reoffend, they have to serve the remaining sentence in addition to the new sentence. If, on the one hand, a longer time served might reduce the risk of recidivism (Kuziemko 2007), on the other hand, the **threat** of a longer sentence also decreases it. Future works should address whether the benefits of granting some inmates probation outweigh the cost associated with the risk that these former inmates will reoffend.

Prisons are key to target serious and repeat offenders

Helm and Doward 12 – Political Editor for The Observer, writer for The Guardian

Toby Helm and Jamie Doward, 7/7/2012, The Guardian, "Longer prison terms really do cut crime, study shows", http://www.theguardian.com/law/2012/jul/07/longer-prison-sentences-cut-crime, 7/8/2015, \\BD

Tougher prison sentences reduce crime, particularly burglary, according to **ground-breaking** research.∂ The study, by academics at Birmingham University, also found that during periods when police detect more offences, crime tends to fall overall, suggesting that levels of police activity – and therefore of staffing – have a direct impact on criminal activity.∂ The findings are likely to be seized on by critics of the government's plans for reducing the number of police officers as part of spending cuts.∂ The research, carried out for Civitas, an independent thinktank, used local sentencing data released by the Ministry of Justice under freedom of information requests to track the effectiveness of penal policy and policing on recorded crime across the 43 forces in England and Wales between 1993 and 2008.∂ The researchers concluded that prison was particularly effective in reducing property crime when targeted at **serious** and **repeat** offenders. They concluded that an increase of just one month in the average sentence length for burglaries – from 15.4 to 16.4 months – would reduce burglaries in the following year by 4,800, out of an annual total of 962,700.∂ For fraud, an increase in sentences from 9.7 to 10.7 months would result in a reduction of 4,700 offences a year, out of 242,400. The report declares this to be "a substantial effect, especially when we consider that the length of sentence usually corresponds to approximately half the actual time spent in custody".∂ The study also estimates that a policy of forcing offenders to serve a higher proportion of their sentences in prison would have a further dramatic effect on cutting crime, in part because more offenders would be behind bars for longer. If offenders were made to serve two-thirds of their sentence in custody, rather than the current half, it suggests that there would be 21,000 fewer recorded burglaries and 11,000 fewer recorded frauds in England and Wales.∂ The findings tend to support the thrust of policies followed by the last Labour government, which increased funding to the police and concentrated on the roughly 100,000 persistent offenders responsible for a high proportion of crime. This approach increased the prison population, but it also led to reductions in overall levels of crime.

Link – mandatory minimums

Mandatory minimum implementation is the largest cause of the crime rate decline

Otis 13 – adjunct professor of law at Georgetown University

William Otis, 7/2/2013, US News, "Like Less Crime? Thank Mandatory Minimums", http://www.usnews.com/opinion/articles/2013/09/02/tell-eric-holder-that-mandatory-minimums-worked-to-reduce-crime, 7/8/2015, \\BD

It is both odd and unfortunate that Attorney General Eric Holder wants to turn back the clock on a sentencing system that works in favor of one that fails. Two generations ago, in the '60s and '70s, we believed we could uniformly trust judges to get it right at sentencing, with no binding input from Congress. The result was a national crime wave. Big cities, for example, had twice the amount of murder they have now.∂ By the '80s, we had learned our lesson and embraced determinate sentencing. That meant sentencing guidelines and, for a few very serious offenses, mandatory minimums below which the judge couldn't go.∂ From the early '90s to the present day, there's been a 50 percent reduction in crime – levels not seen since the baby boomers were in

grade school. This massive increase in our ability to live in peace and safety has been a moral and economic boom. Millions of ordinary people did not become crime victims and did not have to fork out to pay hospital bills or to replace stolen savings. Tougher sentencing and increased imprisonment did not alone produce these benefits, but they contributed **significantly**.♂ Now Attorney General Eric Holder wants to jeopardize all this by gutting mandatory minimum sentencing in federal court. He's proposed that, for the most part, federal prosecutors be barred from writing truthful indictments that, if proved, would require the defendant to get at least a minimum sentence.♂ The proposal is misconceived. First, Holder says he would limit his plan to "nonviolent" offenses. But that doesn't go nearly far enough; nonviolent offenses can be extremely harmful, if not lethal. Trafficking in heroin or methamphetamine is not, per se, violent, but it results in tremendous social damage, for which taxpayers have to pick up the bill. Those who sell these drugs to make a quick buck, no matter how "nonviolently," deserve at least a rock-bottom sentence that can't be watered down by an overly sympathetic or naive judge.♂ Sentencing has never been given over exclusively to the judge's discretion; instead, it has been a shared function. From the founding of the republic, the executive branch has had the ability to decide whether to bring a more or a less serious charge; the legislative branch has set the general parameters of sentencing ranges; and the judicial branch – the judge – has imposed the specific sentence. It is one thing, and wise, to give judges substantial discretion. It's another to give them all of it, exempt from checks and balances. Because judges vary widely in temperament, ideology and experience, letting individual ones decide without constraint what the sentence will be is sure to lead to irrational disparity. Without congressionally imposed floors, we'll go back to the luck-of-the-draw. Nearly identical defendants with similar records will get widely varying sentences based solely on whose courtroom they're assigned to.♂Finally, existing law already provides an escape hatch for deserving defendants facing a tough mandatory minimum. Often, they can plea bargain their way to a lesser charge. Even if convicted under a mandatory minimum charge, however, the judge can sidestep the required sentence if the defendant has little criminal history, has not committed a violent act and comes clean about the extent of his crime. Also, a defendant can avoid a mandatory sentence by helping prosecutors bring other gang members to justice.♂ We tried the attorney general's version of the justice system before. **It doesn't work**. More realistic, law-guided sentencing does.

Mandatory minimums are key to solve crime – deterrence and leverage

Bernick and Larkin 14 - Assistant Director of the Center for Judicial Engagement, Senior Legal Research Fellow at The Heritage Foundation

Evan Berick and Paul Larkin, 2/10/2014, The Heritage Foundation, “Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms”, http://www.heritage.org/research/reports/2014/02/reconsidering-mandatory-minimum-sentences-the-arguments-for-and-against-potential-reforms, 7/8/2015, \\BD

Mandatory minimum sentences also prevent crime because certain and severe punishment inevitably will have a deterrent effect.[48] Locking up offenders also incapacitates them for the term of their imprisonment and thereby protects the public.[49] In fact, where the chance of detection is low, as it is in the case of most drug offenses, reliance on fixed, lengthy prison sentences is preferable to a discretionary sentencing structure because mandatory sentences enable communities to conserve scarce enforcement resources without losing any deterrent benefit.[50]♂ Finally, the available evidence supports those conclusions. The 1990s witnessed a significant drop in crime across all categories of offenses,[51] and the mandatory minimum

sentences adopted in the 1980s contributed to that decline.[52]♫Moreover, mandatory minimums are an important law enforcement tool. They supply the police and prosecutors with the leverage necessary to secure the cooperation and testimony of low-level offenders against their more senior confederates.[53] The evidence shows that mandatory minimums, together with the Sentencing Guidelines promulgated by the U.S. Sentencing Commission, have produced more cooperation and accomplice testimony in organized crime cases.[54]

MPX – economy

Crime is incredibly costly- hurts the economy

American Law and Legal Library No Date [The most comprehensive legal information site on the web, 'Economic And Social Effects Of Crime - Determining Costs'. Accessed July 10 2015. http://law.jrank.org/pages/12118/Economic-Social-Effects-Crime-Determining-costs.html./VL

The following annual figures estimating the various costs of crime in the mid-1990s come from the National Institute of Justice and a study by David A. Anderson called "The Aggregate Burden of Crime." The study was published in the October 1999 issue of the Journal of Law and Economics. Crime costs are based on approximately 49 million annual crimes and attempted crimes in the United States. $105 billion each year in medical bills and lost earnings; $450 billion when including pain and suffering and lost quality of life $400 billion to operate corrections facilities $130 billion for crime prevention and loss of potential productivity of criminals and inmates $1 trillion when including the cost of the criminal justice systems, as well as private individuals and companies taking security measures $426 billion of the $450 billion is related to violent crime, the remaining $24 billion to property crime $4,118 is the annual cost of crime to each U.S. citizen $603 billion lost to the economy from fraud and unpaid taxes $500 million of money or valuables taken in robberies $15 billion in property stolen $127 billion from rape offenses; assault $93 billion, murder $61 billion, and child abuse $56 billion $45 billion paid by insurance programs to crime victims $8 billion paid to victims by U.S. government annually for restorative and emergency services 3 percent of all medical expenses in the nation is related to violent crimes 1 percent of annual U.S. earnings is equal to wage losses from violent crime 10 to 20 percent of mental healthcare costs are attributed to crime $54,000 is the average cost of each arson incident; $31,000 for each assault $25,000 to $30,000 is the annual cost of an inmate in prison 4 out of 5 gunshot victims end up on public assistance and uninsured, costing the government $4.5 billion annually (From the National Center For Policy Analysis Web site at http://www.ncpa.org/pi/crime.html) As opposed to street crime, white-collar crime is considered far more costly to society. It was estimated in the mid- 1990s that white-collar crime cost U.S. businesses as much as $400 billion a year, or about 6 percent of total revenue in the nation. Consumer fraud alone cost Americans about $45 billion each year.

MPX – vtl

Crime hurts victim's v2l

Hanson et al '10 [Rochelle F. Hanson [Professor of Psychiatry at the Medical University of South Carolina], Genelle K. Sawyer [Assistant Professor in the Department of Psychology at the Military College of South Carolina], Angela M. Begle [Instructor at the National Crime Victims Research and Treatment Center (NCVC) at the Medical University of South Carolina (MUSC)], and Grace S. Hubel [sixth year graduate student in the Clinical Psychology Training Program at

the University of Nebraska-Lincoln], The Impact of Crime Victimization on Quality of Life. Journal of traumatic stress. 2010;23(2):189-197. doi:10.1002/jts.20508./VL

In addition to the effects of victimization on role functioning, researchers postulate a link between crime and the victim's report of life satisfaction and well-being. Studies examining these constructs typically focus on indicants such as fear of crime, concerns for personal safety, happiness, and satisfaction with overall quality of life (e.g., Demaris & Kaukinen, 2005; Michalos & Zumbo, 2000; Norris & Kaniasty, 1994; Zlotnick, Johnson, & Kohn, 2006). In general, a history of crime victimization does not appear to have a profound effect on these variables. For example, in their study examining the impact of crime-related issues on happiness and satisfaction with quality of life in British Columbia, Michalos and Zumbo (2000) concluded that "crime-related issues have relatively little impact on people's satisfaction with the quality of their lives, with life satisfaction or happiness here" (p. 290). Although victimization was associated with some concerns about neighborhood crime and problems, a tendency to engage in more defensive behaviors, less satisfaction with their own and their family's safety in neighborhoods, as well as lower levels of satisfaction with quality of life, the overall relationships (i.e., proportion of variance accounted for) were quite low, leading the authors to conclude that victimization did not have a significant overall impact on these factors. However, it is important to highlight that few respondents were victims of violent crimes (38%); the vast majority were non-violent, property crimes (90%), which likely contributes to these findings. Using data from the National Survey of Families and Households, Zlotnick et al. (2006) examined whether women reporting partner violence at an initial interview differed from those who did not report these experiences on measures of global life satisfaction, functional impairment, social support, and past 30-day alcohol use obtained in a 5-year follow-up interview. Results indicated that partner violence reported at the initial interview was related to a greater degree of functional impairment and less life satisfaction 5 years later. Consistent with these findings, Demaris and Kaukinen (2005) found that individuals who experienced a serious injury and those who had been stalked were more likely to be "very concerned" about their personal safety and to "always" carry a protective device, which may affect life satisfaction and well-being. Physical and sexual assault severity were also related to a greater likelihood of always carrying a protective device, but not to being very concerned about personal safety. However, once timing of first victimization and the victim–offender relationship were included in analyses, only severity of physical assault was related to an increased likelihood of carrying something for personal protection.

Crime fundamental alters perceptions of the world and makes life unenjoyable

Wasserman 7, (Assistant Professor of Criminology at California State University, PhD, "IMPACT OF CRIME ON VICTIMS"http://www.ccvs.state.vt.us/sites/default/files/resources/VVAA%20Ch%206%20Impact%20of%20Crime.pdf)

The trauma of victimization can have a profound∂ and devastating impact on crime victims and∂ their loved ones. It can alter the victim's view of∂ the world as a just place and leave victims with∂ new and difficult feelings and reactions that they∂ may not understand. It is important for victim∂ assistance professionals to understand the∂ different ways that crime can affect victims—∂ psychologically, financially, physically and∂ spiritually. Any discussion of the impact of crime∂ on victims is necessarily general in scope. The∂ following information is offered to help victim∂

assistance professionals to be aware of the common types of reactions that victims experience, and should be used as general guidelines to provide direction and references for additional resources. Crime has significant, yet varying consequences, on individual crime victims, their families and friends, and communities. The impact of crime on victims results in emotional and psychological, physical, financial, social and spiritual consequences.

MPX – turns case

Crime creates endemic fear and makes social relations impossible

Moser 4, (Caroline, urban social anthropologist/social policy specialist , PhD Sussex University, "URBAN VIOLENCE AND INSECURITY: AN INTRODUCTORY ROADMAP", http://eau.sagepub.com/content/16/2/3.full.pdf)

ALTHOUGH ACCELERATING RATES of violence and crime are by no means an urban specific problem, they are particularly problematic in urban areas. The sheer scale of violence in the poor areas or slums means that, in many contexts, it has become "routinized" or "normalized" into the functional reality of daily life.(20) Daniel Esser, in this volume, mentions new labels such as "failed cities" and "cities of chaos" to describe the loss of control by public bodies, and the victimization of urban residents in the cities of Kabul and Karachi, while Dennis Rodgers refers to Managua as "the city of chaos". Violence is linked to fear and insecurity, which pervades people's lives, with serious implications for trust, well-being and social capital among communities and individuals. Thus, Mo Hume, in her article on El Salvador, describes how random criminal violence and highly visible gang activity contribute to a situation where fear and insecurity characterize everyday life for many citizens: "The war may have ended, but social and political relations remain characterized by what Taussig calls 'terror as usual', exhibiting itself through a sharp rise in street crime, a growing gang culture and high levels of violence in the private realm."

Crime creates division – leads to poverty and exclusion

Moser 4, (Caroline, urban social anthropologist/social policy specialist , PhD Sussex University, "URBAN VIOLENCE AND INSECURITY: AN INTRODUCTORY ROADMAP", http://eau.sagepub.com/content/16/2/3.full.pdf)

Finally, and very fragmentally, a number of papers tentatively address the issue of fear. In cities across the world, relentless "routinized" daily violence dominates the lives of local populations. The fear of such violence **isolates the poor in their homes and the rich in their segregated spaces**. This isolation, in turn, **perpetuates a fear of the "other**" as Lemanski calls it, and contributes to the **fragmentation of cities, socially, economically and politically**. To date, few violence-related strategies have confronted or addressed the issue of fear or its associated relationship to power and powerlessness. Ultimately, however, this may provide a critically important mechanism for redressing the impact of violence on the daily lives of the poor and excluded in cities throughout the world, so graphically described in the papers in this volume.

MPX – poverty

Crime leads to poverty – it should be the primary focus

Raspberry 86 – writer for the Washington Post, but citing the director of the Justice Deptartment's National Institute of Justice

William Raspberry, 7/9/1986, Orlando Sentinel, "A New Twist: Crime As A Cause Of Poverty", http://articles.orlandosentinel.com/1986-09-09/news/0250260007_1_crime-and-fear-costs-of-crime-poverty, 7/9/2015, \\BD

WASHINGTON — In the days when decent people used to worry about the "roots of crime," a lot of us were convinced that one of the chief causes of crime was poverty. We believed that poverty, because it produced hunger, dehumanizing living conditions, alienation and despair, tended to make people anti-social and predispose them to criminal activity. Poverty, we said, causes crime.∂ But the director of the Justice Deptartment's National Institute of Justice has turned the idea on its head. Crime, says James Stewart, writing in Policy Review, causes poverty. The former Oakland, Calif., police official does not mean merely that crime impoverishes its victims by stealing their goods and cash (and sometimes their health and life), though he does contend that these direct costs of crime hit hardest at the poor who are least able to afford insurance or replace stolen necessities.∂ "The less-direct costs of crime to the poor may be even more destructive," he argues. "The traditional means by which poor people have advanced themselves -- overtime, moonlighting or education to improve future opportunities -- can easily be obstructed by crime and fear. Why risk a late job or night school if the return home means waiting at deserted bus stops and walking past crowds of threatening teen-agers?∂ If crime makes it harder for residents of poor neighborhoods to avail themselves of income-boosting opportunity, it also strangles that opportunity directly, by driving business -- and jobs -- out of low-income neighborhoods. "A number of economic features ought to attract capital to revive inner cities," says Stewart. "Most poor neighborhoods are . . . in or near the center of our cities and therefore should be prime locations for commerce. The inner city usually provides easy access to railheads, highways . . . as well as to a ready labor supply. It already has the infrastructure often missing from the suburbs and exurbs."∂ But to a dismaying extent, the inner city also has crime: Crime that translates into unacceptable losses through theft and burglary for the business owners, crime that makes suppliers and contractors reluctant to come into the area, crime that leads many workers to look for jobs in less-menacing neighborhoods.∂ What is the solution? Not enterprise zones, which afford relief from taxes and government regulation, but not from crime. But there is another way. Stewart offers the examples of four communities -- East Brooklyn, Oakland, Watts and Portland, Ore. -- that managed a job-producing economic turnaround by launching a direct assault on crime.∂ The East Brooklyn Industrial Park (with city help) knocked down abandoned buildings, installed burglar alarms, trained private guards and patrols and provided escort services for businesses and residents. Portland undertook a similar effort along its Union Avenue commercial strip.∂ Clorox, IBM and other tenants of Oakland's Bramalea Corp. spend $300,000 a year for enhanced police security and a program to "curtail incivilities and disorderly behavior." Watts, a high-crime area of south central Los Angeles, has created an oasis of safety in the Martin Luther King Jr. Shopping Center, an impressive center complete with wrought-iron fence around its perimeter, closed-circuit monitoring, private guards and a city police field office.∂ Obviously, crime isn't the only thing that causes poverty (just as poverty isn't the only cause of anti-social attitudes that produce crime). There are countless people who, though deprived, are not depraved. There are scores of communities whose residents, though reasonably law-abiding, remain poor.∂ I

don't think Stewart would argue the matter. His point is not that decent behavior automatically creates businesses and jobs, but that too much crime can destroy business and employment opportunities and make it harder for poor people to break out of their poverty.∂ "Crime," he says, "is the ultimate tax on enterprise. It must be **reduced** or **eliminated** before poor people can fully share in the American dream."

Crime causes economic decline as well as a poverty trap- rigorous empirics prove

Mehlum et al '05 [Halvor Mehlum [Professor of Economics at University of Oslo, Deputy leader of Centre of Equality, Social Organization, and Performance (ESOP), Co-editor of Nordic Journal of Political Economy Member of the Executive committee at European Development Research Network (EUDN)], Karl Moene [Professor at University of Oslo, Scientific Advisor at the Center of Applied Research, Oslo (from 1987) Board member of the Norwegian Research Council, Environment/Development (1992-2000) Editor of the Scandinavian Journal of Economics (1992-1999) Panel member of Economic Policy (1999-2000)], Ragnar Torvik [Professor at Norwegian University of Science and Technology], Crime induced poverty traps, Journal of Development Economics Volume 77, Issue 2, August 2005, Pages 325–340. doi:10.1016/j.jdeveco.2004.05.002/VL

The first linkage represents an old theme, passionately described by Thomas More in Utopia (1518) "[L]eave fewer occasions to idleness;[…] so there may be work found for those companies of idle people whom want forces to be thieves, or who now, being idle vagabonds or useless servants, will certainly grow thieves at last." Later Georg von Mayr found that crime rates in Bavaria in the period 1835–1865 depended positively on the cost of living of the poor (von Mayr, 1917). Sociologists and criminologists have emphasized how poverty and idleness explain high crime rates (Allan and Steffensmeier, 1989 and Currie, 1997). The connection between crime and poverty has also caught renewed attention among economists. Applying panel data for 45 developed and developing countries over the period 1965–1995, Fajnzylber et al. (2001) find that violent crime rates decline when economic growth improves (see also Fajnzylber et al., 2002 and Miguel, 2002). The second linkage, from crime to economic performance, is documented by many recent observers. Bourguignon's (2001) survey concludes that social costs of crime are substantial in countries with more than the average level of criminality. In Latin America, for example, the costs of crime are in several cases above seven percent of GDP (Londoño and Guerrero, 2000). The Economist (1996) provides an even more dramatic assessment of Latin America: "[T]he region spends an astonishing 13–15% of GDP on security expenses (both private and public). That is more than total welfare spending. It represents a crippling burden on the economy". Crime is also seen as an important deterrent to doing business in countries like South Africa and constitutes one of the biggest challenges to economic growth in Africa (EIU, 1998). Russia has also experienced escalating crime and violence spirals in the 1990s with bad economic consequences (Ledeneva and Kurkchiyan, 2000). Finally, the negative impact of crime on economic performance is also evident from cross-country regressions (Barro and Sala-I-Martin, 1995, chap. 12). Put together, the two linkages between crime and growth are damaging as they generate a vicious circle that can result in a poverty trap. Economic stagnation explains rising crime and rising crime, in turn, explains the economic stagnation. Some countries may therefore end up in an equilibrium state characterized by persistently low or negative growth rates and high or rising crime levels. Other countries, where crime is prevented and labor demand is not allowed to plummet, may take off on a sustainable path of social and economic development where high growth produces low crime rates, which leads to further economic growth and development.

Prefer our projections- rigorous theoretical models also prove

Mehlum et al '05 [Halvor Mehlum [Professor of Economics at University of Oslo, Deputy leader of Centre of Equality, Social Organization, and Performance (ESOP), Co-editor of Nordic Journal of Political Economy Member of the Executive committee at European Development Research Network (EUDN)], Karl Moene [Professor at University of Oslo, Scientific Advisor at the Center of Applied Research, Oslo (from 1987) Board member of the Norwegian Research Council, Environment/Development (1992-2000) Editor of the Scandinavian Journal of Economics (1992-1999) Panel member of Economic Policy (1999-2000)], Ragnar Torvik [Professor at Norwegian University of Science and Technology], Crime induced poverty traps, Journal of Development Economics Volume 77, Issue 2, August 2005, Pages 325–340. doi:10.1016/j.jdeveco.2004.05.002/VL

Note that the reason for the increasing return to modern sector job creation in the third regime is different from those in other recent theories. In growth theory, economic geography, and the "Big push" literature increasing returns play an important role. Positive externalities at the micro level produce an aggregate production function with increasing returns to scale.7 In contrast, our model has a constant returns to scale technology and without crime the return of job creation is constant and independent of the level of modernization. When crime is taken into account, however, the return of job creation becomes a function of the level of modernization, solely as a result of socially disruptive behavior. In regime three a marginal increase in labor demand reduces the number of criminals. Each firm is too small to take this positive externality into account.

In the model, the overall shape of the return to job creation follows the movement in crime levels: As crime declines, the return to job creation increases and vise versa. In regime three the condition for this to happen is that the positive social externality through crime outweighs the increase in wages. Several reasonable mechanisms that we have left out from the discussion would strengthen the increasing returns result of regime three. For example, a constraint on each thief's capacity of stealing would limit the negative effect from the wage rise following higher production levels. The wage rise would also be limited if the probability of being caught as a criminal went up together with modernization. This probability could go up as a result of both tax financed improvements in law enforcement, (more tax income and fewer thieves) or because the probability of being caught increases with the amount being stolen as in Usher (1989).

Law enforcement and crime deterrence are key to solve

Mehlum et al '05 [Halvor Mehlum [Professor of Economics at University of Oslo, Deputy leader of Centre of Equality, Social Organization, and Performance (ESOP), Co-editor of Nordic Journal of Political Economy Member of the Executive committee at European Development Research Network (EUDN)], Karl Moene [Professor at University of Oslo, Scientific Advisor at the Center of Applied Research, Oslo (from 1987) Board member of the Norwegian Research Council, Environment/Development (1992-2000) Editor of the Scandinavian Journal of Economics (1992-1999) Panel member of Economic Policy (1999-2000)], Ragnar Torvik [Professor at Norwegian University of Science and Technology], Crime induced poverty traps, Journal of Development Economics Volume 77, Issue 2, August 2005, Pages 325–340. doi:10.1016/j.jdeveco.2004.05.002/VL

The possibility of being caught in a trap has implications for economic policies and the design of reform programs. First, policies that improve law enforcement and raise the expected costs of being a criminal not only reduce crime rates but may also trigger a sustainable economic take off.

Second, improving the conditions of the worst off group may have similar growth enhancing effects. Third, downsizing the public sector may generate higher crime levels. In general, a temporary fall in labor demand may kick off social reactions that lead the economy into contraction. Hence, a big bang reform intended to improve the efficiency may actually end up as a reverse big push into a poverty trap.

Crime collapses the efforts of low-income people working to get out of poverty

Samenow 14 – B.A. from Yale, Ph.D. from University of Michigan

Stanton E. Samenow, 12/24/2014, Pyschology Today, "Crime Causes Poverty", https://www.psychologytoday.com/blog/inside-the-criminal-mind/201412/crime-causes-poverty, 7/9/2015, \\BD

Social scientists and public officials have long identified poverty as a "root cause" of crime or, at least, as a significant "risk factor." Such a causal linkage was made by Roman emperor Marcus Aurelius (121-180 A.D.), who declared, "Poverty is the mother of crime." ∂During the 1960s, Attorney General Ramsey Clark emphasized that the United States government needed to combat crime by improving the deplorable conditions under which impoverished people were living. What followed was a plethora of social programs aimed at doing just that. Although many citizens benefited and improved their lot in life, crime remained an intractable problem.∂What may not be apparent is that crime causes poverty.∂Consider the costs of establishing and operating a small business in a rundown inner city neighborhood. An entrepreneur saves for years and finally amasses funds sufficient to establish a hair salon. She has paid for schooling to learn the skills to become a beautician, and she has honed them working for other people. Now she can rent space, purchase supplies and a stylist's chair or two, and begin fixing women's hair in her own shop. By careful management of her finances, she is able to invest additional sums in her business and expand the services she offers. A break-in and robbery occur, setting her back enormously. While awaiting costly repairs, she loses revenue and customers every day. She has to spend additional sums to tighten security. Having had a small profit margin as she struggled to maintain her salon, she now slides into the red or may not be able to re-open at all, thus losing the source of her livelihood.∂Consider what has transpired in inner city areas rocked by social unrest. It can take years, even decades, for businesses to return to neighborhoods that were burned and looted. Such was the case during the 1968 riots in Washington, D.C., following the assassination of Martin Luther King, Jr. Recently, damage occurred to businesses in Ferguson, Missouri after a grand jury did not indict a white police officer for killing a young black man.∂ It is not peaceful protestors who threaten the livelihoods of small business owners. It is criminals who seize upon an opportunity when there is social disorder. In the name of a cause, they ∂ strike -- destroying property belonging to fledgling entrepreneurs. Having begun to emerge from poverty, these merchants are plunged back into it when criminals demolish overnight what they have worked so hard to build.

It's key in the inner city

Stewart 86 – Director of the National Institute of Justice and the U.S. Department of Justice

J K Stewart, 1986, National Criminal Justice Reference Service, "Urban Strangler - How Crime Causes Poverty in the Inner City", https://www.ncjrs.gov/App/abstractdb/AbstractDBDetails.aspx?id=102533, 7/9/2015, \\BD

Most poor people are honest citizens whose opportunities for advancement are stunted by the drug dealers, muggers, and other criminals who terrorize their neighborhoods. These predators prey on the property and sometimes the lives of the poor, who suffer higher rates of victimization than wealthier people. Poor people often lack insurance to cover property loss. Crime lowers their property values as well, making it harder to accumulate capital and borrow money. Crime can also destroy the quality of life in public housing projects. It hampers commerce and industry in inner cities by raising the operating costs of businesses and scares away customers and suppliers. The ineffectiveness of the criminal justice system in solving most crimes is a further problem. Poor people have little mobility and cannot escape their neighborhoods. Crime and disorder increase people's sense of fear and vulnerability, starting the process of neighborhood deterioration. Strong anticrime efforts based on increased security measures are the best way to reverse this process. Fences, lighting, monitoring, and private security guards are measures that several communities have used to revitalize their commercial districts. These programs have shown that providing security enables businesses to succeed even in the most hostile environments. Reducing crime should be the first step in any urban antipoverty program.

Crime leads to massive poverty

Lippman 91 – writer for the Baltimore Sun

Theo Lippman, 3/30/1991, The Baltimore Sun, “Cause crime. Crime causes poverty...”, http://articles.baltimoresun.com/1991-03-30/news/1991089022_1_cost-of-crime-poverty-fight-crime, 7/9/2015, \\BD

Poverty doesn’t cause crime. Crime causes poverty. Therefore, to fight poverty, fight crime.∂ How does crime cause poverty? Suppose your family lives just above the poverty line. A burglar breaks into your house and steals all your clothes. What it costs you to replace them drops you into poverty, since you no longer have the minimum needed for food and shelter.∂ Or suppose you're on your way home from work. A mugger takes your paycheck and beats you up so badly that you have to miss another week's work. Losing two weeks' pay is impoverishing at many levels.∂ In 1988, according to the Department of Justice, "the total estimated cost of crime to victims was $16.6 billion. This estimate includes losses from property theft or damage, cash losses, medical expenses and other costs. The estimate was derived by summing crime victims' estimates of the amount of stolen cash, the value of stolen property, medical expenses and the amount of pay lost from work because of injuries, police-related activities, court-related activities, or time spent repairing or replacing property."∂ Not all of that $16.6 billion came from poor and nearly poor victims, but much of it did. The rate of criminal victimization is higher in cities, where most of the poor live, than in suburbs or non-metropolitan areas. It is highest by far in cities our size -- 500,000-999,999 -- half again the rate for large metropolitan suburbs, more than double the rate for medium metro suburbs.∂ The rate of criminal victimization also correlates to income for many crimes. Someone with an income of less than $7,500 is three times more likely to be robbed than someone with an income over $50,000, and is twice as likely to be assaulted.∂ That $16.6 billion surely underestimates the annual monetary cost of crime. Think of the lost wages of people who won't take a better-paying job -- or a job at all -- because of fear of street crime. Think of higher insurance costs in high crime neighborhoods. Think of paying for home security systems out of food budgets.

MPX – communities

Crime kills social cohesion and magnifies impacts of poverty

Kawachi et al '99 [Ichiro Kawachi [John L. Loeb and Frances Lehman Loeb Professor of Social Epidemiology Chair, Department of Social and Behavioral Sciences at Harvard, Co-Editor in Chief of the international journal Social Science & Medicine, elected member of the Institute of Medicine of the US National Academy of Sciences], Bruce P. Kennedy [social epidemiologist, formerly at the Harvard School of Public Health], and Richard G. Wilkinson [Former Professor Emeritus of Social Epidemiology at the University of Nottingham, Honorary Professor of Epidemiology and Public Health at University College London and Visiting Professor at University of York] [Crime: social disorganization and relative deprivation, Social Science & Medicine Volume 48, Issue 6, March 1999, Pages 719–731. doi:10.1016/S0277-9536(98)00400-6/VL

One dynamic aspect of social capital that cross-sectional analyses fail to address is the reciprocal relationship between crime and social capital. In other words, high crime rates may themselves produce disinvestment in community social capital. Skogan (1991)identified several feedback processes that contribute to declining social capital, including: fear of crime leading to physical and psychological withdrawal from community life; deteriorating conditions leading to the exit of businesses, with accompanying loss of jobs (and norms of labor market attachment); and further change in the composition of localities (e.g. middle class flight). If people shun their neighbors due to fear of crime, fewer opportunities exist for local networks and associations to take hold. The resulting disorganization of community structure in turn fuels further crime, producing a vicious cycle of declining social capital, followed by rising crime, followed by further disinvestment in social capital. The trend toward increasing residential segregation during recent decades — whether by race or class — has been further hypothesized as a mechanism by which traditional social buffers have become depleted (and social capital eroded) in many inner-city areas of the US (Kawachi and Kennedy, 1997). Demographic evidence suggests that, accompanying the surge in income inequality in the US since the mid 1970's, there has been sharp increase in the spatial concentration of poverty. Between 1970 and 1990, the percentage of urban poor Americans living in nonpoor neighborhoods (defined as having poverty rates below 20%) declined from 45 to 31%, while the percentage living in poor neighborhoods (poverty rates between 20 and 40%) increased from 38 to 41%. Meanwhile, the share of the urban poor living in very poor neighborhoods (over 40% poverty) grew from 17 to 28% (Massey, 1996). Such patterns of residential concentration impose a double burden on the poor — not only do they have to grapple with the multiple problems arising from their own lack of income; they also have to deal with the social effects of living in a neighborhood where most of their neighbors are also poor (Wilson, 1987; Kawachi and Kennedy, 1997). Examples of such `concentration effects' include lack of role models of labor force attachment (caused by persistently high unemployment), and exposure to unsupervised peer group activity as well as high rates of delinquency.

POLITICS

Links

Entrenched opposition to the plan—economic interests and stubborn belief

Mauer and Cole, 5/23—*executive director of the Sentencing Project **professor of law and public policy at Georgetown University (Marc Mauer and David Cole, 5-23-2015, "How to Lock Up Fewer People," New York Times, http://www.nytimes.com/2015/05/24/opinion/sunday/how-to-lock-up-fewer-people.html)//emchen

Ending mass incarceration will not be easy. Opposition will come from rural community leaders who see prisons as **economic development**, legislators who still **respond emotionally** to the "crime of the week" and prosecutors who **measure success** by convictions and incarcerations, rather than by resolving conflict. But the recent tragic police shootings of young black men have, for the moment, focused our attention on the imperative for reform. And state budgetary crises have led many to question the vast resources we devote to holding too many people under lock and key. Today, at long last, a consensus for reform is emerging. The facts that no other Western European nation even comes close to our incarceration rates, and that all have lower homicide rates, show that there are better ways to address crime. The marked disparities in whom we choose to lock up pose one of the nation's most urgent civil rights challenges. But **we will not begin to make real progress** until we face up to the full dimensions of the task.

The plan is unpopular—public backlash and empirics—turns the case

Salins and Simpson, 13—Loyola University Chicago School of Law (Lauren Salins and Shepard Simpson, "Efforts to Fix a Broken System: Brown v. Plata and the Prison Overcrowding Epidemic", Loyola University Chicago Law Journal, Lexis)//emchen

By endorsing rehabilitative services and programming for both inmates and parolees, states can ensure that they are taking steps to reduce recidivism. 265 The question of whether the Brown Court's holding will cause the **public's "lock and key" mentality** to shift to an endorsement of proactive alternatives to incarceration deserves reflection. At a minimum, it is possible that society will welcome creative and effective ways to reduce crime. 266 As the answers to these questions play out in Brown's wake, it is beneficial to further assess the aforementioned programs that states can implement to prevent crime, particularly a successful rehabilitative model used by the Illinois Department of Corrections. 267 2. What Does Work? An Example of Proactive Reform in Illinois The use of proactive corrections reform, specifically rehabilitative measures, is hardly novel. 268 Experts and scholars have been pushing for such reform for years. 269 As states attempt to navigate the most effective ways to implement proactive reforms, it is useful to look at successful alternatives to incarceration. While many states have various diversionary and rehabilitative programs, 270 this Subsection focuses on [*1198] successful efforts employed by the Illinois prison system. 271 Not unique to Illinois, drug offenders are routinely housed alongside those who have committed violent crimes as a result of deficient bed space and poor infrastructural organization in correctional facilities. 272 This setup promotes the criminogenic effect of prisons and significantly contributes to overcrowding in almost every U.S. prison facility. 273 According to the Center for Health and Justice, illegal drug use "has played a fundamental role in the population explosion within the American justice system." 274 To prevent drug offenders from congesting prisons, Illinois implemented one promising front-end proactive measure: diverting drug offenders from the traditional prison system and into tailored treatment plans. 275 The Sheridan Correctional Center, an Illinois Department of Corrections facility, is a medium security all-male prison that is dedicated entirely to housing individuals dealing with substance abuse. 276 In addition to providing its inmates with rehabilitative services, this facility collaborates with community programs to help reintegrate these individuals into society and ensure they receive assistance upon release. 277 As a result, lower-level offenders who otherwise would have been placed in traditional prison facilities are [*1199] separated into this particularized facility based on their needs and provided with services to help prevent them from reoffending. 278 At first glance, it may appear as though this method is fiscally ineffective. The cost to house these men is significantly higher than in other facilities - Illinois must pay $ 34,733 per year to house an adult in the Sheridan Correctional Center, 279 while it costs the State $ 19,492 to house an adult offender in the maximum security Menard Correctional Center. 280 However, enacting proactive reforms, such as the use of treatment centers and drug programs, as an alternative to traditional incarceration will ultimately help end the cycle of recidivism. With more tailored treatment options, individuals can receive the care needed to help resolve the underlying causes of their criminal tendencies. 281 The numbers behind this particular proactive program are telling: individuals treated at the Sheridan Correctional Center are 40% less likely than other Illinois inmates to reoffend one year after their release and 85% less likely to commit another crime in their lifetime. 282 This downturn in recidivism will in turn reduce the fiscal cost of housing these individuals in the future and the social cost of allowing individuals who are not sufficiently rehabilitated to reenter society. 283 Although Illinois and other states have started to implement proactive reforms to counter prison overcrowding,

public support is still needed if such programs are to **achieve long-term success**. 284 Convincing the rest of society that an emphasis on rehabilitation rather than harsh corrections and sentencing policies is more effective **will not be easy**. The past few decades have shown that an **uphill battle lies ahead**. 285 [*1200] Hopefully, in time, the public's view of corrections will begin to evolve now that states are faced with Brown's ultimatum: release or reform.

The plan is unpopular—it's try or die for those whose economic survival depends on the prison system

Senger, 6(William, 2006, "Abolition: Good Idea/Bad Approach", Journal of Prisoners on Prisons Vol. 1 No. 1 Summer, www.jpp.org/documents/forms/JPP1_1/Senger.pdf)//emchen

The real problem which faces abolitionists is that the hierarchy in Ottawa has no control over its own institutions. If abolition is to occur, the power of the subordinates in the system will have to be removed. One example of subordinate power is the guards' union which gets more powerful each time a new penitentiary opens and the union membership increases by absorbing the new recruits. The union also becomes more powerful with each riot it causes since it can use prison riots as a bargaining tool to increase membership or salaries. Guards are **dependent upon the system** for their livelihood. Because they are right in the thick of the action, they can manipulate events in their favour. The guards' union and its activities are not scrutinised by any government department and therefore it polices its own activities. This is a great deal of authority 1 Journal of Prisoners on Prisons Vol. 1 No. 1 Summer (1988) which the union exploits at every opportunity. Abolition of prisons will never occur until the power of the guards' union is eroded. The union is only one example of a bargaining unit which **requires the survival of the prison system**. Other jobs are created by the prison system: clerical staff, building contractors, suppliers, administrators, and employees working in prison industries and services. These groups would fight abolition **just to save their jobs**. The entire system is **a business now**, more interested in jobs and money than rehabilitation or abolition. The power of this system is in its ability to provide secure employment. Any attempt to change the system must take place at the source of the power. The groups who hold this power must be exposed for what they really are: a violent, corrupt, and greedy group of oppressors who are making a living by degrading and oppressing prisoners. Until such time as power is taken away from the oppressors, the injustices occurring behind prison walls will continue. Men and women will continue to leave prisons with bitter feelings for the diseased society which allowed them to suffer. Abolition can only occur when the power of the oppressor is in the hands of the oppressed. The activists working to better prison conditions are only succeeding in giving the system more to oppress.

Link – XO

The plan is an XO – causes a resurgence of political fights over executive power even if it is on balance popular

Savage 13, (Charlie, Masters degree from Yale Law School, "Justice Dept. Seeks to Curtail Stiff Drug Sentences", http://www.nytimes.com/2013/08/12/us/justice-dept-seeks-to-curtail-stiff-drug-sentences.html)

Still, in states that have undertaken prison and parole overhauls, the changes were approved by state lawmakers. Mr. Holder's reform is different: instead of going through Congress for legislation to modify mandatory minimum sentencing laws, he is invoking his power of prosecutorial discretion to sidestep them.∂ Earlier in Mr. Obama's presidency, the administration

went through Congress to achieve policy goals like reducing the sentencing disparity between crack and powder forms of cocaine. But it has increasingly pursued a strategy of invoking unilateral executive powers without Congress, which the White House sees as bogged down by Republican obstructionism. Previous examples, like Mr. Obama's decision last year to issue an executive order allowing immigrants who came to the United States illegally as children to remain without fear of deportation and to work, have drawn fire from Republicans as "power grabs" that usurp the role of Congress.

Prisons Northwestern

Their Evidence

Racism – Radical Change Good

Top down legalist reforms fail – radical change key

Michelle **Alexander 10**, Associate Professor of Law at Ohio State University, 2010, "The new Jim Crow: Mass incarceration in the age of colorblindness." http://www.kropfpolisci.com/racial.justice.alexander.pdf, AB)

So what is to be demanded in this moment in our nation's racial history? If the answer is more power, more top jobs, more slots in fancy schools for "us"—a narrow, racially defined us that excludes many—we will continue the same power struggles and can expect to achieve many of the same results. Yes, we may still manage to persuade mainstream voters in the midst of an economic crisis that we have relied too heavily on incarceration, that prisons are too expensive, and that drug use is a public health problem, not a crime. But if the movement that emerges to end mass incarceration does not meaningfully address the racial divisions and resentments that gave rise to mass incarceration, and if it fails to cultivate an ethic of genuine care, compassion, and concern for every human being—of every class, race, and nationality— within our nation's borders, including poor whites, who are often pitted against poor people of color, the collapse of mass incarceration will not mean the death of racial caste in America. Inevitably a new system of racialized social control will emerge—one that we cannot foresee, just as the current system of mass incarceration was not predicted by anyone thirty years ago. No task is more urgent for racial justice advocates today than ensuring that America's current racial caste system is its last. Given what is at stake at this moment in history, bolder, more inspired action is required than we have seen to date. Piecemeal, top-down policy reform on criminal justice issues, combined with a racial justice discourse that revolves largely around the meaning of Barack Obama's election and "post-racialism," will not get us out of our nation's racial quagmire. We must flip the script. Taking our cue from the courageous civil rights advocates who brazenly refused to defend themselves, marching unarmed past white mobs that threatened to kill them, we, too, must be the change we hope to create. If we want to do more than just end mass incarceration—if we want to put an end to the history of racial caste in America—we must lay down our racial bribes, join hands with people of all colors who are not content to wait for change to trickle down, and say to those who would stand in our way: Accept all of us or none. That is the basic message that Martin Luther King Jr. aimed to deliver through the Poor People's Movement back in 1968. He argued then that the time had come for racial justice advocates to shift from a civil rights to a human rights paradigm, and that the real work of movement building had only just begun.64 A human rights approach, he believed, would offer far greater hope for those of us determined to create a thriving, multiracial, multiethnic democracy free from racial hierarchy than the civil rights model had provided to date. It would offer a positive vision of what we can strive for—a society in which all human beings of all races are treated with dignity, and have the right to food, shelter, health care, education, and security.65 This expansive vision could open the door to meaningful alliances between poor and workingclass people of all colors, who could begin to see their interests as aligned, rather than in conflict—no longer in competition for scarce resources in a zero-sum game. A human rights movement, King believed, held revolutionary potential. Speaking at a Southern Christian Leadership Conference staff retreat in May 1967, he told SCLC staff, who were concerned that the Civil Rights Movement had lost its steam and its direction, "It is necessary for us to realize that we have moved from the era of civil rights to the era of human rights." Political reform efforts were no longer adequate to the task at hand, he said. "For the last 12 years, we have been in a reform movement. . . . [But] after Selma and the voting rights bill, we moved into a new era, which must be an era of revolution. We must see the great distinction between a reform movement and a revolutionary movement. We are called upon to raise certain basic questions about the whole society."66 More than forty years later, civil rights advocacy is stuck in a model of advocacy King was determined to leave behind. Rather than challenging the basic structure of society and doing the hard work of movement building— the work to which King was still committed at the end of his life—we have been tempted too often by the opportunity for people of color to be included within the political and economic structure as-is, even if it means alienating those who are necessary allies. We have allowed ourselves to be willfully [indifferent] ~~blind~~ to the emergence of a new caste system—a system of social excommunication that has denied millions of African Americans basic human dignity. The significance of this cannot be overstated, for the failure to acknowledge the humanity and dignity of all persons has lurked at the root of every racial caste system. This common thread explains why, in the 1780s, the British Society for the Abolition of Slavery adopted as its official seal a woodcut of a kneeling slave above a banner that read, "AM I NOT A MAN AND A BROTHER"? That symbol was

followed more than a hundred years later by signs worn around the necks of black sanitation workers during the Poor People's Campaign answering the slave's question with the simple statement, I AM A MAN. The fact that black men could wear the same sign today in protest of the new caste system suggests that the model of civil rights advocacy that has been employed for the past several decades is, as King predicted, inadequate to the task at hand. If we can agree that what is needed now, at this critical juncture, is not more tinkering or tokenism, but as King insisted forty years ago, a "radical restructuring of our society," then perhaps we can also agree that a radical restructuring of our approach to racial justice advocacy is in order as well. All of this is easier said than done, of course. Change in civil rights organizations, like change in society as a whole, will not come easy. Fully committing to a vision of racial justice that includes grassroots, bottom-up advocacy on behalf of "all of us" will require a major reconsideration of priorities, staffing, strategies, and messages. Egos, competing agendas, career goals, and inertia may get in the way. It may be that traditional civil rights organizations simply cannot, or will not, change. To this it can only be said, without a hint of disrespect: adapt or die

Racism – Alt Causes

The war on drugs fuels the current incarceration system – it's an alt cause they don't solve for

Michelle **Alexander 10**, Associate Professor of Law at Ohio State University, 2010, "The new Jim Crow: Mass incarceration in the age of colorblindness." http://www.kropfpolisci.com/racial.justice.alexander.pdf, AB)

Some might argue that as disturbing as this system appears to be, there is nothing particularly new about mass incarceration; it is merely a continuation of past drug wars and biased law enforcement practices. Racial bias in our criminal justice system is simply an old problem that has gotten worse, and the social excommunication of "criminals" has a long history; it is not a recent invention. There is some merit to this argument. Race has always influenced the administration of justice in the United States. Since the day the first prison opened, people of color have been disproportionately represented behind bars. In fact, the very first person admitted to a U.S. penitentiary was a "light skinned Negro in excellent health," described by an observer as "one who was born of a degraded and depressed race, and had never experienced anything but indifference and harshness."14 Biased police practices are also nothing new, a recurring theme of African American experience since blacks were targeted by the police as suspected runaway slaves. And every drug war that has ever been waged in the United States—including alcohol prohibition—has been tainted or driven by racial bias.15 Even post-conviction penalties have a long history. The American colonies passed laws barring criminal offenders from a wide variety of jobs and benefits, automatically dissolving their marriages and denying them the right to enter contracts. These legislatures were following a long tradition, dating back to ancient Greece, of treating criminals as less than full citizens. Although many collateral sanctions were repealed by the late 1970s, arguably the drug war simply revived and expanded a tradition that has ancient roots, a tradition independent of the legacy of American slavery. In view of this history and considering the lack of originality in many of the tactics and practices employed in the era of mass incarceration, there is good reason to believe that the latest drug war is just another drug war corrupted by racial and ethnic bias. But this view is correct only to a point. In the past, the criminal justice system, as punitive as it may have been during various wars on crime and drugs, affected only a relatively small percentage of the population. Because civil penalties and sanctions imposed on ex-offenders applied only to a few, they never operated as a comprehensive system of control over any racially or ethnically defined population. Racial minorities were always overrepresented among current and ex-offenders, but as sociologists have noted, until the mid-1980s, the criminal justice system was marginal to communities of color. While young minority men with little schooling have always had relatively high rates of incarceration, "before the 1980s the penal system was not a dominant presence in the disadvantaged neighborhoods."16 Today, the War on Drugs has given birth to a system of mass incarceration that governs not just a small fraction of a racial or ethnic minority but entire communities of color. In ghetto communities, nearly everyone is either directly or indirectly subject to the new caste system. The system serves to redefine the terms of the relationship of poor people of color and their communities to mainstream, white society, ensuring their subordinate and marginal status. The criminal and civil sanctions that were once reserved for a tiny minority are now used to control and oppress a racially defined majority in many communities, and the systematic manner in which the control is achieved reflects not just a difference in scale. The nature of the criminal justice system has changed. It is no longer concerned primarily with the prevention and punishment of crime, but rather with the management and control of the dispossessed. Prior drug wars were ancillary to the prevailing caste system. This time the drug war is the system of control. If you doubt that this is the case, consider the effect of the war on the ground, in specific locales. Take Chicago, Illinois, for example. Chicago is widely considered to be one of America's most diverse and vibrant cities. It has boasted black mayors, black police chiefs, black legislators, and is home to the nation's first black president. It has a thriving economy, a growing Latino community, and a substantial black middle class. Yet as the Chicago Urban League reported in 2002, there is another story to be told.17 If Martin Luther King Jr. were to return miraculously to Chicago, some forty years after bringing his Freedom Movement to the city, he would be saddened to discover that the same issues on which he originally focused still produce stark patterns of racial inequality, segregation, and poverty. He would also be struck by the dramatically elevated significance of one particular institutional force in the perpetuation and deepening of those patterns: the criminal justice system. In the few short decades since King's death, a new regime of racially disparate mass incarceration has emerged in Chicago and become the primary mechanism for racial oppression and the denial of equal opportunity. In Chicago, like the rest of the country, the War on Drugs is the engine of mass incarceration, as well as the primary cause of gross racial disparities in the criminal justice system and in the ex-offender population. About 90 percent of those sentenced to prison for a drug offense in Illinois are African American.18 White drug offenders are rarely arrested, and when they are, they are treated more favorably at every stage of the criminal justice process, including plea bargaining and sentencing.19 Whites are consistently more likely to avoid prison and felony charges, even when they are repeat offenders.20 Black offenders, by contrast, are routinely labeled felons and released into a permanent racial undercaste.

Multiple alt cause to reforming communities they don't solve for

Nkechi Taifa 97, clinical instructor at Howard University School of Law and Director of Howard Clinical Law Center's Public Service Program, Spring 1997, 'THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD): ARTICLE: Codification or Castration? The Applicability of the International

Convention to Eliminate All Forms of Racial Discrimination to the U.S. Criminal Justice System," Howard Law Journal, 40 How. L.J. 641, AB)

It makes little sense to reduce racial disparities in drug control efforts by increasing the number of arrests and rate of incarceration of white drug dealers. Many independent experts believe that because U.S. drug control efforts aim to curtail supply rather than demand, they cannot help but be futile as well as unfair.[141] They have proposed alternative measures, e.g. increased substance abuse treatment, drug education, and positive social investments in low income neighborhoods, to respond to public concerns about drug dealing and drug abuse.[142] Complying with the letter and spirit of ICERD requires the United States to untangle the twisted dynamics of race, poverty, drugs and law enforcement that have determined the course of the war on drugs to date. This may be an extraordinarily difficult undertaking, but it is imperative.[143] Racial discrimination in the war on drugs is intolerable because of the direct and irremediable harm to individual offenders, their families, and their communities. But the racial discrimination is not just devastating to black Americans. It contradicts the principles of justice and equal protection of the law that should be the nation's bedrock. It undermines faith among all races and ethnic groups in the fairness and efficacy of the U.S. criminal justice system.[144] In drug control policy as in many other aspects of American life, it is time for the United States to fulfill the promise it made to Americans and the world when it ratified ICERD.

Alt Causes – changing educative programs and discourse is a pre-requesite

Angela **Davis, and** Dylan **Rodriguez 00,** Davis teaches in the History of Consciousness program at the University of California and has been actively involved in prison-related campaigns and Rodriguez is an Assistant Professor at University of California - Riverside and was involved in the formation of Critical Resistance, 2000, "The Challenge of Prison Abolition: A Conversation", http://www.bowdoin.edu/news/events/archives/images/Prison%20Abolition.pdf, AB)

and criminologists, and many others. Although you were quite clear in the conference's opening plenary session that the purpose of Critical Resistance was to encourage people to imagine radical strategies for a sustained prison abolition campaign, it was clear to me that only a few people took this dimension of the conference seriously. That is, it seemed convenient for people to rejoice at the unprecedented level of participation in this presumably "radical" prison activist gathering, but the level of analysis and political discussion generally failed to embrace the creative challenge of formulating new ways to link existing activism to a larger abolitionist agenda. People were generally more interested in develop-ing an analysis of the prison-industrial complex that incorporated the local work that they were involved in, which I think is an important practical connection to make. At the same time, I think there is an inherent danger in conflating militant reform and human rights strategies with the underlying logic of anti-prison radicalism, which conceives of the ultimate eradication of the prison as a site of state violence and social repression. What is required, at least in part, is a new vernacular that enables this kind of political dream. How does prison abolition necessitate new political language, teachings, and organizing strategies? How could these strategies help to educate and organize people inside and outside the prison for abolition? Angela: In order to imagine a world without prisons — or at least a social landscape no longer dominated by the prison — a new popular vocabulary will have to replace the current language, which articulates crime and punishment in such a way that we cannot think about a society without crime except as a society in which all the criminals are imprisoned. Thus, one of the first challenges is to be able to talk about the many ways in which punishment is linked to poverty, racism, sexism, homophobia, and other modes of dominance. In the university, the emergence of the interdisciplinary field of prison studies can help to trouble the prevailing criminology discourses that shape public policy as well as popular ideas about the permanence of prisons. At the high school level, new curricula can also be developed that encourage critical thinking about the role of punishment.

Community organizations can also play a role in urging people to link their demands for better schools, for example, to a reduction of prison spending.

Racism – Reformism good

Reform solves for abolition

Allegra M. **McLeod 15**, Associate Professor at Georgetown University Law Center, 2015, "Prison Abolition and Grounded Justice", UCLA Law Review, 62 UCLA L. Rev. 1156 (2015), http://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod_6.2015.pdf, AB)

Abolition as an ethical and institutional framework—as an aspirational horizon for reform—is not unduly or merely utopian, but orients critical thought and reformist efforts toward meaningful and just legal, ethical, and institutional transformation to which we might commit ourselves.370 Nor is abolition through gradual decarceration and the incremental investment in other substitutive social projects apart from criminal law enforcement utterly implausible. Faced with fiscal crises, many jurisdictions are actively rethinking their dependence on incarceration as a means of responding to criminalized conduct, including through de facto and de jure decriminalization.371 Although the elimination of the penal state in its current forms is difficult to imagine, as the German abolitionist criminologist Sebastian Scheerer suggested decades ago, so too were many other transformative events, right up until the time they came to pass.

You're too sweeping – reform is possible and should be balanced with abolition

Angela **Davis, and** Dylan **Rodriguez 00,** Davis teaches in the History of Consciousness program at the University of California and has been actively involved in prison-related campaigns and Rodriguez is an Assistant Professor at University of California - Riverside and was involved in the formation of Critical Resistance, 2000, "The Challenge of Prison Abolition: A Conversation", http://www.bowdoin.edu/news/events/archives/images/Prison%20Abolition.pdf, AB)

Angela: The seemingly unbreakable link between prison reform and prison development — referred to by Foucault in his analysis of prison history — has created a situation in which progress in prison reform has tended to render the prison more impermeable to change and has resulted in bigger, and what are considered "better," prisons. The most difficult question for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant mode of punishment. In other words, I do not think that there is a strict dividing line between reform and abolition. For example, it would be utterly absurd for a radical prison activist to refuse to support the demand for better health care inside Valley State, California's largest women's prison, under the pretext that such reforms would make the prison a more viable institution. Demands for improved health care, including protection from sexual abuse and challenges to the myriad ways in which prisons violate prisoners' human rights, can be integrated into an abolitionist context that elaborates specific decarceration strategies and helps to develop a popular discourse on the need to shift resources from punishment to education, housing, health care, and other public resources and services.

Gender- Reformism Good

Slow reforms and support for community solves – this is both an advocate for the CP and a deficit to the affirmative

Dave W. **Frank, 14,** Attorney at Christopher C. Myers & Associates , Ohio Northern University—Claude W. Pettit College of Law, 2/14/14, "Commentary: Abandoned: Abolishing Female Prisons to Prevent Sexual Abuse and Herald an End to Incarceration", http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1322&context=bglj, AB)

As described earlier, U.K. prison reformers offered support and community care as alternatives to prisons and punishment.173 The U.S. should adopt these alternatives as it ends female incarceration and moves toward total prison abolition. Funds for prisons should be reinvested in community programs that provide support services such as substance abuse treatment, childcare, medical attention, housing assistance, and educational training.174 The development of support and community care services would benefit both the would-be-prisoner and society as a whole.175 While the urge to retaliate against a perceived offender is understandable, ultimately it is ineffective.176 True prison alternatives, such as models of support and community care, can be defined by what they are not. They are not incarceration, punishment, or retribution by another name.177 They are not alternatives that reproduce the conditions of confinement through other forms of in-jail treatment or community-based corrections.178 They are not alternatives, such as probation or parole, imposed under the threat of incarceration.179 They do not incarcerate at arms-length through home detention or halfway houses.180 They do not restrict people's movements through community policing181 or electronic monitoring programs182 They do not attempt to reform through the physical coercion of boot camps,183 substance testing,184 daily inspections,185 or chemical castration.186 Such alternatives, modeled on incarceration, inflict punishment and pain imprecisely, uneconomically, or ineffectively. While seeking vengeance against an outcast group—those accused and convicted of crimes—may provide society with a sense of justice and finality, this vengeful urge is ultimately destructive. True alternatives to prison abandon this vengeance by refusing to create outcasts, and instead recognizing and attending to the needs of those most marginalized by our society.

Gender – Prison focus bad

An exclusive focus on prisons is bad – leaves people unprepared for the world beyond

Angela Y. **Davis 03**, Professor of Feminist Studies at University of CA Santa Cruz, 2003, "Are Prisons Obsolete?", http://www.feministes-radicales.org/wp-content/uploads/2010/11/Angela-Davis-Are_Prisons_Obsolete.pdf, AB)

As important as some reforms may be-the elimination of sexual abuse and medical neglect in women's prison, for example-frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison. Debates about strategies of decarceration, which should be the focal point of our conversations on the prison crisis, tend to be marginalized when reform takes the center stage. The most immediate question today is how to prevent the further expansion of prison populations and how to bring as many imprisoned women and men as possible back into what prisoners call lithe free world." How can we move to decriminalize drug use and the trade in sexual services? How can we take seriously strategies of restorative rather than exclusively punitive justice? Effective alternatives involve both transformation of the techniques for addressing "crime" and of the social and economic conditions that track so many children from poor communities, and espeCially communities of color, into the juvenile system and then on to prison. The most difficult and

urgent challenge today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor.

Gradual - Reformism CP

Solvency

Abolition must be gradual to be effective - transform criminal law and people's livelihoods

Allegra M. **McLeod 15**, Associate Professor at Georgetown University Law Center, 2015, "Prison Abolition and Grounded Justice", UCLA Law Review, 62 UCLA L. Rev. 1156 (2015), http://www.uclalawreview.org/wp-content/uploads/2015/06/McLeod_6.2015.pdf

If prison abolition is conceptualized as an immediate and indiscriminate¶ opening of prison doors—that is, the imminent physical elimination of all structures¶ of incarceration—rejection of abolition is perhaps warranted. But abolition¶ may be understood instead as a gradual project of decarceration, in which radically¶ different legal and institutional regulatory forms supplant criminal law enforcement.¶ These institutional alternatives include meaningful justice **reinvestment to¶ strengthen the social arm of the state and** improve human **welfare; decriminalizing¶ less serious infractions**; improved design of spaces and products to reduce opportunities for¶ offending; **urban redevelopment and "greening" projects**; proliferating¶ restorative forms of redress; and creating both **safe harbors** for individuals at risk¶ of or fleeing violence **and alternative livelihoods** for persons otherwise subject to¶ criminal law enforcement. When abolition is conceptualized in these terms—as¶ a transformative goal of gradual decarceration and positive regulatory substitution¶ wherein penal regulation is recognized as morally unsustainable—then inattention¶ to abolition in criminal law scholarship and reformist discourses comes into¶ focus as a more troubling absence.16 Further, the rejection of abolition as a horizon¶ for reform mistakenly assumes that reformist critiques concern only the occasional,¶ peripheral excesses of imprisonment and prison-backed policing rather¶ than more fundamentally impugning the core operations of criminal law enforcement,¶ and therefore requiring a departure from prison-backed criminal¶ regulation to other regulatory frameworks.

Short term efforts to reduce incarceration is an effective combination of critique, action, and goals that holds reform and abolition in creative tension in order to maintain the advantages of both—we aren't reformism, but non-reformist reforms towards abolition

Berger 13¶ [2013, Dan Berger is an Assistant Professor at the University of Washington Bothell, "Social Movements and Mass Incarceration: What is To Be Done?", Souls: A Critical Journal of Black Politics, Culture, and Society, Volume 15, Issue 1-2, 2013, pages 3-18]

The strategy of decarceration **combines radical critique, direct action, and tangible goals for reducing the reach of the carceral state.** It is a **coalitional strategy that works to shrink the prison system through a combination of pragmatic demands** and **far-reaching, open-ended critique**. It is **reform in pursuit of abolition**. Indeed, decarceration allows a **strategic launch pad for the politics of abolition**, providing what has been an **exciting but abstract framework with a course of action**. 32 Rather than juxtapose pragmatism and radicalism, as has so often happened in the realm of radical activism, the strategy of decarceration **seeks to hold them in creative tension**. It is a strategy **in the best tradition of the black freedom struggle**. It is a strategy that seeks to **take advantage of political conditions without sacrificing its political vision**. Today we are in a moment where it is possible, in the words of an organizer whose work successfully closed Illinois's infamous supermax prison Tamms in January 2013, to confront prisons as both an economic and a moral necessity. 33 Prisons bring together diverse forms of oppression across race, class, gender, sexuality, citizenship status, HIV status and beyond. The movements against them, therefore, will need to bring together **diverse communities of resistance.** They will need to unite people across a range of issues, identities, and sectors. That is the coalition underlying groups such as Californians United for a Responsible Budget (CURB), the Nation Inside initiative, and Decarcerate PA. The fight against prisons is **both a targeted campaign** and a **broad-based struggle**

for social justice. These movements must include the leadership by those directly affected while at the same work to understand that prisons affect us all. This message is the legacy of prison rebellions from Attica in 1971 to Pelican Bay in 2012. The challenge is to **maintain the aspirational elements of that message while at the same time translating it into a political program**. Decarceration, therefore, **works not only to shrink the prison system but to expand community cohesion and maximize what can only be called freedom**. Political repression and mass incarceration are joined at the hip. The struggles against austerity, carcerality, and social oppression, the struggles for restorative and transformative justice, for grassroots empowerment and social justice **must be equally interconnected**. For it is only when the movement against prisons is as interwoven in the social fabric of popular resistance as the expansion of prisons has been stitched into the wider framework of society that we might hope to supplant the carceral state. There are many obstacles on the path toward decarceration; the existence of a strategy hardly guarantees its success. Until now, I have focused largely on the challenges internal to the movement, but there are even taller hurdles to jump in encountering (much less transforming) the deeply entrenched carceral state. Perhaps the biggest challenge, paradoxically, comes from the growing consensus, rooted in the collective fiscal troubles of individual states, that there is a need for prison reform. In that context, a range of politicians, think tanks, and nonprofit organizations—from Right on Crime to the Council on State Governments and the Pew Charitable Trusts—have offered a spate of neoliberal reforms that trumpet free market solutions, privatization, or shifting the emphasis away from prisons but still within the power of the carceral state. Examples include the "Justice Reinvestment" processes utilized by states such as Texas and Pennsylvania that have called for greater funding to police and conservative victim's rights advocates while leaving untouched some of the worst elements of excessive punishment. These neoliberal reforms can also be found in the sudden burst of attention paid to "reentry services" that are not community-led and may be operated by private, conservative entities. 34 Perhaps the grandest example can be found in California, where a Supreme Court ruling that overcrowding in the state's prisons constituted cruel and unusual punishment has been met with a proposal for "realignment," that shifts the burden from state prisons to county jails. 35 A combination of institutional intransigence and ideological commitment to punish makes the road ahead steep. Even as many states move to shrink their prison populations, they have done so in ways that have left in place the deepest markings of the carceral state, such as the use of life sentences and solitary confinement, and the criminalization of immigrants. Social movements will **need to confront the underlying ideologies that hold that there is an "acceptable" level of widespread imprisonment**, that there is a specter of villainy out there—be they "illegal immigrants," "cop killers," "sex criminals"—waiting in the wings to destroy the American way of life. 36 **There is a risk**, inherent in the sordid history of prison reform, that the current reform impulse will be bifurcated along poorly defined notions of "deservingness" that will continue to uphold the carceral logic that separates "good people" from "bad people" and which decides that no fate is too harsh for those deemed unworthy of social inclusion. This, then, is a movement that **needs to make nuanced yet straightforward arguments that take seriously questions of accountability while showing that more cops and more** (whether bigger or smaller) **cages only takes us further from that goal**. 37 At stake is the kind of world we want to live in, and the terms could not be more clear: the choice, to paraphrase Martin Luther King, is either carceral chaos or liberatory community. The framework of community—as expressed Decarcerate PA slogan "build communities not prisons" and the CURB "budget for humanity" campaign—allows for a robust imagination of the institutions and mechanisms that foster community versus those that weaken it. It focuses our attention on activities, slogans, programs, and demands that maximize communities. In short, it allows for unity. If the state wants to crush dissent through isolation, our movements must rely on togetherness to win. Solidarity is **the difference between life and death**. State repression **expands in the absence of solidarity**. Solidarity is a lifeline against the logic of criminalization and its devastating consequences. For the most successful challenges to imprisonment come from intergenerational movements: movements where people raise each other's consciousness and raise each other's children, movements that fight for the future because they know their history. Here, **in this pragmatic but militant radicalism, is a chance to end mass incarceration and begin the process of shrinking the carceral state out of existence.**

The mindset of abolishing prisons detracts from reformation and won't work

Herbert 8 (Nick Herbert [Minister of state for policing and criminal justice and Conservative MP for Arundel and South Downs], "The abolitionists' criminal conspiracy," The Gaurdian, Sunday, 27 July 2008 10.00 EDT)

Last week saw an International Conference on Penal Abolition. With such a heady ambition, what can be next? A global conference to abolish crime? **The ambition of an eccentric minority to abolish prison isn't just dotty. It's [It is] a distraction from a real and pressing agenda**, which is **to reform prisons** which simply aren't working. ¶ **A century ago, prisons had hard labour and treadmills. Today, they have colour TVs in cells. Jails may have changed, but the enduring truth that they are necessary has not. We will always have a small minority of offenders who, by their behaviour, pose so great a threat to the lives and property of the law-abiding majority that they must be kept apart from us. Ignoring this reality and arguing for the total abolition of prison is a hopelessly utopian goal that does the credibility of penal reformers no service.** The case for penal abolition rests on a series of tenuous assertions. Let's set aside the obvious, if uncomfortable, fact that part of the purpose of prison is to punish. It's said that short-term prison sentences don't work, because recidivism rates are shockingly high and there is little time for any restorative programmes to work. But since the evidence is that longer sentences have lower recidivism rates, and provide the opportunity to rehabilitate offenders, this might be an argument to lengthen sentences, not abolish them altogether. After all, another purpose of prison is to incapacitate offenders.¶ Of course, overcrowded prisons that are awash with drugs, and a system which gives short-term prisoners no supervision or support on release, is almost calculated to fail. But this could equally be an argument – the one which the modern Conservative party is making – for a complete transformation of prison regimes and a system of support for offenders when they are released from jail. It's a logical non sequitur on a grand scale to argue that because short-term prison sentences currently aren't working, we should therefore stop using them at all.¶ Abolitionists say that short-term prison sentences have a poorer recidivism rate than community sentences. In fact, both have a lamentable record – and one that has deteriorated in the last ten years. But the difference is hardly surprising, since the worst recidivists are bound to end up in jail. According to Home Office figures (pdf), only 12% of those sentenced to prison have no previous convictions. Over half have five or more previous convictions, and over a third have ten or more. Those who say that prison should be reserved for serious or serial offenders tend to ignore the fact that it already is.¶ Serial offenders who end up with custodial sentences have usually run through the gamut of weak community sentences already. If we want to avoid magistrates having little choice but to send them down, the logical thing to do is to make community sentences far more effective. Yet the perverse reaction of the abolitionists is to recommend that the very community disposals that have, by definition, already failed are used again.¶ Over a third of unpaid work requirements are not completed. Drug rehabilitation requirements have an even worse record – fewer than half are completed. If a fraction of the energy and resources that are being devoted to the cause of penal abolition were directed to thinking seriously about how better to design non-custodial punishments, short-term prison sentences would be less necessary.¶ What do the abolitionists really want? If it's the end of all custody, including for the most serious and dangerous offenders, then we can dismiss their demands as truly silly. If it's the abolition of short-term custodial sentences, then the effect on the overall prison population will be minimal. Justice ministry tables show (pdf) that over 87% of the current prison population are serving sentences of over 12 months. Abolishing prison for those serving, say, six months or less would mean watering down 60,000 sentences – but it would reduce the prison population by less than 7,000. The more effective and sustainable way to reduce the prison population in the long term is to reduce re-offending, as the Conservative party's radical "rehabilitation revolution" proposes.¶ It would be nice to live in a society where there were no prisons, just as it would be nice if there were no hospitals because there was no illness. But until someone steps forward with a ten-year plan to Make Crime History, jails are here to stay. The challenge is to create prisons with a purpose – not to hold lazy conferences making futile calls for their abolition.

Abolition movements only work when also building institution based alternatives – anti-prison movements run into conflicts with anti-violence movements

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She received a JD from Harvard University School of Law and an MPhil in Criminology from the University of Cambridge. "Reform and Abolition: Points of Tension and Connection", Defending Justice: An Activist Resource Kit, http://www.publiceye.org/defendingjustice/organizing/shaylor_reform.html, 7/28/15

We can simultaneously address the needs of people who are suffering in the system currently and challenge the efforts by the Right to co-opt our attempts to change the system by carefully crafting reform strategies that are about diminishing the power of the system and building alternatives to it. For instance, a focus on strategic decarceration is a significant step toward the ultimate abolition of the prison. Such campaigns focus on: implementing a moratorium on prison construction; closing existing prisons; changing laws and sentencing structures that imprison the greatest numbers of people (such as drug laws, three strikes schemes, property offenses, anti-sex work ordinances, etc); and creating community-based institutions that provide services that people need. When implementing such strategies, however, it is important to build them on rhetorical approaches that do not play into the hands of the Right. An example, which often occurs in relation to death penalty and immigrant rights work, is the pitting of non-violent prisoners (those who "deserve" to be released) against violent prisoners (those who do not) or "innocent" prisoners against "guilty" prisoners. Though the number of people who are in prison for violent offenses is extremely small, the first question posed to prison abolitionists is the question of how to respond to harms that people inflict. In response, strategies for creating systems of accountability instead of punishment when someone is harmed can be developed without relying on policing and prison. While the antiprison movement has historically challenged racist policing and imprisonment practices, few strategies have been developed for alternative mechanisms of safety and justice. As a result, the anti-violence movement has struggled to respond to interpersonal violence in an era when policing and prisons are often the only available response. Moreover, through a desire to have the State acknowledge the vulnerability of marginalized groups, anti-violence activists often push for increased criminalization, such as hate crimes legislation, as a response to discrimination. Through these practices, activists interested in protecting vulnerable groups can unintentionally bolster the same systems of oppression and State violence that most often target the groups they are seeking to protect. There is a need to break down barriers between and within the anti-prison and anti-violence movements, to expand the definition of violence to include Statesanctioned violence such as imprisonment, and to create tangible alternatives for establishing true safety and justice.

VOCA Reform CP

Counterplan: The USFG should eliminate the Victims of Crime Act funding restriction that disqualifies incarcerated sexual violence survivors from receiving aid under the Crime Victims' Fund.

VOCA funding restrictions prevent incarcerated sexual assault victims from receiving aid – trauma and STD risk follow the victims back home

JDI 9/**09** – Just Detention International, human rights organization that seeks to end sexual abuse in all forms of detention. All of JDI 's work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture. "Prisoner Rape Survivors Need Crime Victim Assistance Services", http://www.justdetention.org/en/factsheets/Factsheetvoca.pdf, 7/28/15, ACC

Sexual assault is a crime that has a devastating impact on survivors. Quality medical care and crisis counseling are essential to the ability of rape survivors to heal from their abuse and to rebuild their lives.

Unfortunately, in the U.S. today, rather than being recognized as the victims of crime that they are, survivors of rape and other forms of sexual abuse in detention are denied access to even the most basic assistance offered to rape survivors in the community – such as rape crisis counseling.2 One reason for this alarming lack of services in prisons and jails stems directly from a funding restriction in the guidelines of the federal Victims of Crime Act (VOCA).3 This restriction precludes agencies that receive victim assistance grants under VOCA from using any such funding to serve incarcerated individuals – even in cases where detainees have been raped or subjected to other forms of sexual violence.4 JDI believes that this VOCA funding restriction must be lifted as a matter of urgency. Passed in 1984, VOCA created the Crime Victims' Fund, which uses fines and penalties assessed in federal court to fund victim assistance and crime victim compensation programs. Victim assistance programs provide crisis intervention, counseling, and resources in the aftermath of a crime.5 Victim compensation programs provide money to help pay out-of-pocket expenses incurred as a result of a crime.6 Every year, some 300 million dollars are allotted for crime victim assistance7 – the VOCA funding restriction means that no incarcerated survivor of sexual violence in detention is eligible to benefit from that assistance. The vast majority of rape crisis centers and related service providers receive a significant portion of their funding from VOCA, limiting their ability to serve prisoner rape survivors. To make matters worse, the VOCA funding restriction has caused many rape crisis centers and other community-based service providers erroneously to believe that they will jeopardize their VOCA funding even if they use funds from other sources to serve incarcerated individuals. As a result, even agencies that receive private donations are sometimes reluctant to serve survivors in prisons or jails. Sexual violence behind bars is shockingly common. In a 2007 survey of prisoners across the country, the Bureau of Justice Statistics (BJS) found that 4.5 percent (or 60,500) of the more than 1.3 million inmates held in federal and state prisons had been sexually abused in the previous year alone.8 A BJS survey in county jails was just as troubling; nearly 25,000 jail detainees reported having been sexually abused in the past six months.9 The most vulnerable inmates come from the same marginalized populations as the individuals at greatest risk for sexual abuse in the community, including youth, gay and transgender individuals, and people with disabilities.10 Survivors of sexual abuse behind bars experience the same emotional pain as other rape victims – and they need and deserve the same services. The absence of confidential counseling in the aftermath of an assault causes many prisoner rape survivors to develop serious long-term problems, like post-traumatic stress disorder (PTSD), depression, and alcohol and other drug addictions.11 Moreover, the high rates of HIV and other sexually transmitted diseases in detention place incarcerated survivors at great risk for infection.12 Once released – and more than 95 percent of inmates do return home13 – survivors bring their emotional trauma and medical conditions back to their communities.

Reform Good - Mental Health NB

State mental health cuts already forcing more people into prison – Instant release doesn't provide for the mentally ill

Ron **Honberg**, **et al** March 20**11** (Sita Diehl, Angela Kimball, Darcy Gruttadaro, Mike Fitzpatrick, National Alliance on Mental Illness, the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. NAMI has more than 1,100 State Organizations and Affiliates across the country that engage in advocacy, research, support and education. Members are families, friends and people living with mental illnesses such as major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder(OCD), panic disorder, posttraumatic stress disorder (PTSD) and borderline

personality disorder, “State Mental Health Cuts: A National Crisis”, http://www2.nami.org/ContentManagement/ContentDisplay.cfm?ContentFileID=126233, 7/26/15, ACC)

One in 17 people in America lives with a serious mental illnesses such as schizophrenia, major depression, or bipolar disorder.1 About one in 10 children live with a serious mental disorder.2 In recent years, the worst recession in the U.S. since the Great Depression has dramatically impacted an already inadequate public mental health system. From 2009 to 2011, massive cuts to non-Medicaid state mental health spending totaled nearly $1.6 billion dollars. And, deeper cuts are projected in 2011 and 2012. States have cut vital services for tens of thousands of youth and adults living with the most serious mental illness. These services include community and hospital based psychiatric care, housing and access to medications. To make matters worse, Medicaid funding of mental health services is also potentially on the chopping block in 2011. The temporary increase in federal funding of Medicaid through the stimulus package will end on June 30, 2011. Medicaid is the most important source of funding of public mental health services for youth and adults, leaving people with mental illness facing the real threat of being cut off from life-saving services. Communities pay a high price for cuts of this magnitude. Rather than saving states and communities money, these cuts to services simply shift financial responsibility to emergency rooms, community hospitals, law enforcement agencies, correctional facilities and homeless shelters. Massive cuts to mental health services also potentially impact public safety. As a whole, people living with serious mental illness are no more violent than the rest of the population. In fact, it is well documented that these individuals are far more frequently the victims of violence than the perpetrators of violent acts. However, the risks of violence among a small subset of individuals may increase when appropriate treatment and supports are not available. The use of alcohol or drugs as a form of self medication can also increase these risks. Unfortunately, the public often focuses on mental illness only when high visibility tragedies of the magnitude of Tucson or Virginia Tech occur. However, less visible tragedies take place everyday in our communities—suicides, homelessness, arrests, incarceration, school drop-out and more. These personal tragedies also occur because of our failure to provide access to effective mental health services and supports.

Gradual release programs more effective than immediate release – provides support while readjusting to society

Mark **Kleiman et al** 3/18/**15** -Mark Kleiman is professor of public policy at the UCLA Luskin School of Public Affairs; in July he will move to the Marron Institute at New York University. He is the author of When Brute Force Fails: How to Have Less Crime and Less Punishment. Angela Hawken is associate professor of economics and policy analysis and the James Q. Wilson Fellow at the School of Public Policy at Pepperdine University. She has studied the effects of mandated drug treatment and swift-certain-fair community-corrections programs on offender outcomes. Ross Halperin is a project manager with BOTEC Analysis, where he works on operational plans for graduated re-entry programs. “We don’t need to keep criminals in prison to punish them”, http://www.vox.com/2015/3/18/8226957/prison-reform-graduated-reentry, ACC)

The transition from prison to the "free world" can be very tough, both for the offender and for the neighborhood he returns to. In the month after getting out, a person released from prison has about a dozen times the mortality rate of people of the same age, race, and sex in the same neighborhood, with the leading causes of death among former inmates being drug overdose, cardiovascular disease, homicide, and suicide. This shouldn't be a surprise. Consider someone whose conduct earned him[/her] (much more rarely "her") a prison cell. Typically, that person went into prison with poor impulse control, weak if any attachment to the legal labor market, few marketable skills, and subpar work habits. More often than not, ~~he's~~[they’re] returning to a high-crime neighborhood. Many of ~~his~~[their] friends on the outside are also criminally active. Maybe, if ~~he's~~[their] lucky and has been diligent, ~~he's~~ [they’ve] learned something useful in prison. Perhaps ~~he's~~[they’ve] even picked up a GED. But he[/she] hasn't learned much about how to manage him[/her]self in freedom because he[/she] hasn't had any freedom in the recent past.

And he[/she] hasn't learned to provide for him[/her]self because [she's/]he's been fed, clothed, and housed at public expense. Now let him[them] out with $40 in ~~his~~[their] pocket, sketchy if any identification documents, and no enrollment for basic income support, housing, or health insurance. Even if [s/]he has family or friends who can tide him[/her] over during the immediate transition, [her/]his chances of finding legitimate work in a hurry aren't very good. If [s/]he's not working, [s/]he has lots of free time to get into trouble and no legal way of supporting [her/]himself. Altogether, it's a formula for failure — and failure is, too often, what it produces. But there is a better way. The current system never made sense, and it makes less sense every day. The cost of buildings and staff goes up every year; the cost of information collection goes down. We need to learn to substitute effective supervision for physical confinement. That's the idea behind "graduated re-entry." To get back to our historic level of incarceration, we would have to reduce the prisoner headcount by 80 percent. We can't get from where we are to where we need to be just by releasing the innocent and harmless. More than half of today's prisoners are serving time for violent offenses, and even those now in prison for nonviolent crimes often have violent histories. Solving mass incarceration requires releasing some seriously guilty and dangerous people. The problem is how to do that while also protecting public safety by turning ex-criminals into productive, free citizens. For the transition from prison to life outside to be successful, it needs to be gradual. If someone needed to be locked up yesterday, [s/]he shouldn't be completely at liberty today. And [s/]he shouldn't be asked to go from utter dependency to total self-sufficiency in one flying leap. [S/]He needs both more control and more support. Neither alone is likely to do the job. Of course, both control and support cost money. But so does prison. The trick is to start the re-entry process before what would otherwise have been the release date, so the money you spend in the community is balanced by the money you're not spending on a cell. The average cost of holding a prisoner comes to about $2,600 per month. At the same time, even very intrusive supervision leaves a released offender freer than [s/]he would have been on the inside. So even a program that looks expensive and intrusive compared with ordinary re-entry or parole is cheap and liberating compared with a cellblock. Start with housing. A substantial fraction of prison releasees go from a cellblock to living under a bridge: not a good way to start free life. Spend some of the money that would otherwise have financed a prison cell to rent a small, sparsely furnished efficiency apartment. In some ways, that apartment is still a cell and the offender still a prisoner. [S/]He can't leave it or have visitors except as specifically permitted. The unit has cameras inside and is subject to search. But [s/]he doesn't need guards, and doesn't have to worry about prison gangs or inmate-on-inmate assault.

Released prisoners have increased likelihood of death – drug overdose, cardiovascular disease, homicide, suicide, and mental relapse – prison and release reforms can alleviate the risk

Ingrid A. **Binswanger et al** 3/10/**10** – Ingrid A. Binswanger, Associate Professor at UC Denver SOM, Director of Primary Care Residency Research, UC Denver SOM, Director of Primary Care Research Fellowship Program, UC Denver SOM and Affiliated Investigator for the Institute for Health Research at Kaiser Permanente, Current Research Interests: Criminal justice involvement and health. Marc F. Stern, Affiliate Assistant Professor of Health Services at University of Washington, Research Interests: Correctional health care. Richard A. Deyo, OHSU Professor and the Kaiser-Permanente Endowed Professor of Evidence-Based Medicine in the Department of Family Medicine at Oregon Health and Science University. Patrick J. Heagerty, Professor in Department of Biostatistics, University of Washington, Member of the Public Health Sciences Division, Director at the Center for Biomedical Statistics, UW Schools of Medicine and Public Health / Institute of Translational Health Sciences LOCAL. Allen Cheadle, Affiliate Professor of Health Services at University of Washington and Director of Center for Community Health & Evaluation at the Group Health Research Institute. Joann G. Elmore, professor of medicine and adjunct professor of epidemiology at University of Washington, as well as an affiliate investigator with the Fred Hutchinson Cancer Research Center and the Group Health Research Institute. Thomas D. Koepsell, Professor Emeritus of Epidemiology (primary

department) and Professor Emeritus of Health Services at University of Washington. "Release from Prison — A High Risk of Death for Former Inmates", NCBI.com, The National Center for Biotechnology Information advances science and health by providing access to biomedical and genomic information, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2836121/, 7/26/15, ACC)

During the first 2 weeks after release from the Washington State Department of Corrections, the risk of death among former inmates was 12.7 times that among Washington State residents of the same age, sex, and race. The sharply elevated risk immediately after release suggests that the reentry process contributes to excess mortality in this population. Overall, we observed an increase by a factor of 3.5 in the risk of death among former inmates. Mortality rates did not return to the baseline of the general population of the same age, sex, and race even several weeks after release. Factors such as level of education, employment status, level of income, neighborhood of residence, and health insurance status may account in part for the difference between the mortality rates among former inmates and those among other state residents of the same age, sex, and race. National estimates suggest that state prison inmates have a lower level of education than does the general population.19 However, socioeconomic differences between former inmates and the general population are unlikely to account for all the observed variation in the relative risk of death during the 8 weeks after release from prison. Our estimates for the study period showed that the risk of death was sharply higher after release than during incarceration, perhaps because there are fewer overdoses, homicides, or motor vehicle accidents during incarceration. Inprison mortality rates reported by the U.S. Bureau of Justice Statistics for 2001 and 2002 (244 deaths per 100,000 prisoners in state correctional facilities; 192 deaths per 100,000 Washington State prisoners) were also considerably lower than those among former inmates.20 Our comparisons were limited by the lack of specificity of the data in CDC WONDER on racial groups other than black or white, which may account for some of the interaction observed according to race. We may not have identified all deaths among former inmates, including deaths occurring outside the United States. Data on the Social Security numbers and names of former inmates may be more likely to be incorrect than data on other members of the population, but the personal identifiers of former inmates were likely to be as accurate as possible since these were provided by the criminal justice system. Ascertainment of known deaths may be better for men than for women and for whites than for blacks and persons of other races,21 but the NDI is currently the best available source for identifying deaths in the United States.21,22 Many types of personal identifiers and all known aliases for linkage improved our ability to ascertain deaths correctly. We have identified important risks that former inmates must confront: drug overdose, cardiovascular disease, homicide, and suicide. A period of relative abstinence during incarceration may have led to diminished physiological tolerance to drugs, increasing the risk of overdose. The excess risk of homicide suggests that former inmates were exposed to considerable personal risk from violence. Firearms were involved in many deaths in this population after release. The risk of death from cardiovascular disease and lung cancer may be related to the high prevalence of tobacco use in populations in correctional institutions.23,24 A high prevalence of underlying mental illness and the psychological stress of reentry may have contributed to the excess risk of suicide. Persons with mental illness may have particular difficulty obtaining care and medications from community providers after the medications provided by prisons run out. Improved transitional planning for inmates with mental illness may help to reduce this risk. We could not verify data from the Department of Corrections, nor could we be certain that deaths did not occur when an inmate was incarcerated in another correctional system within Washington State or elsewhere. Classification of the causes of death was subject to the limitations imposed by the use of data recorded in the NDI from death certificates. For instance, some suicides may have been misclassified as drug overdoses and some drug overdoses may have been misclassified as cardiovascular deaths. However, many suspected overdoses, suicides, and accidental deaths would have been coroners' cases and undergone investigation with toxicologic testing and autopsy, making our data at least as accurate as most standard reports on the cause of death provided by treating physicians.Our study was based in a prison system in a single state in the United States, so we cannot be certain that the findings are generalizable to other correctional systems, states, or countries. U.S. prisons reported more than 600,000 releases in 2002.25 In addition, jails in which persons awaiting trial or serving short-term sentences for misdemeanors are detained had approximately 10 million releases in 1997 (7.2 million unique persons).26 If former jail inmates have an elevated risk of death similar to that of former inmates of Washington State prisons, the effect of the excess risk of death after release could be substantial. Because a disproportionate number of black and Hispanic men interact with the criminal justice system, decreasing the risk of death after release may decrease disparities in health outcomes in this population overall. The age distribution in the categories of leading

causes of death suggests that specific interventions might be targeted according to age. Interventions aimed at decreasing the risk of death could include planning for the transition from prison to the community, including use of halfway houses, work-release programs, drug-treatment programs, education about susceptibility to overdose after relative abstinence during incarceration, and preventive care to modify cardiac risk factors. Possible interventions after release include providing intensive case management during the period immediately following release and improving access to and continuity of medical and mental health care. In addition to possible reductions in mortality after release, there might be secondary benefits for society from such interventions, in the form of increased public safety.

Your let people out without resolving psychological issues that recreates the issues of the status quo.

NC 6 (November Coalition, non-profit organization Working to End Drug War Injustice, "Abolishing the Prison Industrial Complex," July 2006, http://www.november.org/stayinfo/breaking06/CarceralLandscapes.html)//ghs-VA

The other thing that I like to point out is that most of the time, terrible things happen within a pretty limited context. The majority of really violent acts, with the exception of **serial killers** or people who are really disturbed, happen as crimes of passion or with people who they know. Crimes of passion are highly-specific incidents in highly-specific contexts. That's not to say that it's ok, or change the fact that they may have killed someone, for example. But that kind of person doesn't pose the kind of threat to society that people often play-up. I'm not sure what to do with people who are currently locked-up. A lot of people who are locked up need mental healthcare, need good mental health care. They need immensely supportive environments where they can engage with the damage they've done and the people they've harmed, if they're someone who's capable of processing something like that. If they're not capable of processing something like that, they may need some other kind of support or supervision that might not have to be locked.

Total abolition fails to account for the mentally ill prisoners reliant on mental healthcare of prisons – sudden cut off medication endangers lives

Matt **Ford 6/8** - an associate editor at The Atlantic, where he covers law and the courts, 6/8/15, the Atlantic, "America's Largest Mental Hospital Is a Jail", http://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/, 7/25/15, ACC)

Demetrio's battle with mental illness began at an early age. "My mother was murdered and I watched it when I was young, so that's how it started," he told me. Doctors diagnosed him with post-traumatic stress disorder and bipolar disorder as an adolescent. He served time for drug-related offenses in 1987 and 1993, then kept out of trouble for the next 18 years. He drifted in and out of Chicago-area hospitals during that period, checking himself in when he felt suicidal. While on parole for a 2009 burglary charge, he went off his medication and stopped reporting to his parole officer. That landed him back in state prison to serve the remainder of his sentence. There, Demetrio received medication and treatment, but it ended the moment he became a free man last year. Prison doctors tried to set him up with an appointment in one of the city's remaining community mental-health clinics. "They said the earliest I could see a doctor was June [2014]," he told the sheriff and me. "When were you released?" asked Dart. Nine months earlier in October 2013, Demetrio replied. He knew that surviving until the following June wouldn't be easy. "I was trying to stretch my medicine out by not taking it regularly like I should have every day," he told me. "It didn't work." This spring, he was arrested on aggravated battery charges—for getting in a fight with a man selling drugs to his family, he told me—and landed back in Cook County Jail on a $250,000 bond. He said he wasn't medicated when the fight erupted and was eager to get back out. "I've been in Chicago my whole life. I have a 14-year-old son. His mother's all messed up right now,

she's on drugs, that's why I'm trying to get out of here," he told me. Demetrio spoke lucidly and without difficulty during our conversation. He credited the hydroxyzine, Klonopin, and Prozac he was receiving at the jail. "I've been lucky so far," he told me. "If I wasn't on my medication, I'd be a whole different person." Cook County Jail does house its share of serious violent offenders. Some of them are mentally ill. Many aren't. But the overwhelming majority of Cook County Jail's mentally ill population is booked for minor offenses, Dart told me. "When people do not receive the care they need, they become symptomatic," Jones Tapia explained. "When people become symptomatic with acute mental illness, a lot of times those behaviors look criminal. And we have done an excellent job of criminalizing people with mental illness in our state." When the criminal-justice system is your only hope, perverse incentives are also inevitable. In 1976, the Supreme Court ruled in Estelle v. Gamble that prisons are constitutionally required to provide adequate medical care to inmates in their custody. As a result, prisoners are the only group of Americans with a constitutional right to health care. Multiple city and county officials told me they had encountered mentally ill people who committed crimes simply to receive treatment.

Reform Good – Disability NB

Reforming prisons is key to solve for those struggling with mental illness

E. Fuller **Torrey et al 14**, Associate Director, Stanley Medical Research Institute Founder and Board Member, Treatment Advocacy Center Mary T. Zdanowicz, Esq. Mental health law attorney, Eastham, Massachusetts Sheriff Aaron D. Kennard (retired), M.P.A. Executive Director, National Sheriffs' Association H. Richard Lamb, M.D. Emeritus Professor of Psychiatry, University of Southern California, Keck School of Medicine Board Member, Treatment Advocacy Center Donald F. Eslinger Sheriff, Seminole County, Florida Board Member, Treatment Advocacy Center Michael C. Biasotti Chief of Police, New Windsor, New York Board Member, Treatment Advocacy Center Doris A. Fuller Executive Director, Treatment Advocacy Center, "The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey" APRIL 8, 2014 http://www.tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf, AB)

Prison and jail officials thus have few options. Although they are neither equipped nor trained to do so, they are required to house hundreds of thousands of seriously mentally ill inmates. In many cases, they are unable to provide them with psychiatric medications. The use of other options, such as solitary confinement or restraining devices, is sometimes necessary and may produce a worsening of symptoms. Yet, when things go wrong, as they inevitably do, the prison and jail officials are blamed. The present situation is unfair to both the inmates and the officials and is untenable. The ultimate solution to this problem is to maintain a functioning public mental health treatment system so that mentally ill persons do not end up in prisons and jails. To this end, public officials need to: Reform mental illness treatment laws and practices in the community to eliminate barriers to treatment for individuals too ill to recognize they need care, so they receive help before they are so disordered they commit acts that result in their arrest. Reform jail and prison treatment laws so inmates with mental illness can receive appropriate and necessary treatment just as inmates with medical conditions receive appropriate and necessary medical treatment. Implement and promote jail diversion programs such as mental health courts. Use court-ordered outpatient treatment (assisted outpatient treatment/AOT) to provide the support at-risk individuals need to live safely and successfully in the community. Encourage cost studies to compare the true cost of housing individuals with serious mental illness in prisons and jails to the cost of appropriately treating them in the community. Establish careful intake screening to identify medication needs, suicide danger, and other risks associated with mental illness. Institute mandatory release planning to provide community support and foster recovery. Provide appropriate mental illness treatment for inmates with serious psychiatric illness.

The aff's unrealistic approach is actively dangerous for mentally disabled folk

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo
"Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and

Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

Before and during deinstitutionalization, opponents of closures in the mental health and developmental disabilities arenas claimed that the policy is unrealistic and that its proponents should wait until the time is right for it. One of the most pervasive arguments against deinstitutionalization, which is still debated today, is the widespread belief that certain people will always require some custodial care. This is true for people with cognitive, psychiatric and intellectual/developmental disabilities- especially those labels on the severe or profound side of the spectrum. Many professionals, and parents, believe that the best interests of "these people" will always be better served in residential settings and although others can benefit from programs and therapies, they cannot. This is the position of organizations such as Voice of the Retarded, and some, vocal, family members from NAMI (the National Alliance of Mental Illness). They actively lobby for increasing options such as involuntary hospitalizations and medication or residential living options. This of course ends up competing with those who advocate for more community living options and supports, both ideologically and in terms of budgetary priorities.

The aff lets homeless disabled people die in the streets

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

In addition to resistance to deinstitutionalization and community living when they were proposed or enacted, there have also been critiques against them after the fact, which some characterize as "the backlash against deinstitutionalization." Such critiques helped build a narrative in which deinstitutionalization is seen as a culprit in a variety of social problems of its era, and especially as leading to increases in homelessness and trans-incarceration (especially of people with mental illness in jails and prisons). This section will explicate some of the key arguments in these debates and hopefully bring new light to understanding both deinstitutionalization and its backlash. Although there are variations to this idea, the hegemonic story is that deinstitutionalization led to "dumping people in the streets," or to "mentally ill" people living in the streets or in jail via being homeless. Snow et al. (1986) give a few examples of such accounts as reported in the popular media during the 1980s: "...a recent Time essay (Krauthammer, 1985:103) contends that a conservative estimate would place "a majority of the homeless . . .near either psychosis or stupor" and then adds, presumably to mollify public fears, that the homeless do not pose a serious safety threat because "the overwhelming majority are simply too crazy to be dangerous." A Newsweek cover story (Morganthau et. al., 1986:14-19) on the homeless mentally ill paints a similar picture by claiming that the majority of the homeless who will succumb to the effects of exposure on city streets "will be found to have a history of chronic mental illness and to have spent at least some time in psychiatric hospitals." And a People magazine essay (1986:27-36) on homelessness asserts rather matter-of-factly that "probably the greatest contributors to the size of the homeless population. . .are the state mental hospitals." (Snow et al. 1986: 1). Add to these news stories the stack of scholarly books written on the topic, such as Dear and Wolch's Landscapes of Despair: From Deinstitutionalization to Homelessness, Issac and Armat's Madness in the Streets and E. Fuller Torrey's Out of the Shadows, and it would be clear to any lay person that the connection between deinstitutionalization in mental health and homelessness is undisputable.

Reform Good - Sexual Violence Specific

Untreated PTSD in victims of sexual violence can lead to suicide

Kevin **Caruso NO DATE** – Caruso is the Founder and Senior Writer for Suicide.com, a website run by suicide survivors with information and hotlines to help possible victims. "Rape Victims Prone to Suicide", http://www.suicide.org/rape-victims-prone-to-suicide.html, 7/28/15

Rape is a horrible crime. And it effects the victims for the rest of their lives. Depression and post-traumatic stress disorder are common conditions among rape victims. Numerous rape victims have suicidal thoughts. Many die by suicide. Sexual assaults are, unfortunately, extremely common. In the U.S., a sexual assault occurs every two minutes. Here are some additional disquieting statistics about rape: 17% of American women have been the victim of sexual assault at some point in their lives. In 2002, there were 247,730 sexual assaults -- Approximately 87,000 were victims of completed rape; 70,000 were victims of attempted rape; and 91,000 were victims of sexual assault. (Data is from the National Crime Victimization Survey and does not include data on victims 12 and younger.) About 44% or rape victims are under the age of 18. 15% of rape victims are under the age of 12. 93% of the rape victims age 18 and under knew the rapist. Of these rapists, 34.2% were family members and 58.7% were acquaintances. In 2001, it was estimated that only 39% of rapes and sexual assaults were reported to the police. 66% of rape victims know their assailant. 40% of the rapes occur in the victim's home. 20% of the rapes occur in the home of a friend or acquaintance. 10% of the rapes occur outdoors. 8% of the rapes occur in parking structures. Rape has long-term emotional consequences that can lead to suicide. It is quite common for rape victims to suffer from depression. And untreated depression is the number one cause for suicide.

Reform CP – AT: Perm

Perm fails – abolition and reform strategies TRADE OFF and link to politics

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

A more implicit critique of deinstitutionalization and prison abolition is in the way it is perceived by the public and (social) scientific literature. Specifically, the characterization of these movements as radical and utopian did much to hasten the backlash against their activists as well as against the ideas they put forward. Prisoner organizing, described in chapter 5, was a particular target of backlash and critique from the public and the state. This strand of activism, which was more radical and marginal by nature, **started to overpower reform based efforts and prison litigation,** which were driven primarily by civil rights lawyers and progressive policy makers. The prisoner movement provided a bridge between the activism on the left, which was largely white and middle class, and the revolutionary stance of black power activism, according to Gottschalk (2006). Most importantly, because of this movement, prison issues became a major concern for most radical and progressive social justice organizations at the time, regardless of their "cause."

Abolitionist movements are perceived as too radical and diminish reform efforts

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Famed criminologist Roger Matthews further critiques prison abolitionists for trying to abolish not only prison but the state, as a centralized entity that controls punishment and other governing operations, and moving those entities into the hands of individuals and local communities. Thus, he refers to abolitionists as "anarcho-communist." This is in contrast, in his view, to the position offered by many other prison activist groups who attempt to make the state a more effective or accountable entity in relation to penalty (Sim 2009). Prison abolition is also seen as "uncivil" and undemocratic, as it does not espouse change through pressure groups which lobby for particular policies, such as specific reform efforts within particular provinces or 289 states, but seek to abolish a whole system. This strategy is perceived as breaking from the liberal political discourse all together, as well as the discourse of modern social movements (Sim 2009). On the other hand, abolitionism has come to be regarded as a remnant of 1960s

idealism, rooted in extreme libertarian views, similar to those espoused by anti-psychiatry and other antiauthoritarian activists. From the inception of prison abolitionism as a movement, its activists were being dismissed as "dreamers, crackpots and sentimentalists" (in Knopp 1976). Activists in these movements point out that it is ironic that abolitionism is considered to be idealistic, while prison reform, whose oxymoronic goal to create reformed non-oppressive prisons is considered realistic.

50 States CP

1NC

Text: The 50 states should abolish state prisons.

There are far more people incarcerated in state prisons than federal prison

Wagner & Sakala 14 (Peter, attorney and the Executive Director of the Prison Policy Initiative, Leah, Senior Policy Analyst and has been working with the Prison Policy Initiative since 2008, "Mass Incarceration: The Whole Pie ", March 12th, http://www.prisonpolicy.org/reports/pie.html)CDD

So now that we have a sense of the bigger picture, a natural follow-up question might be something like: how many people are locked up in any kind of facility for a drug offense? While the data don't give us a complete answer, we do know that it's 237,000 people in state prison, 95,000 in federal prison, and 5,000 in juvenile facilities, plus some unknowable portion of the population confined in military prisons, territorial prisons and local jails.

A2: Federal prisons worse than state

State prisons are far worse than federal prisons- Nearly twice as many assaults

O'Donnell 4 (Jayne, reporter for USA today, "State time or federal prison?", 3/18, http://usatoday30.usatoday.com/money/companies/2004-03-18-statetime_x.htm)CDD

State penitentiaries, with inmate-on-inmate assaults nearly twice as likely as in federal prisons, are a far cry from the comparatively cushy accommodations in federal prisons, where former ImClone CEO Sam Waksal now sits and where Martha Stewart is likely to soon be spending time. The distinction could be especially important for former Tyco CEO Dennis Kozlowski and former CFO Mark Swartz, waiting to hear how a jury rules in their New York state trial on charges of having plundered Tyco for $600 million. James Connelly, former vice chairman of Fred Alger Management, already is a guest of New York state, serving up to three years in a state prison after pleading guilty to evidence tampering in the mutual fund scandal. The guilty pleas of at least two other mutual fund executives could also force them to do state time in New York. State authorities know they carry a bigger stick than the feds and aren't afraid to use it. New York Attorney General Eliot Spitzer says the threat of possible state prison time has been a valuable tool for his office's investigation of the mutual fund industry. "Have you ever been to a state prison?" Spitzer asked. "The idea of taking a bus trip to (Clinton Correctional Facility, a New York state maximum-security prison in) Dannemora sent shock waves through the mutual fund industry." More violence Bleak state prisons house far more violent criminals than federal pens and present such a scary plight, they often affect plea negotiations, defense attorneys and prosecutors say. And New York state sentencing guidelines add a more ominous element: Anyone sentenced to a minimum six years in prison has to serve most of the term in a maximum-security prison — something that's virtually unheard of for white-collar criminals in the federal system. Many white-collar crimes violate both state and federal laws and can be prosecuted in either jurisdiction. Defense attorneys say their clients are often more likely to plead guilty to reduce the chance of going to state prison. "Experienced defense attorneys are acutely aware that there are huge differences between the federal and state penal institutions and almost always seek to have clients housed by the feds," says white-collar defense attorney Reid Weingarten, who represents former Tyco general counsel Mark Belnick, slated to go on trial April 12 on charges related to the alleged looting of the company. "Prosecutors are equally aware of the differences and have been known to take advantage of the reality to extract guilty pleas from defendants who are exposed in both systems." Who goes to federal prison Anyone who violates a federal law, usually including: Large-scale drug traffickers Organized crime figures Robbers of federally chartered banks Immigration violators All Washington, D.C.-based felons Those guilty of felonies on federal property, including military bases, or against some high-level federal employees. White-collar criminals guilty of crimes such as securities or mail fraud. Who goes to state prison Those charged with a felony by state authorities, usually including: Murderers Rapists Robbers Those who commit violent crimes using guns White-collar criminals who did not also violate federal law, such as petty embezzlers. It's hard to imagine being lucky when you're a defendant in a white-collar criminal case, but those charged by U.S. attorneys working for the Justice Department will at least be in the federal system, where there is a good chance of being housed in a minimum-security prison camp. Defendants targeted by state attorneys general such as Spitzer or a district attorney such as Manhattan's Robert Morgenthau could wind up at notorious prisons such as Attica or Sing Sing. The chance of being assaulted in a state prison, which houses a greater percentage of violent criminals, is higher. In 2000, one out of 36 inmates was assaulted by other inmates in state prison. In federal prison, the assault rate was one of every 58 inmates, according to the 2001 Corrections Yearbook. Meanwhile, a 2000 survey of inmates in seven Midwestern state prisons showed that about one in five male inmates reported a pressured or forced sex incident, while about one in 10 said they had been raped, according to an article published in The Prison Journal.

State prisoners are sexually abused at more than double the rate of federal prisoners

Frieden 12 (Terry, CNN Justice Department Producer, "Study finds nearly 1 in 10 state prisoners is sexually abused while incarcerated", 5/17, http://www.cnn.com/2012/05/17/us/us-state-prisons-abuse/)CDD

Nearly one of every 10 state prisoners is sexually victimized during confinement, according to a Justice Department study released Thursday. The Bureau of Justice Statistics examined data collected in surveys of former prisoners about their time behind bars. The officials found that most of the victims had been abused while they were in state prisons, but a small percentage were molested in local jails or halfway houses. The victimization rate of 9.6% is **more than double** the rate cited in a report on the subject in 2008. However, the Bureau of Justice Statistics, an arm of the Justice Department, cautioned that the previous study was based on a survey of current inmates in both state and federal institutions. The nature of the sexual incidents did not change. Female prisoners were more than three times as likely to be victims of sexual abuse as male prisoners. Prison staff sexual misconduct was prevalent. The study noted nearly seven in eight such incidents involved perpetrators of the opposite sex. More than 75% of the former prisoners who reported staff sexual misconduct were male inmates who said they had interaction with female staff, the report said. Violence associated with the sexual incidents was found to be common.

PTX supplement

Link

Policies meant to help minorities anger Republicans

Weishar 13 (Mike, politics & news writer, "Republicans Have Chosen to Remain the Party of Hate", July 29th, http://quietmike.org/2013/07/29/republicans-the-party-of-hate/)CDD

America has gone through a lot of social changes in recent years, but instead of embracing this change, the majority of Republicans have rejected it and have run off in the opposite direction. It is the primary reason why the Republican Party has one presidential election victory in the last twenty years. Still, at a time when it's easier than ever for anyone to get their voices heard, minorities of all shapes and sizes are speaking up. Meanwhile, conservatives have ignored these voices and have turned to a new faction within their party determined to ridicule and belittle them. Conservative distaste for minorities has always been there, but I can't remember a time when it was directly in front of us like this. I suppose this is the result of the Information Age coupled with a Black President and a vocal extremist wing called the Tea Party. Everywhere we look, Republicans are attacking minorities either with purpose or pure ignorance. Blacks, Latinos, gays, women and the poor are all targets in some way, shape or form. Despite the warnings from moderate Republicans on the dangers of offending these voters, they are effectively doing just that. They would rather marginalize entire groups of people and risk losing further elections, than try to understand and empathize with them. "In the emergency room they have what's called rape kits, where a woman can get cleaned out," – Texas Rep. Jodie Laubenberg Let's start with my favorite group; women. The Roe v. Wade decision came down forty years ago, but watching the news you'd think it happened yesterday. Since Obama was elected, US states backed with Republican led legislators have enacted hundreds of anti-abortion laws. These bills have led to the closing of countless clinics and have effective closed the abortion option to women in some states. Let's not forget the compulsory ultra-sound exams and the diminishing time frame you can have one. In addition to abortion restrictions, we have conservative objections to birth control access (you know, the thing that prevents abortions in the first place). Reproductive rights are on the front-line of the Republican war on women, but Republican governors have also repealed laws granting equal pay for women. One thing that has stayed constant throughout the years is the Republican ignorance toward African Americans. The hate and racism persists no thanks to the false information being spread by right-wing pundits and racism passed down through generations of the white majority. Listening to these conservative pundits on Fox News, you get the impression that blacks are made up of criminals, murderers, welfare queens and all come from broken families. It's no wonder they believe Zimmerman was right in shooting an unarmed black teenager on his way home from the store. Disgust towards African Americans must still run pretty deep in the Party of Hate. If not, they wouldn't be celebrating the gutting of the voting rights act. Nor would they instantly move toward preventing them from voting, the most important right of any American. It's clear Republicans would rather shut them up than listen.

Republicans hate letting prisoners out of prison

4/15 Millhiser (Ian, a Senior Fellow at the Center for American Progress Action Fund and the Editor of ThinkProgress Justice, "House Republicans Are Outraged That Obama Is Too Merciful", 2015, http://thinkprogress.org/justice/2015/07/15/3680759/house-republicans-clemency-letter/)CDD

On Monday, President Obama announced that he would commute 46 "unduly harsh sentences" as the first wave of what his administration has promised will be an aggressive effort to expand its (up unto this point fairly rare) grants of mercy. This decision did not sit well with several key House Republicans, including some who have recently indicated that they are willing to work with Democrats on criminal justice reform. In a letter addressed to Attorney General Loretta Lynch on Tuesday, 19 members of the House Judiciary Committee — including its chair — attacked the president's grants of clemency. Much of the letter consists of a list of questions about the particular individuals who received clemency; the lawmakers want to know, for example, "what quantity of narcotics did each offender possess?" The letter's primary substantive

critique of the administration, however, is a novel constitutional argument that Obama and the Justice Department are discriminating in favor of drug offenders in a manner that is somehow legally objectionable. "[T]he fact that the Department's clemency initiative is focused solely on federal drug offenders continues this Administration's plainly unconstitutional practice of picking and choosing which laws to enforce and which to change," the letter claims. The suggestion that the Obama administration is crossing a line because they've decided to focus their efforts on drug offenders is unusual as an historic matter. President Gerald Ford discriminated in favor of disgraced former presidents in his exercise of the executive's power to grant mercy, while President George W. Bush discriminated in favor of former high-ranking aides to Vice President Dick Cheney. Presidents have historically exercised their power to grant pardons or clemency as they please, and they are not required to get Congress's permission in order to do so. Indeed, the president's broad discretion to grant mercy to whoever they choose, when they choose, so long as the beneficiary of that mercy is an alleged or convicted federal offender, is part of America's constitutional design. The Constitution itself lays this power out in broad terms, providing that the president "shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." As the Supreme Court explained in Schick v. Reed, the drafters of this constitutional provision "spoke in terms of a 'prerogative' of the President, which ought not be 'fettered or embarrassed.'" Moreover, the Court added, "the power flows from the Constitution alone, not from any legislative enactments, and that it cannot be modified, abridged, or diminished by the Congress." Should the signatories to the House Republicans' letter distrust the Supreme Court's interpretation of the Constitution, perhaps they will trust the conservative Heritage Foundation. According to The Heritage Guide to the Constitution, "[t]he power to pardon is one of the least limited powers granted to the President in the Constitution," and its scope "remains quite broad, almost plenary." So the accusation that President Obama has somehow misused his powers by giving particular attention to federal drug offenders is frivolous. There's also a very specific policy reason which explains why the administration would target drug offenders over people convicted of a different crime — federal sentencing law has changed significantly with respect to drug offenders in recent years. As the House Republicans' letter itself explains, former Attorney General Eric Holder announced that the administration would prioritize drug offenders who, among other things, "likely would have received a substantially lower sentence if convicted of the same offense(s) today," when determining whether to issue a grant of clemency. In any event, the letter suggests that bipartisan progress on criminal justice reform could prove fragile in the face of some lawmaker's overarching need to attack leaders of the other party. Outside of Congress, there are encouraging signs for advocates eager to see traditional opponents come together to reduce excessive sentences and otherwise reform the criminal justice system. Liberal groups such as the Center for American Progress (which is the partner organization of ThinkProgress's parent organization) and the ACLU have joined with conservative groups such as FreedomWorks and Americans for Tax Reform to push for wide-ranging reforms. The Koch brothers are a major supporter of this effort.

I/L

Killing the Iran deal increases US sanctions

7/22 Shiner (Meredith, yahoo political correspondent, "Killing Iran pact could lead to war, Rep. Keith Ellison warns'", 2015, https://www.yahoo.com/politics/killing-iran-pact-could-lead-to-war-rep-keith-124767932951.html)CDD

"I clearly prefer diplomacy over warfare, and if we don't do this deal, I don't see how we can avoid military conflict," Ellison said. "Because if [Republicans] do manage to scuttle this deal, clearly Congress is going to increase sanctions and Iran is probably going to be afraid, and so they'll probably accelerate their production of a nuclear weapon. If we detect [them] doing that, we're going to issue an ultimatum for them to stop. If they don't, we're probably going to bomb them."

Impact

US Sanctions on Iran are genocide

Greenwald 12 (Glenn, a former columnist on civil liberties and US national security issues for the Guardian, "Iran sanctions now causing food insecurity, mass suffering", Oct 7th, http://www.theguardian.com/commentisfree/2012/oct/07/iran-santions-suffering)CDD

The Economist this week describes the intensifying suffering of 75 million Iranian citizens as a result of the sanctions regime being imposed on them by the US and its allies [my emphasis]: "Six years ago, when America and Europe were putting in place the first raft of measures to press Iran to come clean over its nuclear ambitions, the talk was of "smart" sanctions. The West, it was stressed, had no quarrel with the Iranian people—only with a regime that seemed bent on getting a nuclear bomb, or at least the capacity for making one. Yet, as sanctions have become increasingly punitive in the face of Iran's intransigence, it is ordinary Iranians who are paying the price. "On October 1st and 2nd Iran's rial lost more than 25% of its value against the dollar. Since the end of last year it has depreciated by over 80%, most of that in just the past month. Despite subsidies intended to help the poor, prices for staples, such as milk, bread, rice, yogurt and vegetables, have at least doubled since the beginning of the year. Chicken has become so scarce that when scant supplies become available they prompt riots. On October 3rd police in Tehran fired tear-gas at people demonstrating over the rial's collapse. The city's main bazaar closed because of the impossibility of quoting accurate prices. . . . "Unemployment is thought to be around three times higher than the official rate of 12%, and millions of unskilled factory workers are on wages well below the official poverty line of 10m rials (about $300) a month." Pervasive unemployment, inflation, medicine shortages, and even food riots have been reported elsewhere. That sanctions on Muslim countries cause mass

human suffering is not only inevitable but part of their design. In 2006, the senior Israeli official Dov Weisglass infamously described the purpose of his nation's blockade on Gaza with this candid admission: "'The idea is to put the Palestinians on a diet, but not to make them die of hunger." Democratic Rep. Brad Sherman justified the Iran sanctions regime this way: "Critics of sanctions argue that these measures will hurt the Iranian people. Quite frankly, we need to do just that." Even more infamously, the beloved former Democratic Secretary of State Madeleine Albright - when asked in 1996 by 60 Minutes' Lesley Stahl about reports that 500,000 Iraqi children had died as a result of US-imposed sanctions on that country - stoically replied: "I think this is a very hard choice, but the price - we think the price is worth it." So extreme was the suffering caused by sanctions in Iraq that one former UN official, Denis Halliday, resigned in protest, saying that the sanctions policy met the formal definition of "genocide": "We are now in there responsible for killing people, destroying their families, their children, allowing their older parents to die for lack of basic medicines. We're in there allowing children to die who were not born yet when Saddam Hussein made the mistake of invading Kuwait." In an excellent Op-Ed for Al Jazeera last week, Murtaza Hussain extensively documented the devastation wrought on 26 million Iraqis by that sanctions regime - the one Albright declared as "worth it" - and argues: "that tragedy is being willfully replayed, only this time the target is the population of Iran". He explained: "Intensifying sanctions against the country have sent the Iran's rial into an unprecedented free-fall, causing it to plummet in value by 75 per cent since the start of the year; and, stunningly, almost 60 per cent in the past week alone. "Ordinary Iranians completely unconnected to the government have had their lives effectively ground to a halt as the sudden and unprecedented collapse of the financial system has rendered any meaningful form of commerce effectively impossible. In recent weeks, the price of staples such as rice and cooking oil have skyrocketed and once ubiquitous foods such as chicken have been rendered completely out of the reach of the average citizen." That is a fact that should be deeply disturbing to any decent person. In 2001, the writer Chuck Sudetic visited Iraq and then wrote in Mother Jones about what he saw: namely, that the US-led sanctions regime "killed more civilians than all the chemical, biological, or nuclear weapons used in human history".

Prisons K

1NC

Legalistic solutions for prison reform inevitably fail and cause more oppressive structures to be put in place

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

The law is not only a mechanism of attempts at release and decarceration but can be a tool used by the state to control certain populations. Even seemingly progressive or libratory laws and regulations often have loopholes or are based on assumptions that cut against any efforts for justice and equality. A prevalent example is the 13th Amendment, which symbolizes for many a rights based approach, especially in the post-slavery era. The 13th Amendment to the U.S. Constitution was signed in 1864 and (at least seemingly) abolished and prohibited slavery and involuntary servitude. But as Guyora Binder (1996), Kim Gilmore (2000) and others show, there is a clause in the 13th Amendment, which authorizes the state to use the labor of felons, as slavery is abolished except for punishment of crime. Thus, a seemingly benevolent and beneficial constitutional amendment became a state mechanism of control, capable of giving freedom to some and not to others. This practice of involuntary servitude of felons gave rise to the racialization of both criminalization and unpaid labor. Some scholars/ activists thus view the convict lease system as the transition between slavery and the creation of the Prison Industrial Complex (Davis 2000), as 272 was discussed in the introduction chapter. The abolition of slavery thus did not end the practice of servitude or unpaid work. Many **prison abolitionists are therefore wary of simply abolishing a system without starting to rethink what can come in its place,** or starting to build it de facto. The 13th **amendment can thus serve as a warning sign for prison abolitionists and anti-institutionalization activists of the fact that abolition in itself is only a first step and unless the roots of oppression are tackled, another oppressive structure will come to replace it.** It also serves to point to the limits of the law in bringing about abolition, as the law only addresses very narrow aspects of profound social questions. Like the clause in the 13th amendment, the cases dealing with institutional release of people with disabilities were also used to establish clear boundaries on who is worthy or unworthy of rights and freedom. In 1975, the U.S. Supreme Court ruled on the constitutional right of a "nondangerous mental patient" in O'Connor v. Donaldson. In a unanimous decision, the Supreme Court ruled that Kenneth Donaldson, a "nondangerous" mental patient, had a constitutional right to liberty. The judgment relayed that it was not constitutional to incarcerate a person who is deemed nondangerous who can safely live by themselves or with the support of others. This proved to be a landmark case, seemingly assuring the freedom and liberty of people labeled with mental illnesses. This was viewed as a milestone as such rights are not usually associated or guaranteed to those institutionalized. In fact, as opposed to incarceration in prisons, there is no limit on a time an inmate must spend in a psychiatric hospital or institution. At the same time though, the ruling reinforced the notion that those who are "dangerous" are not deserving of such rights and freedoms. This ruling, therefore, once again constructed and reinforced the boundaries between those deserving of freedoms and rights and those who mark 273 the lines of un-freedom (in this case, people with psychiatric disabilities who are labeled as dangerous, which is the main cause of involuntary institutionalization to begin with). Some contend that the prisoners" rights movements had a positive effect overall, as they almost entirely eliminated or at least reduced practices like torture, starvation, freezing, banning the exercise of religion and so forth, from American prisons. Others claim that such seemingly progressive measures only led to the strengthening of the penal system and led to the increased usage of more invisible and repressive modes of control in the prisons. (Gottschalk 2006). Abolitionist Ruth Gilmore wants us to question the role that activists play "first in normalizing the prison and then enabling its perpetually expanding use as an all-purpose remedy for the thwarted rights of both prisoners and harmed free people" (Gilmore 2006: 23). Penal expansion came about after the rise of the civil rights movements. But were rights a way, used by the state, that eventually pacified any real change or inclusion? The 1990 American with Disabilities Act can be perceived as a reform measure that seemingly provides equality under the law, thus pacifying more radical opposition (from groups like ADAPT, which use direct action to protest the placement of people with disabilities in nursing homes). If we look at rates of unemployment of people with disabilities, which have

risen or have stayed the same since the enactment of the ADA, and the fact that most cases brought under the ADA are not ruled in favor of disabled plaintiffs, we can begin to analyze such laws as a form of co-option of activism by the state. Brown insists that rights must not be confused with equality and that they "are more likely to become sites of the production of identity as injury than vehicles of emancipation" (Brown 1995: 134). For instance, if a woman's rights are violated it is then up to the state to uphold those rights as they have been written into law. Protection is then institutionalized, creating a female dependence on state power. There is no discussion of transcending the existing patterns of male 274 dominance within the masculinist state because women have been granted equality under law. The liberal philosophy of writing rights into law thus entrenches and subjugates women into the existing systems of traditional subordination, allowing no real way out of the cycle of dependency, protection and regulation. Litigation and rights discourse draws on the state in fixing social ills of its own creation. Under this view, using the law as an arena to create change assumes that the law is just and is a fruitful arena through which change can come to harmed populations. But many anti-prison and social justice activists perceive the law as inherently repressive, not just in cases where the plaintiffs do not win justice. Hence their use of the term "criminal injustice system" to refer to the current state of punishment in the U.S. Prison expansion serves as a reminder that it is precisely this kind of reform impetus that boomeranged against incarcerated populations. **By using the law, one perpetuates and reifies an oppressive structure that needs to be challenged and ultimately abolished**. As Audre Lorde (1984) wrote years ago - **the master's tools will not dismantle the master's house.**

Vote negative to re-conceptualize and challenge the 1ACs assumptions about the process of abolition – the act of critique in and of itself is a goal that actively resists top-down legalistic oppression

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It is my hope, as an activist/scholar that this work brings to light the ghost of the incarceration yet to come but also highlights abolition as praxis to resist it. As Gordon (2004) explicated, the aim of the politically engaged intellectual is to nourish cultures of resistance and 367 to aid in the fulfillment of the human potential of all. In addition, and in response to critique that claimed that his work in Discipline and Punish is not practical but only theoretical in nature, Foucault explained that his role as an intellectual (or scholar/activist) is not to prescribe solutions, but to open up conversations. He remarked that "it is true that certain people, such as those who work in the institutional setting of the prison… are not likely to find instructions in my book that tell them „what is to be done". But my project is precisely to bring it about that they „no longer know what to do", so that the acts, gestures, discourses that up until then had seemed to go without saying become problematic, difficult, dangerous" and that "it seems to be that "what is to be done" ought not to be determined form above by reformers, be they prophetic or legislative, but by a long work of comings and goings, of exchanges, reflections, trials and different analyses" (Foucault 1994: 256). Critique, according to Foucault, is sometimes the goal and sometimes the means to a goal, often one which is not yet conceived but is used in a process of trial and error. Foucault asserts that critique "should be an instrument for those who fight, those who resist and refuse what is. Its use should be in processes of conflict and confrontation, essays in refusal. It doesn't have to lay down the law for the law. It isn't a stage in programming. It is a challenge directed to what is" (Foucault 1994: 236). I contend that this challenge towards "what is" is the work of abolition today, and for the future of a non-carceral society. Even for those of us who find deinstitutionalization, anti- psychiatry and prison abolition movements to be "too radical" or problematic for whatever reason, I believe activists and scholars could benefit greatly from connecting them to each other and paying attention to the path of abolition of oppressive institutions. People or ideas, which are perceived as radical are often characterized as dangerous, and sometimes "crazy," and

these are exactly the populations 368 we still hold behind bars and locked doors. But in terms of abolition, people who called for the abolition of slavery were also called dangerous and some lost their lives in the struggle, but you would be hard pressed to find people who advocate for slavery today. One can hope that this will be the case in relation to prisons and institutions in the imminent future. As Sebastian Scheerer (1987: 7) comments: "the great victories of abolitionism are slowly passing into oblivion, and with them goes the experience that there has never been a major social transformation in the history of mankind that had not been looked upon as unrealistic, idiotic or utopian by the large majority of experts even a few years before the unthinkable became reality." This research attempts to ensure that abolition of the carceral in the form of deinstitutionalization, prison abolition and anti-psychiatry do not pass into oblivion and are not only preserved but built upon in a shared horizon combating "the incarceration yet to come."

F/W

Abolition as a revolutionary framework comes first - critical analysis is key to education and understandings of the world / prisons

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In a conversation between activist/scholars Angela Y. Davis and Dylan Rodriguez, they describe prison abolition as much bigger than a critique of incarceration, but rather providing a broader critique of society (Davis 2000a). The most powerful relevance of the prison abolitionist stance, for them, is to analyze the prison as a core structure that shapes social relations in society, not just for those affected directly but for everyone. The prison has direct implications for all, in terms of morality, ethics, surveillance, commodification, criminalization, inequality and oppression based on race and class (Davis 2000a). Thus, prison abolition insists not only on ridding ourselves of imprisonment but of imagining "a new world order" in the absence of the carceral archipelago. As Angela Y. Davis (2000) suggests, "The call for prison abolition urges us to imagine and strive for a very different social landscape." In a discussion group at the 2009 annual meetings of the American Sociological Association, Dylan Rodriguez connected prison abolition in particular to the creation and preservation of particular racial formation, especially in the U.S. context. Rodriguez conceptualizes abolition as a radical intellectual position, which is not about closure of prisons, as that is not enough, but perceives it instead as a revolutionary framework which transforms the way we analyze and understand forces that shape our histories and everyday lives. The prison is therefore conceptualized by Rodriguez not merely as a punitive institution, but as a mechanism of state violence and racial domination. Put simply, for Rodriguez, abolition is a way to expose global white supremacy and its institutions of control. Dismantling the walls of the prison, however, is not a goal that will eliminate the use of coercion and punishment as mechanism of state control, according to some abolitionists (Davis 11 2000; Sudbury 2004). Hence the shift of many prison abolitionist activists and writers, beginning in the 1990s, from promoting prison abolition to conceptualizing penal abolition more broadly (Morris 1995). Penal abolition is sometimes viewed as a more comprehensive practice and discourse, attempting to revolutionize the way we perceive crime and punishment (Magnani and Wray 2006). Saleh-Hanna (2000) defines penal abolition as: a social movement whose future goal is to eliminate the penal system; a theoretical framework which re-conceptualizes crime, offenders, community, justice etc.; and a political strategy promoting rights and equality to all, leading to safer communities that will no longer be based on punitive principles

Genealogy F/W

Genealogy f/w – external state focus is bad and useless until we examine our pre-conceptions

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

It seems that, unlike Foucault, activists develop an attachment to ideas of progress, because "a better world is possible." Indeed, Brown (2001) asserts that activists claim that without a progressive vision, what is the point of working for change? But genealogy does not prescribe political aims, or draft formulas for alternative futures. Its aim is to make clearer our current visions of the future, how and why they came into dominance, and the ways they operate in a manner reminiscent to those they came to replace. In one of his works, on pastoral power and governmentality, Foucault links policy (and its studies) with policing (and the state). The preoccupation with policy, Foucault posits, is not merely a deficit of reform politics, but a symptom of contemporary thought, which does not question the bureaucratic administration of everyday life by the state (biopolitics) (Brown 2001). Thus, a political commitment focused on policy changes or any specific prescription for change would further reinforce the administration of everyday life by the state. The mode of effective history, though, is political in nature. The present political options seem constrained by their histories, but these histories are open to ruptures, and tales of impossibility. The political also comes into play by choosing genealogical locales and the answers they generate. What is happening now, and what is this now in which we are living? And how are we defined, as subjects, in this time? What kind of subjects have we become and how? The type of questions asked, the kind of openings that are sought and most of all, what is done with them is the subject of political inclinations, desires, power and pure chance (Brown 2001). Genealogy is also political in its essence, in the ways it transforms those conducting and utilizing it. In its extreme, genealogy calls for a change from within. It is a political tool in the sense that it encourages us to question what we took for granted before, and begs us to be what 123 we have not been before. It is "an agitation within" (Kendall and Wickham 1999). Nietzsche's original aim in devising the genealogical method, later revised by Foucault, is to create a distance between ourselves and our knowledge, a space of questioning and defamiliarization from both epistemology (what we know) and ontology (what we are) (Brown 2001). In summary, genealogy, as Brown recounts, opens up the terrain for postprogressive and postunitary politics, as well as postidentity politics, but does not prescribe their replacement. But genealogy does open up new conversations and formulations of our present circumstances. By using genealogy as his methodology Foucault rejects temporal logic (as in notions of progress) in favor of spatial ones (power as circulating and disciplinary). Spatial assignment is perceived as a technique of power. Thus, Foucault's work moves us, as scholars and activists, from typologies of time to geography of power (Brown 2001). I hope my work can expand genealogy to of not just instruments of power but the topography of their resistance. For that end, the next chapter will start charting the genealogy of deinstitutionalization and prison abolition not just as historical events, but as forms of disqualified knowledges.

EXT: Link

Alternatives to imprisonment reproduce the same institutional oppressions as before when they come from top-down legislative efforts

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Some view the shift from institutional life to community living as a victory, a move away from anachronistic approaches that segregate people with disabilities, into humanistic discourses that advocate for equality, inclusion and

integration. Taking an analytical approach in the spirit of Foucault's genealogical inquiry (see Foucault 1963; 1977), however, blurs the lines between what has come to be termed as "community living" and "institutional living." Much of what we conceive of as advancement (releasing people who are mad from asylums into psychiatric hospitals to be cared for; or the placement of people with cognitive disabilities labels away from large institutions and into group homes) are in fact not signs of progress, if one takes a Foucauldian approach. I argue that the shift from custodial care and institutionalization to deinstitutionalization and community living should not be seen as the rise and fall of one epoch to be replaced by the other. This is because the effects of the former still linger on in the latter. In other words, I wonder whether institutionalization and community living should be conceived of as two separate epistemes, as Burrell and Trip (2011) seem to suggest in their genealogy of deinstitutionalization in New Zealand, or are they governed by similar logic that operates in seemingly different ways? 256 The concept of community based services was supposed to be more than a change in the location of the provision of services, in the eyes of those advocating for the abolition of the institutional mindset, as opposed to reforming or closing institutions. It was meant as an epistemic shift in regards to the hierarchical system of care and the lack of meaningful relationships offered to people with disabilities. In theory, community based services were supposed to help in bringing down the barriers that prevent full participation of people with disabilities from all aspects of life. In reality, as was demonstrated above, "community" often became a negation, that which is not the institution or mental hospital (Carey 2011). From an abolitionist perspective, it was a negative abolition, but the attempt to create something new out of the ashes of the old institutions, i.e. achieving meaningful relationships and living in the community, was not always successful. Community services were certainly smaller and more dispersed but the relations of power/knowledge at their core remained intact. Professionals created the programs and ran them, with little change or input from the service users. Under these conditions, it is not very surprising that many of these services fostered further segregation and marginalization of people with disabilities. Proponents of community based services envision a world of both natural supports and paid services but the system is ultimately directed by the needs and guidance of the service users themselves. Self Advocates Becoming Empowered (SABE) argue that any service provision that is not controlled by the service users themselves is institutional, whether it is given in an enclosed setting or not. Ultimately, they argue, decision making and resources should come from the disabled person, hence their advocacy for legislation such as Money Follows the Person as well as person directed services. This shift in perspective, from institutional to community based models, should not be made by disabled people or policy makers solely, but by all members of any given community 257 that will value and include other members, including those who have been historically marginalized and segregated (Carey 2011).

Absent a remove of the profit motive under capitalism – the aff can't solve

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

Because of the rising cost of prison construction and maintenance, the corporate world and criminal justice systems are now turning to various alternatives to incarceration models. But this turn to alternatives to incarceration signifies the increased privatization of penalty, not the decline of imprisonment by any means. These corporations now lobby for alternatives to incarceration and use both the rhetoric of increased efficiency and that of restorative justice. Needless to say that no restoration can occur when private companies take over meanings of what is just and do it for profit (Selman 2009). Ruth Morris was a particularly vocal critic of some alternatives to incarceration, which she saw as a continuation of the current state of affairs. Morris (1989) distinguishes between "true community alternatives" and prisons in the community (like group homes as mini-institutions). Prison-like institutions tend to widen the net and regulate lives that would not be surveilled without such "alternatives"; create social isolation and segregation in the community; categorize people into staff vs. inmates; and promote control and violence as the basic tool for human interaction. In contrast, some characteristics of true alternatives to imprisonment include treating people in a humane fashion; creating meaningful integration into the totality of the community as much as possible; rejecting stigma and labels; and demonstrating non-violent ways of resolving problems. Finally, it is important to

note that activists view prison and penal abolition as part of a larger social justice agenda. Although this agenda is not the same for all activists, as some are faithbased, some have more anti-statist or anti-capitalist stances and so on, they all perceive the prison or penal systems as enmeshed in other injustice. In this sense, **until the roots causes of injustice, oppression and inequality are resolved, there is little point in changing only one aspect of the equation,** i.e. the reliance on imprisonment. Many activists therefore advocate change in the areas of housing, education, health care and more as forms of prevention to incarceration. In 259 addition, anti-prison and social justice activists, like the American Friends Service Committee, focus on alternative to violence programs as way of addressing not only imprisonment but the prevention of harm, the reduction of the school to prison pipeline and a way to address structural inequalities in the lives of those most marginalized and at risk of incarceration.

Legal solutions fail and are co-opted and circumvented – resources and budgets stay institutionalized / The aff fails – federal policies, lack of conversion plans, and lack of budgetary priorities doom solvency

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Even in places where near consensus is achieved regarding deinstitutionalization and institutional closure, there are various impediments to the successful implementation of the policy. The biggest barrier to implementation of community living and community mental health on a national level is federal policies that make it fiscally undesirable to move people out of institutions and nursing homes. There is inherent institutional bias in programs such as Medicaid, due to their funding stream, strong political lobby and staff organizations and unions that are often underutilized (Lerman 1985). This bias means that money (in the form of benefits or waivers) goes towards institutions, nursing homes or group homes but not to the person who benefits from these services directly. The introduction of Medicaid money (as waivers, benefits etc.) mostly applies to alternative institutions (nursing homes, hostels) and not alternative care. There is a lack of reimbursements that could cover services such as non-hospitalization long term treatment, day and vocational habilitation, advocacy and support for living in the community. 301 The consequence is that most people with disabilities do not have real choices in terms of whether and with whom they would like to live, if their main source of funding is federal benefits. Many disability advocacy organizations, most prominently ADAPT, therefore support any initiatives (such as Money Follows the Person, Medicaid Community Attendant Services Act (MiCasa) and the Community Choice Act) that enable people to utilize their benefits and waivers as they see fit, to hire their own aides and enable them to live an integrated life in community settings of their own choosing. In the mental health and developmental disabilities fields, deinstitutionalization was justified, by its advocates and the states, as saving money on a state and federal level. However, at least in the 1980s and in some states to this day, the spending on mental health has only increased post deinstitutionalization and the majority of the budget still goes to psychiatric centers and hospitals, because of outdated ideologies but also the policy bias described above (Johnson 1990). In the field of mental health, one of the immediate consequences of deinstitutionalization in the seventies was that more patients were treated in institutions than before the program began, and more money was going to institutional care than to community mental health. For example, Shadish (1984) describes an innovative approach to treat mental patients who were released from institutions, called the Lodge Society. This program, which had been in operation from the early 1960s, had been proven to be effective in establishing the well being of released patients as well as helping them with job placement and decreasing their dependence on professionals. But in a large effort to disseminate this model, less than 10% of the 255 hospitals contacted made any effort to adopt or learn more about this program. One of the reasons offered for this rejection is that the Lodge model goes against many of the ideals of the current mental health system. Under this program, it is believed that social factors are the major factor 302 contributing to people's behaviors and the way these behaviors are perceived. But the current system views mental patients as the ones responsible for their own predicament and therefore they are the ones who need to be changed or cured. In addition, although lodges are much cheaper than hospitalization, they are not reimbursable or profitable under the current health care system. The lodge system also discourages dependence on health care professionals, but often it is these professionals who hold the resources that the residents need. In contrast, Shadish (1984) reports on the growth of the nursing home industry at that time, as the major beneficiary of deinstitutionalization. They filled this role, which the lodges did not, because they were constructed around the same beliefs as the general health care system and retained the "mentally ill" in their former place as patients and dependent on care and services from medical professionals, not peer support. Another issue is the absence of conversion plans for existing institutions and move into a policy that actively encourages community living and care (Center on Human Policy 1979). Blatt et. al. (1977) pushed for the idea that for deinstitutionalization to be

successful, a full conversion model from an institutional to a community service model should be achieved. In order to accomplish full conversion one must recognize the depth of business interests in seemingly nonprofit services and agencies. Secondly, creating new meaningful use for the evacuated settings after their closure is paramount. In chapter 2, I discussed a few recent examples in Upstate New York in which a former developmental center and psychiatric hospitals that closed down as part of the deinstitutionalization movement were converted into prisons shortly afterwards. Some facilities created smaller units on the ground of the old institutions in which people with the same disability labels can live. Such examples illustrate the need to guarantee explicitly what will 303 happen with the physical remains of the closed institution and have the community involved in such decisions. One of the most prominent barriers to implementation of any policy is lack of budgets and budgetary priorities. In the case of state-run institutions and mental hospitals there are two compounding issues at play. The first is that states are often reluctant to close institutions since they were funded by municipal and state bonds (Blatt et. al. 1977). Secondly, even when they close down, the budgets of each institution do not seem to go directly into community services. This of course creates a budgetary issue as monies that used to be utilized for the care of people with disabilities either disappear from the budget all together or go to the upkeep of institutions even as the number of their residents is very small. In most states traditional institutional facilities receive the bulk of the mental health budget, even while the patient populations have shrunk significantly over the years (Lerman 1985). One of the reasons is that there is renewed interest in upgrading the old facilities, which have closed down or are underutilized. Many states had thus included in their mission statement of deinstitutionalization the desire to improve conditions of institutions for those who will need them. However, this priority not only raised the mental health budget overall, but it also cut the funds from community programs and less restrictive placements (Lerman 1985). Miller (1991, citing Rothman 1979) claims that in New York State and Pennsylvania, while thousands of patients were left with little housing or treatment options in the community, the budgets for the depopulated hospitals actually increased at the beginning stages of deinstitutionalization. He sums up the situation by remarking that although most mental patients left the institutions in past decades, the staff, resources and budgets remained institutionalized

More links in this

The use of legal advocacy, as a strategy of closure and abolition, is based on the belief that massive legal pressure will collapse the walls of the prison. This pressure would come from dual tracks- the prisoners filing lawsuits based on constitutional principles, and advocates, abolitionists and reformers putting pressure from outside the prison32. By the end of the 1970s it was becoming clear in the field of developmental disabilities that community living is desirable, but the institutionalized population was not decreasing in most states. The "inevitable" change 31 A similar phenomenon can be seen in Ferri and Connor's (2006) analysis of desegregation efforts in relation to race and disability in schools.

EXT: Impact

Turns case – institutional movement get silenced and circumvented

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"Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

What led to successful deinstitutionalization and what led to the "fall" of the radical prison movement of the 1970s? Deinstitutionalization and anti-psychiatry were not as threatening to the state as the radical prison movement was in the 1960s and 1970s. Since the prison movement was connected to black power and other anti-statist and revolutionary struggles the state repression against its activist was very pronounced and had lingering effects, to the point that many prominent activists in those struggles are incarcerated to this day. This is not to say that 275 some activism related to deinstitutionalization was perceived favorably by the state. For example, to this day self-advocates are denied visitation to their friends in nursing homes and institutions for the fear of "influencing them" with an anti-institutional mindset (O"Brien 1997, see also footnote 38). Secondly, deinstitutionalization was not motivated by ideology alone, as

can be observed throughout this research. It was the result of planned and unplanned policies, budgetary considerations, politics on a local level as well as pressure from disabled people, their families and professionals. In contrast, at least at that time, discussion of decarceration and prisoners‟ rights was mostly ideologically motivated and was not combined with other forces such as policy changes and a shift in professional view of incarceration. Without the ideological fervor of its supports, the prisoner movement had little chance of survival. Because of state repression and the backlash against it, the radical prisoner rights movement was silenced.

Aff fails – other moves must come first

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

Closure of repressive institutions, such as mental hospitals and prisons, can be conceptualized as a necessary but not sufficient action on the road to abolition. The most important element in institutional closure, according to Taylor (1995/6), is to ensure that people do not end up re-incarcerated in other ways such as in group homes or other institutional placements. In this sense the effectiveness of deinstitutionalization as a movement is in ensuring community living, not the closure of the institution, which is only a first step in such a process. 207 This ideological stance may create a dilemma of whether proponents of deinstitutionalization should wait until there are sufficient community placements before advocating for institutional closure, or go ahead regardless based on the principle that no one should live in an institution at any time, which is the very dilemma posed by Mathiesen in regards to abolition in general . Taylor (1995/6) suggests that in such cases one should ask, which path would lead to the least harm done to the fewest people. Such questioning, he believes, would lead one to realize that institutional living is unjustifiable under any circumstances, even if community settings are imperfect at the present time. The mere closure of prisons and large state institutions for people labeled as mentally retarded or mentally ill does not necessarily entail a radical change in policy, attitudes or the lived experiences of those incarcerated. Penal abolitionist Ruth Morris reflects on her own experiences within the prison abolition movement in Canada and the United States: "…. My objection to prisons is to something much more oppressive than closed buildings, or even locks and keys. It's important to think this out, because otherwise we delude ourselves about building alternatives when actually we are creating their very spirit in the community, destroying people just as effectively as any building with locks can possibly do" (Morris 1989: 141). In this light, closure in itself is still embedded within the same circuits of power that created such institutions, unless there is an epistemic shift in the way community, punishment, dis/ability and segregation are conceptualized. Therefore closure of prisons and institutions is only one step in the way to achieve a shift in perspective. Other activists within the prison abolition movement also emphasize that activism entails much more the closing prisons. It is about creating a society free of systems of inequity, which produce hatred, violence, desperation and suffering. In such a society the idea of caging people for wrong doings will be seen as absurd (Lee 2008). 208 Closure of repressive institutions should be distinguished from abolition but perhaps it is also not the same as deinstitutionalization. In the ethnography Deinstitutionalizing Women, Johnson (1998) describes the lives of women in a locked ward within an institution for people with developmental and intellectual disabilities. When a decision to close the institution was made, most of the women studied asked to be placed with family or their advocates. For the most part their requests were ignored and out of 21 women, a third were moved to other institutions and the remaining were placed in group homes. As a result, Johnson (1998) contends that although the institution finally closed, its deinstitutionalization was a failure. This can be seen in the way the institution closed, with opposition from parents and the union who were given little information and advance notice of the closure. In essence, Johnson claims, it was not deinstitutionalization but institutional closure. The final placement of the

women only reinforces this analysis. Johnson further claims that the women were locked into a discourse that objectified them and saw them as needy and dependent, and until that discourse was changed any attempt for true deinstitutionalization was futile (Johnson 1998). When a system is abolished there is a danger that other systems that fulfills the same functions would arise to fill in the void left by the abolished system. More specifically, within the U.S. prison archipelago there is a clear overrepresentation of poor people of color. Therefore, some penal abolitionists (Davis 2000; Gilmore 2000) position slavery, the convict lease system and the prison industrial complex on a continuum, as sites of warehousing the racialized underclass. Under this analysis it is clear that just "tearing down the walls" is insufficient as the state will find another mechanism by which to construct and contain its unwanted populations (Appel 2002). Famed sociologist W.E. B Du Bois, in his book Black Reconstruction (1935), discusses abolition not as a mere negative process, one of tearing down. It is ultimately about 209 creating new institutions. Du Bois was very insistent that in order to abolish slavery in modern times, new democratic institutions have to be established and maintained. Because that did not occur, slavery found a new home in Jim Crow, convict lease systems, second class education and mass incarceration. Thus, the abolition of slavery was only successful in the negative aspect, but no new institutions were created to successfully incorporate black people into the existing social order. Prisons today have thrived precisely because of the lack of such resources that Du Bois was arguing for. Prisons today cannot be abolished until such equality ensuring mechanisms are in place (Davis 2005). Being free of chains is only the beginning.

EXT: Utopian Alt Good

Alt solves – utopian thought is an active political strategy

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Sociologist and life-long anarchist activist Howard Ehrlich47 believes that radicals, as opposed to reformers or revolutionaries, are almost by definition not "of the society." Most are politically engaged and experiment with alternative ways of being and thinking, in terms of antiauthoritarianism, anti-racism, anti-capitalism etc. The radical life is living today the way you would like the future society to be. Similarly, Ernest Bloch exclaims that "the essential function of utopia is a critique of what is present. If we had not already gone beyond the barriers, we could not even perceive them as barriers" (in Muñoz 2009: 37). This is reminiscent of Thomas Mathiesen's work, which theorized abolition as "the unfinished," always a work in progress. Mathiesen's work has often been criticized for lacking any concrete suggestions for penology or even activism, thus remaining abstract and detached from specific activist and policy stances (Saleh-Hanna 2000). But reclaiming utopia as a liberatory, as opposed to derogatory, position would conceive this work as helpful in fashioning new ways of envisioning the world and opening up opportunities that are not closed off by readymade prescriptions. For Muñoz, "the here and now is a prison house" (2009: 1). The connection to prison abolition and the more radical factions of the anti-institutional stance are conjured up by this affirmation from Muñoz, and not simply because he brings up prison as the ultimate metaphor for stagnation and lack of imagination. Muñoz further discusses Ernst Bloch's distinction between concrete and abstract utopias, explaining that the latter are useful only as "they pose a critique function that fuels a critical potentially transformative political imagination" (2009: 3). Concrete utopias, on the other hand, represent collective hopes, and are the blocks upon which hope can exist. As Bloch writes "hope's methodology… dwells in the region of the not-yet" (quoted in Muñoz 2009: 3). The "not-yet," as Bloch refers to it, seems akin to Mathiesen's formulation of the "unfinished" in relation to the work of the abolitionist.

1NC Anarchy Alt

Endorse a co-operative insurrection towards individualist anarchism – legalistic and authoritarian movements inevitable fail

Jim **Baker 92** BAD Broadside #6, Contemporary Individualist Anarchism: The Broadsides of the Boston Anarchist Drinking Brigade 1988-2000, 1992, "ANARCHISM AND CIVILITY", Political Notes No. 184, http://www.libertarian.co.uk/lapubs/polin/polin184.htm, AB)

A generally accepted anarchist tenet is that the State can only be effectively dismantled by a voluntary, cooperative and spontaneous insurrection by the people. Authoritarian revolutions gotten up by manipulative vanguardists are rejected as inconsistent with the anarchist belief that the means must be consistent with the ends. History has plenty of examples to show that seizure of power through elitist revolt, rather than furthering the goals of the revolution, actually becomes a process for the strengthening of the State in a new and more vicious form. From an evanescent moment of exultant freedom one inevitably wakes up to the hangover of a Napoleon or a Lenin or a Mao. Nevertheless, contemporary anarchists are often still mesmerized by the call to arms, even when the chance of such a romantic gesture succeeding is nil. The only real revolutions occur when popular discontent causes the state to collapse under the weight of its own folly, not when some bloody vanguard, following whatever destructive fantasy its leaders concoct, meets the modern state head-on. This inevitably results in meaningless hardship for the people involved, with the greatest misery reserved for innocents who gets in the way of either side's fallacious ideology. Being a "rebel" and antagonizing the flatulent powers-that be in a modern state can be an exciting game, but it is only bluster and puerile self-gratification when genuine revolt is implausible. In the end the most radical "revolutionaries" either end up as bitter, dead-end martyrs or become the next generations' "born-again" capitalists. Having had their fling, they come to believe in their new "realism" as holistically as they embraced rebellion. None of this brings us any closer to a solution to the problem of the State. The fallacy of revolutionary adventurism is mirrored on a personal level by the intolerant and abusive discourse of identity politics. Everyone is pre-judged by their race, gender, sexual or religious affiliation, and socially compartmentalized in some politically correct egg basket. The goal of the anarchist movement is to establish a free, tolerant and cooperative society which will embrace diversity and celebrate difference. If the means are to be consistent with the ends, then how can such an abrasive and bigoted practice as identity politics possibly achieve that end? Identifying the "enemy" by birth or predilection, regardless of an individual's actual beliefs or actions, is simple bigotry. Awarding moral virtue on the same grounds is simple stupidity. Similarly, essaying to act as a unwarranted spokesperson for a diverse grouping of individuals who by chance share a single basic characteristic is the most arrogant sort of elitism. Real people, stripped of their individual identities, are thus subsumed in some hypothetical single-dimensional construct that effectively denies them any complexity of character. This isn't an answer to institutionalized racism and bigotry, but rather its mirror image. This sort of prejudicial activity has appeal for the simpleminded. It's easy to either attack or adulate a stranger on the grounds of appearance. A similar anxiety powered the old Sumptuary laws which punished anyone who dressed above their social class -- it was too unnerving for the elite to think they might make a mistake and treat an inferior as an equal, thanks to illicit appearances. Political prejudice makes it simple to get through the difficulty of rootless modern life where there are no clear-cut exterior indications of what a person might really be like. All white males (unless, perhaps, gay) are dangerous, power-driven and bigoted. All women (unless, perhaps, Republican) are intuitive, nurturing and empathetic with Nature. Members of minorities (take your pick) are morally superior to members of majorities. Classifications and labels which assist us in making such decisions are more real (and more important) than the people they describe. Et cetera. Bullshit. The goal of a tolerant and cooperative society of free individuals can only be achieved by those very means -- by being tolerant, cooperative and free. We must be better companions to our fellow mortals, whatever their outward characteristics. Civility, which facilitates cooperation, is imperative if anarchy is to really work. Pigheaded and selfimportant aggressiveness, hypercriticism and easy intolerance is a recipe for the status quo. We don't mean to suggest some sort of all accepting, "turn-the-other-cheek" bourgeois crap, either. Once you get beyond the labels, there are still unfortunately plenty of folks that it makes sense to despise. Arrogant, violent, intolerant, fanatical, bigoted, manipulative, rapacious... individuals with these characteristics must be guarded against, but they are not all found in one easily recognized group identity. These adjectives equally describe individual men, women, blacks, whites, handicapped people -- the whole gamut of the human race. Nor is anyone as morally pure as some of our new puritan idealists would insist that they be. A person is the sum of their character traits, not a distillation of the most pronounced ones. Radicals are just as prone to frailties of character as industrialists. It is by their actual effect on their community and environment that we should evaluate our fellow beings, not by some dominant virtue or fault which particularly excites us. It would be far preferable to tolerate an insensitive verbal bigot who in practice actually helped people than a pious hypocrite who mouthed politically correct platitudes and then went home and beat his lover. Anarchism involves conscientious and responsible judgement, and the effort to see through the shucks, facades and hype of our unregenerate society. One of the most virulent traps for the contemporary Left is the aping of the knee-jerk bigotry of the Right, which involves a meanspirited "us-and-them" prejudice through group identity. There are

plenty of actual villains out there, some easily identifiable, others hidden in hypocrisy. There are equally many good people obscured by the accidents of their birth, uprearing or situation. Let us therefore focus on the individual rather than the group, and recognize that the only way we will ever really achieve the goals of Anarchy is through living those difficult precepts in the here and now, and treat each other civilly. There can be no other effective preparation for Anarchy's ultimate realization in the future.

Anarchy Alt: Solves Prisons

Just getting rid of federal prisons isn't enough – governmental action makes privatization inevitable which doesn't go far enough and replicates the harms of the 1AC

Joe **Peacott 97**, leading figure at BAD Press, work on economics and sociology has been published by the Libertarian Alliance and referenced favorably by leading anarchist scholars, "PRIVATIZATION? IT DOESN'T GO FAR ENOUGH!" October 1997, BAD Broadside #17, http://www.libertarian.co.uk/lapubs/polin/polin184.htm, AB)

Privatized prisons best show the minimal difference between a government-run agency, and one that has been turned over to a for-profit corporation. In these new privately-owned jails, prisoners are still abused, beaten, and raped, guards still run the smallest details of prisoners, lives, and people continue to be locked up without their consent. Private prisons are the antithesis of private decision-making and private agreement, since the "customer, in this case the prisoner, is not allowed to have any autonomous life, makes few personal decisions, and cannot freely choose to stop doing business with the new company and leave. Additionally, for-profit prisons are totally dependent on the state to provide them with new 'customers' by arresting and convicting people who have violated the laws created by various levels of government. Without government action there would be no prisoners, and therefore no prisons, public or private. Anarchists value private decision-making and private voluntary agreements between individuals. We oppose government because it interferes with these activities of nonviolent, non-coercive people. Privatization sounds appealing to some anarchists, because it holds out the hope of decreasing such state involvement and interference in people's lives. But, while it does alter the way in which government interacts with individuals, it generally does not result in any increase in people's freedom to choose how to live. It doesn't give us more options, it often doesn't provide better service, and it doesn't stop government from reaching into our pockets to obtain the money to subsidize many of these new enterprises. And it certainly doesn't decrease our taxes, since governments always find new ways to spend our money, even if privatization has resulted in some savings. People should be free to produce and consume whatever they want, as long as they don't interfere with others, equal freedom to do so. If someone wants to transport people in their van in return for money, or a group of people wish to run a bus service, it should be no one's business but that of the parties to the exchange. If someone wants to take penicillin or Valium without getting a doctor's note, or wishes to consult a medical school graduate before making health care decisions, both options should be available. True freedom, true private life, means the freedom to live however we like, making our own arrangements with other people when and if it suits us (and them). Only the complete abolition of government will truly 'privatize' our lives. Government-sponsored privatization? It doesn't go far enough!

Anarchy Alt Solves

Individualist anarchy is pretty chill

Joe **Peacott 91**, leading figure at BAD Press, work on economics and sociology has been published by the Libertarian Alliance and referenced favorably by leading anarchist scholars,

"Individualism Reconsidered", http://www.bad-press.net/wp-content/uploads/2012/06/Individualism-Reconsidered.htm, AB)

Individualists feel that the way to maximize human freedom and happiness is by abolishing not just the state, but all other involuntary relationships and organizations as well. Although I reject mandatory participation in any organization or society, I am not opposed to cooperation between free individuals to better satisfy their desires and needs. I oppose the welfare state and support private property, but encourage interested people to voluntarily help others in need of assistance. And, while I oppose any restrictions on voluntary economic activities, I am opposed to the theft of the labor of others, which is called profit. I feel that people's desires can be fulfilled, and a just society achieved, without the oversight of either the state or the community. The individualist view of the person is quite different from that of the collectivist. The individualist views people as responsible agents who, even in present-day, unfree society, have to take at least partial responsibility for the situations in which they find themselves, and therefore are capable of changing their situation, at least in part. Through gradual and often small changes in the way people think and lead their lives today, and through a continual expansion in the number of people adopting a libertarian outlook, government can be abolished and the world changed to a free one. Collectivists, on the other hand, often seem to view people as perpetual victims of an evil social system, which strips them of the ability to make choices, and therefore frees them of all responsibility for their lives and problems. This view of people leads to an elitist attitude towards people and their problems. Collectivists often end up in the unanarchic position of regarding people as ignorant and immature, and therefore in need of protection from themselves and others by continued regulation and laws. Rarely, for instance, do collectivists endorse decriminalization and deregulation of drugs as a solution to the violence and illness associated with the use of illegal pleasure drugs. In their view, apparently, it is only after the revolution (made by the enlightened collectivists) has been achieved, and the economic leveling of libertarian socialism has allowed other people to develop their reasoning faculty to an adequate level, that they should be allowed to make unsupervised decisions. Because of their different outlook on people, individualists look at people's problems and their solutions in a vastly different way. The primary idea in individualist thought is that the individual person should be free to do whatever they wish with their body or property, provided it does not interfere with the equal freedom of other non-invasive or non- coercive persons. Additionally, individualists support the freedom of people to engage in whatever activities they wish with other consenting persons in all spheres of human interaction. People should be free to choose any kind of economic, sexual, medical, or any other sort of relationship with any person who consents to it.

Solves all hierarchies

Joe **Peacott 91**, leading figure at BAD Press, work on economics and sociology has been published by the Libertarian Alliance and referenced favorably by leading anarchist scholars, "Individualism Reconsidered", http://www.bad-press.net/wp-content/uploads/2012/06/Individualism-Reconsidered.htm, AB)

The most serious problem with the collectivist view of people and the world is what I call "groupism", the idea that categories of people are more important than, and fully represent the needs and aspirations of, individual members of these categories. The collectivist anarchist press, like most of the rest of the leftist press, is filled with references to "women's issues", "communities/people of color", "the working class", "the lesbian and gay community", "people with AIDS (PWAs)", etc. (See the political statement published in every issue of Love and Rage for a perfect example of this tendency among collectivists to ghettoize people into such groups.) The assumption is made that self-proclaimed representatives of these supposed communities or groups are somehow able to speak for all the individual members of these huge groups of people. I have frequently heard people start their presentations at conferences and other events with the formulation, "Speaking as a woman (or black person, or gay man, or lesbian, etc)...," and then go on to speak as if they are representative of all other persons who share the description in question. And a

writer in Mayday #6 stated that "people of color have their own struggle; it may not be ours." No recognition is given to the reality that these alleged communities and groups are made up of vastly different individuals with a broad range of interests and viewpoints. One cannot speak meaningfully about the interests or ideas of black people or women or homosexualists or workers, because the different individuals described by these labels are often very unlike most members of their "group", just as they are frequently very much like many persons who are of a different class, sex, color, or sexual proclivity. Much to the dismay of leftists, anarchist and otherwise, there are large numbers of anti-abortion women, antiunion workers, anti-sandinista nicaraguans, and anti-ANC black south africans. Collectivist anarchists who make assumptions about people based on their color or sex are just as racist and sexist as non-anarchists who also make assumptions about people based on these criteria; they simply make different, but equally invalid, assumptions. These people also judge people's activities differently based on what "community" a person is a part of. For instance, in Reality Now #8, animal liberationists, who otherwise condemn killing animals for fur, defended american indian people who are engaged in fur trapping. According to these people, the fact that indian people are "oppressed" makes it acceptable for them to engage in conduct that non-indian americans would be criticized for. Similarly, collectivist anarchists defended the hierarchical and authoritarian social structure of dine/navajo people at Big Mountain in Open Road #20, encouraging non- indian people to "'tak[e] direction' from the traditional Native American leadership". Defending authority based on the color of those who wield it is simply racist.

Aff AT: Genealogy F/W Card

Genealogy is unfalsifiable and totalizing in its critique – reject it

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

As can be seen above, genealogy is a complex and multifaceted enterprise, which can be explained and employed in a variety of ways. After relating the connection it has with other methodologies, it might be useful to lay out some questions that are left unanswered from Foucault's own description of the genealogical method. It is unclear from Foucault's description of genealogy and his own research whether he believes genealogy sits outside of power and its effects. On a more general note, we can ask whether genealogy can be considered a method without truth claiming effects. In other words, does Foucault not fall into the same trap as Marx, whom he critiques extensively as a totalizing 121 theorist, in which he is the only one outside of false consciousness (or in Foucault's theorization, outside of discourse) that can really perceive what is going on and critique it? Other questions remain when analyzing Foucault's own use of various research practices. Are Foucault's theorizations really localized and dispersed, as he described in interviews when discussing genealogy and his own work? Notions such as biopolitics or disciplinary power seem to be quite unitary and all encompassing. Foucault's own historicization in his expanded works spans through whole centuries without much specificity. Thus, it remains an open question whether or not Foucault practices what he preached, so to speak (i.e. whether he really attended to the specific and localized events as intended in his description of genealogy). A related question is whether Foucault was even practicing genealogy in his later writings. He is most certainly conducting extensive archival research that excavates buried histories, especially in regards to discursive formations and how they came to be dominant. But if genealogy is the combination of erudite knowledges with subjugated ones, should not we see more accounts of people's own knowledge, the everyday knowledge (savoir)? Where are the subjugated knowledges in Discipline and Punish or The History of Sexuality for example?

Other Stuff

Ableism

The term 'colorblind' is ableist – use the term 'racial indifference'

Andrea (AJ) **Plaid 10**, associate editor of the award-winning race-and-pop-culture blog Racialicious. She is also an associate producer of the renowned web series Black Folk Don't. Her work on race, gender, sex, and sexuality can be found in multiple publications, SEPTEMBER 9, 2010, http://www.racialicious.com/2010/09/09/%E2%80%9Ccolorblindness%E2%80%9D-%E2%80%9Cilluminated-individualism%E2%80%9D-poor-whites-and-mad-men-the-tim-wise-interview-part-1/, AB)

His latest book, Colorblind: The Rise of Post-racial Politics and the Retreat from Racial Equity, is full of win because he succinctly takes apart the Obama Age meme of "post-racial" as well as its progenitor, the ableist term "colorblind(ness)," as the fallback retorts when race—and particularly racism—is discussed and/or called out.

PIC

PIC out of bad people

Liat **Ben-Moshe 11**, Assistant Professor, Disability Studies at University of Toledo "Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." (2011). Sociology - Dissertations. Paper 70, http://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd, AB)

A similar barrier is constructed by the category of "the dangerous few" in regards to imprisonment, as discussed in an earlier chapter. Sauve (1988), a prisoner himself, perceives prison abolition as two worldviews. One advocates for the total abolition of prisons and its system of penalty. The second holds that a few small prisons for violent criminals are a necessary evil but all other prisons should be closed and depopulated on a major scale. He sees the first strand as unrealistic and utopian, and so radical as to deter people from joining the movement. Total abolitionists, as he refers to them, seem to want to return to a mythical Garden of Eden where everyone loved their fellow men and women. In realistic terms, he believes that the "dangerous few" still need to be segregated from the rest of society. These views are reflective of many opponents to decarceration who advocate for abolition but only for certain populations.

Privacy Northwestern

CPs

Congress Legislation CP

1NC

CP text: The United States federal government should increase the evidentiary threshold under Section 3123 to a reasonable suspicion standard.

This solves privacy – provides clear limitations on surveillance

Richard M. **Thompson 14** – (Legislative Attorney at Congressional Research Service, "The Fourth Amendment Third-Party Doctrine", 6/5/14, Congressional Research Service, http://fas.org/sgp/crs/misc/R43586.pdf, AB)

Notwithstanding the concurring opinions in Jones, the bulk of Supreme Court and lower federal court precedent have left most non-content information unprotected by the Fourth Amendment. In some instances, Congress filled this void by creating varying levels of privacy protection for this type of non-content information. However, these protections are in the main not as robust as the warrant requirement, and in some instances, searches may be justified by little more than "official curiosity."171 Seven years after the Court handed down Smith and ruled that government access to telephone toll records was not covered by the Fourth Amendment, Congress enacted as part of the Electronic Communications Privacy Act of 1986 (ECPA) several provisions requiring the government to seek a court order before using a pen register or trap and trace device.172 Again, these devices allow the government to gather dialed telephone numbers and email addressing information, among other non-content information.173 Under 18 U.S.C. § 3123, a court "shall issue an ex parte order authorizing the installation and use of a pen register or trap and trace device ... if the court finds that the attorney for the Government has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation."174 A few things should be noted about this provision. First, the "shall" language removes discretion from the judge; if the judge finds the government has made the required certification, he must issue the order.175 Second, while the court must ensure that the government has made the proper certification, ECPA does not require an "independent judicial inquiry into the veracity of the attested facts."176 This means that the judge will not make an independent assessment whether the relevancy standard has been met, but only that the government has made the proper certification. One district court has noted that "the extremely limited judicial review required by [the pen register statute] is intended merely to safeguard against purely random use of this device."177 One magistrate judge went so far as to describe his role under the pen register statute as a "rubber stamp" limited to "proofreading errors," and that "without independent judicial review, the authorization of pen registers is subject to misuse and abuse."178 Third, the relevancy standard, which again the government, and not the court, determines if it has been met, is a "far from burdensome" legal standard.179 The Supreme Court has held, at least in the subpoena context, that information sought is not relevant only if "there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject" of the investigation.180 In light of this relatively lax standard, several prominent commentators on privacy and technology have suggested that Congress should increase the evidentiary threshold under Section 3123 from mere relevance to at least a reasonable suspicion standard similar to that used for accessing certain stored communications.1 Also included in ECPA is the Stored Communications Act (SCA), in which Congress provided varying degrees of protection to information historically subject to the third-party doctrine and, thus, outside the reach of the Fourth Amendment. Under 18 U.S.C. § 2703(c), service providers must hand over "records or other information pertaining to a subscriber" so long as the government can establish "specific and articulable facts" that the records are "relevant and material" to an ongoing criminal investigation.182 This is akin to the Terry reasonable suspicion standard—it is lower than probable cause but does require the government to articulate its basis to believe that the information is connected to criminal activity.183 This standard has been applied to data such as the to/from address line in an email or the IP addresses of websites a person has visited. Some courts have construed Section 2703(d) in conjunction with the pen register statute to allow the government access to cell site location information.184 Section 2703(c)(2) requires the providers to hand over other customer information such as their name, address,

telephone calling records, length of service, telephone number, and means and source of payments, including credit card or bank account numbers with either an administrative, grand jury, or trial subpoena.185 Additionally, Congress has passed more targeted privacy protection laws. For instance, the privacy of cable subscribers is safeguarded under the Cable Communications Privacy Act of 1984,186 and the privacy of video store customers under the Video Privacy Protection Act.187 More recently, various Members of Congress have sought to temper the reach of the third-party doctrine with respect to transactional data. Several days after the Edward Snowden leaks became public, Senator Paul filed the "Fourth Amendment Restoration Act of 2013" (S. 1121) in an effort to "stop the National Security Agency from spying on citizens of the United States[.]"188 This bill would require that "[t]he Fourth Amendment to the Constitution shall not be construed to allow any agency of the United States Government to search the phone records of Americans without a warrant based upon probable cause."189 While dictating to the judiciary what the Fourth Amendment should and should not protect may be beyond Congress's constitutional power,190 **Congress clearly can play a role in setting substantive and procedural limitations on government surveillance authorities.** For instance, Senator Paul has introduced a similar bill, the "Fourth Amendment Preservation and Protection Act of 2013" (S. 1037), which would prohibit federal, state, and local government officials from accessing information relating to an individual held by a third party in a "system of records."191 Other congressional measures would alter the third-party doctrine in a more targeted way. Several location monitoring bills would, for instance, prohibit companies from sharing their customers' location information unless the government obtained a warrant or one of several limited exceptions applied.192 So what does the future have in store for the third-party doctrine and the government's collection of non-content, transactional data? At this point, there appears to be only one solid vote on the Court in Justice Sotomayor for eliminating or significantly reducing the scope of this doctrine. Although there are hints in Justice Alito's Jones opinion that he and the three members of his concurrence are ready to reconsider this rule when it comes to pervasive government surveillance, his rationale was left somewhat underdeveloped. It will take future opinions to get a better sense of whether or how far these Justices are willing to go to limit government access to non-content information held in the hands of third parties. In the meantime, the lower federal courts might continue to limit or distinguish the third-party doctrine in specific and narrow instances. For instance, in the NSA telephone metadata case, Judge Leon limited Smith to its facts and held that it did not apply to this more comprehensive data collection program.193 Likewise**, if and when the Supreme Court is asked to reconsider the scope of the third-party doctrine, it is more likely to carve out specific exceptions than to overturn it in its entirety**. This approach would permit the courts to engage in a more nuanced, normative approach to analyzing the privacy interests implicated by accessing records derived from transactions between people and other various entities. Another possibility is for Congress to act. Justice Alito observed in Jones that "[i]in circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative" as "a legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way."194 This argument that Congress is best suited to address the nuanced policy questions that privacy and security entails has been expressed by commentators as well.195 Like the courts, it appears unlikely that Congress would be willing to completely eliminate the third-party doctrine. On the other hand, Congress may be more inclined to engage in a subject-by-subject approach, in which Congress limits the third-party doctrine in certain areas. Congress provided statutory protection for telephone toll records in the pen register/trap and trace statute; for Internet metadata in the Stored Communications Act; and for video customer records in the Video Privacy Protection Act. It could enact similar protection for other subject areas where non-content information is shared with companies as a necessary part of doing business.

2NC

Congress can modify the 4th amendment- this solves

Rosen and Wittes 11, Jeffrey and Benjamin, professor of law at The George Washington University and senior fellow in Governance Studies at The Brookings Institution, "Constitution 3.

0 : Freedom and Technological Change," Brookings Institution Press, 2011. ProQuest ebrary. Web. 30 June 2015.

The final question is what branch of government will create the use restrictions I have in mind. Can courts do this in the name of the Fourth Amendment, or is it up to Congress? In my view, Congress is the most likely regulator. The Fourth Amendment prohibits unreasonable searches and seizures. Use limitations are neither searches nor seizures, however. They are restrictions on what the government can do with information after it has searched for and seized it. There is little in the way of constitutional text, history, or precedent that supports recognizing use restrictions as part of Fourth Amendment protections. Granted, it is possible to creatively reimagine Fourth Amendment law in ways that recognize use restrictions. As far back as 1995, Harold Krent made such an argument. 1 Krent reasoned that obtaining information is a seizure and that the subsequent use of the information— including downstream disclosures of it— could make the seizure "unreasonable." In other words, instead of saying that searches and seizures occur at a specific time, they could be deemed to occur over a period of time. All uses of information would be required to be reasonable, and courts could distinguish between acceptable and unacceptable uses of information according to their reasonableness. The argument is creative, but I think it is too far a stretch from existing doctrine to expect courts to adopt it. In my view, there are two basic problems. First, most of the information collected by the government is not protected under current Fourth Amendment law. Collecting third-party records is neither a search nor a seizure (which is why they are frequently collected; information that is protected by the Fourth Amendment is collected only rarely). Under Krent's proposal, however, presumably we would need to overhaul that doctrine to make all evidence collection a seizure to enable courts to then pass on the reasonableness of the seizure. If we took that step, however, we would need an entirely new doctrine on what seizures are reasonable, quite apart from downstream uses. This would require a fairly dramatic overhaul of existing Fourth Amendment law, all to enable use restrictions. Second, disclosures of information come in so many shapes and sizes that courts would have little basis on which to distinguish reasonable from unreasonable uses. Every database is different, every data point is different, and every disclosure is different. The kind of fine-grained reasonableness inquiry called for by Fourth Amendment law would leave judges with few clear guideposts or historical precedents on which to distinguish uses that violate the Fourth Amendment from those that do not. For both of these reasons, recognizing use restrictions in Fourth Amendment law may create more problems than it solves. At the very least, we should not expect courts to take such a leap any time soon. In contrast, legislatures are well equipped to enact use restrictions. They can promulgate bright-line rules concerning information collected under specific government powers, and they can explain the scope of the limitation and the contexts in which it is triggered. Furthermore, they can legislate use restrictions at the same time as they enact the statutes authorizing the evidence collection. That way, use restrictions can be a part of the original statutory design, rather than something imposed years later by the

State Drafting CP

1NC Shell: State Drafting CP

CP Text: The fifty states and all relevant territories should draft an amendment expressly guaranteeing a right to informational privacy, then advocate and hold a voluntary convention to engage in a non-binding amendment proposal for this amendment

It solves and competes – it's distinct from regular procedure which shields the link to PTX since Congress isn't involved

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

There is a way to address the defects of the national convention approach. The nation could adopt an amendment process that avoids the problems of a runaway convention and most of the other uncertainties while also depriving Congress of the ability to block amendments. Under this reformed amendment process, the state legislatures would draft the amendment themselves rather than have a convention draft it. Once two-thirds of the state legislatures had approved the same specific language for an amendment, that amendment would thereby be formally proposed. This would trigger the ratification stage, which would require, as it does now, three-quarters of the states to ratify a constitutional amendment. This simple version of the reform could be improved in three ways. First, to facilitate deliberation and coordination, the amendment process would specifically authorize an advisory convention among the states so that they could discuss, in a nonbinding way, possible amendments to propose. Second, to prevent the small states from having excessive power relative to their populations, the voting rule for ratification should be changed so that each state's ratification does not count equally, but instead is measured based on its electoral votes. Third, to ensure that the ratification decision is made by a different entity than the state legislatures that propose the amendment, ratification would be decided by either state conventions or the people of the states through ballot measures.

2NC Solvency: States

Solves from the states alone

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

In proposing this reform, I will rely on the normative approach that I outlined earlier. In particular, I will assume that the best way to pass constitutional provisions is through a strict supermajority process that uses one entity to propose the amendment and another to ratify it. Yet, I will make one significant adjustment to this normative approach—limiting my proposals to those that are likely to be attractive to state legislatures. As I discuss in the next section, Congress is not likely to amend the Constitution to eliminate its veto, but the state legislatures might call a convention to increase their power. For state legislatures to do this, however, the amendment procedure has to be attractive to them.116 My goal in this Article is not merely to explore the normative defects of the broken convention process. It is also to show that a reform is available that would solve the problem and that could conceivably be enacted under the existing system. Thus, focusing on reforms that might be adopted is not an arbitrary limitation, but one that is essential to my purposes.

It solves and ensures passage

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

The overall effect of the political controls would be significant. In my view, they would operate to strongly discourage the passage of nonconforming amendments and to provide a reasonably strong chance that a state drafting amendment would, if it were actually popular, be enacted. While there is no single aspect of the process that guarantees these results, the combination of effects is likely to be powerful. First, the state agreement largely eliminates the coordination problems and therefore assures that if two-thirds of the states apply, a convention will be called. Second, the joint strategy of the states to write a specific amendment, to announce that a runaway convention would be illegal and improper, to select sympathetic convention delegates, and to attempt to block any nonconforming amendment at the ratification stage should have a significant effect in both blocking a runaway convention and in promoting passage of the state drafting amendment.

2NC Solvency: Coordination

The CP solves coordination problems

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

The state legislatures could address these difficulties by combining elements of the state drafting procedure with the existing national convention approach. First, the states should hold a voluntary convention in order to agree on a single specific amendment and a strategy for adopting it. By proposing a single specific amendment, the states would significantly reduce the coordination problems among the states and between the states and Congress. With two-thirds of the state legislatures calling for the exact same amendment, Congress would have no discretion to argue that the applications were not for the same subject.

AT: CP = Watered Down

No deficits, reforms are just as successful and any issues are insignificant

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

Obviously, this focus places limits on the normative attractiveness of the reforms that are available. If the state legislatures would be unwilling to enact good reforms, then no good reform could occur. Fortunately, I do not believe this is a significant problem. Given my assumption that a strict supermajoritarian process that uses two entities is desirable, the reform I propose here is close to what one might regard as the ideal. While the need for state legislative enthusiasm does require adopting a less than ideal approach, the defects are not so large as to make the proposal unattractive. The best is sometimes the enemy of the good. It makes sense, however, to address these possibly superior alternatives, which state legislatures are unlikely to adopt, after discussing the reform proposal.

AT: Runaways bad / Links to PTX

Solves and ensures no runaway failure or Congressional backlash

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

To address this problem, it would be useful for the states to hold a convention, but to do so in a way that avoids the pitfalls of the existing convention method. The Constitution ought to authorize conventions that are both voluntary and advisory. A group of states could choose to hold a convention whenever they deemed it advisable, but no state would be required to attend. The convention would not have any binding powers. Instead, it would allow the states to debate the merits of different proposals. It would also allow them to assess the popularity of different proposals and to compromise on a single amendment to be considered by each state legislature. A successful convention would endorse a single proposal that each state legislature could then approve. This type of convention would avoid the problems that afflict national conventions under the existing convention approach. First, it could not result in a runaway convention. The convention itself would have no power and its endorsement therefore could not allow a proposal to avoid state scrutiny. There also could be no runaway convention because proposals would result only from the actions of the state legislatures. Second, calling a convention would not require the states to agree on a single subject. A convention would not require specification of a subject and the delegates could discuss whatever they deemed important. But because the convention would have no power, it would have an incentive to discuss subjects that the state legislatures were interested in. Third, there would be no need for the convention to agree on specific voting rules or voting rights. While the convention might want to do so, nothing significant would turn on it since it would be an advisory body. The convention could report its votes in a variety ways, tabulating them based on state population, state equality, or some combination. With this information, the state legislatures would then be in a position to determine which proposals had significant support and to decide whether to formally endorse those proposals. Finally, there would be no problem of congressional sabotage of the convention because Congress would have no authority over it.

AT: Links to PTX

Congress doesn't even need to authorize them if the states agree to it

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

If at least two-thirds of the states agreed to the application, this would eliminate most of the discretion that Congress ordinarily exercises when there are calls for a limited convention. First, with two-thirds of the states calling for the same convention, Congress would not have to decide whether state applications that differed from one another should be interpreted as calling for a single limited convention. Second, this proposal would also address the situation where Congress holds that there are no limited conventions.132 The contingency portion of this application would address that possibility and require Congress, in those circumstances, to call an unlimited convention. Thus, this proposed application would largely eliminate the two main ways that Congress might hold that applications for a limited convention did not actually require such a convention to be called.

States CP

Solvency

State constitutions sufficient to protect from infringing surveillance - Florida's 100 new laws prove

Jenna **Buzzacco-Foerster 6/30**, "More than 100 new state laws take effect Wednesday," 6/30/15, http://www.tcpalm.com/news/politics/legislative-session-2015/more-than-100-new-state-laws-take-effect-wednesday_04854714, AZ

A law aimed at protecting Floridians from unwanted surveillance is one of more than 100 that take effect Wednesday. The law — dubbed the Freedom from Unwarranted Surveillance Act — spells out that unmanned aerial drones can't be used for surveillance. It also says when devices can be used.

"From my standpoint, I think it's a good start," said Stephen Myers, owner of Angel Eyes UAV in Naples. "It's a good beginning." Drones can be used to assess property taxes, for aerial mapping, and to conduct environmental monitoring. The law also says that drones can be used by a person licensed by the state to perform "reasonable tasks within the scope" of the person's job. Myers said that could mean insurance companies can use drones for roof inspections or to inspect large properties, like golf courses, for damage following a storm.

Rep. Ray Rodrigues, R-Estero, said he supported the law because it protected Floridians' privacy, while still allowing some commercial uses.

"We've seen the technology for drones evolve rather rapidly and the technology has exceeded the statutory privacy protections," said Rodrigues, who co-sponsored the measure in the House. "I saw a strong effort to ensure our right to privacy. It addressed the concerns I had."

The drone law is one of dozens — including the state's $78 billion spending plan and a nearly $400 million tax cut package — that went into effect Wednesday, the first day of the state's fiscal year.

States solve

Jeffrey A. **Parness 11**, B.A., Colby College, J.D., University of Chicago, taught for six years at the University of Akron School of Law, Northern Illinois University, 2011, "American State Constitutional Equalities", GONZAGA LAW REVIEW Vol. 45:3, https://www.law.gonzaga.edu/law-review/files/2011/02/Parness.pdf , AB)

American state constitutions can play a key role today in protecting individuals.9 State constitutional laws can afford protections beyond those dictated by federal lawmakers. While the federal Constitution chiefly implies individual rights through recognizing federal and state governments with express and limited powers, state constitutions often "contain positive or affirmative rights."10 At worst, expansive state constitutional rights are hortatory, simply duplicating important federal values or iterating unenforceable local values. At best, they

extend new rights locally, deeming unlawful any oppressions that are irrational or uncompelling.11 Because of their narrower setting, in constitutional matters states are more able "to experiment, to improvise, [and] to test new theories."12 Thus, if "a state experiment succeeds, others may follow," and if an experiment fails, the failure will be isolated.13 As well, because they are more prone to amendment than the federal Constitution,14 state constitutions can more quickly respond to failed experiments, social changes, and new values.15 Of course, for many, too many amendments may diminish the enhanced or special status of constitutional law.16 State constitutional rights can be read to be independent of, and thus to reach beyond, federal constitutional rights17 even when the federal and state constitutions are both applicable and employ the same or similar language.18 For example, a reasonable search or seizure for federal constitutional purposes may be an unreasonable search or seizure under a state constitution.19 A state constitutional right can also follow the federal constitutional language on federal rights, even though that federal right is inapplicable to the states.20 State constitutions can also expressly recognize rights and limits on governmental conduct that are unaddressed in the federal Constitution.21 Thus, they can expand rights by condemning private as well as public acts resulting in inequalities.22 They can **explicitly speak to privacy and other enumerated rights,**23 thus avoiding the difficulties in recognizing similar protections through vague terms like liberty and through unenumerated rights analyses. 24 Further, state constitutions can explicitly limit state governmental acts directed at certain citizens who are far less protected or relatively unprotected under the federal Constitution.25 Finally, comparable constitutional rights and limits may themselves be read differently from state to state. Thus, there can be varying interstate levels of judicial protection for certain comparable rights with heightened judicial review required at times.26 Greater equalities should be especially promoted by state constitutions where significant and unfair inequalities continue without other federal or state law remedies.27 One example is discrimination based upon sexual orientation. A quick review of contemporary American state constitutions reveals there is already a wide range of local constitutional initiatives furthering equality

States approve, innovation + support

Jeffrey A. **Parness 11**, B.A., Colby College, J.D., University of Chicago, taught for six years at the University of Akron School of Law, Northern Illinois University, 2011, "American State Constitutional Equalities", GONZAGA LAW REVIEW Vol. 45:3, https://www.law.gonzaga.edu/law-review/files/2011/02/Parness.pdf , AB)

Equalities in employment, housing, schooling, and other settings have broad public support. Greater express state constitutional recognitions of self-executing rights of all persons to be free from employment, housing, schooling, and other discrimination on the basis of race, sex and other inappropriate classifications, subject to limited legislative oversight, would extend equalities beyond federal law mandates. They would reflect the establishment of fundamental local values and allow for experimentation. They could also prompt varying balances between judicial and legislative authority over equality, both between states and within states depending upon the equality context.

The states solve – the federal government has ceded privacy protection to the states

Jeffrey M. **Shaman 6**, Vincent de Paul Professor of Law, DePaul University College of Law, "THE RIGHT OF PRIVACY IN STATE CONSTITUTIONAL LAW," 2006, http://org.law.rutgers.edu/publications/lawjournal/issues/37_4/Shaman.pdf

The right of privacy has developed primarily through decisions of the United States Supreme Court interpreting the Federal Constitution.9 Over the years, the Supreme Court has used the Fourteenth Amendment

to the United States Constitution10 to formulate an evolving right of privacy that encompasses certain family rights, reproductive rights, and, most recently, a right of intimate association.11 Yet the Court has placed definitive limits on family and reproductive rights, and also has refused to extend the right of privacy to other areas.12 There is scant agreement among the Justices of the Supreme Court concerning the right of privacy, and at times, the high Court's **commitment to privacy has wavered** considerably. As a result of the Court's continuing equivocation in this area, the scope of the right of privacy under the Federal Constitution is considerably uncertain. Given this uncertainty, it was hardly surprising when a number of states stepped into the breach to revitalize the right of privacy. State constitutions, after all, are an important source of protection for individual rights and liberties, including the right of privacy. Indeed, state constitutions contain various provisions that can be used to protect the right of privacy. Many state constitutions contain due process or law of the land clauses safeguarding liberty that have been interpreted to ensure the right of privacy.13 Similarly, state constitutional provisions that deny the existence of arbitrary power over individual liberty have been construed to protect the right of privacy.14 State constitutional provisions guaranteeing equality also are used as a means of protection for the right of privacy. In some states, a right of privacy has been found implicit in constitutional provisions declaring, "All persons are by nature free and independent, and have certain natural and unalienable rights"15 or stating, "The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people."16 In modern times, five states—Alaska, California, Florida, Hawaii, and Montana—have amended their constitutions to expressly protect the right of privacy.17 These express provisions provide **fertile ground for the recognition** of expansive privacy rights. But even where only a more general constitutional provision, such as a due process clause, is available as a source of protection for privacy, some states have been willing to countenance expansive privacy rights. In recent years, as claims have been made to expand the right of autonomy to new dimensions, the states have differed in their willingness to do so. Some state courts have moved forward to expand the right of a woman to choose to have an abortion, while others have declined to take that course. A number of state courts have recognized the right of intimate association and struck down sodomy laws well before the Supreme Court was willing to do so, while other state courts chose to stand fast with the then prevailing federal approach rebuffing the right of intimate association. Of late, a number of state courts have faced the issue of same-sex marriage or civil union, and have reached various conclusions concerning it. The Supreme Court of Massachusetts became a pioneer by being the first judicial body in the nation to rule that the right of privacy secured by the state constitution encompassed a right to same-sex marriage.18 Some twenty-eight years before that, the Supreme Court of Alaska pioneered a different sort of privacy by ruling that the state constitutional guarantee of privacy afforded a right to possess marijuana for personal use in the privacy of one's home,19 although the court later was unwilling to extend that right to the possession of cocaine.20 The Alaska ruling was reminiscent of a few earlier cases upholding, on grounds of privacy, a right to smoke cigarettes or to ingest alcoholic beverages.21 Those decisions, though, fell into desuetude for many years, until they were revived as the foundation for regenerating the right of privacy.

States solve best – they're already pioneers in privacy law

Somini **Sengupta 13**, foreign correspondent for The Times, "States rush to fill gap in U.S. privacy laws; Lawmakers see increase in support after accounts of federal surveillance," lexis, 11/01/13

State legislatures around the United States, facing growing public concern about the collection and trading of personal data, have rushed to propose a series of privacy laws, including limiting how schools can collect student data and deciding whether the police need a warrant to track cellphone locations. Over **two dozen privacy laws have passed this year** in more than 10 states, in places as different as Oklahoma and California. Many lawmakers say that news reports of widespread surveillance by the National Security Agency have led to more support for the bills among constituents. And in some cases, the state lawmakers say, they have felt compelled to act because of the stalemate in Washington on legislation to strengthen privacy laws. "Congress is obviously not interested in updating those things or protecting privacy," said Jonathan Stickland, a Republican state representative in Texas. **"If they're not going to do it, states have to do it."** This year, Texas passed a bill introduced by Mr. Stickland that requires warrants for email searches, while Oklahoma enacted a law meant to protect the privacy of student data. At least three states proposed measures to regulate who inherits digital data, including Facebook passwords, when a user dies.

Some of the bills extend to surveillance beyond the web. Eight states, for example, have passed laws this year limiting the use of drones, according to the American Civil Liberties Union, which has advocated such privacy laws. In Florida, a lawmaker has drafted a bill that would prohibit schools from collecting biometric data to verify who gets free lunches and who gets off at which bus stop. Vermont has limited the use of data collected by license plate readers, which are used mostly by the police to record images of license plates. California, long a pioneer on digital privacy laws, has passed three online privacy bills this year. One gives children the right to erase social media posts, another makes it a misdemeanor to publish identifiable nude pictures online without the subject's permission, and a third requires companies to tell consumers whether they abide by "do not track" signals on web browsers. More than a year ago, the White House proposed a consumer privacy bill of rights, but Congress has not yet taken on the legislation. And a proposed updating of the 27-year-old Electronic Communications Privacy Act has stalled. Many states have already responded to those opinions. In the past couple of years, about 10 states have passed laws restricting employers from demanding access to their employees' social media accounts. California set the stage on digital privacy 10 years ago with a law that required organizations, whether public or private, to inform consumers if their personal data had been breached or stolen. Several states followed, and today, nearly every state has a data breach notification law. This year, California amended that landmark law, adding an Internet user's login name and password to the menu of personal information that is covered. The California attorney general's office also has a full-time unit to enforce digital privacy laws.

Privacy Bill CP

1NC Shell

Privacy bill solves – creates a better framework of privacy policy

White House 12 – The White House ["Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy", February 2012, https://www.whitehouse.gov/sites/default/files/privacy-final.pdf] hk

The United States is committed to protecting privacy. It is an element of individual dignity and an aspect of participation in democratic society. To an increasing extent, privacy protections have become critical to the information-based economy. Stronger consumer data privacy protections will buttress the trust that is necessary to promote the full economic, social, and political uses of networked technologies. The increasing quantities of personal data that these technologies subject to collection, use, and disclosure have fueled innovation and significant social benefits. We can preserve these benefits **while** also ensuring that our consumer data privacy policy better reflects the value that Americans place on privacy and bolsters trust in the Internet and other networked technologies. The framework set forth in the preceding pages provides a way to achieve these goals. **The Consumer Privacy Bill of Rights should be the legal baseline that governs consumer data privacy in the United States**. The Administration will work with Congress to bring this about, but it will also work with private sector stakeholders to adopt the Consumer Privacy Bill of Rights in the absence of legislation. To encourage adoption, the Department of Commerce will convene multistakeholder processes to encourage the development of enforceable, context-specific codes of conduct. The United States Government will engage with our international partners to increase the interoperability of our respective consumer data privacy frameworks. Federal agencies will continue to develop innovative privacy-protecting programs and guidance as well as enforce the broad array of existing Federal laws that protect consumer privacy. A cornerstone of this framework is its call for the ongoing participation of private-sector stakeholders. The views that companies, civil society, academics, and advocates provided to the Administration through written comments, public symposia, and informal discussions have been invaluable in shaping this framework. Implementing it, and making progress toward consumer data privacy protections that support a more trustworthy networked world, will require all of us to continue to work together.

2NC: Solvency

Individual control over data solves the aff

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson,

Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

The principle of Individual Control in the Consumer Privacy Bill of Rights shifts the focus away from the longstanding principle of notice-and-choice to more dynamic and flexible mechanisms. Notice-and-choice is one important mechanism of privacy protection, but the Commerce Department Green Paper process found that routine checking of boxes puts too much weight on the unmanageable burden of reading privacy policies and does not differentiate among situations that present material privacy risk and those that do not. Whether data is used in a commercial context, or for basic medical or scientific research, may also be relevant to what kind of individual control is warranted. The Consumer Privacy Bill of Rights therefore calls for contextual mechanisms to exercise choice at the time of collection "appropriate for the scale, scope, and sensitivity of the data in question," and also for additional mechanisms to address the use of personal data after collection. This principle reflects the Big Data environment in two ways. First, it recognizes that the increasing velocity and variety of data collection make notice-and-choice ineffective. consumers are asked for consent too frequently and on devices such as mobile phones that are not suited to deliberate informed consent. Second, it recognizes that the velocity of data includes increased sharing with third parties with whom consumers do not have a direct relationship. Moving away from a one-size-fits-all notice and choice regime in which consumers often face a binary choice (either to give up data control or not to use a service) will strengthen fair exchange of value between consumers and companies by allowing consumers greater choices of how much to share in exchange for a given level of features and benefits. There are certainly contexts in which individual control will play a minor role as compared to other principles such as Respect for Context and Focused Collection. The expanded use of sensors and other developing forms of automated data collection will make notice-and-choice and other mechanisms of control impossible or infeasible in an increasing number of circumstances. The principles of Consumer Privacy Bill of Rights are intended to apply in interactive and dynamic ways appropriate to the technologies they address; the expansion of Big Data will put a premium on such application.

Privacy principles reduce the risk of leaks

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

1. Re-identification risk: The risk that personal data can leak **from big data research platforms** is real. Principles including Transparency, Security, Focused Collection, and Accountability will all be important to manage this risk. Transparency will enable regulators, enforcement authorities, and interested members of the public such as advocates and academics to know what kind of data is being released and in what form. Assessing whether the users' rights to have data held securely should include an assessment of who is able to access the data and therefore whether the re-identification risk can be minimized by binding those individuals to legal commitments to avoid re-identification. The right to have only focused collection of user data will also reduce re-identification risk by limiting gratuitous collection of data. And finally, an organization with strong institutional accountability procedures in place should handle data carefully and only release it publicly after evaluating the risk of re-identification. If the organization fails to consider this risk, then appropriate parties can be held accountable for resulting harm.

Resolves false info and models – their ev assumes the squo

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

2. Data and model inaccuracy: The Consumer Privacy Bill of Rights can reduce the risk that decisions are made about an individual based on inaccurate information or an incorrect model. The principles of Transparency, Respect for Context, and Access and Accuracy are all useful to ensure fairness in

big data decisionmaking. Since the Fair Credit Reporting Act (FCRA) was enacted, individuals have had basic transparency rights enabling them to know that personal information about them is being used for important decisions, as well as the right to access and correct personal data to ensure that it is accurate. Such transparency is critical to make sure that individuals know their data is being used therefore be able to assure its accuracy or decide to exclude themselves from uses they object to. Similarly, the Access and Accuracy affords a mechanism to assure that data and the inference drawn from are accurate. While most consumers will not be able to identify errors in models, 5 transparency on inferences drawn by a model may shine light on algorithmic errors, The CPBR Transparency principle also requires that companies explain how they will use data and this should be understood to include relevant information about the decision-making models and algorithms. There is work to be done to define how much of the decision-making metrics should be exposed, as some of that information will be proprietary. Enough context about the decision metrics should be made available to enable consumer protection enforcement agencies and other stakeholders to assess whether the decisions models are fair. These principles are reinforced by the Respect for Context principle. When data is used out of context, the CPBR provides that if "companies decide to use or disclose personal data for purposes that are inconsistent with the context in which the data was disclosed, they must provide heightened measures of Transparency and Individual Choice." This will help individuals to flag uses of information that are likely to create risk and increase the likelihood that both personal data and models derived from personal data are accurate.

Transparency is key

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

First and foremost, an expanded commitment to transparency is **necessary** to guard against the risk of unfair, inaccurate use of personal data. The variety of personal information in big data systems requires a more active transparency in which individuals, consumer advocates and enforcement agencies can understand precisely how personal data is used, in some cases with resolution down to the level of individual data elements. Recognizing that individual control and consent may not be practical for high velocity collection and use of personal data**,** such systems will place more reliance on respect for context, assuring the information is only collected where the context makes such collection reasonably apparent, and that the use is consistent with the original context of collection. In context use should be able to proceed without individual consent, but out of context use would require increased transparency and individual control. Large collections of personal data create increased risk of breach and loss, to security must be given special attention. As important decisions may be made through big data systems, **access and accuracy rights are vital** to be sure individuals are not treated unfairly. And finally, institutional accountability mechanism are vital to assure that all of the principles in the Consumer Privacy Bill of Rights are adhered to the use of big data systems. Beyond just the substantive principles of the Consumer Privacy Bill of Rights, the larger policy process that the Administration's privacy framework puts into place has a dynamic, flexible quality that will be especially important to help American society evolve new privacy norms in response to the challenge of large scale analytics. As explained by Ken Bamberger and Deirdre Mulligan, the evolution of 'privacy on the ground' has enabled the evolution of privacy rules in a 8 manner that is responsive to public requirements while at the same allowing flexibility for the development of new services and business models. The Consumer Privacy Bill of Rights framework is designed to facilitate the continuous evolution of norms and rules as large-scale analytics drive new business models.

2NC: Agenda PTX NB

Read the Albert evidence specific to constitutional amendments

2NC: Big Data NB

The CP keeps up with big data innovations

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", 4/4/14 https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf, AB)

For each of the big data privacy risks identified here, the substantive principles in the Consumer Privacy Bill of Rights offer guidance to develop concrete responses to those risks in a manner that provides clarity for individuals and flexibility for innovative big data analytic applications. Given the rapid evolution of big data analytic applications, the unique procedural aspects of the Consumer Privacy Bill of Rights also offers a means by which principle-based privacy approaches to new applications can be developed rapidly as enforceable codes of conduct and then enforced under the FTC's existing statutory authority

2NC AT: Ethics S. Deficit

Solves ethics claims – specifically designed to become conscious of the use of data collection

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

3. Unfair use of sensitive inferences: Even if inferences are accurate, it may be unfair as a matter of ethics or public policy to use such information for certain purposes. For example, behavioral profiling techniques used for marketing purposes can provide advertisers the ability to reach audiences defined by age, ethnicity, race, gender and other sensitive categories. The recent statement of privacy principles from leading civil rights organizations ("Civil Rights Principles for the Era of Big Data") offers useful guidance on this point. The Respect for Context principle was **specifically designed** to prevent misuse of such profiles for more sensitive, harmful discriminatory purposes. As the CPBR explains: The Administration also encourages companies engaged in online advertising to refrain from collecting, using, or disclosing personal data that may be used to make decisions regarding employment, credit, and insurance eligibility or similar matters that may have significant adverse consequences to consumers…. Such practices also may be at odds with the norm of responsible data stewardship that the Respect for Context principle encourages." 6 Just because it is possible to learn or infer a sensitive characteristic of an individual, that does not imply that it is either legally or ethically permissible to use such an inference (no matter how accurate or inaccurate) for all purposes. However, addressing the use of such characteristics is a matter of social policy broader than privacy policy. Antidiscrimination laws and norms of countries around the world regularly prohibit acting in a discriminatory manner based on information about an individual, even if it is publicly available. Indeed, some of the personal characteristics that entail the highest degree of legal concern include gender and race, attributes of individuals that are readily observable and in most cases public information. The Transparency and Access Accuracy principles provide mechanisms that can be helpful in identifying where data collected about individuals is used in ways contrary to legal or ethical principles. Despite this, reflexive and poorly justified application of the Fourth Amendment third party doctrine can lead to the "unwarranted" assumption that as soon as personal data is public it can be used for any purpose**.** The Respect for Context principle stands in opposition to this view and squarely for the proposition that privacy interests in personal information are determined as much by how the data is to be used as is the public or non-public status of the data.

2NC AT: Circumvention S.Deficit

No risk of a solvency deficit – transparency principle resolves circumvention

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

The Transparency Principle requires companies to disclose when and why they collect individuals' personal data, so that consumers can guard against misuse of their personal data. Beyond just individual awareness, transparency has a vital function for the evolution of privacy norms themselves. In the modern history of information privacy, transparency has enabled consumer advocates, policy makers, enforcement agencies, the press and the interested public to engage in dialogue and criticism about how commercial privacy practices are evolving. It is only with awareness of actual privacy practices that society can have a meaningful dialogue about which practices are acceptable and which fall outside legal and/or social norms. Meaningful transparency in big data systems will require going beyond just disclosure of policies as to personal data. Enabling **citizens, governments and advocates to address big data** privacy challenges requires a more active transparency - the ability to be aware of and track the actual flow and use of personal information. Big Data is different from the regular use of personal data in that consumers are not only affected by the primary collection of data, but also by the subsequent aggregation of that data to inform algorithms that govern companies' decision-making and affect individual users. Therefore users need additional tools to help them follow complex data flows and understand what picture of them this data enables, beyond just the general disclosures in privacy policies. For example, disclosing to an individual that a health insurance company knows her address does not inform her of the likelihood that this information is being combined with multiple other databases to create "neighborhood profiles" that in turn could affect pricing for individual customers within those neighborhoods. The requirement that companies detail how they will use gathered data bears more weight in the Big Data context than requirements that companies simply disclose what personal data they collect. A transparency framework that updates consumers when companies come up with new uses for aggregated personal data will increase user trust and help ensure that accountability takes place at the rate of business growth, rather than at the rate of governmental enforcement

DAs

Privacy Turn

1NC

Increased internet freedom would result in desensitization of human rights abuses and an increase in divisions.

Jamie **Metzl, 69**, served as Deputy Staff Director and Senior Counselor of the United States Senate Committee on Foreign Relations,[7] Senior Coordinator for International Public Information and Senior Advisor to the Undersecretary for Public Diplomacy and Public Affairs at the Department of State,[8] and Director of Multilateral and Humanitarian Affairs on the National Security Council, "Information Technology and Human Rights," http://www.heinonline.org.turing.library.northwestern.edu/HOL/Page?page=705&handle=hein.journals%2Fhurq18&collection=journals, shlee

In an information age where satellite television broadcasts and Internet appeals to address mass violations of human rights reach world populations on a daily basis, there is a danger that people will become callous to reports of difficulties everywhere in the world, that the limited human capacity for absorption, compassion, and responsive action will become spread so thin as to dilute popular outrage and forestall responsive action. There is also a danger that as information technology systems continue to play ever greater roles in the international worlds of commerce and communications, those without access to such systems will be denied the tools necessary to improve their conditions. This appears to be happening even in this early stage in the development of information technology systems. Although Internet access can be achieved through satellite, packet radio, microwave, or cable links, it is still mostly done by telephone, access to which is highly concentrated in the wealthiest countries!' It is thus not surprising that access to the Internet is no better distributed internationally.° This international division between rich and poor is often mirrored within states. In the United States, for example, where 60 percent of global computer networking takes place, the Rand Corporation has estimated that while only 3 percent of the bottom income quartile of the population had access to computer networks in 1993, 23 percent of the top quartile had access during the same period" In an information age, disparities in access to information and sources of knowledge can only exacerbate existing divisions between rich and poor societies, states, and individuals.

2NC

Increased privacy rights results would result in more oppressive forms of control

Morozov 11 (Evgeny Morozov, Bernard L. Schwartz Senior Fellow at the New America Foundation and a contributing editor of Foreign Policy, "Whither Internet Control?", April 2011, http://muse.jhu.edu/journals/journal_of_democracy/v022/22.2.morozov.html,shlee)

Most talk of "liberation technologies" as ways of weakening "Internet [End Page 62] control" turns out to be about the technological rather than the sociopolitical dimension. But what if success in that area is met with larger and more sophisticated efforts at exerting sociopolitical control? Scholars still know little about the factors that influence the dynamics and the distribution of the two kinds of control. As technological methods lose efficacy, sociopolitical methods could simply overtake them: An authoritarian government might find it harder to censor blogs, but still rather easy to jail bloggers. Indeed, if censorship becomes infeasible, imprisonment may become inevitable. Thus, if the technological dimension

of Internet control were one day to be totally eliminated, the upshot could be a set of social and political barriers to freedom of expression that might on balance be worse—not least because "liberation technologies" would be powerless to overcome them. It would be a cruelly paradoxical outcome indeed should liberation technology's very success spur the creation of a sociopolitical environment in which there would be nothing for technology to "liberate."

Politics DA

1NC - Unpopular

The plan is ridiculously capital-intensive

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

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

2NC - Unpopular

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

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

Political parties and increased political polarization may have exacerbated the difficulty of Article V. As American political parties have become nearly evenly divided across both the federal and state governments over the last two generations, writes David Kyvig, "divisions within society together with the requirements of Article V frustrated every attempt to bring about fundamental change."132 Kyvig adds that the close balance between political parties and among the forces of federalism alongside the "centripetal power of the federal government and the centrifugal strength of the states" have combined to inhibit agreement on formal amendment.133 Daryl Levinson and Rick Pildes observe that political parties in the United States "today are both more internally

ideologically coherent and more sharply polarized than at any time since the turn of the twentieth century."134 Rick Pildes connects the onset of today's hyperpolarized politics to the adoption of the Voting Rights Act of 1965: [T]his polarization reflects the deep structural and historical transformation in American democracy unleashed in 1965 by the enactment of the VRA. That moment began the process of ideologically realigning the political parties and of purifying them, so that both parties are far more ideologically coherent, and differentiated from each other, than at any time in many generations. The culmination of that historical transformation – which can be seen as the maturation or full realization of American democracy – is today's hyperpolarized partisan politics.135 Pildes concludes that "[t]he reality is that the era of highly polarized, partisan politics will endure for some time to come."136 This only complicates an already difficult formal amendment process that relies on strong supermajorities across both the federal and state institutions. Nevertheless, as Christopher Eisgruber cautions, measuring amendment difficulty is itself difficult because amendment difficulty turns "upon a number of cultural considerations, such as the extent to which state politics differ from national politics and the extent to which people are receptive to or skeptical about the general idea of constitutional amendment."137 The difficulty of measuring amendment difficulty has not discouraged scholars from comparing amendment difficulty across nations. In such measures, the United States has ranked among the most difficult to amend.138

Terror DA

Case Turn

Turns case – terrorism kills human rights

Office of the United Nations High Commissioner for Human Rights 8 "Human Rights, Terrorism and Counter-terrorism", Fact Sheet No. 32, July 2008, http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf, AB)

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights. The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council.7 Specifically, Member States have set out that terrorism: • Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights; • Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments; • Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery; 8 • Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and • Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security. International and regional human rights law makes clear that States have both

a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right"8

Case

Privacy Advantage

Amendment Fails

Plan causes privacy paternalism and OVERKILL with an amendment

Adam **Thierer 14**, senior research fellow at the Mercatus Center at George Mason University with the Technology Policy Program, Jan 23, 2014, "Do We Need A Constitutional Amendment Restricting Private-Sector Data Collection?", https://privacyassociation.org/news/a/do-we-need-a-constitutional-amendment-restricting-private-sector-data-colle, AB)

Astonishingly, Rosen doesn't seem to think that we should be free to do so. During our NPR debate, he said his amendment would disallow individuals from surrendering private data or privacy because he viewed these rights as "unalienable." But Rosen should keep in mind that not everyone shares the same privacy values and that many of us will voluntarily trade some of our data for the innovative information services we desire. If that choice is taken away from us then **"privacy regulation**," as privacy scholar Daniel Solove has recently noted, "**risks becoming too paternalistic**. Regulation that sidesteps consent denies people the freedom to make choices," Solove argues. "The end result is that either people have choices that are not meaningful or people are denied choices altogether." By making privacy choices for us, Rosen's proposed amendment would likely suffer from that same sort of privacy paternalism. Such paternalism is particularly problematic in this case since privacy is such a highly subjective value and one that evolves over time. As Solove notes, "the correct choices regarding privacy and data use are not always clear. For example, although extensive self-exposure can have disastrous consequences, many people use social media successfully and productively." Privacy norms and ethics are changing faster than ever today. One day's "creepy" tool or service is often the next day's "killer app." Finally, practically speaking, **a constitutional amendment is overkill** since many other options exist for protecting individual privacy from private data collection efforts. User education and empowerment is essential. So, too, is privacy by design and an expanded role for privacy professionals within private organizations. Targeted enforcement of existing laws, torts and other measures will continue to be applied here and perhaps even expand in their focus. And, again, more constraint on government's ability to commandeer private databases is absolutely essential. These are all far more practical and less-restrictive steps that can be taken without resorting to the sort of **constitutional sledgehammer** that Jeff Rosen favors. or upending the information economy.

Privacy Turn – Takes Away Freedom

Plan constrains private entity which takes AWAY freedom – turns case

Adam **Thierer 14**, senior research fellow at the Mercatus Center at George Mason University with the Technology Policy Program, Jan 23, 2014, "Do We Need A Constitutional Amendment Restricting Private-Sector Data Collection?", https://privacyassociation.org/news/a/do-we-need-a-constitutional-amendment-restricting-private-sector-data-colle, AB)

There are several problems with Rosen's proposal—legal, economic and practical. The bottom line is that a constitutional amendment would be too sweeping in effect and that better alternatives exist to deal with the privacy concerns he identifies. Conflating Two Different Things First, it goes without saying that a constitutional amendment is not a matter to be taken lightly. It alters the underlying fabric of our republic and represents the ultimate legal constraint. Rosen nonetheless thinks one is needed to cover both governmental- and private-sector data collection practices, even though the Fourth Amendment

already applies to government. Many people are rightly outraged about the extent of government surveillance activities that have come to light in the wake of the Snowden revelations. A crucial component of these revelations is that our government is increasingly vacuuming up data from private entities—sometimes with their consent, but often without those private entities having any choice in the matter (or perhaps not even knowing about it at all). This leads many privacy advocates to make a big leap: Because much of the data that our government collects today originates from private data collection efforts, we should just treat those private entities the same as government actors. "Once data is collected by private parties, the government will inevitably demand access," Rosen says. Therefore, he says, we should impose the same data collection restrictions on private actors that we impose on governments. Of course, it's always been true that "the government will inevitably demand access" to private data, but to the extent it is a growing problem, Rosen and other privacy advocates should redouble their efforts to constrain government surveillance powers and the ability to indiscriminately suck up privately held data. We could start with strong ECPA reform, elimination of the third-party doctrine, and other bolstered Fourth Amendment constraints on national security and law enforcement powers. Importantly, a private entity is just not the same as a government entity, and we should continue to distinguish between them when crafting data collection policies. Rosen says that "distinction between surveillance by the government and surveillance by Google makes little sense," but in reality, the differences between public and private entities remains profound. Private entities cannot fine, tax or imprison us. And while we can escape the orbit of private companies and their services, the same is not true for governments. We need to have serious discussions about how to help people better manage their privacy preferences, but if we begin those conversations by mistakenly conflating government and corporate power, then the end result will be sweeping controls on our modern information economy. Which is the next problem with Rosen's proposal: It would create serious social and economic trade-offs that he fails to consider. In terms of social trade-offs, a constitutional amendment limiting data collection might conflict with certain speech and information-gathering freedoms. As Professor Eugene Volokh has noted, at least here in the U.S., "We already have a code of 'fair information practices,' and it is the First Amendment, which generally bars the government from controlling the communication of information … whether the communication is 'fair' or not." Meanwhile, recent commercial speech jurisprudence—such as the Supreme Court's 2011 decision in Sorrell v. IMS Health Inc.—has bolstered First Amendment protections for data-gathering and use. There would also be economic trade-offs associated with Rosen's proposed amendment. Private data collection is the fuel that powers our information economy. It creates value for consumers by making possible innovative goods and services at a great price—often free. Banning private data collection and use will likely mean fewer choices or higher prices. That's why many of us already trade away some of our personal information in exchange for digital services that improve our lives in other ways. For example, the same location "tracking" techniques that Rosen and many others decry as privacy violations are also what enable the free mapping and traffic services that we rely on daily. Shouldn't we be allowed to make that trade?

Not having a clear definition of privacy turns case

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

Although the conclusions put forth in this article do not in themselves dictate any particular legal result, they should nonetheless serve to inform the development of Canada's fledgling privacy tort. We ought to know what privacy is, and what interests underlie it, before we set about fine-tuning a legal test designed to protect it. The same point can perhaps be put better in the negative: **without a clear conceptual account of privacy, "a legal privacy right would be**", as Delany and Carolan note, "**incomplete, incoherent, and liable to cause confusion".**230 An appellate court tasked with determining the scope of a Canadian privacy tort will have to identify the nature of a privacy invasion, find an appropriate doctrinal basis for the action, and decide how to balance competing interests in privacy and freedom of speech. I have argued throughout this article that a coherent understanding of

privacy must include both a physical and an informational dimension. The American approach, which recognizes both the wrongful disclosure of information and intrusions on private activities, provides a more comprehensive and conceptually justified response than the narrower "informationist" approach employed in New Zealand and England.

Privacy Doesn't Solve

Too vague to be legit

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

The "right to be let alone" occupies a hallowed place in privacy discourse. Although the phrase was coined by Judge Cooley42—who used it not to justify a right to privacy, but rather to explain why tort law regards trespass to the person as wrongful—it is now generally attributed to Warren and Brandeis, who invoked it throughout their seminal 1890 article.43 The latter authors analyzed numerous cases of trespass, defamation, confidence, and especially common law copyright, and identified a latent principle of privacy—operating unarticulated— which they argued should thenceforth be protected independently, as a distinct tort.44 This principle of privacy, expressed as a "right to be let alone", is anchored in the more fundamental interest of an "inviolate personality".4 The Warren and Brandeis formulation has come under much academic criticism. The first problem is its vagueness.46 Because neither the "right to be let alone" nor the concept of "inviolate personality" is adequately defined, 47 the article gives no practical or conceptual guidance on the scope of the right.48 A related criticism is that the phrase "right to be let alone" itself appears to be less a definition of privacy than simply a description of one example of it.49

Privacy is too sweeping/broad

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

The second criticism, stemming from the above mentioned vagueness, is that this conception of privacy is overly broad. As Gavison explains: [It] cover[s] almost any conceivable complaint anyone could ever make. A great many instances of "not letting people alone" cannot readily be described as invasions of privacy. Requiring that people pay their taxes or go into the army, or punishing them for murder, are just a few . . . examples.50 This conceptual over breadth is evident in how the "right to be let alone" has been used in American constitutional jurisprudence, where it is often equated with privacy51 and is taken to encompass the right to "live one's life as one chooses". 52 This includes the "privilege of an individual to plan his own affairs . . . [and] do what he pleases".53 This "substantive"54 conception of privacy confers a zone of decisional autonomy, and currently forms the basis for the right to abortion in American constitutional law.55 It has been much criticized as being really an "assertion of liberty per se [rather] than one of privacy".56 A narrower and clearer definition of privacy is needed.

Focus on surveillance as information gathering ignores content of the surveillance – causes restriction which turns the case

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational

Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

Conceiving of privacy as a claim to control personal information gets us very close to understanding its essence.63 Simply put, we intuit privacy as a claim to control, and this intuition is reflected in the social norms that surround us.64 We feel that this conception of privacy is the reason someone has a moral claim to keep the contents of his diary secret; and reasonable people reflect that understanding by respecting this right, or at least by intuiting that reading a person's diary violates something we all sense to be private. Furthermore, as I explain in section two, the claim to control personal information is closely associated with the values underpinning privacy (especially the values of dignity and autonomy). However, there are three significant problems with control-based definitions. The first problem is that insofar as they concentrate on information,65 they are too restricted.66 We all recognize, intuitively, that privacy can be invaded even where information is not communicated, such as where a peeping tom trains his telescope on a woman's bedroom to watch her undress. A definition of privacy that fails to capture such physical intrusions simply lacks intuitive coherence. It might be suggested that informational control can capture this example, the argument being that the tom has in fact received information about his victim (in the sense that he has learned what she looks like without clothes). This argument is problematic however, owing to its artificiality. Parker responds to it by asking us to imagine that the tom and the woman are lovers.67 Is it still sensible to regard the tom, when he sneaks a peak at his lover through the window after leaving her side, as obtaining information about what she looks like naked—information he already has?68 If the answer is no, then such peeping falls outside this definition of privacy, resulting in an intuitive under-inclusiveness. Even if we strain and answer yes because the man has learned that his lover remains undressed or is in a different pose, this information-based approach clearly fails to capture the true essence of the invasion.69 It is not that information has been acquired but rather that she is being "looked at . . . against her wishes".70 Wacks explains: What is essentially in issue in cases of intrusion is the frustration of the legitimate expectations of the individual that he should not be seen or heard in circumstances where has not consented to or is unaware of such surveillance. The quality of the information thereby obtained, though it will often be of an intimate nature, is not the major objection.71 These observations lead to a related point. As Moreham has convincingly argued, by failing to appreciate the true essence of the complaint, this information-based approach necessarily fails to appreciate the gravity of the privacy violation itself, and therefore must logically undervalue it.72 This is because, to be internally coherent, the information-based approach must regard the information learned as the only relevant factor when assessing the gravity of an invasion; but if we consider Parker's peeping lover example, we see that very little new information has in fact been communicated. Consequently, as the information learned was negligible, so too must be the violation of privacy. Such an approach is clearly inadequate if we regard this example as a serious violation of privacy.73 So, the first major problem with the "control over information" approaches is their narrowness, in that they fail to adequately capture what we intuit—that physical intrusions violate privacy for reasons unrelated to, and irrespective of, any information that may also be gleaned (or subsequently published) as a consequence of an intrusion. It is the looking (or listening or touching) itself, not the acquisition of information, that is offensive to our intuitive sense of privacy. Furthermore, as I explain in section two, the values underpinning privacy, and the reasons why it is important, strongly support including a physical intrusion dimension in our definition. Before moving to the remaining criticisms, it is worth noting that there is widespread academic74 and law commission75 recognition, and some judicial recognition, that physical intrusions lie at the conceptual core of privacy

Their definition of privacy is vague which causes exclusion

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

A second criticism of control-based definitions concerns ambiguity in the manner in which "control" is used by various commentators.77 If control is used, as Fried uses it,78 to mean actual control, and privacy is thus the state of controlling information, it follows that a person who cannot exert control

cannot enjoy privacy.79 But surely this cannot be correct, for it would mean that a person could not assert a right to privacy even in relation to highly sensitive personal information gathered while she is in a public place80—a position roundly rejected by academics,81 the House of Lords,82 the European Court of Human Rights,83 the New Zealand Court of Appeal84 and the Supreme Court of Canada.85 A related problem here is that treating privacy as a state of actual control over information may suggest a loss of privacy where there is only the threat of a loss.86 Moreham illustrates this by noting that if X had a machine capable of reading all of Y's emails, and also of seeing Y's naked body through her clothes, Y could not be said to have actual control over that information. So even if X never actually used the hypothetical device, the mere fact that he had it would violate Y's privacy.87 In short, "[c]ontrol-based definitions therefore fail to distinguish between those situations where there is a risk of unwanted access and those where unwanted access has in fact been obtained".88 A better conception of privacy is thus to formulate it, as Westin does, as a claim to control information, rather than a state of control itself.89 A third criticism of control-based definitions concerns their potential over breadth.90 This stems from the fact that many authors fail to identify with precision the types of information falling within a controlbased conception of privacy. Simply put, defining privacy as a claim to control information relating to one's self does little to help us know what information is in fact private. On a plain reading, it could mean that any information about a person is private, including the colour of her eyes or even her name—information that, to be sure, few would intuit to be private. What is needed is some conceptual device to guide us in ascertaining what information is private. I return to this issue, as well as to the concept of privacy as a claim to control, after considering the remaining conceptions of privacy.

Squo Solves

New ECPA legislation restores privacy rights – status quo solves

Chris **Calabrese 7/5**, the legislative counsel for privacy-related issues in the American Civil Liberties Union, "Post USA Freedom Act: There's more to be done," 7/5/15, http://www.ourmidland.com/opinion/editorials/post-usa-freedom-act-there-s-more-to-be-done/article_6676dd8c-7565-5ba4-8387-0158caae0784.html, AZ

But unless ECPA is reformed to reflect modern realities, government agents will continue to assert the authority to search our communications and our private possessions without a warrant and without showing any evidence whatsoever that a crime has been committed.
That's an intolerable and completely unwarranted invasion of our privacy. It isn't what the law's authors intended, of course. But government agencies are taking advantage of ECPA's unintended consequences to evade constitutional checks on their powers. And as long as ECPA remains on the books as written, it no longer represents an unexpected assault on our liberty. It is an intentional one.
Fortunately, members in both houses of Congress, led by Senators Mike Lee and Pat Leahy, and Representatives Kevin Yoder and Jared Polis, have introduced legislation to reform ECPA, and restore Fourth Amendment protections to our online communications. The ECPA Amendments Act and Email Privacy Act, respectively, would restore the law's original purpose to protect privacy in the ways we communicate, transact businesses, learn and recreate today by protecting emails and other communications stored with third party service providers for any amount of time.
Their legislation has broad, bipartisan support. It is backed by hundreds of members in Congress, including more than 270 House members. Outside the halls of Congress, conservatives, moderates and liberals, small and large businesses, labor unions, civil libertarians and former prosecutors all advocate reforms to an obsolete law that threatens the liberty and prosperity of the American people.
Congress has regularly had to pass reforms to legislation that technology has rendered obsolete and vulnerable to exploitation by the executive branch. We're calling on ECPA to be next.
Since our founding as a nation, Americans have insisted that we be secure in our persons and secure in our liberties. We made progress toward that end with the passage of the USA Freedom Act. The next step is the reform of ECPA, and re-establishing that neither changes in technology nor laws that have outlived their purpose can be allowed to infringe on Americans' privacy protections.

Your evidence is overstated – there is no root cause, and checks on surveillance in the status quo prevent escalation or injustice

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

There are, of course, infinite examples of people being persecuted, abused or discriminated against because of personal attributes (such as their religion or political opinion) which have been identified by others or by the State. This naturally tends to invite suspicion concerning disclosure of personal information. However, to draw a connection between this type of injury and the absence of privacy is misguided – it fails to identify the root cause of such conduct. People were not demonised, persecuted and murdered in Nazi Germany because there was no right to privacy, but because of the implementation by a totalitarian regime of policies based on a racist ideology which tapped into pervasive anti-Semitic attitudes in the community.132 In liberal democracies such as Australia, the strongest safeguards against the misuse of personal information by the State are the checks and balances built into the system through the separation of powers and the rule of law, and ultimately, the accountability of the executive government to the people at democratic elections. State agencies may only collect and use personal information about citizens if such action comes within the executive power of the State or is specifically authorised by law. Unauthorized action can be challenged in the courts. Moreover, the trend in recent times has been to provide further protection in the form of legislation such as the Privacy Act (Cth) 1988 which imposes obligations in relation to the collection, use and disclosure of information which the State is legally authorised to collect. Gibbs argues that the danger of introducing the concept of privacy into legal discourse is that 'it starts to colonize the various rights of action that already exist'.133 Bundling up complaints about the acquisition, disclosure and use of personal information under the heading 'privacy' militates against the clear and precise identification of the interests at stake and what, if any, remedies should be granted by the law when those interests are compromised.134 As a general rule, the misuse of personal information to discriminate against a person in employment or the provision of services is best addressed by laws which are specifically directed against the attitudes and conduct which cause the harm, rather than by a general right of privacy. Anti-discrimination laws fulfil this function. Of course, it may also be necessary to impose restrictions on the release of personal information held by private and public sector organisations in order to minimise the possibility of such information falling into the hands of criminals and sociopaths. But the object of such laws is the protection of personal security and safety, not privacy per se.

Quit your whining – privacy right concerns are unfounded and status quo solves

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

The existence of a right to privacy is dubious. Even if such a right does exist it is not a very important right, ranking well down in the list of interests that are conducive to human flourishing. Privacy proponents have been incapable of explaining the foundation for such a right and why it should enjoy a high level of legal protection. The present level of protection of privacy in specific contexts both through legislation and at common law is adequate, particularly in view of the recourse now available under the doctrine of confidence in relation to public disclosures of intimate information. The right to privacy can be seen as a late-twentieth/early twenty-first century First World invention, indicative of a highly individualistic society fearful of the capabilities of the technology it has developed. However the alarmist rhetoric of privacy advocates who proclaim the imminent demise of privacy does not match reality: in fact, it is arguable that citizens in Western societies enjoy a level of de facto privacy unprecedented in history.158 As to the threats posed by the monitoring capabilities of the new information technologies, it is now becoming apparent that technology itself can provide the means to counter them.159 The current legal focus and level of discussion concerning the right of privacy is a clear illustration of the human propensity for losing perspective. It follows that very few interests should be subjugated to the right of privacy.

Manufacturers are starting to respect privacy rights – account for privacy concerns through the national data protection

Marc **Dautlich and** Cerys Wyn **Davies 6/30**, head of information law at Pinsent Masons and partner, "Drone manufacturers can help operators respect privacy rights, says watchdog", 6/30/15, http://www.out-law.com/en/articles/2015/june/drone-manufacturers-can-help-operators-respect-privacy-rights-says-watchdog/, AZ

Drone manufacturers can help the organisations wishing to operate them respect privacy rights by warning of the "potential intrusiveness" of their use, an EU privacy body has said.

The Article 29 Working Party, a committee made of up representatives from the national data protection authorities (DPAs) throughout the EU, said the manufacturers could also put information on their packaging to tell operators where the use of drones is permitted. The manufacturers can also help account for privacy concerns in the use of drones by designing the devices with data protection in mind, it said.

"Data protection should be embedded within the entire life cycle of the technology, from the very early design stage, right through to its ultimate deployment, use and final disposal; such technology should be engineered in such a way as to avoid the processing of unnecessary personal data (for example, in case of strategic or critical infrastructures, engineering firmware of drones in order to inhibit data collection within previously defined no-fly zones could be advisable)," the Working Party's new opinion (21-page / 455KB PDF) said.

New codes of conduct could be drawn up by drone manufacturers and operators to ensure data protection requirements are considered and addressed, it recommended. The codes could help "enhance the social acceptability of drones", it said.

Current Supreme Court protections of privacy sufficient – LA v. Patel proves

Moxila **Upadhyaya and** Brandt **Mori 6/24**, trial attorney in civil litigation and real estate and business lawyer, "U.S. Supreme Court Issues Significant Ruling Protecting Privacy Rights of Hotel Owners and Guests", 6/24/15, http://www.mondaq.com/unitedstates/x/407006/Data+Protection+Privacy/US+Supreme+Court+Issues+Significant+Ruling+Protecting+Privacy+Rights+of+Hotel+Owners+and+Guests, AZ

One difficult situation in which hotel operators and owners can find themselves occurs when law enforcement demands access to private hotel guest records without a warrant.

On June 22, 2015, the U.S. Supreme Court issued an important decision addressing this very dilemma, siding with hotel owners. In City of Los Angeles v. Patel, the Court struck down a Los Angeles municipal provision that required hotels to make guest records available for inspection by any L.A. Police Department officer without the need for a search warrant. Prior to the Court's ruling, any officer could obtain, without a warrant, sensitive records, including a hotel guest's name, address, and vehicle details; the number of members in the guest's party; the method of payment; arrival and departure date; and room number. A hotel owner who refused to turn over such information could be arrested on the spot and be subject to a misdemeanor charge punishable by up to six months in jail and a $1,000 fine.

In its 5-4 decision, the Court held that the provision is unconstitutional because it violates the Fourth Amendment's protection against unreasonable searches and seizures. Because the municipal provision failed to afford hotel owners any pre-compliance opportunity to challenge the requested search, the Court held the provision to be facially unconstitutional. In so holding, the Court noted that "business owners cannot reasonably be put to this kind of choice" – that is, either handing over their guests' private information or facing arrest and criminal prosecution.

Writing for the Court, Justice Sonia Sotomayor noted that the Fourth Amendment may be satisfied as long as a hotel owner is afforded an opportunity to have a neutral decisionmaker review an officer's demand to search the hotel guest records before he or she faces penalties for failing to comply. This can be accomplished, for example, through an administrative subpoena by which the hotel owner may challenge law enforcement's request before a judge. This outcome, according to the Court, "reduces the risk that officers will use these administrative searches as a pretext to harass business owners."

Framing Advantage

Consequentialism

Deontological theories of privacy rights are baseless and guaranteed to fail

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

Non-consequentialist (rights) theories. The leading contemporary non-consequentialist theories are those which are framed in the language of rights. Following the Second World War, there has been an immense increase in 'rights talk',81 both in the number of supposed rights and in total volume. Rights doctrine has progressed a long way since its original aim of providing 'a legitimisation of ... claims against tyrannical or exploiting regimes'.82 As Tom Campbell points out: The human rights movement is based on the need for a counter-ideology to combat the abuses and misuses of political authority by those who invoke, as a justification for their activities, the need to subordinate the particular interests of individuals to the general good.83 There is now, more than ever, a strong tendency to advance moral claims and arguments in terms of rights.84 Assertion of rights has become the customary means to express our moral sentiments. As Sumner notes: 'There is virtually no area of public controversy in which rights are not to be found on at least one side of the question – and generally on both.'85 The domination of rights talk is such that it is accurate to state that human rights have at least temporarily replaced maximising utility as the leading philosophical inspiration for political and social reform.86 Despite the dazzling veneer of deontological rights-based theories, when examined closely they are unable to provide convincing answers to central issues such as: what is the justification for rights? How can we distinguish real from fanciful rights? Which right takes priority in the event of conflicting rights? Such intractable difficulties stem from the fact that contemporary rights theories lack a coherent foundation. It has been argued that attempts to ground rights in virtues such as dignity, concern or respect are unsound and that they fail to provide a mechanism for moving from abstract ideals to concrete rights.87 A non-consequentialist ethic provides no method for distinguishing between genuine and fanciful rights claims and is incapable of providing guidance regarding the ranking of rights in the event of a clash. In light of this, it not surprising that the number of alleged rights has blossomed exponentially since the fundamental protective rights of life, liberty and property were advocated in the seventeenth and eighteenth centuries. Today, all sorts of dubious claims have been advanced on the basis of rights: for example, 'the right to a tobacco-free job', the 'right to sunshine', the 'right of a father to be present in the delivery room', the 'right to a sex break',88 and even 'the right to drink myself to death without interference'.89 Novel rights are continually evolving and being asserted. A good example is the recent claim by the Australian Prime Minister (in the context of the debate concerning the availability of IVF treatment to same-sex couples or individuals) that each child has the right to a mother and father. In a similar vein, in light of the increasing world oil prices, it has been declared that this violates the right of Americans to cheap gasoline. In England, the Premier League has been accused of violating the right of football club supporters to an F.A. Cup ticket. Due to the great expansion in rights talk, rights are now in danger of being labelled as mere rhetoric and are losing their cogent moral force. Or, as Sumner points out, rights become an 'argumentative device capable of justifying anything [which means they are] capable of justifying nothing'.90 Therefore, **in attempting to uncover the scope and content of 'emerging' rights such as the right to privacy it is normally unhelpful to consider the issue from the perspective of a deontological rights-based normative theory.** Against the background of such a theory, proponents of the right can simply assert the existence of a right to privacy and equally validly, opponents can assert a 'right to know'. An impasse is then reached because there is no underlying ideal that can be invoked to provide guidance on the issue. As with many rights, the victor may unfortunately be the side which simply yells the loudest.91 This may seem to be unduly dismissive of rights-based theories and pay inadequate regard to the considerable moral reforms that have occurred against the backdrop of rights talk over the past half-century. There is no doubt that rights claims have proved to be an effective lever in bringing about social change. As Campbell correctly notes, rights have provided 'a constant source of inspiration for the protection of individual liberty'.92 For

example, recognition of the (universal) right to liberty resulted in the abolition of slavery; more recently the right of equality has been used as an effective weapon by women and other disenfranchised groups. For this reason, it is accepted that there is an ongoing need for moral discourse in the form of rights. This is so even if deontological rights-based moral theories (with their absolutist overtones) are incapable of providing answers to questions such as the existence and content of proposed rights, and even if rights are difficult to defend intellectually or are seen to be culturally biased. There is a need for rights-talk, at least at the 'edges of civilisation and in the tangle of international politics'.93 Still, the significant changes to the moral landscape for which non-consequentialist rights have provided the catalyst must be accounted for. There are several responses to this. First, the fact that a belief or judgment is capable of moving and guiding human conduct says little about its truth – the widespread practice of burning 'witches' in medieval times being a case in point. Secondly, at the descriptive level, the intuitive appeal of rights claims, and the absolutist and forceful manner in which they are expressed, has heretofore been sufficient to mask fundamental logical deficiencies associated with the concept of rights. Finally, and perhaps most importantly, we do not believe that there is no role in moral discourse for rights claims, simply that the only manner in which rights can be substantiated is in the context of a consequentialist ethic.94

Util & Consequentialism are necessary and prevent absolutism

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

Consequentialism. A more promising tack for ascertaining the legitimacy of a right to privacy is to ground the analysis in a consequentialist ethic. The most popular consequentialist moral theory is utilitarianism. Several different forms of utilitarianism have been advanced. In our view, the most cogent (and certainly the most influential in moral and political discourse) is hedonistic act utilitarianism, which provides that the morally right action is that which produces the greatest amount of happiness or pleasure and the least amount of pain or unhappiness. This theory selects the avoidance of pain, and the corollary, the attainment of happiness, as the ultimate goals of moral principle. We are aware that utilitarianism has received a lot of bad press over the past few decades, resulting in its demise as the leading normative theory. Considerations of space and focus do not permit us to fully discuss these matters. This has been done elsewhere.95 The key point to note for the purpose of the present discussion is that for those with a leaning towards rights-based ethical discourse, utilitarianism is well able to accommodate interests in the form of rights. Rights not only have a utilitarian ethic, but in fact **it is only against this background that rights can be explained and their source justified.** Utilitarianism provides a sounder foundation for rights than any other competing theory. For the utilitarian, the answer to why rights exist is simple: recognition of them best promotes general utility. Their origin accordingly lies in the pursuit of happiness. Their content is discovered through empirical observations regarding the patterns of behaviour which best advance the utilitarian cause. The long association of utilitarianism and rights appears to have been forgotten by most. However, over a century ago it was John Stuart Mill who proclaimed the right of free speech, on the basis that truth is important to the attainment of general happiness and this is best discovered by its competition with falsehood.96 Difficulties in performing the utilitarian calculus regarding each decision make it desirable that we ascribe certain rights and interests to people – interests which evidence shows tend to maximise happiness97 – even more happiness than if we made all of our decisions without such guidelines. Rights save time and energy by serving as shortcuts to assist us in attaining desirable consequences. By labelling certain interests as rights, we are spared the tedious task of establishing the importance of a particular interest as a first premise in practical arguments.98 There are also other reasons why performing the utilitarian calculus on each occasion may be counter-productive to the ultimate aim. Our capacity to gather and process information and our foresight are restricted by a large number of factors, including lack of time, indifference to the matter at hand, defects in reasoning and so on. We are quite often not in a good position to assess all the possible alternatives and to determine the likely impact upon general happiness stemming from each alternative. Our ability to make the correct decision will be greatly assisted if we can narrow down the range of relevant factors in light of pre-determined guidelines. History has shown that certain patterns of conduct and norms of behaviour if observed are most conducive to promoting happiness. These observations are given expression in the form of rights which can be asserted in the absence of evidence why adherence to them in the particular case would not maximise net happiness. Thus utilitarianism is well able to explain the existence and importance of rights. It is just that rights do not have a life of their own (they are derivative, not foundational), as is the case with deontological theories. Due to the derivative character of utilitarian rights, they do not carry the same degree of absolutism or 'must be doneness' as those based on deontological theories. However, this is not a criticism of utilitarianism, rather it is a strength since it is farcical to claim that any right is absolute. Another advantage of utilitarianism is that it is the

only theory that provides a mechanism for ranking rights and other interests. In event of clash, the victor is the right which will generate the most happiness.

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Even orthodox advocates of deontological prohibitions concede that certain significant risks warrant the infringement of rights - including the right to life.10 A leading strategy for dealing with the dilemma of extreme cases is what has come to be known as threshold deontology. Thus, most contemporary deontologists agree that deontological [End Page 849] injunctions can be overridden under certain circumstances. Even if one concedes that shooting down a plane carrying fifty passengers in order to save fifty victims is not justified, the numbers can surely be fiddled with until an acceptable ratio is achieved. What about shooting down fifty passengers to save 1 000 victims? What about 10 000? And what about shooting down two to save 50? The issue surely must not hinge on playing with the numbers. As a matter of principle, there must be some ratio of victims to potential victims that would indeed justify the downing of the plane.11 This is not merely an abstract observation of moral philosophers. The duties to protect are an established component of many constitutions, including the German Federal Constitution. This duty entails a duty to protect the potential victims of a terrorist attack, and such a duty, enshrined in the Constitution, may under certain circumstances require infringing some people's rights. Some of the difficulties faced by threshold deontology are familiar and need not be rehearsed here.12 Let us, however, point out one difficulty which, to our mind, has not received due emphasis. Threshold deontology we argue is not faithful to the underlying values and commitments of deontology of at least one central brand - Kantian deontology. The basic challenge faced by threshold deontology is to address the following question: if the life of one person cannot be sacrificed for the sake of saving one other person, or two, or even one hundred, why can it be sacrificed to save one thousand, or ten thousand, or one million? The natural answer of a Kantian threshold deontologist is to maintain that, while sacrificing one person to save two or three violates the victims' dignity, the sacrifice of one to save a thousand does not violate the victims' dignity. In other words, **there is a threshold above which the sacrifice of life does not constitute a violation of dignity.**

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Even if we grant that a "critical reconstruction" has to satisfy different criteria from an "interpretation," there must be some criteria for assessing its adequacy on textual and historical grounds. To qualify as a reconstruction, it must have sufficient similarity to its prototype. While it is often difficult to determine what is sufficient in a particular case, most philosophical scholars would agree--I believe--that if a reconstruction were to lead to views that contradict some of the most fundamental features of its prototype, then it does not qualify as a reconstruction. But precisely this is the case with van der Linden's interpretation of Kant's duty to promote the highest good as central for Kantian social ethics. The following three points should go some way towards showing this: (i) When van der Linden interprets "the highest good as a society in which human agents seek to make one another happy," he claims he has changed "somewhat Kant's common definition of the highest good, but [has] preserve[d] the meaning of his claim that we must promote the highest good (as the union of universal virtue and universal happiness)" (4). **But this is clearly false.** He has radically changed Kant's meaning by emphasizing a different factor from the one Kant does. Kant differentiates in the highest good between an "a priori factor" that depends upon us, i.e., our morality, and an "empirically conditioned factor" that does not necessarily depend upon us, i.e., is external to us. This latter factor is happiness. A duty "to further the summum bonum as far as it in us lies" (AK 5: 453) can only amount to furthering the component that is up to us, i.e., to pursuing the strictest morality, not universal happiness. Van der Linden wants us to further what is external to us, empirically conditioned, and clearly not entirely in our power (see also point ii). It is in this way that he transforms the summum bonum into a "social ideal." This ideal is perhaps more reasonable than Kant's, but it also amounts to the opposite of Kant's own ideal. At one point van der Linden observes: "Cohen eliminates the distinction between the highest political good and the highest moral good and puts in their place one highest good, a peaceful international order of democratic socialist societies" (164). That seems to

me, more or less, what van der Linden also does. (ii) When van der Linden attempts "to show that each of the formulations of the categorical imperative.., demands that we seek a moral society in which human agents try to make one another happy" (5f.), he clearly makes happiness the criterion for the morality of acts. However, if Kant was opposed to anything in his moral theory, it was precisely to this move. To be sure, his arguments are directed more against egoistic versions of this type of consequentialism, but his arguments can be seen to be directed against collectivist ones as well. For one thing, **Kant was much too skeptical about our ability to predict what will bring about happiness** (be it our own or that of other people) to give it such a central place in his moral theory (see especially Ak 4: 393-97, and 8: 370). Kant is also adamant that man's morality should not be based upon anything depending on "the circumstances in which he is placed" (ibid., 389). And this is one of the main reasons why he held that "from the viewpoint of the people's welfare, no theory properly applies at all; instead, everything rests on practice submissive to experience" (Ak 8: 3o6). Van der Linden's reconstruction transforms Kant's theory into something Kant himself says is impossible. (iii) In one of the late historical pieces on which van der Linden relies so much, Kant expressis verbis rejects the highest good as a moral principle, saying, when "we ask about the principle of morals, the doctrine of the highest good as the ultimate end of a will that is in conformity to its laws can thus be wholly ignored and put aside as episodic" (On the Old Saw: That May Be Right in Theory; Ak 8: 28o). What Kant considers (and, according to the logic of his position, must consider) as inessential and "episodic," thus becomes central in van der Linden's reconstruction. When he tells us "I place politics, history, social conflict, and the moral commitment to change society at the core of Kant's practical philosophy, attempting to undercut the view of ethics as primarily concerned with the struggle between individual duty and inclination" (vii, emphasis mine), he himself tells us precisely what he does.

***Consequentialism trumps deontology*

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Consequentialist accounts justify privacy insofar as it produces desirable outcomes. Rigorous versions of consequentialism are forms of utilitarianism, whereby outcomes are determined by an aggregation, or maximisation, of individual utilities. Utilitarian-influenced approaches are well-suited to evaluating which of a number of competing interests should prevail by reference to overall results. For example, a strict consequentialist could have no objection to an invasion of privacy that was **necessary to produce a desirable outcome**, such as the preservation of life or an increase in economic welfare. However, pure forms of consequentialism have considerable difficulties in dealing with arguments that rights should be respected regardless of the consequences.68 As a simple example, a consequentialist might consider acceptable the publication of intimate details of an intercepted telephone conversation or, indeed, the placement of surveillance cameras inside a person's home, if the invasion of privacy results in an increase in overall welfare. However, those who have favoured explicitly consequentialist views of privacy have generally not been indirect utilitarians. H J McCloskey, for example, simply regarded the protection of privacy as justified to the extent that it promotes what are, for him, the more fundamental goods of human happiness, justice and liberty.72 This led him to conclude, in general terms, that if concerns about privacy come into conflict with more fundamental concerns regarding liberty of action, **invasions of privacy should be accepted**, and social attitudes adjusted accordingly. If privacy is understood within the context of overall social processes of rationalisation and normalisation, and as integral to struggles over self-definition, the difficulties consequentialist accounts face in taking privacy seriously are comprehensible. In particular, by valuing a purely instrumental concept of reason, welfarism can be seen as privileging impersonal social objectives over human values, such as the ability of individual subjects to define themselves and respect for human dignity. Strict welfarist analysis is therefore completely implicated in processes of rationalisation and normalisation, suggesting that it is especially **ill-suited as a means for analysing the value of privacy.** It is only if the models of the individual subject and of human reason underlying welfarism are enriched in ways suggested by Mill and Sen — by including values such as the ability of the individual to determine his or her own ends — that consequentialism is ever likely to be sympathetic to privacy. The implication of such a broad approach would be to constrain the untrammelled pursuit of welfarist objectives by the

protection of individual rights, however formulated. However, broadening the approach in this way would seem to introduce the universalistic pretensions that plague deontological approaches to privacy.

***Human rights is the epitome of consequentialism*

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A specific group of human rights are categorized as qualified rights in political and legal practice because it is a common understanding that such [End Page 257] rights are not and should not be absolute.31 A human right is regarded as absolute when it cannot be overridden under any empirical circumstance whatsoever.32 Any competing consideration that may emerge according to circumstances is ruled out as irrelevant to upholding a human right in practice. The most common examples of absolute rights provisions in international law are freedom from torture, right to due process, and freedom from slavery.33 **These protections call for action from decision makers, independent of the circumstances.** Courts are also under an obligation to ensure that any measure taken by executive authorities does not infringe upon the absolute character of the right.34 Even the existence of exceptional circumstances, such as a state of emergency or an armed conflict, does not suspend this requirement of independent action.35 [End Page 258] Qualified rights, on the other hand, are marked by their lack of absoluteness. They may conflict with other interests that may or may not be protected by human rights. Whether the protection of such rights then should be subject to consequential forms of analysis remains unclear. Human rights protections precisely aim to act as constraints on consequentialist forms of reasoning. Acts of balancing require identification of interests, assigning values to them and ultimately to deciding which interest yields the net benefit. This leads to a contradicting position of subjecting the constraint itself (human rights protections) to a test of consequentialism.36 This position can only be logical if qualified rights, such as that of freedom of expression, freedom of assembly, or freedom of association are thought to be intrinsically different from absolute rights such as freedom from torture and freedom from slavery. This distinction would mean two things: First, qualified human rights are by their nature in a commensurate conflicting relationship with communal aims and interests and are, therefore, context-sensitive. Second, context-sensitive rights are by their nature subject to utilitarian calculations of net benefit. None of these points, however, are coherent with the nature of human rights protections. It is clear that acts of balancing require this central assumption—that conflicts are commensurate. The case-law of the European Court of Human Rights reflects the strong influence of this assumption. The European Court of Human Rights takes striking a fair balance "between the competing interests of the individual and the community as a whole"37 as one of its interpretive principles in assessing qualified human rights claims. This view reduces important questions about human rights to a conflict between the rights claims of a particular individual against the community. Human rights protections do indeed benefit certain persons at certain times. **The nature of human rights protections, however, is not about the interests of a specific person, but those of each and every person**. Every time a human rights protection is upheld, this does mean that a common interest is simultaneously sacrificed. It also does not follow that more of human rights protections mean less protection of common interests. [End Page 259]

***Rights protection is necessary irrespective of majority opinion*

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Human rights protections are best conceived, regardless of absolute or qualified forms, to serve their own purpose toward an understanding of common good. The deep values and considerations that back up human rights protections are not important because they maximize an overall good, but because they provide a space for individually-centered concerns in a political society.38 In international law, for example, human rights protections, by definition, concern everyone, obligations erga

omnes.39 In arguing **that human rights are important for each and every individual**, the emphasis should be on the separateness of individuals rather than their aggregate. The practice of the Inter-American Convention regarding freedom of expression,40 for example, suggests that this freedom has a "double effect," belonging to each individual to express and a collective to receive information and ideas.41 Even though this formulation might help to increase the rhetorical importance of freedom of expression, the risk of making rights vulnerable to their perceived importance to the community remains. For example, if a community overwhelmingly decides that it does not consider it to be important to receive information about climate change, should this have an effect on the right of individuals to freedom of expression? When human rights are defined as belonging to each and every individual, it is clear that their existence does not depend on a collective need and the right should be protected despite the lack of collective need or interest. Additionally, balancing—identifying, quantifying, and weighing the interests—is not the only way to address these contextual considerations. Indeed, even the European Court of Human Rights, has employed a range of non-balancing approaches. For example, the European Court of Human [End Page 260] Rights has considered the chilling effect caused by restricting the media's freedom of expression without balancing that right against communal interests.42 This shows a way of thinking about fundamental values behind freedom of expression without seeing this right in a head to head competition with a communal interest. When the Court says that the restriction of freedom of speech for a journalist would have a chilling effect, it is not weighing the right against other interests, but showing why it is important in its own end.43 Engagement with the context, consequences, and history can be undertaken consistent with human rights aims, not necessarily at the expense of them.

Yes War

U.S Russia war is uniquely likely

DeBar 14 (Press.TV citing Don DeBar, political analyst, host and journalist at CPRmetro.org, "US encirclement of Russia setting stage for nuclear war: Analyst", 11/9/14, http://www.presstv.com/detail/2014/11/09/385326/us-moves-make-nuclear-war-possible/, AB)

Political activist Don DeBar believes "the stakes are extremely" high for a nuclear war between Washington and Moscow due to US policy of military encirclement of Russia. "The United States has been advancing towards Russia physically in terms of placement of military resources, they are now parked at the borders of Russia from the Baltics up in the Baltic Sea in the very northwest corner of Russia down to the middle of Ukraine at this point in the southwest part of Russia," he told Press TV on Saturday. "The United States has been committing some very hostile acts towards Russia, attempting to tank its currency, attempting to isolate it economically in general, and Russia has, in turn, been looking elsewhere to find partners for the development that it seeks for its own population," the activist added. These hostile moves, DeBar said, have come at the same time that the Obama administration is pursuing its "pivot" to Asia which is aimed at containing China and giving rise to Japan as a military power. DeBar made the comments after American philosopher Noam Chomsky said that the escalating tensions between the United States and Russia could spark a nuclear war. "China has risen as an economic power. Russia has come back as an economic power, [it]maintains its nuclear weaponry and has been upgrading its military," DeBar said. "As tensions rise, as the law of unintended consequences has greater and greater play and as Chomsky cited the low-risk individual incidents of accidental war-peace planning, as you keep rolling the dice, sooner or later you'll get '7' or '11' and that's the end of humanity," the analyst noted. "The stakes are extremely high. The ironic part is that President Barack Obama got a Nobel Peace Prize at the beginning of his presidency because he had spoken to the need to eliminate nuclear weapons and he is now spending what's going to end up being a trillion dollars over the next 30 years, but hundreds of billions of dollars in the near term to upgrade and expand the power of the American nuclear arsenal," DeBar explained.

MAD doesn't check

Kroeig 14 (Matthew Kroenig, Associate Professor and International Relations Field Chair Department of Government Georgetown University & Nonresident Senior Fellow Brent Scowcroft Center on International Security

The Atlantic Council, "The History of Proliferation Optimism: Does It Have A Future?", February 2014, http://www.matthewkroenig.com/The%20History%20of%20Proliferation%20Optimism_Feb2014.pdf, AB)

Scott Sagan and other contemporary proliferation pessimists have provided systematic and thoroughgoing critiques of the proliferation optimism position.32 Sagan shows that the spread of nuclear weapons leads to greater levels of international instability because: states might conduct preventive strikes on the nuclear facilities of proliferant states, proliferant states might not take the necessary steps to build a secure, second-strike capability, and organizational pathologies within nuclear states could lead to accidental or inadvertent nuclear launch.33 As Frank Gavin writes in his review of the optimism/pessimism debate, "The real problem, however, is that Sagan plays small ball in his debate with Waltz, conceding the big issues. Why not challenge Waltz on his core arguments about deterrence and stability?"34 Rather than repeat the substantial efforts of previous pessimists, therefore, I will take up Gavin's challenge and focus on three big issues. In particular, this section maintains that proliferation optimists: present an oversimplified version of nuclear deterrence theory, follow a line of argumentation that contains an internal logical contradiction, and do not address the concerns of U.S. foreign policymakers. First and foremost, proliferation optimists present an oversimplified view of nuclear deterrence theory. Optimists argue that since the advent of Mutually Assured Destruction (MAD), any nuclear war would mean national suicide and, therefore, no rational leader would ever choose to start one. Furthermore, they argue that the requirements for rationality are not high. Rather, leaders must value their own survival and the survival of their nation and understand that intentionally launching a nuclear war would threaten those values. Many analysts and policymakers attempt to challenge the optimists on their own turf and question whether the leaders of potential proliferant states are fully rational.35 Yet, these debate overlook the fact that, apart from the optimists, leading nuclear deterrence theorists believe that nuclear proliferation contributes to a real risk of nuclear war even in a situation of Mutually Assured Destruction (MAD) among rational states.36 Moreover, realizing that nuclear war is possible does not depend on peculiar beliefs about the possibility of escaping MAD.37 Rather, as we will discuss below, these theorists understand that some risk of nuclear war is necessary in order for deterrence to function. To be sure, in the 1940s, Viner, Brodie, and others argued that MAD rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.38 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: how can states credibly threaten a nuclear-armed opponent? Since the 1960s, academic nuclear deterrence theory has been devoted almost exclusively to answering this question.39 And their answers do not give us reasons to be optimistic.

It's totally possible – seven independent reasons

-structural rivalries and stress
-belief that war is impossible
-thick interdependence
-rising nationalism and competing claims
-powerful military establishments
-diplomatic alliances
-temptation to maintain dominance

Allison 14 (Graham Allison, director of the Belfer Center for Science and International Affairs at the Harvard Kennedy School, "Just How Likely Is Another World War?", 6/30/14, The Atlantic, http://www.theatlantic.com/international/archive/2014/07/just-how-likely-is-another-world-war/375320/, AB)

This essay attempts to use the "May Method" to highlight seven salient similarities and seven instructive differences between the challenges confronting Chinese and American leaders today and those facing world leaders in 1914. While most of the similarities make the possibility of conflict today more plausible that it might otherwise seem, and most of the differences make conflict seem less plausible, instructively, some have the opposite effect. 1. "Thucydides's Trap": structural stress that inevitably occurs when a rapidly rising power rivals a ruling power. As Thucydides observed about ancient Greece, an ascendant Athens naturally became more ambitious, assertive, arrogant, and even hubristic. Predictably, this instilled fear, anxiety, and defensiveness among the leaders of Sparta. Accustomed to economic primacy, naval dominance, and an empire on which the sun

never set, Britain in 1914 viewed with alarm the unified German Reich that had overtaken it in industrial production and research, that was demanding a greater sphere of influence, and that was expanding its military capability to include a navy that could challenge Britain's control of the seas. In the decade before the war, this led Britain to abandon a century of "splendid isolation" to tighten entanglements with France and then Russia. During the same period, German military planners watched with alarm as Russia rushed to complete railways that could allow it to move forces rapidly to the borders of Germany and its faltering Austro-Hungarian ally. In 2014, what for most Americans is our natural, God-given position as "Number One" is being challenged by an emerging China on track to surpass the United States in the next decade as the world's largest economy. As China has grown more powerful, it has become more active and even aggressive in its neighborhood, particularly in what it believes are the rightly named "China" seas to its east and south. Fearful neighbors from Japan and the Philippines to Vietnam naturally look to the U.S. for support in its role as the guardian of what since World War II has been an American Pax Pacifica. 2. The virtual inconceivability of "total" war. In 1914, aside from occasional small wars and colonial smackdowns, war was "out of fashion." The best-selling book of the era by Norman Angell argued that war was a "great illusion," since the nominal winner would certainly lose more than it could possibly gain. In 2014, the "long peace" since World War II, reinforced by nuclear weapons and economic globalization, makes all-out war between great powers so obviously self-defeating that it seems unthinkable. 3. Thick interdependence: economic, social, and political. In 1914, the U.K. and Germany were each other's major European trading partner and principal foreign investor. King George and Kaiser Wilhelm were first cousins, the latter having sat by the deathbed of his grandmother, Queen Victoria, in 1901, and marched as second only to George at the funeral of George's father, King Edward VII, in 1910. Elites of both societies studied at each other's major universities, were partners in business, and socialized together. In 2014, China is the United States' second-largest trading partner, the U.S. the largest buyer of Chinese exports, and China the largest foreign holder of American debt. A quarter of a million Chinese students study annually in American universities, including most recently Chinese President Xi Jinping's only daughter. 4. Rising nationalism that accentuates territorial disputes. In 1914, as the Ottoman Empire unraveled, Serbian nationalists aspired to create a greater Serbia, and Russia and Austria-Hungary competed for influence among the Ottoman successor states in the Balkans. Meanwhile, resurgent Germans planned for a larger Germany and French patriots dreamed about recapturing Alsace-Lorraine, provinces taken by Germany from France after the Franco-Prussian War of 1870–71. In 2014, China's claim to the Senkaku Islands administered by Japan in the last China Sea, and the "9-dash line" by which it asserts ownership of the entire South China Sea, are reflections of ambitions that are defining new facts in the surrounding waters, exciting nationalism among its neighbors and in its own population. 5. Powerful military establishments focused on a primary enemy for the purposes of planning and buying (and justifying defense budgets). In 1914, Britain and Germany's militaries viewed each other as major threats, Germany and Russia saw the other as major rivals, and France was focused on the danger posed by Germany. In 1907, as Germany's naval expansion approached the point at which it could challenge British naval primacy, the British prime minister asked the leading analyst in the foreign ministry for a memorandum "on the present State of British relations with France and Germany." That now-famous document written by Eyre Crowe predicted that Germany would not only establish the strongest army on the continent, but also "build as powerful a navy as she can afford." Germany's pursuit of what the memorandum called "political hegemony and maritime ascendency" would pose a threat to the "independence of her neighbors and ultimately the existence of England." Today, the U.S. Department of Defense plans against something it calls the "Anti-Access/Area Denial threat," a thinly veiled "you know who" for China. Since its humiliation in 1996, when it was forced to back down from threats to Taiwan after the U.S. sent two aircraft carriers to support Taiwan, China has planned, built, and trained to push U.S. naval forces back beyond Taiwan to the first island chain and eventually to the second. 6. Entangling alliances that create what Henry Kissinger has called a "diplomatic doomsday machine." In 1914, a web of complex alliance commitments threatened rapid escalation into Great Power war. After unifying Germany in the late nineteenth century, Chancellor Otto von Bismarck constructed a network of alliances that would keep the peace in Europe while isolating Germany's principal enemy, France. Kaiser Wilhelm wrecked Bismarck's finely tuned alliance structure by refusing to extend Germany's alliance with Russia in 1890. Two years later, Russia allied with France. This led Germany to strengthen its ties to Austria-Hungary, and Britain to entertain deeper entanglement with both France and Russia. In 2014, in East Asia, the United States has many allies, China few. In 2014, in East Asia, the United States has many allies, China few. American obligations and operational plans cover a spectrum from the U.S.-Japan Treaty of Mutual Cooperation and Security, which obligates the U.S. to regard any attack upon Japan as an attack on the U.S., to agreements with the Philippines and others that require only consultation and support. As an assertive

China defines air identification zones, drills for oil and gas in contested areas, excludes other states' ships from waters around disputed islands, and operates ships and aircraft to redraw "rules of the road," it becomes easier to imagine scenarios in which mistakes or miscalculation lead to results no one would have chosen. 7. Temptation of a coup de main to radically improve power and prestige. In 1914, a declining Austria-Hungary faced rising, Russian-backed Pan-Slavism in the Balkans. Seeing Serbia as the epicenter of Pan-Slavism, Emperor Franz Joseph imagined that this menace could be contained by a decisive defeat of Serbia. The assassination of his heir, Franz Ferdinand, provided an opportunity. In 2014, Shinzo Abe seeks to reverse Japan's "lost decades." A quarter-century ago, Japan appeared to be on the threshold of becoming "Number One." Since then, it has stagnated economically and become almost irrelevant in international politics. Abe's program for revival thus includes not only "Abenomics," but also restoration of Japanese influence in the world, including revision of the constitution and expansion of Japan's military forces to meet what he explicitly calls the "China threat." In sum, those who see reminders of events a century ago in developments today are not deluded.

Solvency

1NC – Amendments Ineffective

Constitutional Amendments are ineffective and solved through other processes

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

The consequence of the difficulty of Article V has been to reroute political actors pursuing constitutional change from formal to informal amendment. Today, the battleground for constitutional change is what Bruce Ackerman calls a "transformative appointment[] to the Supreme Court."139 Ackerman explains that Article V's formal model of dual federalism, requiring assent from both national and state institutions, has been replaced by a new informal method of constitutional change that relies on the assent of only national institutions.140 The Electoral College selects the President in a national election, which in turn authorizes the President's use of the appointment power to trigger a "decisive break with the constitutional achievements of the past generation."141 The United States Senate then debates the merits of the President's Supreme Court nominee.142 And the Supreme Court subsequently either adopts or rejects an informal constitutional amendment intended to change the Constitution fundamentally.143 This new model of informal amendment codifies constitutional change in "transformative judicial opinions that self-consciously repudiate preexisting doctrinal premises and announce new principles that redefine the American people's constitutional identity,"144 rather than in a formal written change to the constitutional text. The difficulty of formally amending the Constitution has accordingly pushed "a significant amount of constitutional change off the books,"145 and forced political actors to update the Constitution informally through non-Article V methods,146 leaving the actual constitutional text unchanged. As Lawrence Church observes, the amendment procedures under Article V are "too cumbersome and erratic to serve as the sole vehicle for constitutional development in a complex and rapidly changing society."147 There are several other more flexible modes of constitutional change that do not rely on the mechanistic procedures of Article V in order to keep the constitutional regime current and reflective of new social and political equilibria. They result in unwritten changes to the Constitution that may be as constraining as a formal amendment. That the United States Constitution is both written and unwritten is therefore now uncontroversial.148 The Constitution is "much more, and much richer, than the written document."149 Though we cannot deny the importance of the constitutional text, it "is only one component of the country's actual constitution."150 The written constitution cannot completely reduce to writing the principles of natural rights that form our higher law and against which we judge the moral legitimacy of our positive law.151 Nor can it reflect the political forces, democratic traditions, and judicial precedent that constitute the

Constitution.152 Whether something is constitutional therefore depends less on where or whether it is codified than whether political actors perceive it as politically legitimate and conform their conduct to it.153

2NC – Amendments Ineffective

Article V amendments are too capital-intensive to be relevant

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

The pace of formal amendment in the United States is decelerating. Article V remains invoked by political actors but its successful use has declined since its entrenchment. Of the twenty-seven formal amendments inscribed in the text of the Constitution since its ratification in 1789, fifteen were ratified from the founding through 1870.102 The first ten, the Bill of Rights, were ratified in the same year, 1791.103 From 1871 through 1933, there were six formal amendments.104 From 1934 through 1967, there were four formal amendments.105 From 1968 through 1991, there was only one formal amendment.106 And since 1992, over twenty years ago, there has likewise been only one formal amendment.107 Article V has in fact become so infrequently used that Article V amendments have even been described as irrelevant.108 In addition to the decelerating pace of formal amendment, the content of formal amendment has changed as well. As John Vile observes, "[m]ost amendments ratified over the course of the last sixty years have dealt with minor structural features of the Constitution or with voting rights."109 András Sajó agrees, observing that since the Reconstruction Amendments, "amendments have been concerned with the technique of government," with the exception of the Prohibition Amendment, which was an effort to entrench morality.110 The changing orientation of successful uses of Article V compelled Robert Dixon, writing in 1968, to refer to Article V as the "comatose article of our living constitution."111 Whether it is dead or comatose can be answered by asking whether Article V has fallen into either disuse or desuetude. But first let us recognize that the declining use of Article V is attributable to its difficulty.

1NC – States Say No

States would probably not all agree

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

Today, Article V's state supermajority ratification threshold has become functionally even more difficult to achieve as a result of the expansion of the Union. As Rosalind Dixon explains, the increased number of states – from thirteen in 1789 to fifty since 1967 – has changed the denominator for Article V, which has increased the Constitution's amendment difficulty.128 Dixon explains: "All else being equal, this change in the denominator for Article V has implied a directly proportionate increase in the difficulty of ratifying proposed amendments."129 Dixon furthermore observes that today's fifty-state denominator under Article V would be equivalent to a founding-era state supermajority ratification threshold lower than two-thirds: "On one calculation, if one were to try to adjust for this change in the denominator for Article V, the functional equivalent to the 75% super-majority requirement adopted by the framers would in fact now be as low as 62%."130 Thomas Jefferson predicted this denominator problem, in 1823, when he wrote: [T]he States are now so numerous that I despair of ever seeing another amendment to the Constitution, although the innovations of time will certainly call, and now already call, for some, and especially the smaller States are so numerous as to render desperate every hope of obtaining a sufficient number of them in favor of "Phocion's" proposition.131 The Constitution's amendment difficulty therefore derives partly from Article V's structure.

75% of states need to support it for it to pass

Constitution 87, Article V of the Constitution, 1787, http://www.archives.gov/federal-register/constitution/article-v.html, AB)

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Only 10 states support privacy rights

NCSL 14, National Conference of State Legislatures, "PRIVACY PROTECTIONS IN STATE CONSTITUTIONS" 12/12/14, http://www.ncsl.org/research/telecommunications-and-information-technology/privacy-protections-in-state-constitutions.aspx, AB)

Constitutions in 10 states—Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, South Carolina and Washington—have explicit provisions relating to a right to privacy. The privacy protections afforded in some of these states mirror the Fourth Amendment of the U.S. Constitution relating to search and seizure or government surveillance, but add more specific references to privacy [shown in italics]. In addition, more general provisions in other states have been interpreted by courts to have established privacy rights or various types.

1NC – Policies Fail

Privacy policies fail- only are created to protect corporate interests.

Erison 6 (Richard Victor Ericson, professor with the Centre of Criminology at the University of Toronto , "The New Politics of Surveillance and Visibility,"2006, from The New Politics of Surveillance and Visibility,sl)

Discussions about privacy rights often proceed as if privacy is itself a stable phenomena that must be protected from incursions or erosion. Such a conceptualization tends to downplay the historical variability and political contestation associated with the precise content of 'privacy.' Claims to privacy and secrecy are political efforts to restrict the ability of others to see or know specific things. One of the more intriguing developments in this regard concerns how powerful interests are now appealing to such rights. The synoptic capabilities of contemporary surveillance have produced a greater number of powerful individuals and institutions with an interest in avoiding new forms of scrutiny. As such, privacy rights that were originally envisioned as a means for individuals to secure a personal space free from state scrutiny are being reconfigured by corporate and state interests. Corporations routinely appeal to legal privacy and secrecy protections. One of the more ironic of these involves efforts by firms that conduct massive commercial data surveillance to restrict the release of the market segment profiles that they derive from such information on the grounds that these are 'trade secrets.' The ongoing war on terror accentuates how the state is also concerned with carving out a sphere of privacy, even as it tries to render the actions of others more transparent. For example, the US. Patriot Act prohibits Internet service providers from disclosing the extent to which they have established governmental Internet monitoring measures. The US. administration has refused to meet Congressional demands for information regarding the implementation of the Patriot Act. The Pentagon regularly invokes claims to 'national security' to restrict public awareness of military matters, in-duding the capabilities of its surveillance technologies. Hence, legal claims to privacy are being invoked as a means to render the actions of powerful interests more opaque at the same time that these same institutions are making the lives of others more transparent. Some see this trend towards non-reciprocal visibility as one of the greatest inequities in contemporary surveillance (Brin 1998).

Privacy Version 2 Northwestern

CPs

Congress Legislation CP

1NC

CP text: The United States federal government should increase the evidentiary threshold under Section 3123 to a reasonable suspicion standard.

This solves privacy – provides clear limitations on surveillance

Richard M. **Thompson 14** – (Legislative Attorney at Congressional Research Service, "The Fourth Amendment Third-Party Doctrine", 6/5/14, Congressional Research Service, http://fas.org/sgp/crs/misc/R43586.pdf, AB)

Notwithstanding the concurring opinions in Jones, the bulk of Supreme Court and lower federal court precedent have left most non-content information unprotected by the Fourth Amendment. In some instances, Congress filled this void by creating varying levels of privacy protection for this type of non-content information. However, these protections are in the main not as robust as the warrant requirement, and in some instances, searches may be justified by little more than "official curiosity."171 Seven years after the Court handed down Smith and ruled that government access to telephone toll records was not covered by the Fourth Amendment, Congress enacted as part of the Electronic Communications Privacy Act of 1986 (ECPA) several provisions requiring the government to seek a court order before using a pen register or trap and trace device.172 Again, these devices allow the government to gather dialed telephone numbers and email addressing information, among other non-content information.173 Under 18 U.S.C. § 3123, a court "shall issue an ex parte order authorizing the installation and use of a pen register or trap and trace device ... if the court finds that the attorney for the Government has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation."174 A few things should be noted about this provision. First, the "shall" language removes discretion from the judge; if the judge finds the government has made the required certification, he must issue the order.175 Second, while the court must ensure that the government has made the proper certification, ECPA does not require an "independent judicial inquiry into the veracity of the attested facts."176 This means that the judge will not make an independent assessment whether the relevancy standard has been met, but only that the government has made the proper certification. One district court has noted that "the extremely limited judicial review required by [the pen register statute] is intended merely to safeguard against purely random use of this device."177 One magistrate judge went so far as to describe his role under the pen register statute as a "rubber stamp" limited to "proofreading errors," and that "without independent judicial review, the authorization of pen registers is subject to misuse and abuse."178 Third, the relevancy standard, which again the government, and not the court, determines if it has been met, is a "far from burdensome" legal standard.179 The Supreme Court has held, at least in the subpoena context, that information sought is not relevant only if "there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject" of the investigation.180 In light of this relatively lax standard, several prominent commentators on privacy and technology have suggested that Congress should increase the evidentiary threshold under Section 3123 from mere relevance to at least a reasonable suspicion standard similar to that used for accessing certain stored communications.1 Also included in ECPA is the Stored Communications Act (SCA), in which Congress provided varying degrees of protection to information historically subject to the third-party doctrine and, thus, outside the reach of the Fourth Amendment. Under 18 U.S.C. § 2703(c), service providers must hand over "records or other information pertaining to a subscriber" so long as the government can establish "specific and articulable facts" that the records are "relevant and material" to an ongoing criminal investigation.182 This is akin to the Terry reasonable suspicion standard—it is lower than probable cause but does require the government to articulate its basis to believe that the information is connected to criminal activity.183 This standard has been applied to data such as the to/from address line in an email or the IP addresses of websites a person has visited. Some courts have construed Section 2703(d) in conjunction with the pen register statute to allow the government access to cell site location information.184 Section 2703(c)(2) requires the providers to hand over other customer information such as their name, address,

telephone calling records, length of service, telephone number, and means and source of payments, including credit card or bank account numbers with either an administrative, grand jury, or trial subpoena.185 Additionally, Congress has passed more targeted privacy protection laws. For instance, the privacy of cable subscribers is safeguarded under the Cable Communications Privacy Act of 1984,186 and the privacy of video store customers under the Video Privacy Protection Act.187 More recently, various Members of Congress have sought to temper the reach of the third-party doctrine with respect to transactional data. Several days after the Edward Snowden leaks became public, Senator Paul filed the "Fourth Amendment Restoration Act of 2013" (S. 1121) in an effort to "stop the National Security Agency from spying on citizens of the United States[.]"188 This bill would require that "[t]he Fourth Amendment to the Constitution shall not be construed to allow any agency of the United States Government to search the phone records of Americans without a warrant based upon probable cause."189 While dictating to the judiciary what the Fourth Amendment should and should not protect may be beyond Congress's constitutional power,190 **Congress clearly can play a role in setting substantive and procedural limitations on government surveillance authorities.** For instance, Senator Paul has introduced a similar bill, the "Fourth Amendment Preservation and Protection Act of 2013" (S. 1037), which would prohibit federal, state, and local government officials from accessing information relating to an individual held by a third party in a "system of records."191 Other congressional measures would alter the third-party doctrine in a more targeted way. Several location monitoring bills would, for instance, prohibit companies from sharing their customers' location information unless the government obtained a warrant or one of several limited exceptions applied.192 So what does the future have in store for the third-party doctrine and the government's collection of non-content, transactional data? At this point, there appears to be only one solid vote on the Court in Justice Sotomayor for eliminating or significantly reducing the scope of this doctrine. Although there are hints in Justice Alito's Jones opinion that he and the three members of his concurrence are ready to reconsider this rule when it comes to pervasive government surveillance, his rationale was left somewhat underdeveloped. It will take future opinions to get a better sense of whether or how far these Justices are willing to go to limit government access to non-content information held in the hands of third parties. In the meantime, the lower federal courts might continue to limit or distinguish the third-party doctrine in specific and narrow instances. For instance, in the NSA telephone metadata case, Judge Leon limited Smith to its facts and held that it did not apply to this more comprehensive data collection program.193 Likewise**, if and when the Supreme Court is asked to reconsider the scope of the third-party doctrine, it is more likely to carve out specific exceptions than to overturn it in its entirety**. This approach would permit the courts to engage in a more nuanced, normative approach to analyzing the privacy interests implicated by accessing records derived from transactions between people and other various entities. Another possibility is for Congress to act. Justice Alito observed in Jones that "[i]in circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative" as "a legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way."194 This argument that Congress is best suited to address the nuanced policy questions that privacy and security entails has been expressed by commentators as well.195 Like the courts, it appears unlikely that Congress would be willing to completely eliminate the third-party doctrine. On the other hand, Congress may be more inclined to engage in a subject-by-subject approach, in which Congress limits the third-party doctrine in certain areas. Congress provided statutory protection for telephone toll records in the pen register/trap and trace statute; for Internet metadata in the Stored Communications Act; and for video customer records in the Video Privacy Protection Act. It could enact similar protection for other subject areas where non-content information is shared with companies as a necessary part of doing business.

2NC

Congress can modify the 4th amendment- this solves

Rosen and Wittes 11, Jeffrey and Benjamin, professor of law at The George Washington University and senior fellow in Governance Studies at The Brookings Institution, "Constitution 3.

0 : Freedom and Technological Change," Brookings Institution Press, 2011. ProQuest ebrary. Web. 30 June 2015.

The final question is what branch of government will create the use restrictions I have in mind. Can courts do this in the name of the Fourth Amendment, or is it up to Congress? In my view, Congress is the most likely regulator. The Fourth Amendment prohibits unreasonable searches and seizures. Use limitations are neither searches nor seizures, however. They are restrictions on what the government can do with information after it has searched for and seized it. There is little in the way of constitutional text, history, or precedent that supports recognizing use restrictions as part of Fourth Amendment protections. Granted, it is possible to creatively reimagine Fourth Amendment law in ways that recognize use restrictions. As far back as 1995, Harold Krent made such an argument. 1 Krent reasoned that obtaining information is a seizure and that the subsequent use of the information— including downstream disclosures of it— could make the seizure "unreasonable." In other words, instead of saying that searches and seizures occur at a specific time, they could be deemed to occur over a period of time. All uses of information would be required to be reasonable, and courts could distinguish between acceptable and unacceptable uses of information according to their reasonableness. The argument is creative, but I think it is too far a stretch from existing doctrine to expect courts to adopt it. In my view, there are two basic problems. First, most of the information collected by the government is not protected under current Fourth Amendment law. Collecting third-party records is neither a search nor a seizure (which is why they are frequently collected; information that is protected by the Fourth Amendment is collected only rarely). Under Krent's proposal, however, presumably we would need to overhaul that doctrine to make all evidence collection a seizure to enable courts to then pass on the reasonableness of the seizure. If we took that step, however, we would need an entirely new doctrine on what seizures are reasonable, quite apart from downstream uses. This would require a fairly dramatic overhaul of existing Fourth Amendment law, all to enable use restrictions. Second, disclosures of information come in so many shapes and sizes that courts would have little basis on which to distinguish reasonable from unreasonable uses. Every database is different, every data point is different, and every disclosure is different. The kind of fine-grained reasonableness inquiry called for by Fourth Amendment law would leave judges with few clear guideposts or historical precedents on which to distinguish uses that violate the Fourth Amendment from those that do not. For both of these reasons, recognizing use restrictions in Fourth Amendment law may create more problems than it solves. At the very least, we should not expect courts to take such a leap any time soon. In contrast, legislatures are well equipped to enact use restrictions. They can promulgate bright-line rules concerning information collected under specific government powers, and they can explain the scope of the limitation and the contexts in which it is triggered. Furthermore, they can legislate use restrictions at the same time as they enact the statutes authorizing the evidence collection. That way, use restrictions can be a part of the original statutory design, rather than something imposed years later by the

State Drafting CP

1NC Shell: State Drafting CP

CP Text: The fifty states and all relevant territories should draft an amendment expressly guaranteeing a right to informational privacy, then advocate and hold a voluntary convention to engage in a non-binding amendment proposal for this amendment

It solves and competes – it's distinct from regular procedure which shields the link to PTX since Congress isn't involved

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

There is a way to address the defects of the national convention approach. The nation could adopt an amendment process that avoids the problems of a runaway convention and most of the other uncertainties while also depriving Congress of the ability to block amendments. Under this reformed amendment process, the state legislatures would draft the amendment themselves rather than have a convention draft it. Once two-thirds of the state legislatures had approved the same specific language for an amendment, that amendment would thereby be formally proposed. This would trigger the ratification stage, which would require, as it does now, three-quarters of the states to ratify a constitutional amendment. This simple version of the reform could be improved in three ways. First, to facilitate deliberation and coordination, the amendment process would specifically authorize an advisory convention among the states so that they could discuss, in a nonbinding way, possible amendments to propose. Second, to prevent the small states from having excessive power relative to their populations, the voting rule for ratification should be changed so that each state's ratification does not count equally, but instead is measured based on its electoral votes. Third, to ensure that the ratification decision is made by a different entity than the state legislatures that propose the amendment, ratification would be decided by either state conventions or the people of the states through ballot measures.

2NC Solvency: States

Solves from the states alone

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

In proposing this reform, I will rely on the normative approach that I outlined earlier. In particular, I will assume that the best way to pass constitutional provisions is through a strict supermajority process that uses one entity to propose the amendment and another to ratify it. Yet, I will make one significant adjustment to this normative approach—limiting my proposals to those that are likely to be attractive to state legislatures. As I discuss in the next section, Congress is not likely to amend the Constitution to eliminate its veto, but the state legislatures might call a convention to increase their power. For state legislatures to do this, however, the amendment procedure has to be attractive to them.116 My goal in this Article is not merely to explore the normative defects of the broken convention process. It is also to show that a reform is available that would solve the problem and that could conceivably be enacted under the existing system. Thus, focusing on reforms that might be adopted is not an arbitrary limitation, but one that is essential to my purposes.

It solves and ensures passage

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

The overall effect of the political controls would be significant. In my view, they would operate to strongly discourage the passage of nonconforming amendments and to provide a reasonably strong chance that a state drafting amendment would, if it were actually popular, be enacted. While there is no single aspect of the process that guarantees these results, the combination of effects is likely to be powerful. First, the state agreement largely eliminates the coordination problems and therefore assures that if two-thirds of the states apply, a convention will be called. Second, the joint strategy of the states to write a specific amendment, to announce that a runaway convention would be illegal and improper, to select sympathetic convention delegates, and to attempt to block any nonconforming amendment at the ratification stage should have a significant effect in both blocking a runaway convention and in promoting passage of the state drafting amendment.

2NC Solvency: Coordination

The CP solves coordination problems

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

The state legislatures could address these difficulties by combining elements of the state drafting procedure with the existing national convention approach. First, the states should hold a voluntary convention in order to agree on a single specific amendment and a strategy for adopting it. By proposing a single specific amendment, the states would significantly reduce the coordination problems among the states and between the states and Congress. With two-thirds of the state legislatures calling for the exact same amendment, Congress would have no discretion to argue that the applications were not for the same subject.

AT: CP = Watered Down

No deficits, reforms are just as successful and any issues are insignificant

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

Obviously, this focus places limits on the normative attractiveness of the reforms that are available. If the state legislatures would be unwilling to enact good reforms, then no good reform could occur. Fortunately, I do not believe this is a significant problem. Given my assumption that a strict supermajoritarian process that uses two entities is desirable, the reform I propose here is close to what one might regard as the ideal. While the need for state legislative enthusiasm does require adopting a less than ideal approach, the defects are not so large as to make the proposal unattractive. The best is sometimes the enemy of the good. It makes sense, however, to address these possibly superior alternatives, which state legislatures are unlikely to adopt, after discussing the reform proposal.

AT: Runaways bad / Links to PTX

Solves and ensures no runaway failure or Congressional backlash

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

To address this problem, it would be useful for the states to hold a convention, but to do so in a way that avoids the pitfalls of the existing convention method. The Constitution ought to authorize conventions that are both voluntary and advisory. A group of states could choose to hold a convention whenever they deemed it advisable, but no state would be required to attend. The convention would not have any binding powers. Instead, it would allow the states to debate the merits of different proposals. It would also allow them to assess the popularity of different proposals and to compromise on a single amendment to be considered by each state legislature. A successful convention would endorse a single proposal that each state legislature could then approve. This type of convention would avoid the problems that afflict national conventions under the existing convention approach. First, it could not result in a runaway convention. The convention itself would have no power and its endorsement therefore could not allow a proposal to avoid state scrutiny. There also could be no runaway convention because proposals would result only from the actions of the state legislatures. Second, calling a convention would not require the states to agree on a single subject. A convention would not require specification of a subject and the delegates could discuss whatever they deemed important. But because the convention would have no power, it would have an incentive to discuss subjects that the state legislatures were interested in. Third, there would be no need for the convention to agree on specific voting rules or voting rights. While the convention might want to do so, nothing significant would turn on it since it would be an advisory body. The convention could report its votes in a variety ways, tabulating them based on state population, state equality, or some combination. With this information, the state legislatures would then be in a position to determine which proposals had significant support and to decide whether to formally endorse those proposals. Finally, there would be no problem of congressional sabotage of the convention because Congress would have no authority over it.

AT: Links to PTX

Congress doesn't even need to authorize them if the states agree to it

Michael B. **Rappaport 10**, Hugh and Hazel Darling Foundation Professor of Law, Director, Center for the Study of Constitutional Originalism, "REFORMING ARTICLE V: THE PROBLEMS CREATED BY THE NATIONAL CONVENTION AMENDMENT METHOD AND HOW TO FIX THEM", November 2010, VIRGINIA LAW REVIEW VOLUME 96 , NUMBER 7, http://www.virginialawreview.org/sites/virginialawreview.org/files/1509_1.pdf, AB)

If at least two-thirds of the states agreed to the application, this would eliminate most of the discretion that Congress ordinarily exercises when there are calls for a limited convention. First, with two-thirds of the states calling for the same convention, Congress would not have to decide whether state applications that differed from one another should be interpreted as calling for a single limited convention. Second, this proposal would also address the situation where Congress holds that there are no limited conventions.132 The contingency portion of this application would address that possibility and require Congress, in those circumstances, to call an unlimited convention. Thus, this proposed application would largely eliminate the two main ways that Congress might hold that applications for a limited convention did not actually require such a convention to be called.

AT: Say No

We don't need all states to say yes to win – a substantial number is sufficient to pass the plan – empirics prove controversy doesn't prevent passage

Alan **Greenblatt 13**, governmental and political reporter at NPR and won the National Press Club's Sandy Hume award for political journalism while reporting for Congressional Quarterly, "Failure To Ratify: During Amendment Battles, Some States Opt To Watch," 2/21/13, http://www.npr.org/sections/itsallpolitics/2013/02/20/172495803/failure-to-ratify-during-amendment-battles-some-states-opt-to-watch, az

Mississippi has received lots of attention this week for finally having ratified the 13th Amendment, which abolished slavery. But **the state is hardly alone in being slow about blessing some long-established national principle**. **After a sufficient number of states have ratified an amendment, it can feel like a moot point for legislatures to give belated approval to laws that are already in effect**. "Legislative calendars are crowded, and arguing over settled matters isn't a good use of time," says Larry Sabato, director of the University of Virginia Center for Politics. Remember from civics class how constitutional amendments are ratified? Two-thirds of both chambers of Congress approve a resolution, which is then sent to the states. If three-quarters of them pass the amendment within a set period of time, it's enshrined into the Constitution. 'They Missed The Boat' This has happened on 27 of the 33 occasions that Congress has sent amendments out to the states. Of the six amendments submitted to the states that failed to attract the needed support, the most recent came in 1985, when time ran out for states to ratify an amendment giving full congressional representation to the District of **Columbia. Once an amendment has been passed by three-quarters of the states, the others need not bother; it's settled law.** Lots of states have withheld approval of amendments that have already achieved the support needed for ratification. For example, four states — Connecticut, Rhode Island, Vermont and Utah — have never ratified the 16th Amendment, allowing the imposition of the federal income tax. Their residents still pay up come April 15, though. "Massachusetts, Georgia and Connecticut didn't ratify the first 10 amendments until the late 1930s" — actually, 1939 — "about the time that the Bill of Rights became a big deal in the United States," says Pauline Maier, an MIT historian and author of Ratification. "They missed the boat in 1789-91." After the amendment to repeal Prohibition was rapidly passed by the necessary 36 states in 1933, only a couple of the states that had missed the boat ever bothered with it. "Maybe they felt they didn't need to, because other states had already repealed it," says Florence M. Jumonville, a historian and librarian at the University of New Orleans. Reluctant Rhode Island But no state, it seems, has been as reluctant to sign off on constitutional provisions as Rhode Island. **Some appear to be cases where the state's vote wasn't needed, such as the 16th Amendment and the 22nd Amendment (two-term limits for presidents).** Rhode Island, though, had boycotted the Constitutional Convention and originally rejected the Constitution itself. It was the last of the 13 original colonies to approve the founding document, in part because of a long-forgotten argument over paper money. "They already felt they had just fought a war to get out from one distant government, and they didn't want to be under another one," says Al Klyberg, former director of the Rhode Island Historical Society. Rhode Island later pushed hard against the 17th Amendment, which created direct election of U.S. senators. Prior to its adoption in 1913, senators were chosen by state legislatures. The old system suited Rhode Island. Thanks to the clubby atmosphere it created in the Senate, Rhode Island Republican Nelson Aldrich so dominated the body that he was often referred to as the "general manager of the United States." Also, letting the Legislature pick senators ensured GOP dominance within the state. Rural towns dominated by the GOP had disproportionate representation in the state

Legislature and hadn't selected a Democratic senator since 1850 (prior to the Republican Party's founding). "It was very clear why the General Assembly would fail to ratify that amendment," says Patrick T. Conley, historian laureate of the state. "It would be relinquishing power." Rhode Island also initially resisted the 15th Amendment, which (in theory, upon ratification in 1870) guaranteed voting rights for African-American men. One of its senators had already helped water down its language during congressional consideration, so that it didn't address discrimination based on nationality or ethnicity. Still, Rhode Island officials worried that it might interfere with the state's practice of requiring naturalized citizens to own property before they could vote. "There was a big anti-Irish sentiment to Rhode Island's reticence to amending," Conley says. 'Feel-Good Ratification' Ultimately, pressure was put on the state because its approval was needed for ratification, due to opposition from Southern states as well as Oregon and California. Those states were reluctant to ratify for fear the franchise might be extended to citizens of Chinese ancestry; they didn't get around to ratifying the amendment until 1959 and 1962, respectively. A number of states have played catch-up in this way, approving amendments decades after they had become part of the Constitution. Tennessee, for example, didn't approve the 15th Amendment until 1997, while Maryland ratified the 17th Amendment just last year. "This is what you might call a feel-good ratification," says Richard Bernstein, the author of Amending America. "They're trying to make amends for having missed making it part of the Constitution the first time." But **it's also a reminder that constitutional amendments — even though they must achieve some sort of consensus because of the supermajority vote requirements for passage — were often highly controversial in their day.** There were reasons Rhode Island didn't want to approve direct election of senators, or Mississippi didn't vote to abolish slavery back in the 1860s. "Virtually all of the amendments were controversial in some way," says Bernstein, who teaches history and political science at City College of New York, "even the Bill of Rights itself."

States CP

Solvency

State constitutions sufficient to protect from infringing surveillance - Florida's 100 new laws prove

Jenna **Buzzacco-Foerster 6/30**, "More than 100 new state laws take effect Wednesday," 6/30/15, http://www.tcpalm.com/news/politics/legislative-session-2015/more-than-100-new-state-laws-take-effect-wednesday_04854714, AZ

A law aimed at protecting Floridians from unwanted surveillance is one of more than 100 that take effect Wednesday. The law — dubbed the Freedom from Unwarranted Surveillance Act — spells out that unmanned aerial drones can't be used for surveillance. It also says when devices can be used.

"From my standpoint, I think it's a good start," said Stephen Myers, owner of Angel Eyes UAV in Naples. "It's a good beginning." Drones can be used to assess property taxes, for aerial mapping, and to conduct environmental monitoring. The law also says that drones can be used by a person licensed by the state to perform "reasonable tasks within the scope" of the person's job. Myers said that could mean insurance companies can use drones for roof inspections or to inspect large properties, like golf courses, for damage following a storm.

Rep. Ray Rodrigues, R-Estero, said he supported the law because it protected Floridians' privacy, while still allowing some commercial uses.

"We've seen the technology for drones evolve rather rapidly and the technology has exceeded the statutory privacy protections," said Rodrigues, who co-sponsored the measure in the House. "I saw a strong effort to ensure our right to privacy. It addressed the concerns I had."

The drone law is one of dozens — including the state's $78 billion spending plan and a nearly $400 million tax cut package — that went into effect Wednesday, the first day of the state's fiscal year.

States solve

Jeffrey A. **Parness 11**, B.A., Colby College, J.D., University of Chicago, taught for six years at the University of Akron School of Law, Northern Illinois University, 2011, "American State

Constitutional Equalities", GONZAGA LAW REVIEW Vol. 45:3, https://www.law.gonzaga.edu/law-review/files/2011/02/Parness.pdf , AB)

American state constitutions can play a key role today in protecting individuals.9 State constitutional laws can afford protections beyond those dictated by federal lawmakers. While the federal Constitution chiefly implies individual rights through recognizing federal and state governments with express and limited powers, state constitutions often "contain positive or affirmative rights."10 At worst, expansive state constitutional rights are hortatory, simply duplicating important federal values or iterating unenforceable local values. At best, they extend new rights locally, deeming unlawful any oppressions that are irrational or uncompelling.11 Because of their narrower setting, in constitutional matters states are more able "to experiment, to improvise, [and] to test new theories."12 Thus, if "a state experiment succeeds, others may follow," and if an experiment fails, the failure will be isolated.13 As well, because they are more prone to amendment than the federal Constitution,14 state constitutions can more quickly respond to failed experiments, social changes, and new values.15 Of course, for many, too many amendments may diminish the enhanced or special status of constitutional law.16 State constitutional rights can be read to be independent of, and thus to reach beyond, federal constitutional rights17 even when the federal and state constitutions are both applicable and employ the same or similar language.18 For example, a reasonable search or seizure for federal constitutional purposes may be an unreasonable search or seizure under a state constitution.19 A state constitutional right can also follow the federal constitutional language on federal rights, even though that federal right is inapplicable to the states.20 State constitutions can also expressly recognize rights and limits on governmental conduct that are unaddressed in the federal Constitution.21 Thus, they can expand rights by condemning private as well as public acts resulting in inequalities.22 They can **explicitly speak to privacy and other enumerated rights,**23 thus avoiding the difficulties in recognizing similar protections through vague terms like liberty and through unenumerated rights analyses. 24 Further, state constitutions can explicitly limit state governmental acts directed at certain citizens who are far less protected or relatively unprotected under the federal Constitution.25 Finally, comparable constitutional rights and limits may themselves be read differently from state to state. Thus, there can be varying interstate levels of judicial protection for certain comparable rights with heightened judicial review required at times.26 Greater equalities should be especially promoted by state constitutions where significant and unfair inequalities continue without other federal or state law remedies.27 One example is discrimination based upon sexual orientation. A quick review of contemporary American state constitutions reveals there is already a wide range of local constitutional initiatives furthering equality

States approve, innovation + support

Jeffrey A. **Parness 11**, B.A., Colby College, J.D., University of Chicago, taught for six years at the University of Akron School of Law, Northern Illinois University, 2011, "American State Constitutional Equalities", GONZAGA LAW REVIEW Vol. 45:3, https://www.law.gonzaga.edu/law-review/files/2011/02/Parness.pdf , AB)

Equalities in employment, housing, schooling, and other settings have broad public support. Greater express state constitutional recognitions of self-executing rights of all persons to be free from employment, housing, schooling, and other discrimination on the basis of race, sex and other inappropriate classifications, subject to limited legislative oversight, would extend equalities beyond federal law mandates. They would reflect the establishment of fundamental local values and allow for experimentation. They could also prompt varying balances between judicial and legislative authority over equality, both between states and within states depending upon the equality context.

The states solve – the federal government has ceded privacy protection to the states

Jeffrey M. **Shaman 6**, Vincent de Paul Professor of Law, DePaul University College of Law, "THE RIGHT OF PRIVACY IN STATE CONSTITUTIONAL LAW," 2006, http://org.law.rutgers.edu/publications/lawjournal/issues/37_4/Shaman.pdf

The right of privacy has developed primarily through decisions of the United States Supreme Court interpreting the Federal Constitution.9 Over the years, the Supreme Court has used the Fourteenth Amendment to the United States Constitution10 to formulate an evolving right of privacy that encompasses certain family rights, reproductive rights, and, most recently, a right of intimate association.11 Yet the Court has placed definitive limits on family and reproductive rights, and also has refused to extend the right of privacy to other areas.12 There is scant agreement among the Justices of the Supreme Court concerning the right of privacy, and at times, the high Court's **commitment to privacy has wavered** considerably. As a result of the Court's continuing equivocation in this area, the scope of the right of privacy under the Federal Constitution is considerably uncertain. Given this uncertainty, it was hardly surprising when a number of states stepped into the breach to revitalize the right of privacy. State constitutions, after all, are an important source of protection for individual rights and liberties, including the right of privacy. Indeed, state constitutions contain various provisions that can be used to protect the right of privacy. Many state constitutions contain due process or law of the land clauses safeguarding liberty that have been interpreted to ensure the right of privacy.13 Similarly, state constitutional provisions that deny the existence of arbitrary power over individual liberty have been construed to protect the right of privacy.14 State constitutional provisions guaranteeing equality also are used as a means of protection for the right of privacy. In some states, a right of privacy has been found implicit in constitutional provisions declaring, "All persons are by nature free and independent, and have certain natural and unalienable rights"15 or stating, "The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people."16 In modern times, five states—Alaska, California, Florida, Hawaii, and Montana—have amended their constitutions to expressly protect the right of privacy.17 These express provisions provide **fertile ground for the recognition** of expansive privacy rights. But even where only a more general constitutional provision, such as a due process clause, is available as a source of protection for privacy, some states have been willing to countenance expansive privacy rights. In recent years, as claims have been made to expand the right of autonomy to new dimensions, the states have differed in their willingness to do so. Some state courts have moved forward to expand the right of a woman to choose to have an abortion, while others have declined to take that course. A number of state courts have recognized the right of intimate association and struck down sodomy laws well before the Supreme Court was willing to do so, while other state courts chose to stand fast with the then prevailing federal approach rebuffing the right of intimate association. Of late, a number of state courts have faced the issue of same-sex marriage or civil union, and have reached various conclusions concerning it. The Supreme Court of Massachusetts became a pioneer by being the first judicial body in the nation to rule that the right of privacy secured by the state constitution encompassed a right to same-sex marriage.18 Some twenty-eight years before that, the Supreme Court of Alaska pioneered a different sort of privacy by ruling that the state constitutional guarantee of privacy afforded a right to possess marijuana for personal use in the privacy of one's home,19 although the court later was unwilling to extend that right to the possession of cocaine.20 The Alaska ruling was reminiscent of a few earlier cases upholding, on grounds of privacy, a right to smoke cigarettes or to ingest alcoholic beverages.21 Those decisions, though, fell into desuetude for many years, until they were revived as the foundation for regenerating the right of privacy.

States solve best – they're already pioneers in privacy law

Somini **Sengupta 13**, foreign correspondent for The Times, "States rush to fill gap in U.S. privacy laws; Lawmakers see increase in support after accounts of federal surveillance," lexis, 11/01/13

State legislatures around the United States, facing growing public concern about the collection and trading of personal data, have rushed to propose a series of privacy laws, including limiting how schools can collect student data and deciding whether

the police need a warrant to track cellphone locations. Over **two dozen privacy laws have passed this year** in more than 10 states, in places as different as Oklahoma and California. Many lawmakers say that news reports of widespread surveillance by the National Security Agency have led to more support for the bills among constituents. And in some cases, the state lawmakers say, they have felt compelled to act because of the stalemate in Washington on legislation to strengthen privacy laws. "Congress is obviously not interested in updating those things or protecting privacy," said Jonathan Stickland, a Republican state representative in Texas. **"If they're not going to do it, states have to do it."** This year, Texas passed a bill introduced by Mr. Stickland that requires warrants for email searches, while Oklahoma enacted a law meant to protect the privacy of student data. At least three states proposed measures to regulate who inherits digital data, including Facebook passwords, when a user dies. Some of the bills extend to surveillance beyond the web. Eight states, for example, have passed laws this year limiting the use of drones, according to the American Civil Liberties Union, which has advocated such privacy laws. In Florida, a lawmaker has drafted a bill that would prohibit schools from collecting biometric data to verify who gets free lunches and who gets off at which bus stop. Vermont has limited the use of data collected by license plate readers, which are used mostly by the police to record images of license plates. California, long a pioneer on digital privacy laws, has passed three online privacy bills this year. One gives children the right to erase social media posts, another makes it a misdemeanor to publish identifiable nude pictures online without the subject's permission, and a third requires companies to tell consumers whether they abide by "do not track" signals on web browsers. More than a year ago, the White House proposed a consumer privacy bill of rights, but Congress has not yet taken on the legislation. And a proposed updating of the 27-year-old Electronic Communications Privacy Act has stalled. Many states have already responded to those opinions. In the past couple of years, about 10 states have passed laws restricting employers from demanding access to their employees' social media accounts. California set the stage on digital privacy 10 years ago with a law that required organizations, whether public or private, to inform consumers if their personal data had been breached or stolen. Several states followed, and today, nearly every state has a data breach notification law. This year, California amended that landmark law, adding an Internet user's login name and password to the menu of personal information that is covered. The California attorney general's office also has a full-time unit to enforce digital privacy laws.

Privacy Bill CP

1NC Shell

Privacy bill solves – creates a better framework of privacy policy

White House 12 – The White House ["Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy", February 2012, https://www.whitehouse.gov/sites/default/files/privacy-final.pdf] hk

The United States is committed to protecting privacy. It is an element of individual dignity and an aspect of participation in democratic society. To an increasing extent, privacy protections have become critical to the information-based economy. Stronger consumer data privacy protections will buttress the trust that is necessary to promote the full economic, social, and political uses of networked technologies. The increasing quantities of personal data that these technologies subject to collection, use, and disclosure have fueled innovation and significant social benefits. We can preserve these benefits **while** also ensuring that our consumer data privacy policy better reflects the value that Americans place on privacy and bolsters trust in the Internet and other networked technologies. The framework set forth in the preceding pages provides a way to achieve these goals. **The Consumer Privacy Bill of Rights should be the legal baseline that governs consumer data privacy in the United States**. The Administration will work with Congress to bring this about, but it will also work with private sector stakeholders to adopt the Consumer Privacy Bill of Rights in the absence of legislation. To encourage adoption, the Department of Commerce will convene multistakeholder processes to encourage the development of enforceable, context-specific codes of conduct. The United States Government will engage with our international partners to increase the interoperability of our respective consumer data privacy frameworks. Federal agencies will continue to develop innovative privacy-protecting programs and guidance as well as enforce the broad array of existing Federal laws that protect consumer privacy. A cornerstone of this framework is its call for the ongoing participation of private-sector stakeholders. The views that companies, civil society, academics, and advocates provided to the Administration through written comments, public symposia, and informal discussions have been invaluable in shaping this framework. Implementing it, and making progress toward consumer data privacy protections that support a more trustworthy networked world, will require all of us to continue to work together.

2NC: Solvency

Individual control over data solves the aff

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

The principle of Individual Control in the Consumer Privacy Bill of Rights shifts the focus away from the longstanding principle of notice-and-choice to more dynamic and flexible mechanisms. Notice-and-choice is one important mechanism of privacy protection, but the Commerce Department Green Paper process found that routine checking of boxes puts too much weight on the unmanageable burden of reading privacy policies and does not differentiate among situations that present material privacy risk and those that do not. Whether data is used in a commercial context, or for basic medical or scientific research, may also be relevant to what kind of individual control is warranted. The Consumer Privacy Bill of Rights therefore calls for contextual mechanisms to exercise choice at the time of collection "appropriate for the scale, scope, and sensitivity of the data in question," and also for additional mechanisms to address the use of personal data after collection. This principle reflects the Big Data environment in two ways. First, it recognizes that the increasing velocity and variety of data collection make notice-and-choice ineffective. consumers are asked for consent too frequently and on devices such as mobile phones that are not suited to deliberate informed consent. Second, it recognizes that the velocity of data includes increased sharing with third parties with whom consumers do not have a direct relationship. Moving away from a one-size-fits-all notice and choice regime in which consumers often face a binary choice (either to give up data control or not to use a service) will strengthen fair exchange of value between consumers and companies by allowing consumers greater choices of how much to share in exchange for a given level of features and benefits. There are certainly contexts in which individual control will play a minor role as compared to other principles such as Respect for Context and Focused Collection. The expanded use of sensors and other developing forms of automated data collection will make notice-and-choice and other mechanisms of control impossible or infeasible in an increasing number of circumstances. The principles of Consumer Privacy Bill of Rights are intended to apply in interactive and dynamic ways appropriate to the technologies they address; the expansion of Big Data will put a premium on such application.

Privacy principles reduce the risk of leaks

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

1. Re-identification risk: The risk that personal data can leak **from big data research platforms** is real. Principles including Transparency, Security, Focused Collection, and Accountability will all be important to manage this risk. Transparency will enable regulators, enforcement authorities, and interested members of the public such as advocates and academics to know what kind of data is being released and in what form. Assessing whether the users' rights to have data held securely should include an assessment of who is able to access the data and therefore whether the re-identification risk can be minimized by binding those individuals to legal commitments to avoid re-identification. The right to have only focused collection of user data will also reduce re-identification risk by limiting gratuitous collection of data. And finally, an organization with strong institutional accountability procedures in place should handle data carefully and only release it publicly after evaluating the risk of re-identification. If the organization fails to consider this risk, then appropriate parties can be held accountable for resulting harm.

Resolves false info and models – their ev assumes the squo

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

2. Data and model inaccuracy: The Consumer Privacy Bill of Rights can reduce the risk that decisions are made about an individual based on inaccurate information or an incorrect model. The principles of Transparency, Respect for Context, and Access and Accuracy are all useful to ensure fairness in big data decisionmaking. Since the Fair Credit Reporting Act (FCRA) was enacted, individuals have had basic transparency rights enabling them to know that personal information about them is being used for important decisions, as well as the right to access and correct personal data to ensure that it is accurate. Such transparency is critical to make sure that individuals know their data is being used therefore be able to assure its accuracy or decide to exclude themselves from uses they object to. Similarly, the Access and Accuracy affords a mechanism to assure that data and the inference drawn from are accurate. While most consumers will not be able to identify errors in models, 5 transparency on inferences drawn by a model may shine light on algorithmic errors, The CPBR Transparency principle also requires that companies explain how they will use data and this should be understood to include relevant information about the decision-making models and algorithms. There is work to be done to define how much of the decision-making metrics should be exposed, as some of that information will be proprietary. Enough context about the decision metrics should be made available to enable consumer protection enforcement agencies and other stakeholders to assess whether the decisions models are fair. These principles are reinforced by the Respect for Context principle. When data is used out of context, the CPBR provides that if "companies decide to use or disclose personal data for purposes that are inconsistent with the context in which the data was disclosed, they must provide heightened measures of Transparency and Individual Choice." This will help individuals to flag uses of information that are likely to create risk and increase the likelihood that both personal data and models derived from personal data are accurate.

Transparency is key

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

First and foremost, an expanded commitment to transparency is **necessary** to guard against the risk of unfair, inaccurate use of personal data. The variety of personal information in big data systems requires a more active transparency in which individuals, consumer advocates and enforcement agencies can understand precisely how personal data is used, in some cases with resolution down to the level of individual data elements. Recognizing that individual control and consent may not be practical for high velocity collection and use of personal data, such systems will place more reliance on respect for context, assuring the information is only collected where the context makes such collection reasonably apparent, and that the use is consistent with the original context of collection. In context use should be able to proceed without individual consent, but out of context use would require increased transparency and individual control. Large collections of personal data create increased risk of breach and loss, to security must be given special attention. As important decisions may be made through big data systems, **access and accuracy rights are vital** to be sure individuals are not treated unfairly. And finally, institutional accountability mechanism are vital to assure that all of the principles in the Consumer Privacy Bill of Rights are adhered to the use of big data systems. Beyond just the substantive principles of the Consumer Privacy Bill of Rights, the larger policy process that the Administration's privacy framework puts into place has a dynamic, flexible quality that will be especially important to help American society evolve new privacy norms in response to the challenge of large scale analytics. As explained by Ken Bamberger and Deirdre Mulligan, the evolution of 'privacy on the ground' has enabled the evolution of privacy rules in a 8 manner that is responsive to public requirements while at the same allowing flexibility for the development of new services and business models. The Consumer Privacy Bill of Rights framework is designed to facilitate the continuous evolution of norms and rules as large-scale analytics drive new business models.

2NC: Agenda PTX NB

Read the Albert evidence specific to constitutional amendments

2NC: Big Data NB

The CP keeps up with big data innovations

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", 4/4/14 https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf, AB)

For each of the big data privacy risks identified here, the substantive principles in the Consumer Privacy Bill of Rights offer guidance to develop concrete responses to those risks in a manner that provides clarity for individuals and flexibility for innovative big data analytic applications. Given the rapid evolution of big data analytic applications, the unique procedural aspects of the Consumer Privacy Bill of Rights also offers a means by which principle-based privacy approaches to new applications can be developed rapidly as enforceable codes of conduct and then enforced under the FTC's existing statutory authority

2NC AT: Ethics S. Deficit

Solves ethics claims – specifically designed to become conscious of the use of data collection

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

3. Unfair use of sensitive inferences: Even if inferences are accurate, it may be unfair as a matter of ethics or public policy to use such information for certain purposes. For example, behavioral profiling techniques used for marketing purposes can provide advertisers the ability to reach audiences defined by age, ethnicity, race, gender and other sensitive categories. The recent statement of privacy principles from leading civil rights organizations ("Civil Rights Principles for the Era of Big Data") offers useful guidance on this point. The Respect for Context principle was **specifically designed** to prevent misuse of such profiles for more sensitive, harmful discriminatory purposes. As the CPBR explains: The Administration also encourages companies engaged in online advertising to refrain from collecting, using, or disclosing personal data that may be used to make decisions regarding employment, credit, and insurance eligibility or similar matters that may have significant adverse consequences to consumers…. Such practices also may be at odds with the norm of responsible data stewardship that the Respect for Context principle encourages." 6 Just because it is possible to learn or infer a sensitive characteristic of an individual, that does not imply that it is either legally or ethically permissible to use such an inference (no matter how accurate or inaccurate) for all purposes. However, addressing the use of such characteristics is a matter of social policy broader than privacy policy. Antidiscrimination laws and norms of countries around the world regularly prohibit acting in a discriminatory manner based on information about an individual, even if it is publicly available. Indeed, some of the personal characteristics that entail the highest degree of legal concern include gender and race, attributes of individuals that are readily observable and in most cases public information. The Transparency and Access Accuracy principles provide mechanisms that can be helpful in identifying where data collected about individuals is used in ways contrary to legal or ethical principles. Despite this, reflexive and poorly justified application of the Fourth Amendment third party doctrine can lead to the "unwarranted" assumption that as soon as personal data is public it can be used for any purpose. The Respect for Context principle stands in opposition to this view and squarely for the proposition that privacy interests in personal information are determined as much by how the data is to be used as is the public or non-public status of the data.

2NC AT: Circumvention S.Deficit

No risk of a solvency deficit – transparency principle resolves circumvention

Weitzner et al 14 (Weitzner, MIT Computer Science and Artificial Intelligence Lab, Abelson, MIT Department of Electrical Engineering and Computer Science, Dwork, Microsoft Research, Rus, MIT Computer Science and Artificial Intelligence Lab, Pentland, MIT Media Lab Vadhan, Harvard University, [Daniel Weitzner, Hal Abelson, Cynthia Dwork, Cameron Kerry, Daniela Rus, Sandy Pentland, Salil Vadhan, "Consumer Privacy Bill of Rights and Big Data: Response to White House Office of Science and Technology Policy Request for Information", DP: 4-4-14 DA: 7-1-15, https://ipp.mit.edu/sites/default/files/documents/MITBigDataPrivacyComments.pdf] hk)

The Transparency Principle requires companies to disclose when and why they collect individuals' personal data, so that consumers can guard against misuse of their personal data. Beyond just individual awareness, transparency has a vital function for the evolution of privacy norms themselves. In the modern history of information privacy, transparency has enabled consumer advocates, policy makers, enforcement agencies, the press and the interested public to engage in dialogue and criticism about how commercial privacy practices are evolving. It is only with awareness of actual privacy practices that society can have a meaningful dialogue about which practices are acceptable and which fall outside legal and/or social norms. Meaningful transparency in big data systems will require going beyond just disclosure of policies as to personal data. Enabling **citizens, governments and advocates to address big data** privacy challenges requires a more active transparency - the ability to be aware of and track the actual flow and use of personal information. Big Data is different from the regular use of personal data in that consumers are not only affected by the primary collection of data, but also by the subsequent aggregation of that data to inform algorithms that govern companies' decision-making and affect individual users. Therefore users need additional tools to help them follow complex data flows and understand what picture of them this data enables, beyond just the general disclosures in privacy policies. For example, disclosing to an individual that a health insurance company knows her address does not inform her of the likelihood that this information is being combined with multiple other databases to create "neighborhood profiles" that in turn could affect pricing for individual customers within those neighborhoods. The requirement that companies detail how they will use gathered data bears more weight in the Big Data context than requirements that companies simply disclose what personal data they collect. A transparency framework that updates consumers when companies come up with new uses for aggregated personal data will increase user trust and help ensure that accountability takes place at the rate of business growth, rather than at the rate of governmental enforcement

DAs

Privacy Turn

1NC

Increased internet freedom would result in desensitization of human rights abuses and an increase in divisions.

Jamie **Metzl, 69**, served as Deputy Staff Director and Senior Counselor of the United States Senate Committee on Foreign Relations,[7] Senior Coordinator for International Public Information and Senior Advisor to the Undersecretary for Public Diplomacy and Public Affairs at the Department of State,[8] and Director of Multilateral and Humanitarian Affairs on the National Security Council, "Information Technology and Human Rights," http://www.heinonline.org.turing.library.northwestern.edu/HOL/Page?page=705&handle=hein.journals%2Fhurq18&collection=journals, shlee

In an information age where satellite television broadcasts and Internet appeals to address mass violations of human rights reach world populations on a daily basis, there is a danger that people will become callous to reports of difficulties everywhere in the world, that the limited human capacity for absorption, compassion, and responsive action will become spread so thin as to dilute popular outrage and forestall responsive action. There is also a danger that as information technology systems continue to play ever greater roles in the international worlds of commerce and communications, those without access to such systems will be denied the tools necessary to improve their conditions. This appears to be happening even in this early stage in the development of information technology systems. Although Internet access can be achieved through satellite, packet radio, microwave, or cable links, it is still mostly done by telephone, access to which is highly concentrated in the wealthiest countries!' It is thus not surprising that access to the Internet is no better distributed internationally.° This international division between rich and poor is often mirrored within states. In the United States, for example, where 60 percent of global computer networking takes place, the Rand Corporation has estimated that while only 3 percent of the bottom income quartile of the population had access to computer networks in 1993, 23 percent of the top quartile had access during the same period" In an information age, disparities in access to information and sources of knowledge can only exacerbate existing divisions between rich and poor societies, states, and individuals.

2NC

Increased privacy rights results would result in more oppressive forms of control

Morozov 11 (Evgeny Morozov, Bernard L. Schwartz Senior Fellow at the New America Foundation and a contributing editor of Foreign Policy, "Whither Internet Control?", April 2011, http://muse.jhu.edu/journals/journal_of_democracy/v022/22.2.morozov.html,shlee)

Most talk of "liberation technologies" as ways of weakening "Internet [End Page 62] control" turns out to be about the technological rather than the sociopolitical dimension. But what if success in that area is met with larger and more sophisticated efforts at exerting sociopolitical control? Scholars still know little about the factors that influence the dynamics and the distribution of the two kinds of control. As technological methods lose efficacy, sociopolitical methods could simply overtake them: An authoritarian government might find it harder to censor blogs, but still rather easy to jail bloggers. Indeed, if censorship becomes infeasible, imprisonment may become inevitable. Thus, if the technological dimension

of Internet control were one day to be totally eliminated, the upshot could be a set of social and political barriers to freedom of expression that might on balance be worse—not least because "liberation technologies" would be powerless to overcome them. It would be a cruelly paradoxical outcome indeed should liberation technology's very success spur the creation of a sociopolitical environment in which there would be nothing for technology to "liberate."

Politics DA

1NC - Unpopular

The plan is ridiculously capital-intensive

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

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

2NC - Unpopular

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

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

Political parties and increased political polarization may have exacerbated the difficulty of Article V. As American political parties have become nearly evenly divided across both the federal and state governments over the last two generations, writes David Kyvig, "divisions within society together with the requirements of Article V frustrated every attempt to bring about fundamental change."132 Kyvig adds that the close balance between political parties and among the forces of federalism alongside the "centripetal power of the federal government and the centrifugal strength of the states" have combined to inhibit agreement on formal amendment.133 Daryl Levinson and Rick Pildes observe that political parties in the United States "today are both more internally

ideologically coherent and more sharply polarized than at any time since the turn of the twentieth century."134 Rick Pildes connects the onset of today's hyperpolarized politics to the adoption of the Voting Rights Act of 1965: [T]his polarization reflects the deep structural and historical transformation in American democracy unleashed in 1965 by the enactment of the VRA. That moment began the process of ideologically realigning the political parties and of purifying them, so that both parties are far more ideologically coherent, and differentiated from each other, than at any time in many generations. The culmination of that historical transformation – which can be seen as the maturation or full realization of American democracy – is today's hyperpolarized partisan politics.135 Pildes concludes that "[t]he reality is that the era of highly polarized, partisan politics will endure for some time to come."136 This only complicates an already difficult formal amendment process that relies on strong supermajorities across both the federal and state institutions. Nevertheless, as Christopher Eisgruber cautions, measuring amendment difficulty is itself difficult because amendment difficulty turns "upon a number of cultural considerations, such as the extent to which state politics differ from national politics and the extent to which people are receptive to or skeptical about the general idea of constitutional amendment."137 The difficulty of measuring amendment difficulty has not discouraged scholars from comparing amendment difficulty across nations. In such measures, the United States has ranked among the most difficult to amend.138

Terror DA

Case Turn

Turns case – terrorism kills human rights

Office of the United Nations High Commissioner for Human Rights 8 "Human Rights, Terrorism and Counter-terrorism", Fact Sheet No. 32, July 2008, http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf, AB)

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights. The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council.7 Specifically, Member States have set out that terrorism: • Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights; • Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments; • Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery; 8 • Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and • Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security. International and regional human rights law makes clear that States have both

a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right"8

Case

Privacy Advantage

Rights Fail—Paternalistic

Plan causes privacy paternalism and OVERKILL with an amendment

Adam **Thierer 14**, senior research fellow at the Mercatus Center at George Mason University with the Technology Policy Program, Jan 23, 2014, "Do We Need A Constitutional Amendment Restricting Private-Sector Data Collection?", https://privacyassociation.org/news/a/do-we-need-a-constitutional-amendment-restricting-private-sector-data-colle, AB)

Astonishingly, Rosen doesn't seem to think that we should be free to do so. During our NPR debate, he said his amendment would disallow individuals from surrendering private data or privacy because he viewed these rights as "unalienable." But Rosen should keep in mind that not everyone shares the same privacy values and that many of us will voluntarily trade some of our data for the innovative information services we desire. If that choice is taken away from us then **"privacy regulation**," as privacy scholar Daniel Solove has recently noted, "**risks becoming too paternalistic**. Regulation that sidesteps consent denies people the freedom to make choices," Solove argues. "The end result is that either people have choices that are not meaningful or people are denied choices altogether." By making privacy choices for us, Rosen's proposed amendment would likely suffer from that same sort of privacy paternalism. Such paternalism is particularly problematic in this case since privacy is such a highly subjective value and one that evolves over time. As Solove notes, "the correct choices regarding privacy and data use are not always clear. For example, although extensive self-exposure can have disastrous consequences, many people use social media successfully and productively." Privacy norms and ethics are changing faster than ever today. One day's "creepy" tool or service is often the next day's "killer app." Finally, practically speaking, **a constitutional amendment is overkill** since many other options exist for protecting individual privacy from private data collection efforts. User education and empowerment is essential. So, too, is privacy by design and an expanded role for privacy professionals within private organizations. Targeted enforcement of existing laws, torts and other measures will continue to be applied here and perhaps even expand in their focus. And, again, more constraint on government's ability to commandeer private databases is absolutely essential. These are all far more practical and less-restrictive steps that can be taken without resorting to the sort of **constitutional sledgehammer** that Jeff Rosen favors. or upending the information economy.

Rights Fail—Backfire

Explicit constitutional right to privacy backfires

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

It is high time to call out the assumption for the hazy moral intuition that it is and situate the moral intuition in law, and as law, insofar as it is supportable. Resting a protection—even a hazy hypothetical protection—on a moral intuition is dangerous from a pragmatic as well as principled perspective. Moral intuitions are akin to "naïve theories" and heuristics—error-prone and intuition-guided generalizations—that suffer from the manifold cognitive biases identified in the judgment and decision making literature.18 Status quo bias is an example of a cognitive bias with the potential to chill policy innovations if we persist in an intuitive, feels-wrong approach to determining violations.19 New ideas rouse vague

feelings of unease and disquiet because they disrupt the status quo, to which we are intuitively attached. We cannot always trust and use as a guide the affective sense that a particular policy seems disquieting in the change it wreaks. Moreover, inability to distinguish the chaff risks demeaning an important guide and principle for understanding what the liberty explicitly safeguarded by the Constitution means. This Article argues that the work of privacy as a constitutional concept is to adapt the idea of liberty in times of social change. Insofar as constitutionally relevant, the idea of informational privacy helps further define, and should be informed by, the freedoms safeguarded in the Constitution, such as the protections for liberty under procedural and substantive due process. There is a principled reason for distinguishing between the cases of HIV and sexual orientation outings by the state with the aim of marring employment, family, and friendships and cases where state employees want a job representing an important public trust but do not want to get drug tested like the rest of us. And it is more than the crude rule of thumb that we know a violation when we feel it.

Privacy Turn – Takes Away Freedom

Plan constrains private entity which takes AWAY freedom – turns case

Adam **Thierer 14**, senior research fellow at the Mercatus Center at George Mason University with the Technology Policy Program, Jan 23, 2014, "Do We Need A Constitutional Amendment Restricting Private-Sector Data Collection?", https://privacyassociation.org/news/a/do-we-need-a-constitutional-amendment-restricting-private-sector-data-colle, AB)

There are several problems with Rosen's proposal—legal, economic and practical. The bottom line is that a constitutional amendment would be too sweeping in effect and that better alternatives exist to deal with the privacy concerns he identifies. Conflating Two Different Things First, it goes without saying that a constitutional amendment is not a matter to be taken lightly. It alters the underlying fabric of our republic and represents the ultimate legal constraint. Rosen nonetheless thinks one is needed to cover both governmental- and private-sector data collection practices, even though the Fourth Amendment already applies to government. Many people are rightly outraged about the extent of government surveillance activities that have come to light in the wake of the Snowden revelations. A crucial component of these revelations is that our government is increasingly vacuuming up data from private entities—sometimes with their consent, but often without those private entities having any choice in the matter (or perhaps not even knowing about it at all). This leads many privacy advocates to make a big leap: Because much of the data that our government collects today originates from private data collection efforts, we should just treat those private entities the same as government actors. "Once data is collected by private parties, the government will inevitably demand access," Rosen says. Therefore, he says, we should impose the same data collection restrictions on private actors that we impose on governments. Of course, it's always been true that "the government will inevitably demand access" to private data, but to the extent it is a growing problem, Rosen and other privacy advocates should redouble their efforts to constrain government surveillance powers and the ability to indiscriminately suck up privately held data. We could start with strong ECPA reform, elimination of the third-party doctrine, and other bolstered Fourth Amendment constraints on national security and law enforcement powers. Importantly, a private entity is just not the same as a government entity, and we should continue to distinguish between them when crafting data collection policies. Rosen says that "distinction between surveillance by the government and surveillance by Google makes little sense," but in reality, the differences between public and private entities remains profound. Private entities cannot fine, tax or imprison us. And while we can escape the orbit of private companies and their services, the same is not true for governments. We need to have serious discussions about how to help people better manage their privacy preferences, but if we begin those conversations by mistakenly conflating government and corporate power, then the end result will be sweeping controls on our modern information economy. Which is the next problem with Rosen's proposal: It would create serious social and economic trade-offs that he fails to consider. In terms of social trade-offs, a constitutional amendment limiting data collection might conflict with certain speech and information-gathering freedoms. As Professor Eugene Volokh has noted, at least here in the U.S., "We already have a

code of 'fair information practices,' and it is the First Amendment, which generally bars the government from controlling the communication of information … whether the communication is 'fair' or not." Meanwhile, recent commercial speech jurisprudence—such as the Supreme Court's 2011 decision in Sorrell v. IMS Health Inc.—has bolstered First Amendment protections for data-gathering and use. There would also be economic trade-offs associated with Rosen's proposed amendment. Private data collection is the fuel that powers our information economy. It creates value for consumers by making possible innovative goods and services at a great price—often free. Banning private data collection and use will likely mean fewer choices or higher prices. That's why many of us already trade away some of our personal information in exchange for digital services that improve our lives in other ways. For example, the same location "tracking" techniques that Rosen and many others decry as privacy violations are also what enable the free mapping and traffic services that we rely on daily. Shouldn't we be allowed to make that trade?

Not having a clear definition of privacy turns case

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

Although the conclusions put forth in this article do not in themselves dictate any particular legal result, they should nonetheless serve to inform the development of Canada's fledgling privacy tort. We ought to know what privacy is, and what interests underlie it, before we set about fine-tuning a legal test designed to protect it. The same point can perhaps be put better in the negative: **without a clear conceptual account of privacy, "a legal privacy right would be**", as Delany and Carolan note, "**incomplete, incoherent, and liable to cause confusion".**230 An appellate court tasked with determining the scope of a Canadian privacy tort will have to identify the nature of a privacy invasion, find an appropriate doctrinal basis for the action, and decide how to balance competing interests in privacy and freedom of speech. I have argued throughout this article that a coherent understanding of privacy must include both a physical and an informational dimension. The American approach, which recognizes both the wrongful disclosure of information and intrusions on private activities, provides a more comprehensive and conceptually justified response than the narrower "informationist" approach employed in New Zealand and England.

Privacy Doesn't Solve

Privacy policies fail- only are created to protect corporate interests.

Erison 6 (Richard Victor Ericson, professor with the Centre of Criminology at the University of Toronto , "The New Politics of Surveillance and Visibility,"2006, from The New Politics of Surveillance and Visibility,sl)

Discussions about privacy rights often proceed as if privacy is itself a stable phenomena that must be protected from incursions or erosion. Such a conceptualization tends to downplay the historical variability and political contestation associated with the precise content of 'privacy.' Claims to privacy and secrecy are political efforts to restrict the ability of others to see or know specific things. One of the more intriguing developments in this regard concerns how powerful interests are now appealing to such rights. The synoptic capabilities of contemporary surveillance have produced a greater number of powerful individuals and institutions with an interest in avoiding new forms of scrutiny. As such, privacy rights that were originally envisioned as a means for individuals to secure a personal space free from state scrutiny are being reconfigured by corporate and state interests. Corporations routinely appeal to legal privacy and secrecy protections. One of the more ironic of these involves efforts by firms that conduct massive commercial data surveillance to restrict the release of the market segment profiles that they derive from

such information on the grounds that these are 'trade secrets.' The ongoing war on terror accentuates how the state is also concerned with carving out a sphere of privacy, even as it tries to render the actions of others more transparent. For example, the US. Patriot Act prohibits Internet service providers from disclosing the extent to which they have established governmental Internet monitoring measures. The US. administration has refused to meet Congressional demands for information regarding the implementation of the Patriot Act. The Pentagon regularly invokes claims to 'national security' to restrict public awareness of military matters, in-duding the capabilities of its surveillance technologies. Hence, legal claims to privacy are being invoked as a means to render the actions of powerful interests more opaque at the same time that these same institutions are making the lives of others more transparent. Some see this trend towards non-reciprocal visibility as one of the greatest inequities in contemporary surveillance (Brin 1998).

Too vague to be legit

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

The "right to be let alone" occupies a hallowed place in privacy discourse. Although the phrase was coined by Judge Cooley42—who used it not to justify a right to privacy, but rather to explain why tort law regards trespass to the person as wrongful—it is now generally attributed to Warren and Brandeis, who invoked it throughout their seminal 1890 article.43 The latter authors analyzed numerous cases of trespass, defamation, confidence, and especially common law copyright, and identified a latent principle of privacy—operating unarticulated— which they argued should thenceforth be protected independently, as a distinct tort.44 This principle of privacy, expressed as a "right to be let alone", is anchored in the more fundamental interest of an "inviolate personality".4 The Warren and Brandeis formulation has come under much academic criticism. The first problem is its vagueness.46 Because neither the "right to be let alone" nor the concept of "inviolate personality" is adequately defined, 47 the article gives no practical or conceptual guidance on the scope of the right.48 A related criticism is that the phrase "right to be let alone" itself appears to be less a definition of privacy than simply a description of one example of it.49

Privacy is too sweeping/broad

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

The second criticism, stemming from the above mentioned vagueness, is that this conception of privacy is overly broad. As Gavison explains: [It] cover[s] almost any conceivable complaint anyone could ever make. A great many instances of "not letting people alone" cannot readily be described as invasions of privacy. Requiring that people pay their taxes or go into the army, or punishing them for murder, are just a few . . . examples.50 This conceptual over breadth is evident in how the "right to be let alone" has been used in American constitutional jurisprudence, where it is often equated with privacy51 and is taken to encompass the right to "live one's life as one chooses". 52 This includes the "privilege of an individual to plan his own affairs . . . [and] do what he pleases".53 This "substantive"54 conception of privacy confers a zone of decisional autonomy, and currently forms the basis for the right to abortion in American constitutional law.55 It has been much criticized as being really an "assertion of liberty per se [rather] than one of privacy".56 A narrower and clearer definition of privacy is needed.

Focus on surveillance as information gathering ignores content of the surveillance – causes restriction which turns the case

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

Conceiving of privacy as a claim to control personal information gets us very close to understanding its essence.63 Simply put, we intuit privacy as a claim to control, and this intuition is reflected in the social norms that surround us.64 We feel that this conception of privacy is the reason someone has a moral claim to keep the contents of his diary secret; and reasonable people reflect that understanding by respecting this right, or at least by intuiting that reading a person's diary violates something we all sense to be private. Furthermore, as I explain in section two, the claim to control personal information is closely associated with the values underpinning privacy (especially the values of dignity and autonomy). However, there are three significant problems with control-based definitions. The first problem is that insofar as they concentrate on information,65 they are too restricted.66 We all recognize, intuitively, that privacy can be invaded even where information is not communicated, such as where a peeping tom trains his telescope on a woman's bedroom to watch her undress. A definition of privacy that fails to capture such physical intrusions simply lacks intuitive coherence. It might be suggested that informational control can capture this example, the argument being that the tom has in fact received information about his victim (in the sense that he has learned what she looks like without clothes). This argument is problematic however, owing to its artificiality. Parker responds to it by asking us to imagine that the tom and the woman are lovers.67 Is it still sensible to regard the tom, when he sneaks a peak at his lover through the window after leaving her side, as obtaining information about what she looks like naked—information he already has?68 If the answer is no, then such peeping falls outside this definition of privacy, resulting in an intuitive under-inclusiveness. Even if we strain and answer yes because the man has learned that his lover remains undressed or is in a different pose, this information-based approach clearly fails to capture the true essence of the invasion.69 It is not that information has been acquired but rather that she is being "looked at . . . against her wishes".70 Wacks explains: What is essentially in issue in cases of intrusion is the frustration of the legitimate expectations of the individual that he should not be seen or heard in circumstances where has not consented to or is unaware of such surveillance. The quality of the information thereby obtained, though it will often be of an intimate nature, is not the major objection.71 These observations lead to a related point. As Moreham has convincingly argued, by failing to appreciate the true essence of the complaint, this information-based approach necessarily fails to appreciate the gravity of the privacy violation itself, and therefore must logically undervalue it.72 This is because, to be internally coherent, the information-based approach must regard the information learned as the only relevant factor when assessing the gravity of an invasion; but if we consider Parker's peeping lover example, we see that very little new information has in fact been communicated. Consequently, as the information learned was negligible, so too must be the violation of privacy. Such an approach is clearly inadequate if we regard this example as a serious violation of privacy.73 So, the first major problem with the "control over information" approaches is their narrowness, in that they fail to adequately capture what we intuit—that physical intrusions violate privacy for reasons unrelated to, and irrespective of, any information that may also be gleaned (or subsequently published) as a consequence of an intrusion. It is the looking (or listening or touching) itself, not the acquisition of information, that is offensive to our intuitive sense of privacy. Furthermore, as I explain in section two, the values underpinning privacy, and the reasons why it is important, strongly support including a physical intrusion dimension in our definition. Before moving to the remaining criticisms, it is worth noting that there is widespread academic74 and law commission75 recognition, and some judicial recognition, that physical intrusions lie at the conceptual core of privacy

Their definition of privacy is vague which causes exclusion

Chris DL **Hunt 11**, PhD Candidate in law and WM Tapp Scholar, Gonville & Caius College, University of Cambridge, "Conceptualizing Privacy and Elucidating its Importance: Foundational

Considerations for the Development of Canada's Fledgling Privacy Tort", http://queensu.ca/lawjournal/issues/pastissues/Volume37a/5-Hunt.pdf, AB)

A second criticism of control-based definitions concerns ambiguity in the manner in which "control" is used by various commentators.77 If control is used, as Fried uses it,78 to mean actual control, and privacy is thus the state of controlling information, it follows that a person who cannot exert control cannot enjoy privacy.79 But surely this cannot be correct, for it would mean that a person could not assert a right to privacy even in relation to highly sensitive personal information gathered while she is in a public place80—a position roundly rejected by academics,81 the House of Lords,82 the European Court of Human Rights,83 the New Zealand Court of Appeal84 and the Supreme Court of Canada.85 A related problem here is that treating privacy as a state of actual control over information may suggest a loss of privacy where there is only the threat of a loss.86 Moreham illustrates this by noting that if X had a machine capable of reading all of Y's emails, and also of seeing Y's naked body through her clothes, Y could not be said to have actual control over that information. So even if X never actually used the hypothetical device, the mere fact that he had it would violate Y's privacy.87 In short, "[c]ontrol-based definitions therefore fail to distinguish between those situations where there is a risk of unwanted access and those where unwanted access has in fact been obtained".88 A better conception of privacy is thus to formulate it, as Westin does, as a claim to control information, rather than a state of control itself.89 A third criticism of control-based definitions concerns their potential over breadth.90 This stems from the fact that many authors fail to identify with precision the types of information falling within a controlbased conception of privacy. Simply put, defining privacy as a claim to control information relating to one's self does little to help us know what information is in fact private. On a plain reading, it could mean that any information about a person is private, including the colour of her eyes or even her name—information that, to be sure, few would intuit to be private. What is needed is some conceptual device to guide us in ascertaining what information is private. I return to this issue, as well as to the concept of privacy as a claim to control, after considering the remaining conceptions of privacy.

Squo Solves

New ECPA legislation restores privacy rights – status quo solves

Chris **Calabrese 7/5**, the legislative counsel for privacy-related issues in the American Civil Liberties Union, "Post USA Freedom Act: There's more to be done," 7/5/15, http://www.ourmidland.com/opinion/editorials/post-usa-freedom-act-there-s-more-to-be-done/article_6676dd8c-7565-5ba4-8387-0158caae0784.html, AZ

But unless ECPA is reformed to reflect modern realities, government agents will continue to assert the authority to search our communications and our private possessions without a warrant and without showing any evidence whatsoever that a crime has been committed.
That's an intolerable and completely unwarranted invasion of our privacy. It isn't what the law's authors intended, of course. But government agencies are taking advantage of ECPA's unintended consequences to evade constitutional checks on their powers. And as long as ECPA remains on the books as written, it no longer represents an unexpected assault on our liberty. It is an intentional one.
Fortunately, members in both houses of Congress, led by Senators Mike Lee and Pat Leahy, and Representatives Kevin Yoder and Jared Polis, have introduced legislation to reform ECPA, and restore Fourth Amendment protections to our online communications. The ECPA Amendments Act and Email Privacy Act, respectively, would restore the law's original purpose to protect privacy in the ways we communicate, transact businesses, learn and recreate today by protecting emails and other communications stored with third party service providers for any amount of time.
Their legislation has broad, bipartisan support. It is backed by hundreds of members in Congress, including more than 270 House members. Outside the halls of Congress, conservatives, moderates and liberals, small and large businesses, labor unions, civil libertarians and former prosecutors all advocate reforms to an obsolete law that threatens the liberty and prosperity of the American people.
Congress has regularly had to pass reforms to legislation that technology has rendered obsolete and vulnerable to exploitation by the executive branch. We're calling on ECPA to be next.
Since our founding as a nation, Americans have insisted that we be secure in our persons and secure in our liberties. We made progress toward that end with the passage of the USA Freedom Act. The next step is the reform

of ECPA, and re-establishing that neither changes in technology nor laws that have outlived their purpose can be allowed to infringe on Americans' privacy protections.

Your evidence is overstated – there is no root cause, and checks on surveillance in the status quo prevent escalation or injustice

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

There are, of course, infinite examples of people being persecuted, abused or discriminated against because of personal attributes (such as their religion or political opinion) which have been identified by others or by the State. This naturally tends to invite suspicion concerning disclosure of personal information. However, to draw a connection between this type of injury and the absence of privacy is misguided – it fails to identify the root cause of such conduct. People were not demonised, persecuted and murdered in Nazi Germany because there was no right to privacy, but because of the implementation by a totalitarian regime of policies based on a racist ideology which tapped into pervasive anti-Semitic attitudes in the community.132 In liberal democracies such as Australia, the strongest safeguards against the misuse of personal information by the State are the checks and balances built into the system through the separation of powers and the rule of law, and ultimately, the accountability of the executive government to the people at democratic elections. State agencies may only collect and use personal information about citizens if such action comes within the executive power of the State or is specifically authorised by law. Unauthorized action can be challenged in the courts. Moreover, the trend in recent times has been to provide further protection in the form of legislation such as the Privacy Act (Cth) 1988 which imposes obligations in relation to the collection, use and disclosure of information which the State is legally authorised to collect. Gibbs argues that the danger of introducing the concept of privacy into legal discourse is that 'it starts to colonize the various rights of action that already exist'.133 Bundling up complaints about the acquisition, disclosure and use of personal information under the heading 'privacy' militates against the clear and precise identification of the interests at stake and what, if any, remedies should be granted by the law when those interests are compromised.134 As a general rule, the misuse of personal information to discriminate against a person in employment or the provision of services is best addressed by laws which are specifically directed against the attitudes and conduct which cause the harm, rather than by a general right of privacy. Anti-discrimination laws fulfil this function. Of course, it may also be necessary to impose restrictions on the release of personal information held by private and public sector organisations in order to minimise the possibility of such information falling into the hands of criminals and sociopaths. But the object of such laws is the protection of personal security and safety, not privacy per se.

Quit your whining – privacy right concerns are unfounded and status quo solves

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

The existence of a right to privacy is dubious. Even if such a right does exist it is not a very important right, ranking well down in the list of interests that are conducive to human flourishing. Privacy proponents have been incapable of explaining the foundation for such a right and why it should enjoy a high level of legal protection. The present level of protection of privacy in specific contexts both through legislation and at common law is adequate, particularly in view of the recourse now available under the doctrine of confidence in relation to public disclosures of intimate information. The right to privacy can be seen as a late-twentieth/early twenty-first century First World invention, indicative of a highly individualistic society fearful of the capabilities of the technology it has developed. However the alarmist rhetoric of privacy advocates who proclaim the imminent demise of privacy does not match reality: in fact, it is arguable that citizens in Western societies enjoy a level of de facto privacy unprecedented in history.158 As to the threats posed by the monitoring capabilities of the new

information technologies, it is now becoming apparent that technology itself can provide the means to counter them.159 The current legal focus and level of discussion concerning the right of privacy is a clear illustration of the human propensity for losing perspective. It follows that very few interests should be subjugated to the right of privacy.

Manufacturers are starting to respect privacy rights – account for privacy concerns through the national data protection

Marc **Dautlich and** Cerys Wyn **Davies 6/30**, head of information law at Pinsent Masons and partner, "Drone manufacturers can help operators respect privacy rights, says watchdog", 6/30/15, http://www.out-law.com/en/articles/2015/june/drone-manufacturers-can-help-operators-respect-privacy-rights-says-watchdog/, AZ

Drone manufacturers can help the organisations wishing to operate them respect privacy rights by warning of the "potential intrusiveness" of their use, an EU privacy body has said.

The Article 29 Working Party, a committee made of up representatives from the national data protection authorities (DPAs) throughout the EU, said the manufacturers could also put information on their packaging to tell operators where the use of drones is permitted. The manufacturers can also help account for privacy concerns in the use of drones by designing the devices with data protection in mind, it said.

"Data protection should be embedded within the entire life cycle of the technology, from the very early design stage, right through to its ultimate deployment, use and final disposal; such technology should be engineered in such a way as to avoid the processing of unnecessary personal data (for example, in case of strategic or critical infrastructures, engineering firmware of drones in order to inhibit data collection within previously defined no-fly zones could be advisable)," the Working Party's new opinion (21-page / 455KB PDF) said.

New codes of conduct could be drawn up by drone manufacturers and operators to ensure data protection requirements are considered and addressed, it recommended. The codes could help "enhance the social acceptability of drones", it said.

Current Supreme Court protections of privacy sufficient – LA v. Patel proves

Moxila **Upadhyaya and** Brandt **Mori 6/24**, trial attorney in civil litigation and real estate and business lawyer, "U.S. Supreme Court Issues Significant Ruling Protecting Privacy Rights of Hotel Owners and Guests", 6/24/15, http://www.mondaq.com/unitedstates/x/407006/Data+Protection+Privacy/US+Supreme+Court+Issues+Significant+Ruling+Protecting+Privacy+Rights+of+Hotel+Owners+and+Guests, AZ

One difficult situation in which hotel operators and owners can find themselves occurs when law enforcement demands access to private hotel guest records without a warrant.

On June 22, 2015, the U.S. Supreme Court issued an important decision addressing this very dilemma, siding with hotel owners. In City of Los Angeles v. Patel, the Court struck down a Los Angeles municipal provision that required hotels to make guest records available for inspection by any L.A. Police Department officer without the need for a search warrant. Prior to the Court's ruling, any officer could obtain, without a warrant, sensitive records, including a hotel guest's name, address, and vehicle details; the number of members in the guest's party; the method of payment; arrival and departure date; and room number. A hotel owner who refused to turn over such information could be arrested on the spot and be subject to a misdemeanor charge punishable by up to six months in jail and a $1,000 fine.

In its 5-4 decision, the Court held that the provision is unconstitutional because it violates the Fourth Amendment's protection against unreasonable searches and seizures. Because the municipal provision failed to afford hotel owners any pre-compliance opportunity to challenge the requested search, the Court held the provision to be facially unconstitutional. In so holding, the Court noted that "business owners cannot reasonably be put to this kind of choice" – that is, either handing over their guests' private information or facing arrest and criminal prosecution.

Writing for the Court, Justice Sonia Sotomayor noted that the Fourth Amendment may be satisfied as long as a hotel owner is afforded an opportunity to have a neutral decisionmaker review an officer's demand to search the hotel guest records before he or she faces penalties for failing to comply. This can be accomplished, for example, through an administrative subpoena by which the hotel owner may challenge law enforcement's request before a judge. This outcome, according to the Court, "reduces the risk that officers will use these administrative searches as a pretext to harass business owners."

States Solve

States Solve – empirics prove state interpretations gain influence nationally

Jay **Stanley 10**, Senior Policy Analyst with the ACLU, "The Crisis in Fourth Amendment Jurisprudence," 5/2010, https://www.acslaw.org/files/ACS%20Issue%20Brief%20-%20Stanley%204th%20Amendment.pdf, az

The situation in the states is significant for several reasons. First, state law today serves as a source of alternative legal thinking on privacy. Prior to the 20th century expansion in First Amendment rights, the states played just that kind of role. While the Supreme Court was extremely hostile to free speech claims before World War I, historians point out that the legal and cultural groundwork for the subsequent revival of the First Amendment could be found in the states, where a significant number of court decisions rejected the Supreme Court‟s approach and kept the possibility of genuine free speech rights alive within the American legal "conceptual universe."96 Over time, **the spread of alternative interpretations of privacy rights within the states could gain influence at the national level, as has happened before on other issues including the exclusionary rule and the death penalty, where state law has influenced interpretations of "evolving standards of decency"** under the Eighth Amendment.97 Second, divergent state interpretations on privacy are also a symptom of unease with the current state of the law, and to some extent they highlight the arbitrariness and indeterminateness of privacy law as it now stands. They are also, not incidentally, a source of privacy protection for a large number of people. As the majority noted in Katz, "the protection of a person‟s general right to privacy – his right to be let alone by other people – is, like the protection of his property and of his very life, left largely to the law of the individual States."98

State Constitutions Solve – functions as a testing ground

Elbert **Lin 02**, West Virginia Solicitor General, "Prioritizing Privacy: A Constitutional Response to the Internet," June 2002, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1383&context=btlj, az

What remains novel, however, is the argument for a federal constitutional right to informational privacy on the Internet. Only a handful of scholars' 3 have suggested that the United States Supreme Court will strengthen its lukewarm hint at a constitutional right to informational privacy in Whalen v. Roe, in 1977.14 Moreover, only a few of those scholars call for the right with regard to the Internet. Similarly, only a small number of commentators have recommended a state constitutional right to informational privacy.' 5 Most commentators have eschewed federal and state constitutional rights as possible solutions to the increasing technological threat to informational privacy, either dismissing them as weak (and presumably incapable of change) 6 or contending that a constitution is ill-equipped to protect against privacy-destroying technologies. 17 Rather, the debate over informational privacy-on the Internet, in particular-oscillates between industry self-regulation and government legislation, though support increases for other solutions, such as casting privacy as a property right or expanding the privacy torts.' 8 This Article will argue that a constitutional right to informational privacy is necessary and appropriate for protecting privacy on the Internet. Moreover, **given the progress they have already made, and their receptiveness to experimentation, the state constitutions are and should continue to be the testing grounds for an eventual federal constitutional right to informational privacy on the Internet**. Part II lays out the threat posed by the Internet and computers to informational privacy, defining the contours of "informational privacy," the computer technology that threatens informational privacy, and the threat itself, and focusing less on the disclosure aspect and more on the dissemination and use of personal information. In closing, Part II notes that online privacy is the most significant informational privacy

concern. Part Il argues that the Internet has created the need for a constitutional right by elevating informational privacy to a generalized concern. Part III also examines the failure of the current, nonconstitutional legal regime to address the threat of the Internet. Part IV discusses the current state of the constitutional right to informational privacy, considering both the federal and state constitutions, and surveying in detail the constitutional rights in the eleven most noteworthy states, ten of which have explicit constitutional provisions for privacy. The right has not been utilized in Internet litigation and offers the lack of a generalized interest in privacy as a reason for the current weakness in both the federal and state constitutional rights. Part V determines that the constitutional right can best be developed in the states. The leading states have already developed robust constitutional rights, and constitutional experimentation is an accepted premise at the state level. Part VI concludes the Internet has altered the interest in informational privacy such that constitutional protection is necessary and, furthermore, it is best sought first through the state constitutions.

Court Fails

The Supreme Court is a mess – they're political flip-floppers that are too ambivalent to ensure a decisive ruling

Jeffrey M. **Shaman 6**, B.A. from the Pennsylvania State University, J.D. from the University of Southern California, and LL.M. from Georgetown University, where he was a Keigwin Graduate Fellow. teaches Constitutional Law, State Constitutional Law, and First Amendment Freedom of Speech, member of the American Law Institute, the American Society of Legal History, and the U.S. Association of Constitutional Law, 2006, "THE RIGHT OF PRIVACY IN STATE CONSTITUTIONAL LAW", p.984-987, http://org.law.rutgers.edu/publications/lawjournal/issues/37_4/Shaman.pdf, AB)

On occasion, the Court has turned to the past as a source of fundamental rights. Thus, in Moore v. City of East Cleveland, a 1977 decision, **the plurality opinion concluded** that the **right** to live together in an extended family **was fundamental because it was a liberty "deeply rooted in this Nation's history and tradition**."87 Some **years later, a reluctant majority of the Court would again look to history in order to "assume" that under the Due Process Clause, an individual possessed a right to bodily integrity**, which encompassed the right to refuse unwanted medical treatment**.88 History, though, can be a double-edged sword, wielded either to accept rights on the basis of** their **historical** pedigree **or reject them on the ground that they are not firmly established in our history and tradition**. An example of the latter occurred in a 1989 decision, Michael H. v. Gerald D., ruling that a biological father did not have a right to visit his child because no such right could be found in the traditions of our society. 89 And in Washington v. Glucksberg, the Court ruled an individual did not have a right to physician-assisted suicide, once again because none could be found in the traditions of our society.90 In 1969, **the Court countenanced a different aspect of privacy by ruling**, in Stanley v. Georgia, **that** the **private possession of obscene material cannot constitutionally be made a crime, even though distribution of the material may be proscribed.**91 The decision in Stanley was based on the First Amendment right of an individual to receive information and ideas which, in the Court's view, takes on an added dimension in the privacy of a person's own home.92 As the Court put it, "If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."93 Thus, **Stanley recognized that the concept of privacy may comprehend a spatial element involving sanctity of the home**, an interest related to, though not the same as, the right of individual autonomy.94 In a case involving another component of the First Amendment, freedom of association, the Court suggested that because the Bill of Rights was designed to secure individual liberty, it should afford substantial protection for the formation and preservation of "certain kinds of highly personal relationships."95 As the Court explained, the constitutional shelter granted to these relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. "Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty."96 **Regard for personal relationships or the sanctity of the home, however, was shunted** aside in Bowers v. Hardwick, a 1986 decision, **in which the Court once again turned to history to cut short the reach of the Due Process Clause, ruling** by a vote of 5-4, **that the right of privacy does not encompass the right of a consenting adult to engage in homosexual conduct,** even in the privacy of his or her home.97 In upholding the constitutionality of a Georgia criminal law prohibiting sodomy, the majority opinion drew a strict distinction "between family, marriage, or procreation on the one hand and homosexual activity on the other."98 Taking a historical approach to constitutional interpretation, the Court refused to give constitutional countenance to a right to engage in homosexual conduct because, in the Court's reading of history, **such a right was neither "deeply rooted in this Nation's history and tradition**"99 nor "implicit in the concept of ordered liberty."100 **Seventeen years later, however, Bowers was overruled** by a 6-3 majority in Lawrence v. Texas, in which the Court held that a Texas sodomy statute making it a crime for two persons of the same sex to engage in intimate sexual relations was a violation of the Due Process Clause.101 Indeed, in Lawrence, not only did the Court decisively overrule Bowers, 102 it also apologized for it, saying that Bowers was unjustly demeaning to gay and lesbian persons.103 And the

Court devoted a good part of its opinion in Lawrence to explaining why it believed that Bowers had been wrongly decided.104 In Lawrence, the Court dismissed the historical approach that had been taken in Bowers, noting that the historical record was more complex than understood in Bowers, and that the Court's historical analysis in Bowers was open to considerable doubt.105 More importantly, the Court thought that the Bowers majority did not take sufficient account of more recent historical developments: "In all events we think that our laws and traditions in the past half century are of most relevance here."106 Significantly, that more recent tradition showed an emerging awareness that liberty provides substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.107 In other words, more recent history showed a trend toward recognizing that the sexual life of consenting adults was a private matter that should be beyond the realm of state authority, at least state criminal authority.108 The Court further explained that the liberty component of the Due Process Clause protects persons from unwarranted government intrusions into a dwelling or other private places and also protects other spheres of our lives and existence, outside the home, where the State should not be a dominant presence.109 The Court affirmed that "Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. **The instant case involves liberty of the person both in its spatial and more transcendent dimensions**."110 Quoting Casey, the Court once again proclaimed, "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, arecentral to the liberty protected by the Fourteenth Amendment."11 **The Supreme Court has yet to develop a consistent theory to determine the scope of the right of privacy under the Fourteenth Amendment**. Today, **some** of the **Justices** on the high Court **believe in adhering strictly to an historical approach which encompasses only those rights that are "deeply rooted in this Nation's history and tradition**" or "implicit in the concept of ordered liberty."112 Other Justices, though, are more forward looking; they see history as an ongoing phenomena and constitutional interpretation as an evolving process that comprehends the recognition of new rights that are central to personal dignity and autonomy. Although the right of privacy is firmly established as a fundamental right under the Fourteenth Amendment to the Federal Constitution, **the Supreme Court remains ambivalent about the right of privacy, embracing it with fervor in one case, rejecting it in another. As a result, the Court's decisions concerning privacy are marked by inconsistency, leaving the scope of the right of privacy under the Federal Constitution far from certain.**

Courts and existing amendment reinterpretations fail

Nicole **Tutrani 10**, Law Clerk to the Honorable Henry Coke Morgan, Jr. at the Eastern District of Virginia, "The "Right to Privacy" and its Constitutional Evolution: The Ninth and Fourteenth Amendments", November 20, 2010, https://www.regent.edu/admin/stusrv/writingcenter/docs/APSA7thedSamplePaper(PoliticalScienceStudentWriter'sManual).pdf, AB)

In summation, most twentieth-century Supreme Court opinions regarding the "right to privacy" as derived from the Ninth Amendment are inherently flawed. The original intent of both the Ninth and Fourteenth Amendments do not allow for the liberties the Court has taken in their interpretation. The Ninth Amendment, which was intended to protect the states against a latitude of governmental interpretation, has instead become the Supreme Court's perpetual grab bag of rights in the service of changing social morality. As a states' rights amendment, provisions from the Ninth Amendment are also logically un-incorporable to the states through the Fourteenth. Decisions, such as Griswold v. Connecticut, Roe v. Wade, and Lawrence v. Texas are prime examples of how the original meaning of these amendments has been ignored. Although it is not unreasonable to assume a "right to privacy" as provided for by the first eight amendments, recent interpretations of this right have resulted in an incredibly flawed body of case law. It would seem that the Constitution is evolving in such a way that it no longer protects the peoples' liberty; rather, it answers their demands for the expansion of license based on an ever-changing social order.

Framing Advantage

Consequentialism

Deontological theories of privacy rights are baseless and guaranteed to fail

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

Non-consequentialist (rights) theories. The leading contemporary non-consequentialist theories are those which are framed in the language of rights. Following the Second World War, there has been an immense increase in 'rights talk',81 both in the number of supposed rights and in total volume. Rights doctrine has progressed a long way since its original aim of providing 'a legitimisation of ... claims against tyrannical or exploiting regimes'.82 As Tom Campbell points out: The human rights movement is based on the need for a counter-ideology to combat the abuses and misuses of political authority by those who invoke, as a justification for their activities, the need to subordinate the particular interests of individuals to the general good.83 There is now, more than ever, a strong tendency to advance moral claims and arguments in terms of rights.84 Assertion of rights has become the customary means to express our moral sentiments. As Sumner notes: 'There is virtually no area of public controversy in which rights are not to be found on at least one side of the question – and generally on both.'85 The domination of rights talk is such that it is accurate to state that human rights have at least temporarily replaced maximising utility as the leading philosophical inspiration for political and social reform.86 Despite the dazzling veneer of deontological rights-based theories, when examined closely they are unable to provide convincing answers to central issues such as: what is the justification for rights? How can we distinguish real from fanciful rights? Which right takes priority in the event of conflicting rights? Such intractable difficulties stem from the fact that contemporary rights theories lack a coherent foundation. It has been argued that attempts to ground rights in virtues such as dignity, concern or respect are unsound and that they fail to provide a mechanism for moving from abstract ideals to concrete rights.87 A non-consequentialist ethic provides no method for distinguishing between genuine and fanciful rights claims and is incapable of providing guidance regarding the ranking of rights in the event of a clash. In light of this, it not surprising that the number of alleged rights has blossomed exponentially since the fundamental protective rights of life, liberty and property were advocated in the seventeenth and eighteenth centuries. Today, all sorts of dubious claims have been advanced on the basis of rights: for example, 'the right to a tobacco-free job', the 'right to sunshine', the 'right of a father to be present in the delivery room', the 'right to a sex break',88 and even 'the right to drink myself to death without interference'.89 Novel rights are continually evolving and being asserted. A good example is the recent claim by the Australian Prime Minister (in the context of the debate concerning the availability of IVF treatment to same-sex couples or individuals) that each child has the right to a mother and father. In a similar vein, in light of the increasing world oil prices, it has been declared that this violates the right of Americans to cheap gasoline. In England, the Premier League has been accused of violating the right of football club supporters to an F.A. Cup ticket. Due to the great expansion in rights talk, rights are now in danger of being labelled as mere rhetoric and are losing their cogent moral force. Or, as Sumner points out, rights become an 'argumentative device capable of justifying anything [which means they are] capable of justifying nothing'.90 Therefore, **in attempting to uncover the scope and content of 'emerging' rights such as the right to privacy it is normally unhelpful to consider the issue from the perspective of a deontological rights-based normative theory.** Against the background of such a theory, proponents of the right can simply assert the existence of a right to privacy and equally validly, opponents can assert a 'right to know'. An impasse is then reached because there is no underlying ideal that can be invoked to provide guidance on the issue. As with many rights, the victor may unfortunately be the side which simply yells the loudest.91 This may seem to be unduly dismissive of rights-based theories and pay inadequate regard to the considerable moral reforms that have occurred against the backdrop of rights talk over the past half-century. There is no doubt that rights claims have proved to be an effective lever in bringing about social change. As Campbell correctly notes, rights have provided 'a constant source of inspiration for the protection of individual liberty'.92 For example, recognition of the (universal) right to liberty resulted in the abolition of slavery; more recently the right of equality has been used as an effective weapon by women and other disenfranchised groups. For this reason, it is accepted that there is an ongoing need

for moral discourse in the form of rights. This is so even if deontological rights-based moral theories (with their absolutist overtones) are incapable of providing answers to questions such as the existence and content of proposed rights, and even if rights are difficult to defend intellectually or are seen to be culturally biased. There is a need for rights-talk, at least at the 'edges of civilisation and in the tangle of international politics'.93 Still, the significant changes to the moral landscape for which non-consequentialist rights have provided the catalyst must be accounted for. There are several responses to this. First, the fact that a belief or judgment is capable of moving and guiding human conduct says little about its truth – the widespread practice of burning 'witches' in medieval times being a case in point. Secondly, at the descriptive level, the intuitive appeal of rights claims, and the absolutist and forceful manner in which they are expressed, has heretofore been sufficient to mask fundamental logical deficiencies associated with the concept of rights. Finally, and perhaps most importantly, we do not believe that there is no role in moral discourse for rights claims, simply that the only manner in which rights can be substantiated is in the context of a consequentialist ethic.94

Util & Consequentialism are necessary and prevent absolutism

Carolyn **Doyle &** Mirko **Bagaric 5**, "The right to privacy: appealing, but flawed", The International Journal of Human Rights, Volume 9, Issue 1, 2005, p. 3-36, Taylor & Francis Online, AB)

Consequentialism. A more promising tack for ascertaining the legitimacy of a right to privacy is to ground the analysis in a consequentialist ethic. The most popular consequentialist moral theory is utilitarianism. Several different forms of utilitarianism have been advanced. In our view, the most cogent (and certainly the most influential in moral and political discourse) is hedonistic act utilitarianism, which provides that the morally right action is that which produces the greatest amount of happiness or pleasure and the least amount of pain or unhappiness. This theory selects the avoidance of pain, and the corollary, the attainment of happiness, as the ultimate goals of moral principle. We are aware that utilitarianism has received a lot of bad press over the past few decades, resulting in its demise as the leading normative theory. Considerations of space and focus do not permit us to fully discuss these matters. This has been done elsewhere.95 The key point to note for the purpose of the present discussion is that for those with a leaning towards rights-based ethical discourse, utilitarianism is well able to accommodate interests in the form of rights. Rights not only have a utilitarian ethic, but in fact **it is only against this background that rights can be explained and their source justified.** Utilitarianism provides a sounder foundation for rights than any other competing theory. For the utilitarian, the answer to why rights exist is simple: recognition of them best promotes general utility. Their origin accordingly lies in the pursuit of happiness. Their content is discovered through empirical observations regarding the patterns of behaviour which best advance the utilitarian cause. The long association of utilitarianism and rights appears to have been forgotten by most. However, over a century ago it was John Stuart Mill who proclaimed the right of free speech, on the basis that truth is important to the attainment of general happiness and this is best discovered by its competition with falsehood.96 Difficulties in performing the utilitarian calculus regarding each decision make it desirable that we ascribe certain rights and interests to people – interests which evidence shows tend to maximise happiness97 – even more happiness than if we made all of our decisions without such guidelines. Rights save time and energy by serving as shortcuts to assist us in attaining desirable consequences. By labelling certain interests as rights, we are spared the tedious task of establishing the importance of a particular interest as a first premise in practical arguments.98 There are also other reasons why performing the utilitarian calculus on each occasion may be counter-productive to the ultimate aim. Our capacity to gather and process information and our foresight are restricted by a large number of factors, including lack of time, indifference to the matter at hand, defects in reasoning and so on. We are quite often not in a good position to assess all the possible alternatives and to determine the likely impact upon general happiness stemming from each alternative. Our ability to make the correct decision will be greatly assisted if we can narrow down the range of relevant factors in light of pre-determined guidelines. History has shown that certain patterns of conduct and norms of behaviour if observed are most conducive to promoting happiness. These observations are given expression in the form of rights which can be asserted in the absence of evidence why adherence to them in the particular case would not maximise net happiness. Thus utilitarianism is well able to explain the existence and importance of rights. It is just that rights do not have a life of their own (they are derivative, not foundational), as is the case with deontological theories. Due to the derivative character of utilitarian rights, they do not carry the same degree of absolutism or 'must be doneness' as those based on deontological theories. However, this is not a criticism of utilitarianism, rather it is a strength since it is farcical to claim that any right is absolute. Another advantage of utilitarianism is that it is the only theory that provides a mechanism for ranking rights and other interests. In event of clash, the victor is the right which will generate the most happiness.

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Even orthodox advocates of deontological prohibitions concede that certain significant risks warrant the infringement of rights - including the right to life.10 A leading strategy for dealing with the dilemma of extreme cases is what has come to be known as threshold deontology. Thus, most contemporary deontologists agree that deontological [End Page 849] injunctions can be overridden under certain circumstances. Even if one concedes that shooting down a plane carrying fifty passengers in order to save fifty victims is not justified, the numbers can surely be fiddled with until an acceptable ratio is achieved. What about shooting down fifty passengers to save 1 000 victims? What about 10 000? And what about shooting down two to save 50? The issue surely must not hinge on playing with the numbers. As a matter of principle, there must be some ratio of victims to potential victims that would indeed justify the downing of the plane.11 This is not merely an abstract observation of moral philosophers. The duties to protect are an established component of many constitutions, including the German Federal Constitution. This duty entails a duty to protect the potential victims of a terrorist attack, and such a duty, enshrined in the Constitution, may under certain circumstances require infringing some people's rights. Some of the difficulties faced by threshold deontology are familiar and need not be rehearsed here.12 Let us, however, point out one difficulty which, to our mind, has not received due emphasis. Threshold deontology we argue is not faithful to the underlying values and commitments of deontology of at least one central brand - Kantian deontology. The basic challenge faced by threshold deontology is to address the following question: if the life of one person cannot be sacrificed for the sake of saving one other person, or two, or even one hundred, why can it be sacrificed to save one thousand, or ten thousand, or one million? The natural answer of a Kantian threshold deontologist is to maintain that, while sacrificing one person to save two or three violates the victims' dignity, the sacrifice of one to save a thousand does not violate the victims' dignity. In other words, **there is a threshold above which the sacrifice of life does not constitute a violation of dignity.**

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Even if we grant that a "critical reconstruction" has to satisfy different criteria from an "interpretation," there must be some criteria for assessing its adequacy on textual and historical grounds. To qualify as a reconstruction, it must have sufficient similarity to its prototype. While it is often difficult to determine what is sufficient in a particular case, most philosophical scholars would agree--I believe--that if a reconstruction were to lead to views that contradict some of the most fundamental features of its prototype, then it does not qualify as a reconstruction. But precisely this is the case with van der Linden's interpretation of Kant's duty to promote the highest good as central for Kantian social ethics. The following three points should go some way towards showing this: (i) When van der Linden interprets "the highest good as a society in which human agents seek to make one another happy," he claims he has changed "somewhat Kant's common definition of the highest good, but [has] preserve[d] the meaning of his claim that we must promote the highest good (as the union of universal virtue and universal happiness)" (4). **But this is clearly false.** He has radically changed Kant's meaning by emphasizing a different factor from the one Kant does. Kant differentiates in the highest good between an "a priori factor" that depends upon us, i.e., our morality, and an "empirically conditioned factor" that does not necessarily depend upon us, i.e., is external to us. This latter factor is happiness. A duty "to further the summum bonum as far as it in us lies" (AK 5: 453) can only amount to furthering the component that is up to us, i.e., to pursuing the strictest morality, not universal happiness. Van der Linden wants us to further what is external to us, empirically conditioned, and clearly not entirely in our power (see also point ii). It is in this way that he transforms the summum bonum into a "social ideal." This ideal is perhaps more reasonable than Kant's, but it also amounts to the opposite of Kant's own ideal. At one point van der Linden observes: "Cohen eliminates the distinction between the highest political good and the highest moral good and puts in their place one highest good, a peaceful international order of democratic socialist societies" (164). That seems to me, more or less, what van der Linden also does. (ii) When van der Linden attempts "to show that each of the formulations of the categorical imperative.., demands that we seek a moral society in which human agents try to make one another happy" (5f.), he clearly makes happiness the criterion for the morality of acts. However, if Kant was opposed to anything in his moral theory, it was

precisely to this move. To be sure, his arguments are directed more against egoistic versions of this type of consequentialism, but his arguments can be seen to be directed against collectivist ones as well. For one thing, **Kant was much too skeptical about our ability to predict what will bring about happiness** (be it our own or that of other people) to give it such a central place in his moral theory (see especially Ak 4: 393-97, and 8: 370). Kant is also adamant that man's morality should not be based upon anything depending on "the circumstances in which he is placed" (ibid., 389). And this is one of the main reasons why he held that "from the viewpoint of the people's welfare, no theory properly applies at all; instead, everything rests on practice submissive to experience" (Ak 8: 3o6). Van der Linden's reconstruction transforms Kant's theory into something Kant himself says is impossible. (iii) In one of the late historical pieces on which van der Linden relies so much, Kant expressis verbis rejects the highest good as a moral principle, saying, when "we ask about the principle of morals, the doctrine of the highest good as the ultimate end of a will that is in conformity to its laws can thus be wholly ignored and put aside as episodic" (On the Old Saw: That May Be Right in Theory; Ak 8: 28o). What Kant considers (and, according to the logic of his position, must consider) as inessential and "episodic," thus becomes central in van der Linden's reconstruction. When he tells us "I place politics, history, social conflict, and the moral commitment to change society at the core of Kant's practical philosophy, attempting to undercut the view of ethics as primarily concerned with the struggle between individual duty and inclination" (vii, emphasis mine), he himself tells us precisely what he does.

***Consequentialism trumps deontology*

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Consequentialist accounts justify privacy insofar as it produces desirable outcomes. Rigorous versions of consequentialism are forms of utilitarianism, whereby outcomes are determined by an aggregation, or maximisation, of individual utilities. Utilitarian-influenced approaches are well-suited to evaluating which of a number of competing interests should prevail by reference to overall results. For example, a strict consequentialist could have no objection to an invasion of privacy that was **necessary to produce a desirable outcome**, such as the preservation of life or an increase in economic welfare. However, pure forms of consequentialism have considerable difficulties in dealing with arguments that rights should be respected regardless of the consequences.68 As a simple example, a consequentialist might consider acceptable the publication of intimate details of an intercepted telephone conversation or, indeed, the placement of surveillance cameras inside a person's home, if the invasion of privacy results in an increase in overall welfare. However, those who have favoured explicitly consequentialist views of privacy have generally not been indirect utilitarians. H J McCloskey, for example, simply regarded the protection of privacy as justified to the extent that it promotes what are, for him, the more fundamental goods of human happiness, justice and liberty.72 This led him to conclude, in general terms, that if concerns about privacy come into conflict with more fundamental concerns regarding liberty of action, **invasions of privacy should be accepted**, and social attitudes adjusted accordingly. If privacy is understood within the context of overall social processes of rationalisation and normalisation, and as integral to struggles over self-definition, the difficulties consequentialist accounts face in taking privacy seriously are comprehensible. In particular, by valuing a purely instrumental concept of reason, welfarism can be seen as privileging impersonal social objectives over human values, such as the ability of individual subjects to define themselves and respect for human dignity. Strict welfarist analysis is therefore completely implicated in processes of rationalisation and normalisation, suggesting that it is especially **ill-suited as a means for analysing the value of privacy.** It is only if the models of the individual subject and of human reason underlying welfarism are enriched in ways suggested by Mill and Sen — by including values such as the ability of the individual to determine his or her own ends — that consequentialism is ever likely to be sympathetic to privacy. The implication of such a broad approach would be to constrain the untrammelled pursuit of welfarist objectives by the protection of individual rights, however formulated. However, broadening the approach in this way would seem to introduce the universalistic pretensions that plague deontological approaches to privacy.

***Human rights is the epitome of consequentialism*

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A specific group of human rights are categorized as qualified rights in political and legal practice because it is a common understanding that such [End Page 257] rights are not and should not be absolute.31 A human right is regarded as absolute when it cannot be overridden under any empirical circumstance whatsoever.32 Any competing consideration that may emerge according to circumstances is ruled out as irrelevant to upholding a human right in practice. The most common examples of absolute rights provisions in international law are freedom from torture, right to due process, and freedom from slavery.33 **These protections call for action from decision makers, independent of the circumstances.** Courts are also under an obligation to ensure that any measure taken by executive authorities does not infringe upon the absolute character of the right.34 Even the existence of exceptional circumstances, such as a state of emergency or an armed conflict, does not suspend this requirement of independent action.35 [End Page 258] Qualified rights, on the other hand, are marked by their lack of absoluteness. They may conflict with other interests that may or may not be protected by human rights. Whether the protection of such rights then should be subject to consequential forms of analysis remains unclear. Human rights protections precisely aim to act as constraints on consequentialist forms of reasoning. Acts of balancing require identification of interests, assigning values to them and ultimately to deciding which interest yields the net benefit. This leads to a contradicting position of subjecting the constraint itself (human rights protections) to a test of consequentialism.36 This position can only be logical if qualified rights, such as that of freedom of expression, freedom of assembly, or freedom of association are thought to be intrinsically different from absolute rights such as freedom from torture and freedom from slavery. This distinction would mean two things: First, qualified human rights are by their nature in a commensurate conflicting relationship with communal aims and interests and are, therefore, context-sensitive. Second, context-sensitive rights are by their nature subject to utilitarian calculations of net benefit. None of these points, however, are coherent with the nature of human rights protections. It is clear that acts of balancing require this central assumption—that conflicts are commensurate. The case-law of the European Court of Human Rights reflects the strong influence of this assumption. The European Court of Human Rights takes striking a fair balance "between the competing interests of the individual and the community as a whole"37 as one of its interpretive principles in assessing qualified human rights claims. This view reduces important questions about human rights to a conflict between the rights claims of a particular individual against the community. Human rights protections do indeed benefit certain persons at certain times. **The nature of human rights protections, however, is not about the interests of a specific person, but those of each and every person**. Every time a human rights protection is upheld, this does mean that a common interest is simultaneously sacrificed. It also does not follow that more of human rights protections mean less protection of common interests. [End Page 259]

***Rights protection is necessary irrespective of majority opinion*

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Human rights protections are best conceived, regardless of absolute or qualified forms, to serve their own purpose toward an understanding of common good. The deep values and considerations that back up human rights protections are not important because they maximize an overall good, but because they provide a space for individually-centered concerns in a political society.38 In international law, for example, human rights protections, by definition, concern everyone, obligations erga omnes.39 In arguing **that human rights are important for each and every individual**, the emphasis should be on the separateness of individuals rather than their aggregate. The practice of the Inter-American Convention regarding freedom of expression,40 for example, suggests that this freedom has a "double effect," belonging to each individual to express and a collective to

receive information and ideas.41 Even though this formulation might help to increase the rhetorical importance of freedom of expression, the risk of making rights vulnerable to their perceived importance to the community remains. For example, if a community overwhelmingly decides that it does not consider it to be important to receive information about climate change, should this have an effect on the right of individuals to freedom of expression? When human rights are defined as belonging to each and every individual, it is clear that their existence does not depend on a collective need and the right should be protected despite the lack of collective need or interest. Additionally, balancing—identifying, quantifying, and weighing the interests—is not the only way to address these contextual considerations. Indeed, even the European Court of Human Rights, has employed a range of non-balancing approaches. For example, the European Court of Human [End Page 260] Rights has considered the chilling effect caused by restricting the media's freedom of expression without balancing that right against communal interests.42 This shows a way of thinking about fundamental values behind freedom of expression without seeing this right in a head to head competition with a communal interest. When the Court says that the restriction of freedom of speech for a journalist would have a chilling effect, it is not weighing the right against other interests, but showing why it is important in its own end.43 Engagement with the context, consequences, and history can be undertaken consistent with human rights aims, not necessarily at the expense of them.

Yes War

U.S Russia war is uniquely likely

DeBar 14 (Press.TV citing Don DeBar, political analyst, host and journalist at CPRmetro.org, "US encirclement of Russia setting stage for nuclear war: Analyst", 11/9/14, http://www.presstv.com/detail/2014/11/09/385326/us-moves-make-nuclear-war-possible/, AB)

Political activist Don DeBar believes "the stakes are extremely" high for a nuclear war between Washington and Moscow due to US policy of military encirclement of Russia. "The United States has been advancing towards Russia physically in terms of placement of military resources, they are now parked at the borders of Russia from the Baltics up in the Baltic Sea in the very northwest corner of Russia down to the middle of Ukraine at this point in the southwest part of Russia," he told Press TV on Saturday. "The United States has been committing some very hostile acts towards Russia, attempting to tank its currency, attempting to isolate it economically in general, and Russia has, in turn, been looking elsewhere to find partners for the development that it seeks for its own population," the activist added. These hostile moves, DeBar said, have come at the same time that the Obama administration is pursuing its "pivot" to Asia which is aimed at containing China and giving rise to Japan as a military power. DeBar made the comments after American philosopher Noam Chomsky said that the escalating tensions between the United States and Russia could spark a nuclear war. "China has risen as an economic power. Russia has come back as an economic power, [it]maintains its nuclear weaponry and has been upgrading its military," DeBar said. "As tensions rise, as the law of unintended consequences has greater and greater play and as Chomsky cited the low-risk individual incidents of accidental war-peace planning, as you keep rolling the dice, sooner or later you'll get '7' or '11' and that's the end of humanity," the analyst noted. "The stakes are extremely high. The ironic part is that President Barack Obama got a Nobel Peace Prize at the beginning of his presidency because he had spoken to the need to eliminate nuclear weapons and he is now spending what's going to end up being a trillion dollars over the next 30 years, but hundreds of billions of dollars in the near term to upgrade and expand the power of the American nuclear arsenal," DeBar explained.

MAD doesn't check

Kroeig 14 (Matthew Kroenig, Associate Professor and International Relations Field Chair Department of Government Georgetown University & Nonresident Senior Fellow Brent Scowcroft Center on International Security The Atlantic Council, "The History of Proliferation Optimism: Does It Have A Future?", February 2014, http://www.matthewkroenig.com/The%20History%20of%20Proliferation%20Optimism_Feb2014.pdf, AB)

Scott Sagan and other contemporary proliferation pessimists have provided systematic and thoroughgoing critiques of the proliferation optimism position.32 Sagan shows that the spread of nuclear weapons leads to greater levels of international instability because: states might conduct preventive strikes on the nuclear facilities of proliferant states, proliferant states might not take the necessary steps to build a secure, second-strike capability, and organizational pathologies within nuclear states could lead to accidental or inadvertent nuclear launch.33 As Frank Gavin writes in his review of the optimism/pessimism debate, "The real problem, however, is that Sagan plays small ball in his debate with Waltz, conceding the big issues. Why not challenge Waltz on his core arguments about deterrence and stability?"34 Rather than repeat the substantial efforts of previous pessimists, therefore, I will take up Gavin's challenge and focus on three big issues. In particular, this section maintains that proliferation optimists: present an oversimplified version of nuclear deterrence theory, follow a line of argumentation that contains an internal logical contradiction, and do not address the concerns of U.S. foreign policymakers. First and foremost, proliferation optimists present an oversimplified view of nuclear deterrence theory. Optimists argue that since the advent of Mutually Assured Destruction (MAD), any nuclear war would mean national suicide and, therefore, no rational leader would ever choose to start one. Furthermore, they argue that the requirements for rationality are not high. Rather, leaders must value their own survival and the survival of their nation and understand that intentionally launching a nuclear war would threaten those values. Many analysts and policymakers attempt to challenge the optimists on their own turf and question whether the leaders of potential proliferant states are fully rational.35 Yet, these debate overlook the fact that, apart from the optimists, leading nuclear deterrence theorists believe that nuclear proliferation contributes to a real risk of nuclear war even in a situation of Mutually Assured Destruction (MAD) among rational states.36 Moreover, realizing that nuclear war is possible does not depend on peculiar beliefs about the possibility of escaping MAD.37 Rather, as we will discuss below, these theorists understand that some risk of nuclear war is necessary in order for deterrence to function. To be sure, in the 1940s, Viner, Brodie, and others argued that MAD rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.38 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: how can states credibly threaten a nuclear-armed opponent? Since the 1960s, academic nuclear deterrence theory has been devoted almost exclusively to answering this question.39 And their answers do not give us reasons to be optimistic.

It's totally possible – seven independent reasons

-structural rivalries and stress
-belief that war is impossible
-thick interdependence
-rising nationalism and competing claims
-powerful military establishments
-diplomatic alliances
-temptation to maintain dominance

Allison 14 (Graham Allison, director of the Belfer Center for Science and International Affairs at the Harvard Kennedy School, "Just How Likely Is Another World War?", 6/30/14, The Atlantic, http://www.theatlantic.com/international/archive/2014/07/just-how-likely-is-another-world-war/375320/, AB)
This essay attempts to use the "May Method" to highlight seven salient similarities and seven instructive differences between the challenges confronting Chinese and American leaders today and those facing world leaders in 1914. While most of the similarities make the possibility of conflict today more plausible that it might otherwise seem, and most of the differences make conflict seem less plausible, instructively, some have the opposite effect. 1. "Thucydides's Trap": structural stress that inevitably occurs when a rapidly rising power rivals a ruling power. As Thucydides observed about ancient Greece, an ascendant Athens naturally became more ambitious, assertive, arrogant, and even hubristic. Predictably, this instilled fear, anxiety, and defensiveness among the leaders of Sparta. Accustomed to economic primacy, naval dominance, and an empire on which the sun never set, Britain in 1914 viewed with alarm the unified German Reich that had overtaken it in industrial production and research, that was demanding a greater sphere of influence, and that was expanding its military capability to include a navy that could challenge Britain's control of the seas. In the decade before the war, this led Britain to abandon a century of "splendid isolation" to tighten

entanglements with France and then Russia. During the same period, German military planners watched with alarm as Russia rushed to complete railways that could allow it to move forces rapidly to the borders of Germany and its faltering Austro-Hungarian ally. In 2014, what for most Americans is our natural, God-given position as "Number One" is being challenged by an emerging China on track to surpass the United States in the next decade as the world's largest economy. As China has grown more powerful, it has become more active and even aggressive in its neighborhood, particularly in what it believes are the rightly named "China" seas to its east and south. Fearful neighbors from Japan and the Philippines to Vietnam naturally look to the U.S. for support in its role as the guardian of what since World War II has been an American Pax Pacifica. 2. The virtual inconceivability of "total" war. In 1914, aside from occasional small wars and colonial smackdowns, war was "out of fashion." The best-selling book of the era by Norman Angell argued that war was a "great illusion," since the nominal winner would certainly lose more than it could possibly gain. In 2014, the "long peace" since World War II, reinforced by nuclear weapons and economic globalization, makes all-out war between great powers so obviously self-defeating that it seems unthinkable. 3. Thick interdependence: economic, social, and political. In 1914, the U.K. and Germany were each other's major European trading partner and principal foreign investor. King George and Kaiser Wilhelm were first cousins, the latter having sat by the deathbed of his grandmother, Queen Victoria, in 1901, and marched as second only to George at the funeral of George's father, King Edward VII, in 1910. Elites of both societies studied at each other's major universities, were partners in business, and socialized together. In 2014, China is the United States' second-largest trading partner, the U.S. the largest buyer of Chinese exports, and China the largest foreign holder of American debt. A quarter of a million Chinese students study annually in American universities, including most recently Chinese President Xi Jinping's only daughter. 4. Rising nationalism that accentuates territorial disputes. In 1914, as the Ottoman Empire unraveled, Serbian nationalists aspired to create a greater Serbia, and Russia and Austria-Hungary competed for influence among the Ottoman successor states in the Balkans. Meanwhile, resurgent Germans planned for a larger Germany and French patriots dreamed about recapturing Alsace-Lorraine, provinces taken by Germany from France after the Franco-Prussian War of 1870–71. In 2014, China's claim to the Senkaku Islands administered by Japan in the last China Sea, and the "9-dash line" by which it asserts ownership of the entire South China Sea, are reflections of ambitions that are defining new facts in the surrounding waters, exciting nationalism among its neighbors and in its own population. 5. Powerful military establishments focused on a primary enemy for the purposes of planning and buying (and justifying defense budgets). In 1914, Britain and Germany's militaries viewed each other as major threats, Germany and Russia saw the other as major rivals, and France was focused on the danger posed by Germany. In 1907, as Germany's naval expansion approached the point at which it could challenge British naval primacy, the British prime minister asked the leading analyst in the foreign ministry for a memorandum "on the present State of British relations with France and Germany." That now-famous document written by Eyre Crowe predicted that Germany would not only establish the strongest army on the continent, but also "build as powerful a navy as she can afford." Germany's pursuit of what the memorandum called "political hegemony and maritime ascendency" would pose a threat to the "independence of her neighbors and ultimately the existence of England." Today, the U.S. Department of Defense plans against something it calls the "Anti-Access/Area Denial threat," a thinly veiled "you know who" for China. Since its humiliation in 1996, when it was forced to back down from threats to Taiwan after the U.S. sent two aircraft carriers to support Taiwan, China has planned, built, and trained to push U.S. naval forces back beyond Taiwan to the first island chain and eventually to the second. 6. Entangling alliances that create what Henry Kissinger has called a "diplomatic doomsday machine." In 1914, a web of complex alliance commitments threatened rapid escalation into Great Power war. After unifying Germany in the late nineteenth century, Chancellor Otto von Bismarck constructed a network of alliances that would keep the peace in Europe while isolating Germany's principal enemy, France. Kaiser Wilhelm wrecked Bismarck's finely tuned alliance structure by refusing to extend Germany's alliance with Russia in 1890. Two years later, Russia allied with France. This led Germany to strengthen its ties to Austria-Hungary, and Britain to entertain deeper entanglement with both France and Russia. In 2014, in East Asia, the United States has many allies, China few. In 2014, in East Asia, the United States has many allies, China few. American obligations and operational plans cover a spectrum from the U.S.-Japan Treaty of Mutual Cooperation and Security, which obligates the U.S. to regard any attack upon Japan as an attack on the U.S., to agreements with the Philippines and others that require only consultation and support. As an assertive China defines air identification zones, drills for oil and gas in contested areas, excludes other states' ships from waters around disputed islands, and operates ships and aircraft to redraw "rules of the road," it becomes easier to imagine scenarios in

which mistakes or miscalculation lead to results no one would have chosen. 7. Temptation of a coup de main to radically improve power and prestige. In 1914, a declining Austria-Hungary faced rising, Russian-backed Pan-Slavism in the Balkans. Seeing Serbia as the epicenter of Pan-Slavism, Emperor Franz Joseph imagined that this menace could be contained by a decisive defeat of Serbia. The assassination of his heir, Franz Ferdinand, provided an opportunity. In 2014, Shinzo Abe seeks to reverse Japan's "lost decades." A quarter-century ago, Japan appeared to be on the threshold of becoming "Number One." Since then, it has stagnated economically and become almost irrelevant in international politics. Abe's program for revival thus includes not only "Abenomics," but also restoration of Japanese influence in the world, including revision of the constitution and expansion of Japan's military forces to meet what he explicitly calls the "China threat." In sum, those who see reminders of events a century ago in developments today are not deluded.

Privacy Generic DDI

Privacy Neg

1NC Frontline

Weigh consequences — especially when responding to terrorism.

Isaac 2

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University-Bloomington, 2002 ("Ends, Means, and Politics," *Dissent*, Volume 49, Issue 2, Spring, Available Online to Subscribing Institutions via EBSCOhost, p. 35-37)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention **does not ensure** the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of **real violence and injustice**, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. [end page 35] This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; **it is the effects of action, rather than the motives of action, that is most significant**. Just as the alignment with "good" may engender impotence, **it is often the pursuit of "good" that generates evil**. This is the lesson of communism in the twentieth century: it is **not enough** that one's goals be sincere or idealistic; it is **equally important**, **always**, to ask about **the effects of pursuing these goals** and to judge these effects in **pragmatic and historically contextualized** ways. Moral absolutism **inhibits this judgment**. It **alienates** those who are not true believers. It promotes **arrogance**. And it **undermines political effectiveness**.

No NSA abuses – checks the internal link

Lowry 2015,

Rich, Editor, the National Review, 5-27-2015, "Lowry: NSA data program faces death by bumper sticker," Salt Lake Tribune, http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2557534

You can listen to orations on the NSA program for hours and be outraged by its violation of our liberties, inspired by the glories of the Fourth Amendment and prepared to mount the barricades to stop the NSA in its tracks — and still have no idea what the program actually does. That's what the opponents leave out or distort, since their case against the program becomes so much less compelling upon fleeting contact with reality. The program involves so-called metadata, information about phone calls, but not the content of the calls — things like the numbers called, the time of the call, the duration of the call. The phone companies have all this information, which the NSA acquires from them. What happens next probably won't shock you, and it shouldn't. As Rachel Brand of the Privacy and Civil Liberties Oversight Board

writes, "It is stored in a database that may be searched only by a handful of trained employees, and even they may search it only after a judge has determined that there is evidence connecting a specific phone number to terrorism." The charge of domestic spying is redolent of the days when J. Edgar Hoover targeted and harassed Martin Luther King Jr. Not only is there zero evidence of any such abuse, it isn't even possible based on the NSA database alone. There are no names with the numbers. As former prosecutor Andrew C. McCarthy points out, whitepages.com has more personal identifying information. The NSA is hardly a rogue agency. Its program is overseen by a special panel of judges, and it has briefed Congress about its program for years.

No Moral Objections to Surveillance – even new concerns don't assume the strength of activist potential

Sagar 15—Rahul Sagar, Assistant Professor of Politics at Princeton University, 2015 ("Against Moral Absolutism: Surveillance and Disclosure After Snowden," *Cambridge Journals Online*, June 12th, Available online at http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9749725&fileId=S0892679415000040, Accessed on 7/15/15)

I have challenged the conspiratorial view that state surveillance serves to reinforce the hegemony of a shadowy elite. A basic premise of the discussion that follows is that in contemporary liberal democracies, communications surveillance is a legitimate activity. What, then, ought to be the bounds of such surveillance and how far can we be confident that these bounds are being observed? In order to ascertain the rightful bounds on communications surveillance we need to weigh the interests it furthers against those it threatens. The interest it furthers is national security. Greenwald questions this link on a number of grounds. He argues that surveillance is a disproportionate response to the threat of terrorism, which has been "plainly exaggerated" because the "risk of any American dying in a terrorist attack is . . . considerably less than the chance of being struck by lightning." · Furthermore, even if the threat of terrorism is real, surveillance isunjustified because to "venerate physical safety above all other values" means accepting "a life of paralysis and fear." He also questions surveillance's relevance to national security on the grounds that it is often employed to further other national or commercial interests. He asks how, for instance, does "spying on negotiation sessions at an economic summit or targeting the democratically elected leaders of allied states" serve national security?· Arguably these criticisms miss the mark. That terrorist plots thus far have been amateurish does not mean that terrorists will not learn and eventually succeed in causing greater harm. Nor is being concerned about terrorism tantamount to "pursuing absolute physical safety." · The terror in terrorism comes from the unpredictability and the brutality of the violence inflicted on civilians. There is a difference between voluntarily undertaking a somewhat risky bicycle ride in rush hour traffic and being unexpectedly blown to bits while commuting to work. Finally, it is widely accepted that countries have a right to pursue their national interests, subject of course to relevant countervailing ethical considerations. It is not hard to imagine how intercepting Chancellor Angela Merkel's conversation could serve the United States' national security interests (for example, it could provide intelligence on Europe's dealings with Russia). What are the countervailing values that have been overlooked in this case? The President's Review Group on Intelligence and Communications Technologies, set up in the wake of Snowden's disclosures, warns that surveillance of foreign leaders must be "respectful." But the justification offered is strategic rather than moral: the group urges caution out of recognition for "the importance of cooperative relationships with other nations." · A moral justification would have weak legs since American allies, including Germany, reportedly engage in similar practices. As Greenwald himself acknowledges, the NSA's surveillance of foreign leaders is "unremarkable" because "countries have spied on heads of state for centuries, including allies." Greenwald also raises objections from a national security perspective. He warns that mass surveillance undermines national security because "it swamps the intelligence agencies with so much data that they cannot possibly sort through it effectively." He also questions the efficacy of communications surveillance, arguing that it has little to show in terms of success in combating terrorism. But these criticisms are equally unpersuasive. It is certainly possible that a surveillance program could generate so much raw data that an important piece of information is overlooked. But in such a case the appropriate response would not be to shut down the programbut rather to bulk up the processing power and manpower devoted to it. Finally, both the President's Review Group and the Privacy and Civil Liberties Oversight Board have examined the efficacy of the

NSA's programs. Both report that the NSA's foreign surveillance programs have contributed to more than fifty counterterrorism investigations, leading them to conclude that the NSA "does in fact play an important role in the nation's effort to prevent terrorist attacks across the globe." □· So far I have argued that communications surveillance can further national security. However, national security is not the only value liberal democracies and their citizens deem important. Hence we need to consider how far communications surveillance impinges on other important interests and values. Greenwald identifies two major harms. The first is political in nature. Mass surveillance is said to stifle dissent because "a citizenry that is aware of always being watched quickly becomes a compliant and fearful one." Compliance occurs because, anticipating being shamed or condemned for nonconformist behavior, individuals who know they are being watched "think only in line with what is expected and demanded." □· Even targeted forms of surveillance are not to be trusted, Greenwald argues, because the "indifference or support of those who think themselves exempt invariably allows for the misuse of power to spread far beyond its original application." □· These claims strike me as overblown. The more extreme claim, that surveillance furthers thought control, is neither logical nor supported by the facts. It is logically flawed because accusing someone of trying to control your mind proves that they have not succeeded in doing so. On a more practical level, the fate met by states that have tried to perfect mass control—the Soviet Union and the German Democratic Republic, for example—suggests that surveillance cannot eliminate dissent. It is also not clear that surveillance can undermine dissident movements as easily as Greenwald posits. The United States' record, he writes, "is suffused with examples of groups and individuals being placed under government surveillance by virtue of their dissenting views and activism—Martin Luther King, Jr., the civil rights movement, antiwar activists, environmentalists." □□ These cases are certainly troubling, but it hardly needs pointing out that surveillance did not prevent the end of segregation, retreat from Vietnam, and the rise of environmental consciousness. This record suggests that dissident movements that have public opinion on their side are not easily intimidated by state surveillance (a point reinforced by the Arab Spring). Surveillance may make it harder for individuals to associate with movements on the far ends of the political spectrum. But why must a liberal democracy refrain from monitoring extremist groups such as neo-Nazis and anarchists? There is the danger that officials could label as "extreme" legitimate movements seeking to challenge the prevailing order. Yet the possibility that surveillance programs could expand beyond their original ambit does not constitute a good reason to end surveillance altogether. A more proportionate response is to see that surveillance powers are subject to oversight. The second harm Greenwald sees surveillance posing is personal in nature. Surveillance is said to undermine the very essence of human freedom because the "range of choices people consider when they believe that others are watching is . . . far more limited than what they might do when acting in a private realm." □· Internet-based surveillance is viewed as especially damaging in this respect because this is "where virtually everything is done" in our day, making it the place "where we develop and express our very personality and sense of self." Hence, "to permit surveillance to take root on the Internet would mean subjecting virtually all forms of human interaction, planning, and even thought itself to comprehensive state examination." □· This claim too seems overstated in two respects. First, it exaggerates the extent to which our self-development hinges upon electronic communication channels and other related activities that leave electronic traces. The arrival of the Internet certainly opens new vistas, but it does not entirely close earlier ones. A person who fears what her browsing habits might communicate to the authorities can obtain texts offline. Similarly, an individual who fears transmitting materials electronically can do so in person, as Snowden did when communicating with Greenwald. There are costs to communicating in such "old-fashioned" ways, but these costs are neither new nor prohibitive. Second, a substantial part of our self-development takes place in public. We become who we are through personal, social, and intellectual engagements, but these engagements do not always have to be premised on anonymity. Not everyone wants to hide all the time, which is why public engagement—through social media or blogs, for instance—is such a central aspect of the contemporary Internet.

Privacy violations inevitable – tech and corporations

Goldsmith, 2015

Jack the Henry L. Shattuck Professor at Harvard Law School, The Ends of Privacy, The New Rambler, Apr. 06, 2015 (reviewing Bruce Schneier, Data and Goliath: The Hidden Battles to

Collect Your Data and Control Your World (2015)). Published Version
http://newramblerreview.com/images/files/Jack- Goldsmith_Review-of-Bruce-Schneier.pdf

The truth is that consumers love the benefits of digital goods and are willing to give up traditionally private information in exchange for the manifold miracles that the Internet and big data bring. Apple and Android each offer more than a million apps, most of which are built upon this model, as are countless other Internet services. More generally, big data promises huge improvements in economic efficiency and productivity, and in health care and safety. Absent abuses on a scale we have not yet seen, the public's attitude toward giving away personal information in exchange for these benefits will likely persist, even if the government requires firms to make more transparent how they collect and use our data. One piece of evidence for this is that privacy-respecting search engines and email services do not capture large market shares. In general these services are not as easy to use, not as robust, and not as efficacious as their personal-data-heavy competitors. Schneier understands and discusses all this. In the end his position seems to be that we should deny ourselves some (and perhaps a lot) of the benefits big data because the costs to privacy and related values are just too high. We "have to stop the slide" away from privacy, he says, not because privacy is "profitable or efficient, but because it is moral." But as Schneier also recognizes, privacy is not a static moral concept. "Our personal definitions of privacy are both cultural and situational," he acknowledges. Consumers are voting with their computer mice and smartphones for more digital goods in exchange for more personal data. The culture increasingly accepts the giveaway of personal information for the benefits of modern computerized life. This trend is not new. "The idea that privacy can't be invaded at all is utopian," says Professor Charles Fried of Harvard Law School. "There are amounts and kinds of information which previously were not given out and suddenly they have to be given out. People adjust their behavior and conceptions accordingly." That is Fried in the 1970 Newsweek story, responding to an earlier generation's panic about big data and data mining. The same point applies today, and will apply as well when the Internet of things makes today's data mining seem as quaint as 1970s-era computation.

The right to security trumps the right to privacy – Individual ethics prove

Himma 2007 (KENNETH EINAR , "Privacy Versus Security: Why Privacy is Not an Absolute Value or Right" *San Diego Law Review*,
http://poseidon01.ssrn.com/delivery.php?ID=946099113093066103077074112016017090015022028045089092075001073099001099109106114127011017012000106100015114101076020123093078010050012092072093113078096021081008038034055090107126078091116028103066027088072124015085097094100087114086001099009078&EXT=pdf&TYPE=2)

From an intuitive standpoint, the idea that the right to privacy is an absolute right seems utterly implausible. Intuitively, it seems clear that there are other rights that are so much more important that they easily trump privacy rights in the event of a conflict. For example, if a psychologist knows that a patient is highly likely to commit a murder, then it is, at the very least, morally permissible to disclose that information about the patient in order to prevent the crime—regardless of whether such information would otherwise be protected by privacy rights. Intuitively, it seems clear that life is more important from the standpoint of morality than any of the interests protected by a moral right to privacy. Still one often hears—primarily from academics in information schools and library schools, especially in connection with the controversy regarding the USA PATRIOT Act—the claim that privacy should never be sacrificed for security, implicitly denying what I take to be the underlying rationale for the PATRIOT Act. This also seems counterintuitive because it does not seem unreasonable to believe we have a moral right to security that includes the right to life. Although this right to security is broader than the right to life, the fact that security interests include our interests in our lives implies that the right to privacy trumps even the right to life—something that seems quite implausible from an intuitive point of view. If I have to give up the most private piece of information about myself to save my life or

protect myself from either grievous bodily injury or financial ruin, I would gladly do so without hesitation. There are many things I do not want you to know about me, but should you make a credible threat to my life, bodily integrity, financial security, or health, and then hook me up to a lie detector machine, I will truthfully answer any question you ask about me. I value my privacy a lot, but I value my life, bodily integrity, and financial security much more than any of the interests protected by the right to privacy.

Surveillance reinforces the equal protection of the law – key to equitable morals

Taylor 05

[In Praise of Big Brother: Why We Should Learn to Stop Worrying and Love Government Surveillance; James Stacey Taylor; Public Affairs Quarterly Vol. 19, No. 3 (Jul., 2005), pp. 227-246 Published by: University of Illinois Press on behalf of North American Philosophical Publications Stable URL: http://www.jstor.org/stable/40441413] //duff

A system of constant State surveillance would have other advantages, too. Under the current criminal justice system a wealthy defendant who is innocent of the charges that she is faced with can use her wealth to hire private investigators to demonstrate her innocence, either by finding persons who witnessed the crime of which she is accused, or by finding persons who can provide her with a legitimate alibi. This option is not open to poorer defendants who are similarly innocent, but who cannot afford to hire private investigators. Since this is so, innocent, poor defendants are more likely than innocent, wealthy defendants to accept plea bargains, or to be convicted of crimes that they did not commit. If, however, a poor person were to be accused of a crime in a State that subjected its citizens to constant surveillance, the judge in her case would be morally justified (indeed, would be morally required) in enabling the defense to secure information that would prove her innocence, and that would have been gathered by the State's surveillance devices. A State's use of constant surveillance could thus reduce the number of persons who are wrongfully convicted. This would not only be good in itself, but it would also lead to a more equitable justice system, for the disparity in wrongful conviction rates between the wealthy (who could use their wealth to prove their innocence) and the poor could be eliminated.

Transparency is inevitable and aids psychological and ethical self-development – welcome to Post-Privacy

Seemann, 2015,

Michael Seemann studied Applied Cultural Studies in Lünebur, Now he blogs at mspr0.de and writes for various media like Rolling Stone, TIME online, SPEX, Spiegel Online, c't and the DU magazine " Digital Tailspin Ten Rules for the Internet After Snowden" The Network Notebooks series March 2015 http://networkcultures.org/wp-content/uploads/2015/03/NN09_Digital_Tailspin_SP.pdf

POST-PRIVACY: TRANSPARENCY AS A STOIC EXERCISE In his book Post-Privacy: Prima leben ohne Privatsphäre (Post-Privacy: Living just Fine Without Privacy),18 Christian Heller embraces an even more radical strategy. He argues that it is time to say goodbye to privacy altogether and to embrace the inevitable: transparency. He highlights, amongst other points, the fact that privacy as we know it today is a relatively new form of coexistence, and one that has not only been advantageous. The private sphere has, for the longest time, been the place of the oppression of women, for example. Contrast this with the gay rights movements, which were among the first to show how social progress can be achieved by making ultimately personal information public. Since we are unable to halt technological progress, we'd better get used to the idea of total transparency, says Heller. Heller himself acts out this idea in practice. He documents all of his daily routines, his finances, and large amounts of highly personal information in a publicly accessible wiki.19 It is easy to dismiss this as a self-indulgent discovery trip, but Heller is undeniably radicalizing an issue that has become the norm, in social networks anyway, namely the fact that formerly private matters are explicitly being made public. Unlike many Facebook users, however, Heller doesn't deceive himself. He is highly aware of the fact that his data

can be used and abused, by anyone, at any time, for any purpose. In this sense, post-privacy as a strategy complies well with Nassim Nicholas Taleb's dictum of antifragility. Post-privacy is a practical exercise in stoicism: basing your assumptions on the worst case scenario – in this case, that all information is public by default – will not give you a false sense of security, but rather will allow you to make plans in such a way that, should this worst case actually occur, you will not be confronted with unsolvable problems. If you keep in mind that all data is accessible, in one way or another, this can actually reduce anxiety – one of the more negative effects of surveillance.

Ethics

No D- Rule – Consequences 1st

Weigh consequences — especially *when responding to terrorism.*

Isaac 2

Jeffrey C. Isaac, James H. Rudy Professor of Political Science and Director of the Center for the Study of Democracy and Public Life at Indiana University-Bloomington, 2002 ("Ends, Means, and Politics," *Dissent*, Volume 49, Issue 2, Spring, Available Online to Subscribing Institutions via EBSCOhost, p. 35-37)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention **does not ensure** the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that in a world of **real violence and injustice**, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. [end page 35] This is why, from the standpoint of politics—as opposed to religion—pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; **it is the effects of action, rather than the motives of action, that is most significant**. Just as the alignment with "good" may engender impotence, **it is often the pursuit of "good" that generates evil**. This is the lesson of communism in the twentieth century: it is **not enough** that one's goals be sincere or idealistic; it is **equally important**, **always**, to ask about **the effects of pursuing these goals** and to judge these effects in **pragmatic and historically contextualized** ways. Moral absolutism **inhibits this judgment**. It **alienates** those who are not true believers. It promotes **arrogance**. And it **undermines political effectiveness**.

Yes - Consequentialism - surveillance

Privacy needs to be considered in a utilitarian framework to be properly evaluated—weigh it against our impacts

Solove 2—Daniel Solove is an Associate Professor at George Washington University Law School and holds a J.D. from Yale Law School, he is one of the world's leading expert in information privacy law and is well known for his academic work on privacy and for popular books on how privacy relates with information technology, he has written 9 books and more than

50 law review articles, 2002 (“Conceptualizing Privacy,” Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=313103, accessed on 7/17/15)

Thus far, attempts to locate a common denominator for conceptualizing privacy have been unsatisfying. Conceptions that attempt to locate the core or essence of privacy wind up being too broad or too narrow. I am not arguing that we must always avoid referring to privacy in the abstract; sometimes it is easiest and most efficient to do so. Rather, such abstract reference to privacy often fails to be useful when we need to conceptualize privacy to solve legal and policy problems. Therefore, it may be worthwhile to begin conceptualizing privacy in a different way. A bottom-up contextualized approach toward conceptualizing privacy will prove quite fruitful in today’s world of rapidly changing technology. Of course, in advocating a contextual analysis of privacy, the issue remains: At what level of generality should the contexts be defined? This is a difficult question, and I doubt there is a uniform level of generality that is preferable. This Article does not recommend that contexts be defined so narrowly as to pertain to only a few circumstances. It is often useful to define contexts of some breadth, so long as the generalization is not overly reductive or distorting. All generalization is an imperfection. Focusing on particular contexts and practices is a way of carving up experience into digestible parts. The human mind simply cannot examine experience in its chaotic totality: it must bite off pieces to analyze. The way we conceptualize privacy in each context profoundly influences how we shape legal solutions to particular problems. We can evaluate the results of our conceptions by looking to how well they work in solving the problems. Although I critique attempts to locate an overarching conception of privacy, I am certainly not arguing against endeavors to conceptualize privacy. Conceptualizing privacy in particular contexts is an essential step in grappling with legal and policy problems. Thus, the issue of how we conceptualize privacy is of paramount importance for the Information Age, for we are beset with a number of complex privacy problems, causing great disruption to numerous important practices of high social value. With the method of philosophical inquiry I am recommending, we can better understand, and thus more effectively grapple with, these emerging problems.

The value of privacy depends on the context—don’t buy into their universal absolutes arguments

Solove 7—Daniel Solove, an Associate Professor at George Washington University Law School and holds a J.D. from Yale Law School, one of the world’s leading expert in information privacy law and is well known for his academic work on privacy and for popular books on how privacy relates with information technology, has written 9 books and more than 50 law review articles, 2007 (““I’ve Got Nothing to Hide” and Other Misunderstandings of Privacy,” Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=998565 , accessed on 7/17/15)

Because privacy involves protecting against a plurality of different harms or problems, the value of privacy is different depending upon which particular problem or harm is being protected. Not all privacy problems are equal; some are more harmful than others. Therefore, we cannot ascribe an abstract value to privacy. Its value will differ substantially depending upon the kind of problem or harm we are safeguarding against. Thus, to understand privacy, we must conceptualize it and its value more pluralistically. Privacy is a set of protections against a related set of problems. These problems are not all related in the same way, but they resemble each other. There is a social value in protecting against each problem, and that value differs depending upon the nature of each problem.

There should not be a universal ethical rule against surveillance, the context matters.

Stoddart, 2014

Eric. School of Divinity, University of St Andrews "Challenging ‘Just Surveillance Theory’: A Response to Kevin Macnish’s ‘Just Surveillance? Towards a Normative Theory of Surveillance’." Surveillance & Society 12.1 (2014): 158-163.

I am sorry to say that I find Macnish's aim of a normative ethics of surveillance to be an unnecessary goal. I could be persuaded that a radically revised model of practical reasoning based on the Just War Tradition might have saliency for investigative strategies involving surveillance technologies. However, 'surveillance' is much too all-encompassing a term to be the subject of its own ethics. There can be no 'ethics of surveillance' but there may be norms appropriate for particular contexts of surveillance. This means examining specific domains

in which surveillance is deployed, along with other strategies, to address concerns or challenges. For example, the ethics of surveillance in elderly care or the ethics of surveillance in education are valuable discussions to be had. My point is that it ought to be the ethics of elderly care that is foregrounded within which we would be seek to understand the ethical deployment of surveillance mechanisms.

Privacy is instrumental and never a moral absolute—its only valued through other ends

Solove 2—Daniel Solove is an Associate Professor at George Washington University Law School and holds a J.D. from Yale Law School, he is one of the world's leading expert in information privacy law and is well known for his academic work on privacy and for popular books on how privacy relates with information technology, he has written 9 books and more than 50 law review articles, 2002 ("Conceptualizing Privacy," Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=313103, accessed on 7/17/15)

However, along with other scholars,342 I contend that privacy has an instrumental value—namely, that it is valued as a means for achieving certain other ends that are valuable. As John Dewey observed, ends are not fixed, but are evolving targets, constantly subject to revision and change as the individual strives toward them.343 "Ends are foreseen consequences which arise in the course of activity and which are employed to give activity added meaning and to direct its further course."344 In contrast to many conceptions of privacy, which describe the value of privacy in the abstract, I contend that there is no overarching value of privacy. For example, theories of privacy have viewed the value of privacy in terms of furthering a number of different ends. Fried claims that privacy fosters love and friendship. Bloustein argues that privacy protects dignity and individuality. Boling and Inness claim that privacy is necessary for intimate human relationships. According to Gavison, privacy is essential for autonomy and freedom. Indeed, there are a number of candidates for the value of privacy, as privacy fosters self-creation, independence, autonomy, creativity, imagination, counter-culture, freedom of thought, and reputation. However, no one of these ends is furthered by all practices of privacy. The problem with discussing the value of privacy in the abstract is that privacy is a dimension of a wide variety of practices each having a different value—and what privacy is differs in different contexts. My approach toward conceptualizing privacy does not focus on the value of privacy generally. Rather, we must focus specifically on the value of privacy within particular practices.

Deontology Bad - Privacy

Deontological absolutes create bad conceptions of privacy. They destroy our ability to truly advance privacy

Solove 2—Daniel Solove is an Associate Professor at George Washington University Law School and holds a J.D. from Yale Law School, he is one of the world's leading expert in information privacy law and is well known for his academic work on privacy and for popular books on how privacy relates with information technology, he has written 9 books and more than 50 law review articles, 2002 ("Conceptualizing Privacy," Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=313103, accessed on 7/17/15)

Why should scholars and judges adopt my approach to conceptualizing privacy? To deal with the myriad of problems involving privacy, scholars and judges will have to adopt multiple conceptions of privacy, or else the old conceptions will lead them astray in finding solutions. The Court's 1928 decision in Olmstead v. United

States345 epitomizes the need for flexibility in conceptualizing privacy. The Court held that the wiretapping of a person's home telephone (done outside a person's house) did not run afoul of the Fourth Amendment because it did not involve a trespass inside a person's home.346 Justice Louis Brandeis vigorously dissented, chastising the Court for failing to adapt the Constitution to new problems: "[I]n the application of a Constitution, our contemplation cannot be only of what has been, but of what may be."347 The Olmstead Court had clung to the outmoded view that the privacy protected by the Fourth Amendment was merely freedom from physical incursions. As a result, for nearly forty years, the Fourth Amendment failed to apply to wiretapping, one of the most significant threats to privacy in the twentieth century.348 Finally, in 1967, the Court swept away this view in Katz v. United States,349 holding that the Fourth Amendment did apply to wiretapping. These events underscore the wisdom of Brandeis's observations in Olmstead—the landscape of privacy is constantly changing, for it is shaped by the rapid pace of technological invention, and therefore, the law must maintain great flexibility in conceptualizing privacy problems. This flexibility is impeded by the use of an overarching conception of privacy. Trying to solve all privacy problems with a uniform and overarching conception of privacy is akin to using a hammer not only to insert a nail into the wall but also to drill a hole. Much of the law of information privacy was shaped to deal with particular privacy problems in mind. The law has often failed to adapt to deal with the variety of privacy problems we are encountering today. Instead, the law has attempted to adhere to overarching conceptions of privacy that do not work for all privacy problems. Not all privacy problems are the same, and different conceptions of privacy work best in different contexts. Instead of trying to fit new problems into old conceptions, we should seek to understand the special circumstances of a particular problem. What practices are being disrupted? In what ways does the disruption resemble or differ from other forms of disruption? How does this disruption affect society and social structure? These are some of the questions that should be asked when grappling with privacy problems. In the remainder of this section, I will discuss several examples that illustrate these points.

Security First

Security comes first—privacy is never absolute

Himma 7—Kenneth Himma, Associate Professor of Philosophy, Seattle Pacific University, holds JD and PhD and was formerly a Lecturer at the University of Washington in Department of Philosophy, the Information School, and the Law School, 2007 ("Privacy vs. Security: Why Privacy is Not an Absolute Value or Right," Available online at http://ssrn.com/abstract=994458, accessed on 7/17/15)

Although an account that enables us to determine when security and privacy come into conflict and when security trumps privacy would be of great importance if I am correct about the general principle, my efforts in this essay will have to be limited to showing that the various theories of legitimacy presuppose or entail that, other things being equal, security is, as a general matter, more important than privacy. Among the moral rights most people believe deserve legal protection, none is probably more poorly understood than privacy. What exactly privacy is, what interests it encompasses, and why it deserves legal protection, are three of the most contentious issues in theorizing about information ethics and legal theory. While there is certainly disagreement about the nature and importance of other moral rights deserving legal protection, like the right to property, the very concept of privacy is deeply contested. Some people believe that the various interests commonly characterized as privacy interests have some essential feature in common that constitutes them as privacy interests; others believe that there is no such feature and that the concept of privacy encompasses a variety of unrelated interests, some of which deserve legal protection while others do not Notably, many people tend to converge on the idea that privacy rights, whatever they ultimately encompass, are absolute in the sense that they may not legitimately be infringed for any reason. While the various iterations of the USA PATRIOT Act are surely flawed with respect to their particulars, there are many people who simply oppose, on principle, even a narrowly crafted attempt to combat terrorism that infringes minimally on privacy interests. There is no valid justification of any kind, on this absolutist conception, for infringing any of the interests falling within the scope of the moral right to privacy.

Security Trumps Constitution

The counter-terror benefits of mass surveillance outweigh privacy and the Constitution.

Posner 5 —

Richard A. Posner, Senior Lecturer in Law at the University of Chicago, Judge on the United States Court of Appeals for the Seventh Circuit in Chicago, was named the most cited legal scholar of the 20th century by *The Journal of Legal Studies*, 2013 "Our Domestic Intelligence Crisis," *Washington Post*, December 21st, http://www.washingtonpost.com/wp-dyn/content/article/2005/12/20/AR2005122001053.html

These programs are criticized as grave threats to civil liberties. They are not. Their significance is in flagging the existence of gaps in our defenses against terrorism. The Defense Department is rushing to fill those gaps, though there may be better ways. The collection, mainly through electronic means, of vast amounts of personal data is said to invade privacy. But machine collection and processing of data cannot, as such, invade privacy. Because of their volume, the data are first sifted by computers, which search for names, addresses, phone numbers, etc., that may have intelligence value. This initial sifting, far from invading privacy (a computer is not a sentient being), keeps most private data from being read by any intelligence officer. The data that make the cut are those that contain clues to possible threats to national security. The only valid ground for forbidding human inspection of such data is fear that they might be used to blackmail or otherwise intimidate the administration's political enemies. That danger is more remote than at any previous period of U.S. history. Because of increased political partisanship, advances in communications technology and more numerous and competitive media, American government has become a sieve. No secrets concerning matters that would interest the public can be kept for long. And the public would be far more interested to learn that public officials were using private information about American citizens for base political ends than to learn that we have been rough with terrorist suspects – a matter that was quickly exposed despite efforts at concealment. The Foreign Intelligence Surveillance Act makes it difficult to conduct surveillance of U.S. citizens and lawful permanent residents unless they are suspected of being involved in terrorist or other hostile activities. That is too restrictive. Innocent people, such as unwitting neighbors of terrorists, may, without knowing it, have valuable counterterrorist information. Collecting such information is of a piece with data-mining projects such as Able Danger. The goal of national security intelligence is to prevent a terrorist attack, not just punish the attacker after it occurs, and the information that enables the detection of an impending attack may be scattered around the world in tiny bits. A much wider, finer-meshed net must be cast than when investigating a specific crime. Many of the relevant bits may be in the e-mails, phone conversations or banking records of U.S. citizens, some innocent, some not so innocent. The government is entitled to those data, but just for the limited purpose of protecting national security.The Pentagon's rush to fill gaps in domestic intelligence reflects the disarray in this vital yet neglected area of national security. The principal domestic intelligence agency is the FBI, but it is primarily a criminal investigation agency that has been struggling, so far with limited success, to transform itself. It is having trouble keeping its eye on the ball; an FBI official is quoted as having told the Senate that environmental and animal rights militants pose the biggest terrorist threats in the United States. If only that were so. Most other nations, such as Britain, Canada, France, Germany and Israel, many with longer histories of fighting terrorism than the United States, have a domestic intelligence agency that is separate from its national police force, its counterpart to the FBI. We do not. We also have no official with sole and comprehensive responsibility for domestic intelligence. It is no surprise that gaps in domestic intelligence are being filled by ad hoc initiatives.We must do better. The terrorist menace, far from receding, grows every day. This is not only because al Qaeda likes to space its attacks, often by many years, but also because weapons of mass destruction are becoming ever more accessible to terrorist groups and individuals.

Security Balance Good

The current balance between security and privacy is perfect

Karen J. **Greenberg**, [the executive director of the Center on Law and Security], APRIL 12, **2007**

Karen J. Greenberg, Jeff Grossman, Sybil Perez, Joe Ortega, Jim Diggins, Wendy Bedenbaugh, [SECRECY AND GOVERNMENT: America Faces the Future PRIVACY IN THE AGE OF NATIONAL SECURITY] Pgs. 74-75

People often talk about the threats to our privacy under the Patriot Act and other Bush administration programs, but the actual notion of what privacy is – whether we have a right to it, why we think we have a right to it, and whether we even want it – seems to be somewhat up for grabs. The issue brings together the government, the corporate sector, the medical sector, and many diverse specialties that we do not usually combine in the same conversation. I see today's discussion as the beginning of a longterm dialogue about these ideas, which hopefully will come into focus as we talk about them. Privacy is a generational issue, and the way in which policymakers and commentators address it today may be irrelevant sooner than we think. My mother will not use her credit card at the supermarket because she does not want people to know what groceries she buys. That is her notion of privacy. One of my brothers will not go through the E-ZPass lane at the tollbooth because he does not like the idea of anybody knowing where he has been or where he is going. My daughter and her friends, however, post photos and trade notes on Facebook. They are an open book to one another and they do not care. They have a very different conception of what privacy should be. I think that the idea of protecting privacy, as we understand it, is already outdated. Over time, we should begin to understand a new concept of privacy that is very much within us. Prof. Burt Neuborne: We are going to ask difficult and theoretical questions about the nature of privacy and how it evolved as an idea. In thinking about the future, this panel will also discuss the notion of what privacy will look like in the technologically explosive world of the 21st century, why we should care, and what parameters should be imposed upon it. Valerie Caproni: Given my position as general counsel for the FBI, I suspect that few people will be surprised when I say that the primacy of privacy has not been sacrificed to the demands of national security or law enforcement. I do think that the topic needs to be discussed and that there must be public debate about it. I recognize that many of the panelists today feel that the accretion of power in the executive branch has endangered privacy and that we seem to have an endless desire to collect information on citizens. Nevertheless, it is my strong belief that the FBI is striking the correct balance between privacy and security (I do not have sufficiently in-depth knowledge to talk about other federal agencies). Too often, the debate is phrased in terms of an either/or proposition: you can either respect privacy or have national security, but not both. I reject that notion. The question is one of balance. From the Bureau's perspective, the notion of balancing security and privacy is nothing new. Benjamin Franklin said, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." I think we respect the notion of a middle ground. For all of our almost 100 years of existence, the FBI has been in the business of balancing national security and civil liberties. We view privacy as one element of civil liberties. There have admittedly been times in our history when we did not do a good job of balancing those equities. The abuses of the 1960s and '70s that led to the Church Committee in the Senate and the Pike Committee in the House are prime examples of the balance being askew, but things have changed since those days. The agents now working at the Bureau were children in the days of the counterintelligence programs known as "COINTELPRO." Those programs are not a part of any current agent's history.

Secret surveillance programs are necessary

Michael **Sheehan** was appointed a deputy assistant secretary of state in the Bureau of International Organizations . Secrecy and Government: America Faces the Future. April 12, 20**07**

So there are different levels of secrecy; the secrecies involved in discrete acts and the secrecies involved in entire state actions. But to get back to what we are concerned with today, we are talking

about issues involv- ing counterterrorism and some of the programs involved. I think that most people would agree that the government needs to keep certain secrets. The issues really revolve around pro- grams, not secrets – secret *programs*. Three of them have been mentioned here today: the NSA wiretap program, which President Bush initiat- ed after September 11th; the national security letter program that has been internally investigat- ed by the FBI; and the NYPD programs looking at some of the actions prior to the Republican National Convention here in New York City. In my view, each one of these programs was jus- tif ied in itself and was generally well-needed. But each of them probably suf- fered a little from not get- ting the proper legislative action and oversight to prevent abuse. The NSA wiretap program, which we wrote about here at the Center on Law and Security, was in my view well-warranted, and the presi- dent should have gotten the proper authority from the Congress. And he would have gotten it. I believe that if he had partnered with the Congress to give them aggressive oversight, he would have gotten that also. I believe that both sides of the aisle would have been able to pro- vide constructive oversight of that program, and it would have worked much better. Perhaps the program would not have been in the jeopardy that it is in right now, although it still is going on. You do not hear a lot of squawking from the Democratically-controlled Congress because they recognize its value. Now, with proper over- sight, I think they are a little bit more comfort- able with it.

Greatest Hits Util Cards

Utilitarianism is the only moral framework and alternatives are contradictory

Nye, 86 (Joseph S. 1986; Phd Political Science Harvard. University; Served as Assistant Secretary of Defense for International Security Affairs; "Nuclear Ethics" pg. 18-19)

The significance and the limits of the two broad traditions can be captured by contemplating a hypothetical case.34 Imagine that you are visiting a Central American country and you happen upon a village square where an army captain is about to order his men to shoot two peasants lined up against a wall. When you ask the reason, you are told someone in this village shot at the captain's men last night. When you object to the killing of possibly innocent people, you are told that civil wars do not permit moral niceties. Just to prove the point that we all have dirty hands in such situations, the captain hands you a rifle and tells you that if you will shoot one peasant, he will free the other. Otherwise both die. He warns you not to try any tricks because his men have their guns trained on you. Will you shoot one person with the consequences of saving one, or will you allow both to die but preserve your moral integrity by refusing to play his dirty game? The point of the story is to show the value and limits of both traditions. Integrity is clearly an important value, and many of us would refuse to shoot. But at what point does the principle of not taking an innocent life collapse before the consequentialist burden? Would it matter if there were twenty or 1,000 peasants to be saved? What if killing or torturing one innocent person could save a city of 10 million persons from a terrorists' nuclear device? At some point does not integrity become the ultimate egoism of fastidious self-righteousness in which the purity of the self is more important than the lives of countless others? Is it not better to follow a consequentialist approach, admit remorse or regret over the immoral means, but justify the action by the consequences? Do absolutist approaches to integrity become self-contradictory in a world of nuclear weapons? "Do what is right though the world should perish" was a difficult principle even when Kant expounded it in the eighteenth century, and there is some evidence that he did not mean it to be taken literally even then. Now that it may be literally possible in the nuclear age, it seems more than ever to be self-contradictory.35 Absolutist ethics bear a heavier burden of proof in the nuclear age than ever before.

The impossibility to attain knowledge of every outcome or abuse leaves utilitarianism as the only option for most rational decision-making

Goodin 95 – Professor of Philosophy at the Research School of the Social Sciences at the Australian National University (Robert E., Cambridge University Press, "Utilitarianism As a Public Philosophy" pg 63)

My larger argument turns on the proposition that there is something special about the situation of public officials that makes utilitarianism more plausible for them (or, more precisely, makes them adopt a form of utilitarianism that we would find more acceptable) than private individuals. Before proceeding with that larger argument, I must therefore say what it is that is so special about public officials and their situations that makes it both more necessary and more desirable for them to adopt a more credible form of utilitarianism. Consider, first the argument from necessity. Public officials are obliged to make their choices under uncertainty, and uncertainty of a very special sort at that. All choices-public and private alike- are made under some degree of uncertainty, of course. But in the nature of things, private individuals will usually have more complete information on the peculiarities of their own circumstances and on the ramifications that alternative possible choices might have for them. Public officials, in contrast, at relatively poorly informed as to the effects that their choices will have on individuals, one by one. What they typically do know are generalities: averages and aggregates. They know what will happen most often to most people as a result of their various possible choices. But that is all. That is enough to allow public policy makers to use the utilitarian calculus – if they want to use it at all – to choose general rules of conduct. Knowing aggregates and averages, they can proceed to calculate the utility payoffs from adopting each alternative possible general rule. But they cannot be sure what the payoff will be to any given individual or on any particular occasion. Their knowledge of generalities, aggregates and averages is just not sufficiently fine-grained for that.

Utilitarianism is the only way to access morality. Sacrifice in the name of preserving rights destroys any hope of future generations attaining other values.

Nye, 86 (Joseph S. 1986; Phd Political Science Harvard. University; Served as Assistant Secretary of Defense for International Security Affairs; "Nuclear Ethics" pg. 45-46)

Is there any end that could justify a nuclear war that threatens the survival of the species? Is not all-out nuclear war just as self contradictory in the real world as pacifism is accused of being? Some people argue that "we are required to undergo gross injustice that will break many souls sooner than ourselves be the authors of mass murder."73 Still others say that "when a person makes survival the highest value, he has declared that there is nothing he will not betray. But for a civilization to sacrifice itself makes no sense since there are not survivors to give meaning to the sacrifical [sic] act. In that case, survival may be worth betrayal." Is it possible to avoid the "moral calamity of a policy like unilateral disarmament that forces us to choose between being dead or red (while increasing the chances of both)"?74 How one judges the issue of ends can be affected by how one poses the questions. If one asks "what is worth a billion lives (or the survival of the species)," it is natural to resist contemplating a positive answer. But suppose one asks, "is it possible to imagine any threat to our civilization and values that would justify raising the threat to a billion lives from one in ten thousand to one in a thousand for a specific period?" Then there are several plausible answers, including a democratic way of life and cherished freedoms that give meaning to life beyond mere survival. When we pursue several values simultaneously, we face the fact that they often conflict and that we face difficult tradeoffs. If we make one value absolute in priority, we are likely to get that value and little else. Survival is a necessary condition for the enjoyment of other values, but that does not make it sufficient. Logical priority does not make it an absolute value. Few people act as though survival were an absolute value in their personal lives, or they would never enter an automobile. We can give survival of the species a very high priority without giving it the paralyzing status of an absolute value. Some degree of risk is unavoidable if individuals or societies are to avoid paralysis and enhance the quality of life beyond mere survival. The degree of that risk is a justifiable topic of both prudential and moral reasoning.

The aff is moral evasion: consequentialism is imperative

Kai **Nielsen**, Professor of Philosophy, University of Calgary, 19**93**, Absolutism and Its Consequentialist Critics, ed. Joram Graf Haber, p. 170-2

Forget the levity of the example and consider the case of the innocent fat man. If there really is no other way of unsticking our fat man and if plainly, without blasting him out, everyone in the cave will drown, then, innocent or not, he should be blasted out. This indeed overrides the principle that the innocent should never be deliberately killed, but it does not reveal a callousness toward life, for the people involved are caught in a desperate situation in which, if such extreme action is not taken, many lives will be lost and far greater misery will obtain. Moreover, the people who do such a horrible thing or acquiesce in the doing of it are not likely to be rendered more callous about human life and human suffering as a result. Its occurrence will haunt them for the rest of their lives and is as likely as not to make them more rather than less morally sensitive. It is not even correct to say that such a desperate act shows a lack of respect for persons. We are not treating the fat man merely as a means. The fat man's person-his interests and rights are not ignored. Killing him is something which is undertaken with the greatest reluctance. It is only when it is quite certain that there is no other way to save the lives of the others that such a violent course of action is justifiably undertaken. Alan Donagan, arguing rather as Anscombe argues, maintains that "to use any innocent man ill for the sake of some public good is directly to degrade him to being a mere means" and to do this is of course to violate a principle essential to morality, that is, that human beings should never merely be treated as means but should be treated as ends in themselves (as persons worthy of respect)." But, as my above remarks show, it need not be the case, and in the above situation it is not the case, that in killing such an innocent man we are treating him merely as a means. The action is universalizable, all alternative actions which would save his life are duly considered, the blasting out is done only as a last and desperate resort with the minimum of harshness and indifference to his suffering and the like. It indeed sounds ironical to talk this way, given what is done to him. But if such a terrible situation were to arise, there would always be more or less humane ways of going about one's grim task. And in acting in the more humane ways toward the fat man, as we do what we must do and would have done to ourselves were the roles reversed, we show a respect for his person. In so treating the fat man-not just to further the public good but to prevent the certain death of a whole group of people (that is to prevent an even greater evil than his being killed in this way)-the claims of justice are not overriden either, for each individual involved, if he is reasonably correct, should realize that if he were so stuck rather than the fat man, he should in such situations be blasted out. Thus, there is no question of being unfair. Surely we must choose between evils here, but is there anything more reasonable, more morally appropriate, than choosing the lesser evil when doing or allowing some evil cannot be avoided? That is, where there is no avoiding both and where our actions can determine whether a greater or lesser evil obtains, should we not plainly always opt for the lesser evil? And is it not obviously a greater evil that all those other innocent people should suffer and die than that the fat man should suffer and die? Blowing up the fat man is indeed monstrous. But letting him remain stuck while the whole group drowns is still more monstrous. The consequentialist is on strong moral ground here, and, if his reflective moral convictions do not square either with certain unrehearsed or with certain reflective particular moral convictions of human beings, so much the worse for such commonsense moral convictions. One could even usefully and relevantly adapt herethough for a quite different purpose-an argument of Donagan's. Consequentialism of the kind I have been arguing for provides so persuasive "a theoretical basis for common morality that when it contradicts some moral intuition, it is natural to suspect that intuition, not theory, is corrupt." Given the comprehensiveness, plausibility, and overall rationality of consequentialism, it is not unreasonable to override even a deeply felt moral conviction if it does not square with such a theory, though, if it made no sense or overrode the bulk of or even a great many of our considered moral convictions, that would be another matter indeed. Anticonsequentialists often point to the inhumanity of people who will sanction such killing of the innocent, but cannot the compliment be returned by speaking of the even greater inhumanity, conjoined with evasiveness, of those who will allow even more death and far greater misery and then excuse themselves on the ground that they did not intend the death and misery but merely forbore to prevent it? In such a context, such reasoning and such forbearing to prevent seems to me to constitute a moral evasion. I say it is evasive because rather than

steeling himself to do what in normal circumstances would be a horrible and vile act but in this circumstance is a harsh moral necessity, he [it] allows, when he has the power to prevent it, a situation which is still many times worse. He tries to keep his 'moral purity' and [to] avoid 'dirty hands' at the price of utter moral failure and what Kierkegaard called 'double-mindedness.' It is understandable that people should act in this morally evasive way but this does not make it right.

In a nuclear world, you have to weigh consequences

Sissela **Bok**, Professor of Philosophy at Brandeis, 19**88**, Applied Ethics and Ethical Theory, edited by David Rosenthal and Fudlou Shehadi, p. 202-3

The same argument can be made for Kant's other formulations of the Categorical Imperative: "So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means"; and "So act as if you were always through actions a law-making member in a universal Kingdom of Ends." No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one's conscience would be, as Rawls said, "irrational, crazy." And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

A2 Privacy Good

Privacy Security Balance

Privacy relations self-correct to balance harms – empirics prove

Etzioni 15 Amitai, "The New Normal – Finding a Balance between Individual Rights and the Common Good, Transaction Publishers – New Brunswick, NJ, Senior Advisor to the Carter White House; taught at Columbia, Harvard Business, Copyright 2015, ISBN 978-1-4128-5477-1)

Moreover, given that societal steering mechanisms are rather

loose, societies tend to over-steer and must correct their corrections with still further adjustments. For example, in the mid-1970s, the Church and Pike Committees investigated abuses by the CIA, FBI and NSA, uncover- ing "domestic spying on Americans, harassment and disruption of targeted individuals and groups, assassination plots targeting foreign leaders, infiltra- tion and manipulation of media and business:'32 As a result, Congress passed the Foreign Intelligence Surveillance Act of 1978 (FISA) and created the Foreign Intelligence Surveillance Court to limit the surveillance of American citizens by the US government.33 After 9/11, several reports concluded that the reforms had gone too far by blocking the type of interagency intelligence

sharing that could have forestalled the terrorist attacks.34 As a result, the Patriot Act was enacted in a great rush and, according to its critics, sacrificed privacy excessively in order to enhance security and "correct" what are considered the excesses of the reforms the Church and Pike committees set into motion. Since then, the Patriot Act itself has been recalibrated.35

At each point in time, one must hence ask whether society is tilting too far in one direction or the other. Civil libertarians tend to hold that rights in general and privacy in particular are not adequately protected. The govern- ment tends to hold that national security and public safety require additional limitations on privacy. It is the mission of legal scholars, public intellectuals, and concerned citizens to nurture dialogues that help sort out in which direc-

tion corrections must next be made.36 Note that often some tightening in one area ought to be combined with some easing in others. For instance, currently a case can be made that TSA screening regulations are too tight, while the monitoring ofwhether visitors and temporary residents committed to leaving the US actually do so is too loose.

<?rin Kerr and Peter Swire engage in an important dialogue on whether the issues presented above are best suited for treatment by the courts or by Congress, and whether they are largely viewed through the prism of the Fourth Amendment or Congressional acts. The following discussion treats both as if they were an amalgam.

Privacy Violations inevitable

Privacy is dead – Americans willingly share all their data anyway, legal change isn't necessary

Etzioni 15 Amitai, "The New Normal – Finding a Balance between Individual Rights and the Common Good, Transaction Publishers – New Brunswick, NJ, Senior Advisor to the Carter White House; taught at Columbia, Harvard Business, Copyright 2015, ISBN 978-1-4128-5477-1)

One major response to privacy merchants' expanding reach has been well encapsulated by the CEO of Sun Microsystems, Scott McNealy, who stated "You have zero privacy ... Get over it:'44 Facebook's founder, Mark Zuckerberg'. argues that social norms undergirding privacy law are obsolete.45 That is, instead offinding new ways to protect individuals from corporations, individu- als should learn to accept changed-in effect, much lower-levels of privacy. He elaborated, "**People have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people . .. That social norm is just something that has evolved over time**:'46 Zuckerberg continued: "We view it as our role in the system to constantly be innovating and be updating what our system is to reflect what the current social norms are:'47He thus implies that the privacy erchants are not undermining the norm, but merely accommodating their wares to already in-place changes in norms. As I see it, it is true that the privacy norms are eroding due to other fac- tors than the corporate drive to use private information for profit making, as one sees with people going on talk shows to reveal much about themselves, a form of exhibitionism. However, there can be little doubt that corporations, especially the new social media, led by Facebook, are aiding, abetting, and seeking to legitimate the erosion of privacy. The Wall Street Journal editorial page, which reflects that publication's philosophy, argues that the change in norms indicates that the introduction of new laws or regulations to better protect privacy is not called for.48 L. Gordon Crovitz pointed out that, as ofMarch 2011, more than half of Americans over age twelve have Facebook accounts.49 He

proceeded to ask: "If most Americans are happy to have Facebook accounts, knowingly trading personal information for other benefits, why is Washington so focused on new privacy laws? There is little evidence that people want new rules:•so Furthermore, Crovitz argues, consumers value the benefits of information gathering, including better-targeted ads, specific recommendations for cus- tomers, and huge troves of data for research, such as in Google Flu Trends, which tracks search terms about illnesses to assist epidemiologists. "**People are increasingly at ease with sharing personal data in exchange for other benefits**;' he argues.51

Privacy erosion inevitable -- technological innovation.

Stalder, 2009

Felix. Department of Sociology, Queens University "Privacy is not the Antidote to Surveillance." Surveillance & Society 1.1 (2009): 120-124.

The standard answer to these problems the call for our privacy to be protected. Privacy, though, is a notoriously vague concept. Europeans have developed on of the most stringent approaches where privacy is understood as 'informational self-determination'. This, basically, means that an individual should be able to determine the extent to which data about her or him is being collected in any given context. Following this definition, privacy is a kind of bubble that surrounds each person, and the dimensions of this bubble are determined by one's ability to control who enters it and who doesn't. Privacy is a personal space; space under the exclusive control of the individual. Privacy, in a way, is the informational equivalent to the (bourgeois, if you will) notion of "my home is my castle." As appealing and seemingly intuitive as this concept is, it plainly doesn't work. Everyone agrees that our privacy has been eroding for a very long time – hence the notion of the "surveillance society" – and there is absolutely no indication that the trend is going to slow down, let alone reverse. Even in the most literal sense, the walls of our castles are being pierced by more and more connections to the outside world. It started with the telephone, the TV and the Internet, but imagine when your fridge begins to communicate with your palm pilot, updating the shopping list as you run out of milk, and perhaps even sending a notice to the grocer for home delivery. Or maybe the stove will alert the fire department because you didn't turn off the hot plate before rushing out one morning.6 A less futuristic example of this connectivity would be smoke detectors that are connected to alarm response systems. Outside the home, it becomes even more difficult to avoid entering into relationships that produce electronic, personal data. Only the most zealous will opt for standing in line to pay cash at the toll both every day, if they can just breeze through an electronic gate instead. This problem is made even more complicated by the fact that there are certain cases in which we want "them" to have our data. Complete absence from databanks is neither practical nor desirable. For example, it can be a matter of life and death to have instant access to comprehensive and up-to-date health-related information about the people who are being brought into the emergency room unconscious. This information needs to be too detailed and needs to be updated too often – for example to include all prescriptiondrugs a person is currently using – to be issued on, say, a smartcard held by the individual, hence giving him or her full control over who accesses it. To make matters worse, with privacy being by definition personal, every single person will have a different notion about what privacy means. Data one person might allow to be collected might be deeply personal for someone else. This makes it very difficult to collectively agree on the legitimate boundaries of the privacy bubble.

Privacy can't be restored – technological and corporate invasions happen all the time.

Lewis 2014

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"Underestimating Risk in the Surveillance Debate" - Center For Strategic & International Studies - Strategic Technologies Program – December - http://csis.org/publication/underestimating-risk-surveillance-debate

On average, there are 16 tracking programs on every website.4 This means that when you visit a website, it collects and reports back to 16 companies on what you've looked at and what you have done. These programs are invisible to the user. They collect IP address, operating system and browser data, the name of the visiting computer, what you looked at, and how long you stayed. This data can be made even more valuable when it is matched with other data collections. Everything a consumer does online is tracked and collected. There is a thriving and largely invisible market in aggregating data on individuals and then selling it for commercial purposes. Data brokers collect utility bills, addresses, education, arrest records (arrests, not just convictions). All of this data is recorded, stored, and made available for sale. Social networking sites sell user data in some anonymized form so that every tweet or social media entry can be used to calculate market trends and refine advertising strategies. What can be predicted from this social media data is amazing—unemployment trends, disease outbreaks, consumption patterns for different groups, consumer preferences, and political trends. It is often more accurate than polling because it reflects peoples' actual behavior rather than the answer they think an interviewer wants to hear. Ironically, while the ability of U.S. agencies to use this commercial data is greatly restricted by law and policy, the same restrictions do not apply to foreign governments. The development of the Internet would have been very different and less dynamic if these business models had not been developed. They provide incentives and financial returns to develop or improve Internet services. There is an implicit bargain where you give up privacy in exchange for services, but in bargains between service providers and consumers, one side holds most of the cards and there is little transparency. But the data-driven models of the Internet mean that it is an illusion to think that there is privacy online or that NSA is the only entity harvesting personal data.

Corporate Privacy Invasions worse

Private abuse of digital information is worse and only surveillance can stop that.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

The critics' preoccupation with the dangers of state oppression often leads them to overlook the dangers of private abuse of surveillance. They have a surprisingly difficult time coming up with actual examples of serious harm from government surveillance abuse. Instead, they tend to talk about the "chilling effect" from awareness of surveillance. By contrast, there have been many examples of serious harm from private abuse of personal information gained from digital sources. At least one person has committed suicide as a consequence of the Internet publication of video showing him engaged in sexual activity. Many people have been humiliated by the public release of a private recording of intimate conduct, and blackmail based on threats of such disclosure has emerged as a common practice. Some of this private abuse is and should be illegal. But the legal prohibitions can only be enforced if the government has some of the surveillance capacities that critics decry. Illicit recording and distribution can only be restrained if the wrongdoers can be identified and their actions effectively restrained. Less compromising critics would deny government these capacities.

Corporation commit much worse privacy violations.

Lowry 15,
Rich, Editor, the National Review, 5-27-2015, "Lowry: NSA data program faces death by bumper

sticker," Salt Lake Tribune,
http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2557534

In the context of all that is known about us by private companies, the NSA is a piker. Take the retailer Target, for example. According to The New York Times, it collects your "demographic information like your age, whether you are married and have kids, which part of town you live in, how long it takes you to drive to the store, your estimated salary, whether you've moved recently, what credit cards you carry in your wallet and what Web sites you visit." Of course, the Fourth Amendment applies to the government, not private entities like Target. The amendment protects against unreasonable searches and seizures of our "persons, houses, papers, and effects." If the NSA were breaking into homes and seizing metadata that people had carefully hidden away from prying eyes, it would be in flagrant violation of the Fourth Amendment. But no one is in possession of his or her own metadata. Even if the NSA didn't exist, metadata would be controlled by someone else, the phone companies. The Supreme Court has held that you don't have an expectation of privacy for such information in the possession of a third party. One frightening way to look at mail delivery is that agents of the state examine and handle the correspondence of countless of millions of Americans. They aren't violating anyone's Fourth Amendment rights, though, because no one expects the outside of their envelopes to be private.

Alt causes to privacy violations – corporations, the use of nonsensitive information

Etzioni 15 Amitai, "The New Normal – Finding a Balance between Individual Rights and the Common Good, Transaction Publishers – New Brunswick, NJ, Senior Advisor to the Carter White House; taught at Columbia, Harvard Business, Copyright 2015, ISBN 978-1-4128-5477-1)

Another key principle is a ban on using nonsensitive information to divine the sensitive (e.g., using information about routine consumer purchases to divine one's medical condition) because it is just as intrusive as collecting and employing sensitive information.65 This is essential because currently such behavior is rather common.66 Thus, under the suggested law, Target would be prevented from sending coupons for baby items to a teenage girl after the chain store's analysis of her recent purchases suggested she might be pregnant.67 To further advance the cyber age privacy doctrine, much more attention needs to be paid to private actors. Privacy rights, like others, are basically held against the government, to protect people from undue intrusion by public authori- ties. However, cybernation is increasingly carried out by the private sector. There are corporations that make shadowing Internet users-and keeping very detailed dossiers on them-their main line ofbusiness.According to Slobogin, Companies like Acxiom, Docussearch, ChoicePoint, and Oracle can provide the inquirer with a wide array of data about any of us, including: Basic demographic information, income, net worth, real property holdings, social security number, current and previous addresses, phone numbers and fax numbers, names of neighbors, driver records, license plate and VIN numbers, bankruptcy and debtor filings, employment, business and criminal records, bank account balances and activity, stock purchases, and credit card activity.68 These data are routinely made available to government agencies, including the FBI. **Unless this private cybernation is covered, the cyber age privacy doctrine will be woefully incomplete**.69 Given that private actors are very actively engaged in cybernation and often tailor their work so that it might be used by the government (even if no contract is in place and they are, hence, not subject to the limits imposed on the government), ex.tending the privacy doctrine beyond the public/private divide is of pivotal importance for the future of privacy in the cyber age. Admittedly, applying to the private sector restrictions and regulations similar to those that control the government may well be politically unfeasible in the current environment. However, as one who analyzes the conditions ofsociety from a normative viewpoint, I am duty-bound to point out that it makes ever less sense to maintain this distinction.70 Privacy will be increasingly lost in the cyber age, with little or no gain to the common good, unless private

actors- and not just the government-are more reined in. To what extent this may be achieved by self-regulation, changes in norms, increased transparency, or government regulation is a question not addressed here.

Privacy Discriminates

Privacy capabilities in the digital age privilege those with the greatest access to resources—minority groups and poor communities are put at a significant disadvantage

Koebler 15 (Jason, "Why Mass Surveillance Is Worse for Poor People", http://motherboard.vice.com/read/why-mass-surveillance-is-worse-for-poor-people)

Since Edward Snowden revealed that the whole damn world is a surveillance state , a host of encryption and privacy services have popped up. But, people who have the luxury of using them, and the luxury of actually worrying about their privacy, are overwhelmingly well off, overwhelmingly white, and overwhelmingly male. Is privacy only for the privileged?

As we learn that the NSA, FBI, and even local law enforcement have their hands on any number of surveillance tools, it's getting ever more complicated to actually keep your communications safe from them. Anonymity tools like Tor and encryption services aren't always easy to use, and even default encryption on the iPhone requires you to have enough money to buy and pay the contract on an iPhone. Technological literacy is something that only the privileged can afford, and, beyond that, there is increasingly a concrete dollar amount that will afford you a modicum more of privacy.

Last week, news broke that AT&T would disable so-called "super cookies," which track users throughout the internet, for those who pay an extra $29 monthly. In the developing world, many people don't know of an internet beyond Facebook thanks to Facebook Zero, a service that provides access to the social network, but not the real internet, for free.

"You have to design with people and not just for people"

"It's not just AT&T," Daniel Kahn Gillmor of the American Civil Liberties Union said Monday at the New America Foundation's cybersecurity event in Washington, DC. "If the only party you're talking to is Facebook, then it becomes a central point for data collection and surveillance. For communities without phones, that's the only way they're going to get access. Access to the whole, worldwide internet could become the domain of people who have the ability to pay for it."

Less obvious, however, is the fact that protecting yourself online requires a digital literacy that you don't learn when you're working two jobs or living on welfare. It's a problem that Google says it's constantly dealing with. The wording of the warnings Chrome gives you get when you click on a nefarious link, for instance, have to be constantly workshopped to be useful to the largest number of people while still being technical enough to describe what's going on to the computer literate.

"Usability is fundamentally important, and there are very hard problems we're grappling with. We have large numbers of users with different backgrounds, disabilities, ages, and technological literacy," Tara Whalen, a staff privacy analyst at Google, said at the conference. "A specific example of this is with an SSL certificate. When it breaks, it's hard to explain nuances—is this a risk, what went wrong."

And that's just for technology that people use every day, such as a web browser. How are you supposed to get people who haven't been taught that "password" is not such a good password to use an encryption app, especially when the majority of primarily white, primarily male, primarily rich developers haven't thought about making them accessible to everyone?

"If you look at some of the developer communities, the people who volunteer to make [encryption] tools, the diversity is not particularly large," Whalen said. "The numbers of minorities are low, the number of women participating is low. Anyone in a marginalized group doesn't have the resources to participate in a free labor project."

"Bridging that gap is a challenge. You have to involve people in participatory design—you have to design with people and not just for people," she added.

This is, of course, not an entirely new phenomenon. Crime ridden parts of cities are often under constant surveillance, whether it be police cameras or foot patrols. That problem, however, has extended to the digital realm.

The key here, according to Seda Gurses, a postdoc at New York University working on surveillance and privacy issues, is to push companies to build privacy into everything that they do. Asking users to take privacy into their own hands sounds good in theory, but simply doesn't work for everyone.

"There's this word, it's hard to say, but it's responsibilization, which is encouraging people to manage risk themselves," she said. "If you think there are risks, you are responsible for protecting yourself from it. This is problematic of course. Instead of burdening the users, we should ask the phone companies or whoever to give them secure phones. We should make sure the network is secured in a way it can't be eavesdropped on."

Right now, we're seeing little of that happening. The digital divide is extending to become a privacy divide.

Privacy Rights Coopted

The right to privacy has been coopted by information capitalism and preserves discriminatory practices

Torin **Monahan**, Associate Professor of Communication Studies at the University of North Carolina at Chapel Hill, June **2015**, "The Right to Hide? Anti-Surveillance Camouflage and the Aestheticization of Resistance", Communication and Critical/Cultural Studies Vol. 12, No. 2, pp. 159–178, Date Accessed 7/18/15, JL @ DDI

Ultimately, discourses of "the right to hide" are weak variations of "the right to privacy," both of which depend on conceptually inadequate and empirically deficient mobilizations of universal rights. Indeed, poor and racialized populations subjected to the most invasive forms of monitoring are much more concerned with issues of domination and control, along with the practicalities of survival, than they are with legal or philosophical abstractions like privacy.69 Privacy is also a deeply individualistic concept, poorly suited to forestall discriminatory practices against social groups.70 As Sami Coll explains, "The notion of privacy, as a critique of [the] information society, has been assimilated and reshaped by and in favour of informational capitalism, notably by being over-individualized through the selfdetermination principle." 71 The discourse of the right to hide, as with the right to privacy, accepts the legitimacy of state demands for legible populations and offers symbolic compromises to assert degrees of freedom within those constraints.

Privacy rights Fail

Their understanding of privacy rights as personal will fail because its impossible in modern society.

Stalder, 2009,

Felix. Department of Sociology, Queens University "Privacy is not the Antidote to Surveillance." Surveillance & Society 1.1 (2009): 120-124.

So rather than fight those connections – some of which are clearly beneficial, some of which are somewhat ambiguous, and some are clearly disconcerting – we have to reconceptualize what these connections do. Rather than seeing them as acts of individual transgression (X has invaded Y's privacy) we have to see them part of a new landscape of social power. Rather than continuing on the defensive, by trying to maintain an ever-weakening illusion of privacy, we have to shift to the offensive and start demanding accountability of those whose power is enhanced by the new connections. In a democracy, political power is, at least ideally, tamed by making the government accountable to those who are governed, not by carving out areas in which the law doesn't apply. It is, in this perspective, perhaps no co-incidence that many of the strongest privacy advocates (at least in the US) lean politically towards libertarianism, a movement which includes on its fringe white militias which try to set up zones liberated from the US government. In our democracies, extensive institutional mechanisms have been put into to place to create and maintain accountability, and to punish those who abuse their power. We need to develop and instate similar mechanisms for the handling of personal information – a technique as crucial to power as the ability to exercise physical violence – in order to limit the concentration of power inherent in situations that involve unchecked surveillance. The current notion of privacy, which frames the issue as a personal one, won't help us accomplish that.9 However, notions of institutionalized accountability will, because they acknowledge surveillance as a structural problem of political power. It's time to update our strategies for resistance and develop approaches adequate to the actual situation rather than sticking to appealing but inadequate ideas that will keep locking us into unsustainable positions.

A2: Constitutional Violation

NSA programs don't violate the Fourth Amendment because the information has been given to a third-party.

Herman & Yoo, 2014

Yoo, John, law professor at the University of California, Berkeley, and a visiting scholar at the American Enterprise Institute and Arthur Herman. senior fellow at Hudson Institute. "A Defense of Bulk Surveillance." National Review 65 (2014): 31-33.

Considering the millions of phone numbers making billions of phone calls that year and every year, these levels of surveillance can hardly be considered a major intrusive system. But what about the program's constitutionality and alleged violation of the Fourth Amendment? The Fourth Amendment does not protect some vague and undefined right to privacy. Instead, it declares: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." The Constitution protects only the privacy of the "person," the home, and

"papers and effects," which are usually located in the home. It does not reach information or things that we voluntarily give up to the government or to third parties outside of the home or our persons. The Fourth Amendment also does not make such information absolutely immune—it is still subject to search if the government is acting reasonably or has a warrant. These basic principles allow the government to search through massive databases of call and e-mail records when doing so is a reasonable measure to protect the nation's security, which is its highest duty.

Privacy Bad – Economy

Giving up privacy helps economy

JIM **HARPER** Updated Aug. 7, 20**10**. It's Modern Trade: Web Users Get as Much as They Give http://allthingsd.com/20100809/its-modern-trade-web-users-get-as-much-as-they-give/

The reason why a company like Google can spend millions and millions of dollars on free services like its search engine, Gmail, mapping tools, Google Groups and more is because of online advertising that trades in personal information. And it's not just Google. Facebook, Yahoo, MSN and thousands of blogs, news sites, and comment boards use advertising to support what they do. And personalized advertising is more valuable than advertising aimed at just anyone. Marketers will pay more to reach you if you are likely to use their products or services. (Perhaps online tracking makes everyone special!) If Web users supply less information to the Web, the Web will supply less information to them. Free content won't go away if consumers decline to allow personalization, but there will be less of it. Bloggers and operators of small websites will have a little less reason to produce the stuff that makes our Internet an endlessly fascinating place to visit. As an operator of a small government-transparency web site, WashingtonWatch.com, I add new features for my visitors when there is enough money to do it. More money spent on advertising means more tools for American citizens to use across the web.

Publicity allows benefits for business and individuals

Andrew **McStay** Lecturer in Media Culture at Bangor University. November 8, **2013**. Why too much privacy is bad for the economy

Paradoxically though, for Posner, wealth maximisation means that businesses should be afforded greater levels of privacy because placing businesses under the public spotlight harms economic growth. Privacy for individuals simply hides discreditable facts and hinders the flow of economically valuable information, but for businesses it is necessary for entrepreneurship and the creation of innovative strategies and techniques. In this view, for total market efficiency, transparency and net societal gain to be reached, goal-directed systems should be allowed to operate without disruptive intervention. Posner extends this as far as considering the long-term value in fully disclosing sexuality, political affiliations, minor mental illnesses, early dealings with the law, credit scores, marital discord and even nose-picking. This makes a virtue out of disclosure and forced publicness. As well as being economically beneficial, radical transparency could mean that, over time, irrational shunning and biases (for example, about being gay) would be excluded. Less is said, however, about the outcomes for folk who would make privacy sacrifices in order to enlighten the rest of us.

Privacy Bad – Patriarchy

The Private sphere as a safe space is fundamentally flawed – normalizes patriarchal exploitation

Etzioni 15 Amitai, "The New Normal – Finding a Balance between Individual Rights and the Common Good, Transaction Publishers – New Brunswick, NJ, Senior Advisor to the Carter White House; taught at Columbia, Harvard Business, Copyright 2015, ISBN 978-1-4128-5477-1)

To suggest that the time has come to leave behind the reasonable expectation of privacy standard is not to say that the courts should revert to pre-Katz Fourth Amendment analysis, which gave considerable weight to the home as the locus of privacy. In Katz the majority ruled that "the Fourth Amendment protects people, not places:' rejecting the "trespass" doctrine enunciated in Olmstead. However, even after this, the home remained largely inviolable in

The eyes of the courts .ItseemsKatzdidnotdetachFourthAmendmentsafe- guards from the home but rather extended the sphere ofprivacy beyond it to other protected spaces. Information collected about events in one's home is still often considered a priori a violation of privacy, while much more license is granted to the state in collecting information about conduct in public and

commercial spaces. As Justice Scalia put it, "at the very core' of the Fourth Amendment 'stands the right ofa man to retreat into his own home and there be free from unreasonable governmental intrusion: With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no:'18 This is an idea that has deep roots in American and English common law: "Zealous and frequent repetition of the adage that "a man's house is his castle;' made it abundantly clear that both in England and the colonies, "the freedom of one's house" was one of the most vital elements of English liberty:'19 In Dow Chemical Company v. United States, the Court established that the expectation of privacy was lower in an

industrial plant than a home because the latter "is fundamentally a sanctuary, where personal concepts of self and family are forged, where relationships are nurtured and where people normally feel free to express themselves in intimate ways."20

Feminist scholars correctly and roundly criticized the inviolability of the home and the private/public distinction in privacy law. Catharine MacKinnon writes the problem with granting the home extra protection is that "while the private has been a refuge for some, it has been a hellhole for others, often at the same time:'21 Linda McClain points out that **freedom from state interference in the home "renders men unaccountable for what is done in private-rape, battery, and other exploitation**'.'22

A2 Surveillance Bad

Surveillance Good – Solves Discrimination

Mass surveillance is less discriminatory because it targets everyone equally.

Hadjimatheou 2014

Katerina Hadjimatheou, Security Ethics Group, Politics and International Studies, University of Warwick "The Relative Moral Risks of Untargeted and Targeted Surveillance" Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1

There are good reasons to think that both the extent to which surveillance treats people like suspects and the extent to which it stigmatises those it affects increases the more targeted the measure of surveillance. As has already been established,

stigmatisation occurs when individuals are marked out as suspicious. Being marked out implies being identified in some way that distinguishes one from other members of the wider community or the relevant group. Being pulled out of line for further search or questioning at an airport; being stopped and searched on a busy train platform while other passengers are left alone; having one's travel history, credit card, and other records searched before flying because one fits a profile of a potential terrorist- these are all examples of being singled out and thereby marked out for suspicion. They are all stigmatising, because they all imply that there is something suspicious about a person that justifies the intrusion. In contrast, untargeted surveillance such as blanket screening at airports, spot screening of all school lockers for drugs, and the use of speed cameras neither single people out for scrutiny nor enact or convey a suspicion that those surveilled are more likely than others to be breaking the rules. Rather, everybody engaged in the relevant activity is subject to the same measure of surveillance, indiscriminately and irrespective of any evidence suggesting particular suspiciousness. Such evidence may well emerge from the application of untargeted surveillance, and that evidence may then be used to justify singling people out for further, targeted surveillance. But untargeted surveillance itself affects all people within its range equally and thus stigmatises none in particular.

Mass surveillance solves discrimination.

Simon, Arthur Levitt Professor of Law at Columbia University, **2014,**
William H. Simon, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

More generally, broad-reach electronic mechanisms have an advantage in addressing the danger that surveillance will be unfairly concentrated on particular groups; targeting criteria, rather than reflecting rigorous efforts to identify wrongdoers, may reflect cognitive bias or group animus. Moreover, even when the criteria are optimally calculated to identify wrongdoers, they may be unfair to law-abiding people who happen to share some superficial characteristic with wrongdoers. Thus, law-abiding blacks complain that they are unfairly burdened by stop-and-frisk tactics, and law-abiding Muslims make similar complaints about anti-terrorism surveillance. Such problems are more tractable with broad-based electronic surveillance. Because it is broad-based, it distributes some of its burdens widely. This may be intrinsically fairer, and it operates as a political safeguard, making effective protest more likely in cases of abuse. Because it is electronic, the efficacy of the criteria can be more easily investigated, and their effect on law-abiding people can be more accurately documented. Thus, plaintiffs in challenges to stop-and-frisk practices analyze electronically recorded data on racial incidence and "hit rates" to argue that the criteria are biased and the effects racially skewed. Remedies in such cases typically require more extensive recording.

Targetted Surveillance Worse

Untargeted surveillance stigmatizes subjects, is inefficient and could be easily replaced by targeted, evidenced-based surveillance

Hadjimatheou 13, Katerina Hadjimatheou, Research Fellow on an EU-funded project on the ethics of surveillance in serious and organized crime entitled SURVEILLE, Accepted 3 May 2013, Published: 8 August 2013, "The Relative Moral Risks of Untargeted and Targeted Surveillance", Springer Science+Business Media Dordrecht 2013, Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1, https://www.evernote.com/shard/s348/share/578cb-s348/res/796c48d9-1e0e-442d-90be-928f137c2267/art_10.1007_s10677-013-9428-1.pdf) LS

1. Untargeted surveillance is unfair because it treats innocent people like suspects without any prior evidence of suspiciousness. Suspicion should be triggered by evidence of wrongdoing, rather than precede it. By

suspecting those for whom no evidence of wrongdoing exists, untargeted surveillance stigmatises them unfairly; undermines the presumption of innocence (Haggerty and Ericson 1997: 42; Monahan 2010: 99); and "promotes the view…that everybody is untrustworthy'" (Norris in House of Lords 2009: 27[107]; New Scientist 2006). 2. Untargeted surveillance is inefficient in reducing security threats. Evidence about the effectiveness of untargeted surveillance strongly suggests that such measures result in the detection of very few if any genuine security threats of the kind it is intended to reduce.2 Scrutinising individuals who are obviously not suspicious imposes privacy and other costs on them without any prospect of increased benefit to security and is thus "futile and time-wasting" (Lord Bingham, UKHL 12, 2006, 35). Targeted surveillance focuses scarce resources only on those for whom suspicion exists and is therefore likely to be more efficient (Bou-Habib 2008; Risse and Zeckhauser 2004). Each of these criticisms implies that the risks of untargeted surveillance could be reduced or eliminated by imposing on those doing the surveillance a prior requirement for objective, evidence-based, targeted suspicion.

As opposed to mass surveillance, targeted suspicion singles those out who do not meet the "moral standards" of the community, causing negative stigmatization, fracturing the community, and undermining equality

Hadjimatheou 13, Katerina Hadjimatheou, Research Fellow on an EU-funded project on the ethics of surveillance in serious and organized crime entitled SURVEILLE, Accepted 3 May 2013, Published: 8 August 2013, "The Relative Moral Risks of Untargeted and Targeted Surveillance", Springer Science+Business Media Dordrecht 2013, Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1, https://www.evernote.com/shard/s348/share/578cb-s348/res/796c48d9-1e0e-442d-90be-928f137c2267/art_10.1007_s10677-013-9428-1.pdf) LS

I begin this section by discussing some difficulties with the idea that untargeted surveillance treats people like suspects and thereby stigmatises them. Stigmatisation and its costs result from being singled out. Untargeted surveillance is, other things being equal, less stigmatising of those individuals it affects than targeted surveillance, precisely because it treats everybody within its range with equal scrutiny. One standard understanding of stigmatisation defines it as the process of marking a person out as having an undesirable characteristic (Courtwright 2011; Arneson 2007). For the purposes of this paper, the undesirable characteristic associated with people who are marked out as suspects is failure to meet the justified moral standards of the (relevant) community. When surveillance marks people out as suspects, it marks them out as poten- tially having failed to uphold or having violated a rule they are prima facie obliged to follow. For example, the rules of transport security, of professional codes of ethics, and of the criminal law are rules people are normally obliged to follow either because they have explicitly consented to do so or because they enjoy the benefits that accrue from a situation in which the rules are followed collectively. The harms of stigmatising people as suspicious can affect both individuals and society as a whole. On an individual level, being stigmatised as having failed to maintain the moral standards of the community can be humiliating. People are humiliated when they cannot prevent appearing to others in ways that are demeaning (Bou-Habib 2011:44). If individuals who are humiliated as a result of their stigmatisation are in fact innocent of any rule- breaking, they may feel anger or indignation at what they perceive to be an unjust implica- tion of wrongdoing. This may create knock-on social costs, by eroding their trust in the surveilling authorities, which in turn may reduce their willingness to cooperate with those authorities and to support the enforcement of other rules (Fundamental Rights Agency of the EU FRA 2010: 21). Stigmatisation can also make those affected feel alienated from others as they perceive that others' estimation of them has fallen. This can affect negatively people's self-confidence and their willingness and ability to connect and engage effectively with others. It can also lead people to become socially isolated if they react by withdrawing from contact with others (Courtwright 2011:2). At the same time,

social isolation of those stigmatised may be imposed from outside, if other individuals avoid or reject them as a result of surveillance policy. When particular groups of people who share salient traits -such as religion or race-are stigmatised as suspicious, as has been seen to occur with semi-targeted When stigmatisation based on ethnic grounds reflects ethnic prejudice it can be experi- enced as particularly humiliating both by those surveilled and by those who are not themselves surveilled but who share the traits that trigger the suspicion and for that reason feel implicated (Parmar 2011: 9). As all this suggests, stigmatisation caused by surveillance can be harmful to individuals and can distort social relationships in ways that impede the pursuit of important social goals, including security and equality. All of these potential costs are likely to increase along with the importance of the moral standard or rule one is suspected of having broken. Being stigmatised as a suspected cheat at cards in a casino is neither as humiliating nor as likely to lead to social isolation or discrimination as being stigmatised by police as a potential paedophile. The costs of stigmatisation are also likely to intensify the greater the implication of guilt conveyed in the measure of surveillance: a bag search is less stigmatising than a house search, which in turn is less stigmatising than being taken to the police station for questioning. The extent to which people are stigmatised may also be affected by the number and identity of any witnesses to the surveillance: other things being equal, the greater the number of people who witness or become aware of the stigmatisation and the more influential or important those people are, the more severe both the individual and social costs are likely to be.

A2 Surveillance Discriminates

Mass surveillance doesn't stigmatize – simply enforces normal rules depending on situation

Hadjimatheou 13, Katerina Hadjimatheou, Research Fellow on an EU-funded project on the ethics of surveillance in serious and organized crime entitled SURVEILLE, Accepted 3 May 2013, Published: 8 August 2013, "The Relative Moral Risks of Untargeted and Targeted Surveillance", Springer Science+Business Media Dordrecht 2013, Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1, https://www.evernote.com/shard/s348/share/578cb-s348/res/796c48d9-1e0e-442d-90be-928f137c2267/art_10.1007_s10677-013-9428-1.pdf) LS

It might be objected that the act of choosing a range for any measure of untargeted surveillance itself involves suspicion and that therefore untargeted surveillance continues to be stigmatising. This is true in some cases, as is discussed below. But it seems wrong for many routine examples of untargeted surveillance. There are reasons why people travelling by aeroplane are subject to searches not imposed on those travelling by car and reasons why car drivers but not pilots are subject to surveillance by speed camera. In order to accept the claim that surveilling all car drivers by speed camera stigmatises them as suspected speeders or that surveilling all airline passengers stigmatises them as potential terrorists, we would have to accept that these reasons are always or often related to the suspiciousness of either the activity surveilled or the individuals engaged in it. This seems highly unlikely. Driving cars is a dangerous activity and thus should be regulated by enforceable rules such as speed limits. The only people who can break the particular rule of road safety embodied in a speed limit are car drivers. Surveilling anyone else but them would be perverse. Therefore it seems wrong to argue that the indiscriminate surveillance of all people engaged in a particular activity singles them out and thereby stigmatises them, when the surveillance is used in order to enforce the rules of that particular activity.

Bulk surveillance doesn't mean profiling – not rooted in problematic assumptions.

Hadjimatheou 13, Katerina Hadjimatheou, Research Fellow on an EU-funded project on the ethics of surveillance in serious and organized crime entitled SURVEILLE, Accepted 3 May 2013, Published: 8 August 2013, "The Relative Moral Risks of Untargeted and Targeted Surveillance", Springer Science+Business Media Dordrecht 2013, Ethic Theory Moral Prac (2014) 17:187–207 DOI 10.1007/s10677-013-9428-1, https://www.evernote.com/shard/s348/share/578cb-s348/res/796c48d9-1e0e-442d-90be-928f137c2267/art_10.1007_s10677-013-9428-1.pdf) LS

Untargeted surveillance should be distinguished from profiling, with which it often has much in common, but which does treat people like suspects and thereby stigmatise them. Profiling can be defined as the systematic association of sets of physical, behavioural, psychological or ethnic characteristics with rule-breaking and their use as a basis for making security decisions (Hadjimatheou 2011:5–9). It is increasingly proposed as an alternative to untargeted surveillance, despite the widespread concerns about its moral risks.4 Profiling is similar to untargeted surveillance to the extent that it affects groups of people, but it differs in that it singles these groups out for suspicion. For example, the use of metal detectors or sniffer dogs in some 'problem' schools resembles untargeted surveillance because it is used to enforce the rules of a particular institution and is targeted indiscriminately at all members of the institution who could break the rules. But the fact that such measures respond to suspicion that pupils at some schools are more likely to be breaking the rules than others makes them more like profiling. The same could be said of a measure to install a CCTV network in a specific area in virtue of the fact that it is inhabited or frequented by a minority population deemed to be criminally inclined.

A2: Democracy/chilling effect

Surveillance does not eliminate dissent, empirical examples demonstrate the opposite.

Sagar, 2015

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. He was previously assistant professor in the Department of Politics at Princeton University., "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

Greenwald identifies two major harms. The first is political in nature. Mass surveillance is said to stifle dissent because "a citizenry that is aware of always being watched quickly becomes a compliant and fearful one." Compliance occurs because, anticipating being shamed or condemned for nonconformist behavior, individuals who know they are being watched "think only in line with what is expected and demanded."13 Even targeted forms of surveillance are not to be trusted, Greenwald argues, because the "indifference or support of those who think themselves exempt invariably allows for the misuse of power to spread far beyond its original application."14 These claims strike me as overblown. The more extreme claim, that surveillance furthers thought control, is neither logical nor supported by the facts. It is logically flawed because accusing someone of trying to control your mind proves that they have not succeeded in doing so. On a more practical level, the fate met by states that have tried to perfect mass control—the Soviet Union and the German Democratic Republic, for example—suggests that surveillance cannot eliminate dissent. It is also not clear that surveillance can undermine dissident movements as easily as Greenwald posits. The United States' record, he writes, "is suffused with examples of groups and individuals being placed under government surveillance by virtue of their dissenting views and activism—Martin Luther King, Jr., the civil rights movement, antiwar activists, environmentalists."15 These cases are certainly troubling, but it hardly needs pointing out that surveillance did not prevent the end of segregation, retreat from Vietnam, and the rise

of environmental consciousness. This record suggests that dissident movements that have public opinion on their side are not easily intimidated by state surveillance (a point reinforced by the Arab Spring). Surveillance may make it harder for individuals to associate with movements on the far ends of the political spectrum. But why must a liberal democracy refrain from monitoring extremist groups such as neo-Nazis and anarchists? There is the danger that officials could label as "extreme" legitimate movements seeking to challenge the prevailing order. Yet the possibility that surveillance programs could expand beyond their original ambit does not constitute a good reason to end surveillance altogether. A more proportionate response is to see that surveillance powers are subject to oversight.

A2: Authoritarianism

The claims about authoritarianism are hyperbolic and paranoid. All law enforcement practice might be used improperly, but accountability checks the worst practices.

Simon, 2014,

William H. Simon, Arthur Levitt Professor of Law at Columbia University, 10-20-2014, "Rethinking Privacy," Boston Review, http://bostonreview.net/books-ideas/william-simon-rethinking-privacy-surveillance

The third trope of the paranoid style is the slippery slope argument. The idea is that an innocuous step in a feared direction will inexorably lead to further steps that end in catastrophe. As The Music Man (1962) puts it in explaining why a pool table will lead to moral collapse in River City, Iowa, "medicinal wine from a teaspoon, then beer from a bottle." In this spirit, Daniel Solove in Nothing to Hide (2011) explains why broad surveillance is a threat even when limited to detection of unlawful activity. First, surveillance will sometimes lead to mistaken conclusions that will harm innocent people. Second, since "everyone violates the law sometimes" (think of moderate speeding on the highway), surveillance will lead to over-enforcement of low-stakes laws (presumably by lowering the costs of enforcement), or perhaps the use of threats of enforcement of minor misconduct to force people to give up rights (as for example, where police threaten to bring unrelated charges in order to induce a witness or co-conspirator to cooperate in the prosecution of another). And finally, even if we authorize broad surveillance for legitimate purposes, officials will use the authorization as an excuse to extend their activities in illegitimate ways. Yet, slippery slope arguments can be made against virtually any kind of law enforcement. Most law enforcement infringes privacy. ("Murder is the most private act a man can commit," William Faulkner wrote.) And most law enforcement powers have the potential for abuse. What we can reasonably ask is, first, that the practices are calibrated effectively to identify wrongdoers; second, that the burden they put on law-abiding people is fairly distributed; and third, that officials are accountable for the lawfulness of their conduct both in designing and in implementing the practices.

Surveillance doesn't harm freedom or autonomy, because they aren't reliant on digital communication.

Sagar, 2015

Rahul, associate professor of political science at Yale-NUS College and the Lee Kuan Yew School of Public Policy at the National University of Singapore. He was previously assistant

professor in the Department of Politics at Princeton University., "Against Moral Absolutism: Surveillance and Disclosure After Snowden," Ethics & International Affairs / Volume 29 / Issue 02 / 2015, pp 145-159.

The second harm Greenwald sees surveillance posing is personal in nature. Surveillance is said to undermine the very essence of human freedom because the "range of choices people consider when they believe that others are watching is . . . far more limited than what they might do when acting in a private realm."16 Internet-based surveillance is viewed as especially damaging in this respect because this is "where virtually everything is done" in our day, making it the place "where we develop and express our very personality and sense of self." Hence, "to permit surveillance to take root on the Internet would mean subjecting virtually all forms of human interaction, planning, and even thought itself to comprehensive state examination."17 This claim too seems overstated in two respects. First, it exaggerates the extent to which our self-development hinges upon electronic communication channels and other related activities that leave electronic traces. The arrival of the Internet certainly opens new vistas, but it does not entirely close earlier ones. A person who fears what her browsing habits might communicate to the authorities can obtain texts offline. Similarly, an individual who fears transmitting materials electronically can do so in person, as Snowden did when communicating with Greenwald. There are costs to communicating in such "old-fashioned" ways, but these costs are neither new nor prohibitive. Second, a substantial part of our self-development takes place in public. We become who we are through personal, social, and intellectual engagements, but these engagements do not always have to be premised on anonymity. Not everyone wants to hide all the time, which is why public engagement—through social media or blogs, for instance—is such a central aspect of the contemporary Internet.

A2: Tyranny

The argument that NSA surveillance enables tyranny is wrong. The data exists inevitably and if you are concerned about the risk of a tyrant taking over, there are much bigger issues than privacy to be concerned about.

Etzioni, Professor of International Relations at the George Washington University, **2014** Amitai Etzioni , Intelligence and National Security (2014): NSA: National Security vs. Individual Rights, Intelligence and National Security, DOI: 10.1080/02684527.2013.867221

Part VI: The Coming Tyrant? A common claim among civil libertarians is that, even if little harm is presently being inflicted by government surveillance programs, the infrastructure is in place for a less-benevolent leader to violate the people's rights and set us on the path to tyranny. For example, it has been argued that PRISM 'will amount to a "turnkey" system that, in the wrong hands, could transform the country into a totalitarian state virtually overnight. Every person who values personal freedom, human rights and the rule of law must recoil against such a possibility, regardless of their political preference'.177 And Senator Rand Paul (R-KY) has been 'careful to point out that he is concerned about the possible abuses of some future, Hitler-like president'.178 A few things might be said in response. First, all of the data that the government is collecting is already being archived (at least for short periods – as discussed above) by private corporations and other entities. It is not the case that PRISM or other such programs entail the collection of new data that was not previously available. Second, if one is truly concerned that a tyrant might take over the United States, one obviously faces a much greater and all-encompassing threat than a diminution of privacy. And the response has to be similarly expansive. One can join civic bodies that seek to shore up democracies, or work with various reform movements and public education drives, or ally with groups that prepare to retreat

to the mountains, store ammunition and essential foods, and plan to fight the tyrannical forces. But it makes no sense to oppose limited measures to enhance security on these grounds.

A2: State Abuses are morally objectionable

No Ethical abuse – ethical benefits to surveillance outweigh AND inherent safeguards check

Taylor 05

[In Praise of Big Brother: Why We Should Learn to Stop Worrying and Love Government Surveillance James Stacey Taylor Public Affairs Quarterly Vol. 19, No. 3 (Jul., 2005), pp. 227-246 Published by: University of Illinois Press on behalf of North American Philosophical Publications Stable URL: http://www.jstor.org/stable/40441413] //duff

It must be admitted that, in practice, a system of constant State surveillance is likely to be abused to some extent.20 However, if one adopts a rights-based understanding of claim (ii) above (i.e., if one holds that such a system of State surveillance is permissible as long as it does not in itself violate persons' moral rights), this objection can be readily rebutted. On such an understanding of claim (ii) one could first note that this abuse-based objection gets its force from the view that such abuse would violate persons' moral rights. The proponent of a rights-based understanding of claim (ii) would certainly agree with this underlying view, and would join with its advocates in condemning such abuse. However, the rights theorist who was in favor of such a system of State surveillance would also note that the condemnation of the abuse of State surveillance is not to condemn State surveillance itself. To condemn the use of x for the purposes of v, where y violates persons' rights (e.g., to privacy or autonomy) is not also to condemn the use of x for the purposes of z, where z does not violate persons' rights. Thus, a rights theorist who was a proponent of State surveillance could argue, to offer the possibility of abuse as an objection to constant State surveillance is to confuse the moral status of different possible uses of such surveillance. For such proponents of State surveillance, then, this first objection can be readily dismissed. If one adopts a consequentialist understanding of claim (ii), however, defending the use of constant State surveillance against this objection is more difficult. This is because the likelihood of such abuse together with the likelihood of such abuse causing harm must be weighed against the benefits (as outlined above) that such a system is likely to provide. And, given that such a system has not yet been implemented, such a weighing and balancing of its relative costs and benefits will be difficult to assess with certainty. Despite this, however, there is good reason to believe that little harm will accrue from the abuse of such a system of surveillance. Thus, given the likelihood that such a system of State surveillance will bring important benefits to the citizens of the State in which it is installed, the possibility of its abuse should not deter consequentialists from endorsing the above pro-surveillance argument. To show why there is good reason to believe that little harm would accrue from such a system of State surveillance its consequentialist proponents should first distinguish between major abuses of such a system and minor abuses of it. A major abuse of such a system would be one in which the State used its power together with its improved surveillance capabilities to persecute or oppress its citizens, either individually or as a whole. A minor abuse of the system would be one in which some of the agents of the State secured access to the information gathered by its surveillance devices for their own nefarious purposes, such as voyeurism or the mockery of the persons whose recorded actions they are viewing. The consequentialist proponent of constant and universal State surveillance need not be unduly concerned about the possibility of major abuses of the State surveillance system. If the State were prone to abuse its citizens in this way prior to the installation of such a system, this would provide good consequentialist grounds for resisting its introduction. The consequentialist proponent of constant State surveillance is thus only concerned with defending the introduction of such a surveillance system in those cases where the State was not prone to abusing its citizens in this way. This is not to say, however, that a State (or the agents of a State) that was not prone to persecuting or oppressing its citizens might not occasionally persecute individual citizens. In response to this the consequentialist proponent of constant State surveillance should note that given its power were the State (or its agents) to decide to persecute some of its citizens in this way it would not need a system of surveillance to do this effectively. Thus, although such a surveillance system might make it easier for the State (or its agents) to engage in the persecution that it had decided upon, this would not make things any worse for the person or persons thus persecuted. As such, then, the possibility of the major abuse of a system of constant and universal State surveillance by a State that was not prone to persecuting its citizens would not, for a conseqentialist, be a significant objection to the introduction of such a system. What, then, of the concern that such a system of constant State surveillance would be subject to minor abuses? The most obvious

response to this concern is to argue that if such a system of surveillance is introduced then it must be accompanied by a series of safeguards that would reduce the possibility that the information that it gathers would be abused in this way. It might, for example, be that such a system should be accompanied by the requirement that only a very few persons have access to the information that it gathers, that such persons be screened carefully and supervised closely, and that they are subject to draconian penalties for any abuses that they might perpetrate. If they were severe enough such safeguards would be likely to reduce the possibility of the minor abuse of such a system of surveillance to a level whereby the harm that its abusers might cause would be outweighed by the advantages that it would provide to the State's citizens as a whole. However, the consequentialist proponent of State surveillance also has a second - and more philosophically interesting - response to the concern that such surveillance would be subject to minor abuse: that such abuse would not be harmful, and so would not detract from the advantages outlined above. This response is based on observing that given the penalties for abuse by which such a system would be accompanied (as outlined above) any such abuse would be perpetrated covertly. As such, its victims (e.g., persons subjected to the voyeuristic gaze of some of the agents of the State) would not know that they were victims. Yet even though this is so, the proponents of this second response to the above abuse-based objection do not use this observation to argue that, since such persons did not know that they were being watched, this watching did not harm them.21 This is because, as Joel Feinberg has persuasively argued, the mere fact that a person is ignorant of the frustration of her interests (e.g., her interest not to be the unwilling subject of voyeurism) does not mean that she has not thereby been harmed.22 Rather, this second consequentialist response to the above abuse-based objection conjoins this observation with the claim that for a person to be harmed her life must have been adversely affected in some way, whether she knew of this or not. To support this latter claim it will be useful to examine more closely Feinberg's argument against the view that a person can be harmed only if she knows that she has been harmed. This examination will serve two purposes. First, it will show why the consequentialist proponent of constant State surveillance should not claim that the unwitting victim of (e.g.) State voyeurism failed to be harmed by it owing to her ignorance of it. Second, it will support the claim that a person's life must be adversely affected for her to be considered harmed - the claim on which this second response rests.

EXT: No Abuse of Surveillance

The NSA is well-regulated and constrained by judicial oversight.

Cohen, 2015

Michael A. Cohen, 15, fellow at The Century Foundation. Previously, Michael served in the U.S. Department of State as chief speechwriter for U.S. Representative to the United Nations Bill Richardson and Undersecretary of State Stuart Eizenstat. , 6-3-2015, "NSA Surveillance Debate Drowned Out on Both Sides by Fear Tactics," World Politics Review, http://www.worldpoliticsreview.com/articles/15905/nsa-surveillance-debate-drowned-out-on-both-sides-by-fear-tacticsa

The arguments of NSA opponents have, for two years, relied on hypothetical, trumped-up fears of the government ransacking our private information. These concerns have been raised even though, from all appearances, the NSA's domestic surveillance activities are reasonably well-regulated and constrained by judicial oversight. NSA opponents like to point out that a recent court decision determined that the bulk records collection program was illegal, which ignores the many other court decisions that accepted its legality. More important, it ignores the decisions of the secret FISA Court, which ordered the NSA not to scrap collection programs that were determined to be operating unconstitutionally, but rather to make changes to them to get them in line with constitutional constraints.

There's no evidence of abuse of surveillance powers.

Simon, 2013,

David Simon, producer of HBO's The Wire, 7/3/13, "We are shocked, shocked...," http://davidsimon.com/we-are-shocked-shocked/

I know it's big and scary that the government wants a data base of all phone calls. And it's scary that they're paying attention to the internet. And it's scary that your cell phones have GPS installed. And it's scary, too, that the little box that lets you go through the short toll lane on I-95 lets someone, somewhere know that you are on the move. Privacy is in decline around the world, largely because technology and big data have matured to the point where it is easy to create a net that monitors many daily interactions. Sometimes the data is valuable for commerce — witness those facebook ads for Italian shoes that my wife must endure — and sometimes for law enforcement and national security. But be honest, most of us are grudging participants in this dynamic. We want the cell phones. We like the internet. We don't want to sit in the slow lane at the Harbor Tunnel toll plaza. The question is not should the resulting data exist. It does. And it forever will, to a greater and greater extent. And therefore, the present-day question can't seriously be this: Should law enforcement in the legitimate pursuit of criminal activity pretend that such data does not exist. The question is more fundamental: Is government accessing the data for the legitimate public safety needs of the society, or are they accessing it in ways that abuse individual liberties and violate personal privacy — and in a manner that is unsupervised. And to that, the Guardian and those who are wailing jeremiads about this pretend-discovery of U.S. big data collection are noticeably silent. We don't know of any actual abuse. No known illegal wiretaps, no indications of FISA-court approved intercepts of innocent Americans that occurred because weak probable cause was acceptable. Mark you, that stuff may be happening. As happens the case with all law enforcement capability, it will certainly happen at some point, if it hasn't already. Any data asset that can be properly and legally invoked, can also be misused — particularly without careful oversight. But that of course has always been the case with electronic surveillance of any kind.

Other

A2 Semantic Discontinuity

Semantic discontinuity is just as likely to benefit the interests of power.

Balkin, 2012

Jack M. Knight Professor of Constitutional Law and the First Amendment, Yale Law School. "Room for maneuver: Julie Cohen's theory of freedom in the information state." Jerusalem Review of Legal Studies 6.1 (2012): 79-95.

A third caveat follows from the second. Cohen's conception of semantic discontinuity is necessarily asymmetric. She judges the presence or absence of semantic discontinuity from the perspective of a particular individual, and not from the perspective of governments, businesses, or other powerful institutions. This asymmetry is necessary to ensure that discontinuity helps individuals rather than hurts them. **Some gaps in legal and technological enforcement might benefit the powerful far more than the powerless.** Governments might take advantage of gaps in civil liberties protections; large businesses might take advantage of gaps in consumer protection regulations. Facebook's ever-shifting privacy policies seem to be a prominent example of a business taking full advantage of semantic discontinuities wherever it finds them. But Cohen seeks semantic discontinuity for the benefit of the ordinary individual and not for the Leviathan state, the national security apparatus, the multinational corporation, or the malefactor of great wealth. Although this asymmetry is theoretically necessary to Cohen's argument, it is not clear whether she can fully justify or operationalize it. Gaps and ambiguities in code and law that benefit individuals might also benefit powerful corporations, and vice versa. Indeed, sometimes it may not be possible to separate the two in practice. Think of Google's current position on fair use as an example. YouTube's business model is premised on incomplete and ineffective enforcement of copyright infringement. For that matter, so is Google's entire enterprise of scraping content from virtually every site on the Web, storing it, indexing it, and serving up parts of it on demand, all without permission of the copyright owner. Here Cohen's notion of semantic discontinuity seems related to Jonathan Zittrain's argument for protecting emerging businesses that foster the generativity of the Internet.16 Many of the businesses and intermediaries on which the play of everyday practice depends are themselves the beneficiaries of gaps and ambiguities in the law. It may be difficult if not impossible to create information systems and policies that offer gaps and ambiguities that individuals can exploit without also handing the same tools to large private enterprises—who, after all, have greater access to technical and legal talent to exploit them. Indeed,

the problem with ambiguities in a legal system is that the rich may be able to exploit them better than the poor; and the problem with gaps is that the powerful may be able to push through them more easily than the weak. The philosopher Anacharsis once remarked to the great lawgiver Solon that laws are like spider's webs that snare the weak and poor but that the rich and mighty can easily break through.17 Semantic discontinuity is ultimately about tradeoffs, and Cohen's book only begins the discussion about how those tradeoffs might be accomplished. Even the metaphor of tradeoffs may be misleading, as it suggests a careful balance of benefits and risks. But the whole point of gaps and discontinuities in networked systems is that they offer opportunities for the unexpected, and for unforeseen transformations of power—**including ever new opportunities for exercising power over others**.

Semantic discontinuty doesn't work in the context of national security.

Balkin, 2012

Jack M. Knight Professor of Constitutional Law and the First Amendment, Yale Law School. "Room for maneuver: Julie Cohen's theory of freedom in the information state." Jerusalem Review of Legal Studies 6.1 (2012): 79-95.

Many of the issues of privacy and intellectual property that Cohen is concerned with in her book may be recast as issues of national security, terrorism, or crime prevention. This is perhaps the greatest difficulty for her approach. Once an issue is successfully characterized **in public debates as a matter of national security**, calls for imperfect, gap-filled systems may seem unrealistic and counterproductive. Governments face shadowy threats from overseas and can ill afford leaky systems of surveillance and enforcement. Not surprisingly, both governments and businesses that seek to protect intellectual property rights and rights of data collection have incentives to describe problems of governance in precisely these ways. What Cohen celebrates as semantic discontinuity they will see as imperfection and an obstacle to effective law enforcement rather than a strategy for protecting human flourishing. Nevertheless, at the same time, these governments and businesses will want to maintain their own form of semantic discontinuity. They will want to preserve for themselves plenty of room for maneuver and avoid surveillance of their own operations, while reducing or eliminating semantic discontinuity that benefits ordinary individuals. Indeed, this seems to be the general direction of digital enforcement—toward the construction of a great two-way mirror in which ordinary people's lives are increasingly transparent to powerful public and private entities that are not transparent to the people they view. Whether these developments are inevitable, or whether there is another, more democratic future available to us, is the great question for information policy in the digital age.

Semantic discontinuity fails – gaps in the law create artirariness and injustice.

Elkin-Koren 2012, Niva, Professor of Law at the University of Haifa Faculty of Law and the Founding Director of the Haifa Center for Law and Technology. "Affordances of Freedom: Theorizing the Rights of Users in the Digital Era" Jerusalein Review of Legal Studies, Vol. 6, No. 1 (2012), pp. 96-109

The powerful semantic notion of Semantic Discontinuity is lost in translation to the legal regime. Legal rules must reduce abstract concepts into operative norms. Indeed, the law is a system of meaning, but it

is first, and foremost, a normative scheme with operational functions-directing people's behavior by norms. As a general matter, I believe we should be skeptical of intentionally inserting imperfection into legal systems, as there can never be any perfect systems of control. Our legal system in general and copyright law in particular, is already full of gaps. Copyright enforcement does not even come close to perfect enforcement: not every infringer is detected and reported, and reported infringers are rarely investigated and brought to court. Trials often take long time, and not always end up in conviction. Imperfection is also typical of enforcement by technology, as any encryption technology has flaws and vulnerabilities. Human beings, and the technologies they generate, are inherently imperfect and always subject to circumvention and challenge. There is always error, dysfunction, faults and new or unpredictable circumstances which render the legal rule, and its enforcement, imperfect. The digital era did not change this. Security failures, vulnerability to cyber attacks, and systems failures in introducing new digital products are but a few examples. Moreover, we should beware of systematically promoting unpredictability by law, as a mechanism for securing freedom.39 **Gaps and incompleteness in law create uncertainty, unpredictability and risk, and are therefore susceptible to power, abuse, arbitrariness, and injustic**e. Gaps grant law enforcement agencies more discretion in implementing their enforcement policy, and may lead to selective enforcement and injustice. In fact, unpredictability in law enforcement may abandon citizens at the mercy of an arbitrary bureaucracy. Logical gaps and formal incompleteness as a legal policy may also overlook the presence of power. Gaps in legal rules may leave some room for maneuver, but given the structure of power such flexibility may not automatically play in favor of fundamental liberties. When power is inserted into the equation, rights become significant. Negotiating cultural pathways is unlike negotiating the scope of legal rights. For the most part, the law is not a matter of negotiating meaning, but rather a matter of coercive power. Incompleteness, complexity, and unpredictability in law often work to benefit the strong, sophisticated and more powerful; those who can master the law and use it at their service. Google was able to take advantage of uncertainty and to risk potential liability in the Google Books lawsuit. Individuals, small businesses, and startup companies often cannot.4 o

Prostitution DDI

1NC Case Frontline

Solvency

1. Be skeptical of their Conant evidence– All it says is that repealing the act "could be the first step," it doesn't predict future action or make decisive warrants. Also it links back to the 1ACs criticism from the first advantage because it uses solving the AIDS epidemic as the sole reason for decriminalization.

2. Repealing the Mann Act can't solve– this only decriminalizes prostitutes that cross state or foreign borders. The 1AC doesn't specify the extent of prostitutes that this decriminalization would happen for

U.S Legal No Date (USLegal is the legal destination site for consumers, small business, attorneys, corporations, and anyone interested in the law, or in need of legal information, products or services., No date, Federal Mann Act, http://prostitution.uslegal.com/federal-mann-act/)

The Mann Act is a federal statute that prohibits **interstate or foreign transportation** of an individual with the intention of engaging such individual in sexual activity or prostitution. The Mann Act is also known as the White Slave Traffic Act. The Act made it a felony to transport knowingly any person in interstate commerce or foreign commerce for prostitution, or any other immoral purpose. It also made it a felony to coerce an individual into such immoral acts. -

3. The plan's decriminalization doesn't increase worker autonomy.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

And a Legal Response to the Demand for Prostitution," http://www.embracedignity.org/uploads/10Reasons.pdf)

Most women in prostitution did not make a rational choice to enter prostitution¶ from among a range of other options. They did not sit down one day and decide¶ that they wanted to be prostitutes. They did not have other real options such as¶ medicine, law, nursing or politics. Instead, their "options" were more in the realm¶ of how to feed themselves and their children. Such choices are better termed¶ survival strategies.¶ Rather than consenting to prostitution, a prostituted woman more accurately¶ complies with the extremely limited options available to her. Her compliance is¶ required by the fact of having to adapt to conditions of inequality that are set by¶ the customer who pays her to do what he wants her to do.¶ Most of the women interviewed in the studies authored by Raymond et al.,¶ reported that choice in entering the sex industry could only be discussed in the¶ context of a lack of other options. Many described prostitution as their last ¶ 10¶ choice, or as an involuntary way of making ends meet (Raymond et al., 2001;¶ Raymond et al., 2002). In one study, 67% of a group of law enforcement officials¶ expressed the opinion that women did not enter prostitution voluntarily. Similarly,¶ 72% of social service providers did not think that women voluntarily choose to¶ enter the sex industry (Raymond et al 2001, p. 91).¶ The distinction between forced and voluntary prostitution is precisely what the¶ sex industry is promoting because it will give the industry more legal security and¶ market stability if this distinction can be utilized to legalize prostitution, pimping¶ and brothels. Women who consider bringing charges against pimps and¶ perpetrators will bear the burden of proving that they were "forced." How will¶ marginalized women ever be able to prove coercion? If prostituted women must¶ prove that force was used in recruitment or in their "working conditions," very few¶ women in prostitution will have legal recourse, and very few offenders will be¶ prosecuted.¶ Women in prostitution must continually lie about their lives, their bodies, and their¶ sexual responses. Lying is part of the job definition when the customer asks, "did¶ you enjoy it?" The very edifice of prostitution is built on the lie that "women like¶ it." Some prostitution survivors have stated that it took them years after leaving¶ prostitution to acknowledge that prostitution

wasn't a free choice because to deny¶ their own capacity to choose was to deny themselves.¶ There is no doubt that a small number of women say they choose to be in¶ prostitution, especially in public contexts orchestrated by the sex industry. In the¶ same way, some people choose to take dangerous drugs such as amphetamine.¶ However, even when some people consent to use dangerous drugs, we still¶ recognize that is harmful to them, and most people do not seek to legalize¶ amphetamine. In this situation, it is harm to the person, not the consent of the¶ person that is the governing standard.¶ A 1998 International Labor Organization (United Nations ILO) report suggested¶ that the sex industry be treated as a legitimate economic sector, but still found¶ that¶ …prostitution is one of the most alienated forms of labour; the¶ surveys [in 4 countries] show that women worked 'with a¶ heavy heart,' 'felt forced,' or were 'conscience-stricken' and¶ had negative self-identities. . A significant proportion claimed¶ they wanted to leave sex work [sic] if they could (Lim, 1998,¶ p. 213).¶ When a woman remains in an abusive relationship with a partner who batters¶ her, or even when she defends his actions, concerned people now understand¶ that she is not there voluntarily. They recognize the complexity of her¶ compliance. Like battered women, women in prostitution may deny their abuse if¶ they are not provided with meaningful alternatives.

4. The Mann act is a criminalization of the INDIVIDUALS that hire the sex workers and brings them across borders, not the workers themselves. Repealing the act won't solve.

Victims and Villains

1. Even legalization can't solve for the HIV/AIDS epidemic in the sex worker industry– there's no way that decriminalization can solve.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

And a Legal Response to the Demand for Prostitution," http://www.embracedignity.org/uploads/10Reasons.pdf)

A legalized system of prostitution often mandates health checks and certification,¶ but only for women and not for male buyers. Health examinations or tests for¶ women but not men make no public health sense because monitoring prostituted¶ women does not protect them from HIV/AIDS or STDs. This is not to advocate¶ that both women in prostitution and male buyers should be checked. It is simply to¶ point out the duplicity of a policy that implies, "We'll have safer sex and HIV/AIDS¶ control if we examine the women under a regulated or decriminalized system of¶ prostitution." Male buyers can and do originally transmit disease to the women¶ they purchase.¶ It has been argued that legalized brothels or other "controlled" prostitution¶ establishments protect women through enforceable condom policies. In one¶ study, 47% of women in U.S. prostitution stated that men expected sex without a ¶ 9¶ condom; 73% reported that men offered to pay more for sex without a condom;¶ and 45% of women said that men became abusive if they insisted that men use¶ condoms (Raymond et al, 2001, p. 72). Although certain sex businesses had¶ rules that required men to wear condoms, men nonetheless attempted to have¶ sex without condoms. One woman stated: "It's 'regulation' to wear a condom at¶ the sauna, but negotiable between parties on the side. Most guys expected blow¶ jobs without a condom (Raymond et al, 2001, p. 72)."¶ In reality, the enforcement of condom policy was left to the individual women in¶ prostitution, and the offer of extra money was an insistent pressure. One woman¶ stated: "I'd be one of those liars if I said 'Oh I always used a condom.' If there¶ was extra money coming in, then the condom would be out the window. I was¶ looking for the extra money (Raymond et al., 2001, p. 73)." Many factors militate¶ against condom use: the need of women to make money; older women's decline¶ in attractiveness to men; competition from places that do not require condoms;¶ pimp pressure on women to have sex with no condom for more money; money¶ needed for a drug habit or to pay off the pimp; and the general lack of control that¶ prostituted women have over their bodies in prostitution venues.¶ "Safety policies" in brothels did not protect women from harm. Where brothels¶ allegedly monitored the buyers and employed "bouncers," women stated that¶ they were injured by buyers and, at times, by brothel owners and their friends.¶ Even when someone intervened to momentarily control buyers' abuse, women¶ lived in a climate of fear.

Although 60% of women reported that buyers had¶ sometimes been prevented from abusing them, half of those same women¶ answered that, nonetheless, they thought that they might be killed by one of¶ their buyers (Raymond et al., 2002).

2. Neither legalization nor decriminalization can solve for worker's rights.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

And a Legal Response to the Demand for Prostitution," http://www.embracedignity.org/uploads/10Reasons.pdf)

In two studies in which 186 victims of commercial sexual exploitation were¶ interviewed, women consistently indicated that prostitution establishments did¶ little to protect them, regardless of whether the establishments were legal or¶ illegal. One woman said, "The only time they protect anyone is to protect the¶ customers" (Raymond, Hughes & Gomez, 2001; Raymond, d'Cunha, Ruhaini¶ Dzuhayatin, Hynes & Santos, 2002).¶ One of these studies interviewed 146 victims of trafficking in 5 countries. Eighty¶ percent of the women interviewed had suffered physical violence from pimps and¶ buyers and endured similar and multiple health effects from the violence and¶ sexual exploitation, regardless of whether the women were trafficked¶ internationally or were in local prostitution (Raymond et al, 2002, p. 62).¶ A second study of women trafficked for prostitution in the United States yielded¶ the following statements. Women who reported that sex businesses gave them¶ some protection qualified it by pointing out that no "protector" was ever in the¶ room with them. One woman who was in out-call prostitution stated: "The driver¶ functioned as a bodyguard. You're supposed to call when you get in, to¶ ascertain that everything was OK. But they are not standing outside the door¶ while you're in there, so anything could happen" (Raymond et al, 2001, p. 74).¶ In brothels that have surveillance cameras, the function of cameras was to¶ protect the buyer and the brothel rather than the women, with one brothel putting¶ in cameras after a buyer died (Raymond et al, 2001, p. 74). Protection of the¶ women from abuse was of secondary or no importance.

Decriminalization

1. No spillover–women will still work in the illegal prostitution industry and health care isn't solved better, empirics prove.

Farley 4 (Melissa, Prostitution Researcher & Educator, "Bad for the Body, Bad for the Heart"

Prostitution Harms Women Even if Legalized or Decriminalized)

The regulation of prostitution by zoning is a physical¶ manifestation of the same social/psychological stigma that de- criminalization advocates allegedly want to avoid. Reflecting the¶ social isolation of those in it, prostitution is often removed from¶ the mainstream. Whether in Turkish genelevs (walled-off¶ multiunit brothel complexes) or in Nevada brothels (ringed with¶ barbed wire or electric fencing), women in state-zoned prostitution¶ are physically isolated and socially rejected by the rest of society.¶ Often, when prostitution is not physically removed from¶ other businesses, for example in the case of strip clubs, club owners¶ deny that prostitution occurs in their venues.¶ Advocates of decriminalization argue that the health of those¶ in prostitution will be improved by decriminalization because¶ otherwise women will not have access to health care. It is¶ assumed that women will seek health care as soon as the stigma of¶ arrest is removed from prostitution. If the stigma is removed,¶ advocates argue, women will then file a complaint whenever they¶ are abused, raped, or assaulted in prostitution. They assume that¶ the complaint will be followed with a police response that treats¶ women in prostitution with dignity and as ordinary citizens.¶ Unfortunately, health care workers and police too often share the¶ same contempt toward those in prostitution that others do.¶ Aformer prostitute in NZ said to the Parliament: "This bill provides¶ people like me . . . with some form of redress[italics added], for¶ the brutalisation that may happen...when you're with a client and¶ you have a knife pulled on you" (Georgina Beyer, speech,¶ Wellington, NZ, June 26, 2003). The specific form of redress¶ offered by the NZ decriminalization law was not described by the¶ speaker, nor is it articulated in the law. The dilemma for the person¶ in prostitution is not that there is no legal redress for coercion,¶ physical assault, and rape in the new law or in old laws. The¶ dilemma is that in prostitution there is no avoiding sexual harassment,¶ sexual exploitation, rape, and acts that are the equivalent of¶ torture.¶ Decriminalization in NZ was promoted as a means of providing¶ those in prostitution

with legal redress against violent johns.¶ However, prostituted women could already take legal action¶ under existing laws but rarely did so. Explaining this situation, a¶ NZ Prostitutes Collective member stated, "They don't want to¶ draw attention to themselves and what they're doing" (Else, 2003,¶ n.p.). Women in the Netherlands have expressed similar sentiments,¶ even though prostitution has been legal there for many years. Their concern was the loss of anonymity that exists in legal¶ prostitution. Once officially registered as prostitutes, Dutch¶ women feared that this designation would pursue them for the¶ rest of their lives. Despite the fact that if officially registered as¶ prostitutes they would accrue pension funds, the women still preferred¶ anonymity (Schippers, 2002). They wanted to leave prostitution¶ as quickly as possible with no legal record of having been in¶ prostitution (Daley, 2001). Similarly, despite attempts to unionize¶ women in Germany's $16.5 billion legal prostitution industry, the¶ women not only avoided unions, they avoided registering with¶ the government and they continued to engage in illegal prostitution¶ in part because they felt that the remote areas where prostitution¶ is zoned put them at increased, not decreased, risk of physical¶ danger (Taubitz, 2004).

2. Decriminalization legitimizes ALL other aspects of the sex industry – third party businessmen, pimps, and the men who buy women for sexual activity.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

And a Legal Response to the Demand for Prostitution," http://www.embracedignity.org/uploads/10Reasons.pdf)

What does legalization of prostitution or decriminalization of the sex industry¶ mean? In the Netherlands, legalization amounts to sanctioning all aspects of the¶ sex industry: the women themselves, the buyers, and the pimps who, under the¶ regime of legalization, are transformed into third party businessmen and¶ legitimate sexual entrepreneurs. Legalization/decriminalization of the sex¶ industry also converts brothels, sex clubs, massage parlors and other sites of¶ prostitution activities into legitimate venues where commercial sexual acts are¶ allowed to flourish legally with few restraints.¶ Some people believe that, in calling for legalization or decriminalization of¶ prostitution, they dignify and professionalize the women in prostitution. But¶ dignifying prostitution as work doesn't dignify the women, it simply dignifies the¶ sex industry. People often don't realize that decriminalization means¶ decriminalization of the whole sex industry, not just the women in it. And they¶ haven't thought through the consequences of legalizing pimps as legitimate sex¶ entrepreneurs or third party businessmen, or the fact that men who buy women¶ for sexual activity are now accepted as legitimate consumers of sex.

3. Decriminalization increases the risk of sex trafficking because it makes enforcement of the remaining laws more difficult.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

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Legalized or decriminalized prostitution industries are one of the root causes of¶ sex trafficking. One argument for legalizing prostitution in the Netherlands was¶ that legalization would help to end the exploitation of desperate immigrant¶ women who had been trafficked there for prostitution. However, one report found¶ that 80% of women in the brothels of the Netherlands were trafficked from other¶ countries (Budapest Group, 1999)(1). In 1994, the International Organization of¶ Migration (IOM) stated that in the Netherlands alone, "nearly 70 % of trafficked¶ women were from CEEC [Central and Eastern European Countries]" (IOM, 1995,¶ p. 4).¶ The government of the Netherlands presents itself as a champion of antitrafficking¶ policies and programs, yet it has removed every legal impediment to¶ pimping, procuring and brothels. In the year 2000, the Dutch Ministry of Justice¶ argued in favor of a legal quota of foreign "sex workers," because the Dutch¶ prostitution market demanded a variety of "bodies" (Dutting, 2001, p. 16). Also in¶ 2000, the Dutch government sought and received a judgment from the European¶ Court recognizing prostitution as an economic activity, thereby enabling women¶ from the European Union and former Soviet bloc countries to obtain working¶ permits as "sex workers" in the Dutch sex industry if they could prove that they¶ are self employed. Non-governmental organizations (NGOs) in

Europe report¶ that traffickers use the work permits to bring foreign women into the Dutch¶ prostitution industry, masking the fact that women have been trafficked, by¶ coaching them to describe themselves as independent "migrant sex workers"¶ (Personal Communication, Representative of the International Human Rights¶ Network, 1999).¶ In the year since lifting the ban on brothels in the Netherlands, eight Dutch victim¶ support organizations reported an increase in the number of victims of trafficking,¶ and twelve victim support organization reported that the number of victims from¶ other countries has not diminished (Bureau NRM, 2002, p. 75). Forty-three of¶ the 348 municipalities (12%) in the Netherlands choose to follow a no-brothel¶ policy, but the Minister of Justice has indicated that the complete banning of¶ prostitution within any municipality could conflict with the federally guaranteed¶ "right to free choice of work" (Bureau NRM, 2002, p.19).¶ The first steps toward legalization of prostitution in Germany occurred in the¶ 1980s. By 1993, it was widely recognized that 75% of the women in Germany's¶ prostitution industry were foreigners from Uruguay, Argentina, Paraguay and ¶ 4¶ other countries in South America (Altink, 1993, p. 33). After the fall of the Berlin¶ wall, 80% of the estimated 10,000 women trafficked into Germany were from¶ Central and Eastern Europe and CIS countries (IOM. 1998a , p. 17). In 2002,¶ prostitution in Germany was established as a legitimate job after years of being¶ legalized in tolerance zones. Promotion of prostitution, pimping and brothels are¶ now legal in Germany.¶ The sheer volume of foreign women in the German prostitution industry suggests¶ that these women were trafficked into Germany, a process euphemistically¶ described as facilitated migration. It is almost impossible for poor women to¶ facilitate their own migration, underwrite the costs of travel and travel documents,¶ and set themselves up in "business" without intervention.¶ In 1984, a Labor government in the Australian State of Victoria introduced¶ legislation to legalize prostitution in brothels. Subsequent Australian¶ governments expanded legalization culminating in the Prostitution Control Act of¶ 1994. Noting the link between legalization of prostitution and trafficking in¶ Australia, the US Department of State observed: "Trafficking in East Asian¶ women for the sex trade is a growing problem…lax laws – including legalized¶ prostitution in parts of the country – make [anti-trafficking] enforcement difficult at¶ the working level" (U.S. Department of State, 2000, p. 6F).

2NC Case Blocks

Turn – Child Prostitution

Legalization has empirically resulted in significantly increased child prostitution rates.

Janice G. **Raymond 2003** – (Janice G. Raymond is an American lesbian radical feminist activist known for her work against violence, sexual exploitation and the "medical abuse" of women. "Ten Reasons for Not Legalizing Prostitution

And a Legal Response to the Demand for Prostitution," http://www.embracedignity.org/uploads/10Reasons.pdf)

Another argument for legalizing prostitution in the Netherlands was that it would¶ help end child prostitution. Yet child prostitution in the Netherlands has¶ increased dramatically during the 1990s. The Amsterdam-based ChildRight¶ organization estimates that the number of children in prostitution has increased¶ by more than 300% between 1996 –2001, going from 4,000 children in 1996 to¶ 15,000 in 2001. ChildRight estimates that at least 5,000 of these children in¶ Dutch prostitution are trafficked from other countries, with a large segment being¶ Nigerian girls (Tiggeloven, 2001).¶ Child prostitution has increased dramatically in the state of Victoria compared to¶ other Australian states where prostitution has not been legalized. Of all the¶ states and territories in Australia, the highest number of reported incidences of¶ child prostitution came from Victoria. In a 1998 study undertaken by ECPAT¶ (End Child Prostitution and Trafficking) who conducted research for the¶ Australian National Inquiry on Child Prostitution, there was increased evidence of¶ organized commercial exploitation of children (ECPAT Australia, 1998).

Turn – Human Trafficking

Human trafficking perpetuates endless violence against sex workers– it normalizes violence like rape, racism, and domestic violence

Farley 4 (Melissa, Prostitution Researcher & Educator, "Bad for the Body, Bad for the Heart"

Prostitution Harms Women Even if Legalized or Decriminalized)

It is a cruel lie to suggest that decriminalization or legalization¶ will protect anyone in prostitution. There is much evidence that¶ whatever its legal status, prostitution causes great harm to¶ women. The following sections summarize some of the many¶ studies that now document the physical and emotional harm¶ caused by prostitution.¶ In the past two decades, a number of authors have documented¶ or analyzed the sexual and physical violence that is the normative¶ experience for women in prostitution, including Baldwin (1993,¶ 1999); Barry (1979, 1995); Boyer, Chapman, and Marshall (1993);¶ Dworkin (1981, 1997, 2000); Farley, Baral, Kiremire, and Sezgin¶ (1998); Giobbe (1991, 1993); Hoigard and Finstad (1986); Hughes¶ (1999); Hunter (1994); Hynes and Raymond (2002); Jeffreys¶ (1997); Karim, Karim, Soldan, and Zondi (1995); Leidholdt (1993);¶ MacKinnon (1993, 1997, 2001); McKeganey and Barnard (1996);¶ Miller (1995); Silbert and Pines (1982a, 1982b); Silbert, Pines, and¶ Lynch (1982); Valera, Sawyer, and Schiraldi (2001); Vanwesenbeeck¶ (1994); and Weisberg (1985).¶ Sexual violence and physical assault are the norm for women in¶ all types of prostitution. Nemoto, Operario, Takenaka, Iwamoto,¶ 1094 VIOLENCE AGAINST WOMEN / October 2004¶ and Le (2003) reported that 62% of Asian women in San Francisco¶ massage parlors had been physically assaulted by customers.¶ These data were from only 50% of the massage parlors in San¶ Francisco. The other 50%—those brothels controlled by pimps/¶ traffickers who refused entrance to the researchers—were probably¶ even more violent toward the women inside. Raymond,¶ D'Cunha, et al. (2002) found that 80% of women who had been¶ trafficked or prostituted suffered violence-related injuries in prostitution.¶ Among the women interviewed by Parriott (1994), 85%¶ had been raped in prostitution. In another study, 94% of those in¶ street prostitution had experienced sexual assault and 75% had¶ been raped by one or more johns (Miller, 1995). In the Netherlands,¶ where prostitution is legal, 60% of prostituted women suffered¶ physical assaults; 70% experienced verbal threats of physical¶ assault; 40% experienced sexual violence; and 40% had been¶ forced into prostitution or sexual abuse by acquaintances¶ (Vanwesenbeeck, 1994). Most young women in prostitution were¶ abused or beaten by johns as well as pimps. Silbert and Pines¶ (1981, 1982b) reported that 70% of women suffered rape in prostitution,¶ with 65% having been physically assaulted by customers¶ and 66% assaulted by pimps.¶ Of 854 people in prostitution in

nine countries (Canada,¶ Colombia, Germany, Mexico, South Africa, Thailand, Turkey,¶ United States, and Zambia), 71% experienced physical assaults in¶ prostitution, and 62% reported rapes in prostitution (Farley, Cotton,¶ et al., 2003). Eighty-nine percent told the researchers that they¶ wanted to leave prostitution but did not have other options for¶ economic survival. To normalize prostitution as a reasonable job¶ choice for poor women makes invisible their strong desire to¶ escape prostitution.¶ Vanwesenbeeck (1994) found that two factors were associated¶ with greater violence in prostitution. The greater the poverty, the¶ greater the violence; and the longer one is in prostitution, the¶ more likely one is to experience violence. Similarly, the more time¶ women spent in prostitution, the more STDs they reported¶ (Parriott, 1994).¶ Those promoting prostitution rarely address class, race, and¶ ethnicity as factors that make women even more vulnerable to¶ health risks in prostitution. Farley (2003a) found that in NZ, as¶ Farley / HARMS OF PROSTITUTION 1095¶ elsewhere, indigenous women are placed at the bottom of a brutal¶ race and class hierarchy within prostitution itself. When the¶ researchers compared Maori/Pacific Islander New Zealanders to¶ European-origin New Zealanders in prostitution, the Pacific¶ Islander/Maori were more likely to have been homeless and to¶ have entered prostitution at a young age. Mama Tere, an¶ Auckland community activist, referred to NZ prostitution as an¶ "apartheid system" (Farley, 2003a). Plumridge and Abel (2001)¶ similarly described the NZ sex industry as "segmented," noting¶ that 7% of the population in Christchurch were Maori; however,¶ 19% of those in Christchurch prostitution were Maori.¶ Women in prostitution are treated as if their rapes do not matter.¶ For example, in Venezuela, El Salvador, and Paraguay, the¶ penalty for rape is reduced by one fifth if the victim is a prostitute¶ (Wijers & Lap-Chew, 1997). Many people assume that when a¶ prostituted woman is raped, that rape is part of her job and that¶ she deserved or even asked for the rape. In an example of this bias,¶ a California judge overturned a jury's decision to charge a customer¶ with rape, saying "a woman who goes out on the street and¶ makes a whore out of herself opens herself up to anybody" (Arax,¶ 1986, p. 1).¶ We asked women currently in prostitution in Colombia, Germany,¶ Mexico, South Africa, and Zambia whether they thought¶ that legal prostitution would offer them safety from physical and¶ sexual assault. Forty-six percent of these women in prostitution¶ from six countries felt that they were no safer from physical and¶ sexual assault even if prostitution were legal. Brothel prostitution¶ is legal in Germany, one of the countries surveyed. In an indictment¶ of legal prostitution, 59% of German respondents told us¶ that they did not think that legal prostitution made them any safer¶ from rape and physical assault (Farley et al., 2003). A comparable¶ 50% of 100 prostitutes in a Washington, D.C., survey expressed¶ the same opinion (Valera et al., 2001).¶ It is not possible to protect the health of someone whose "job"¶ means that they will get raped on average once a week (Hunter,¶ 1993). One woman explained that prostitution is "like domestic¶ violence taken to the extreme" (Leone, 2001). Another woman¶ said, "What is rape for others, is normal for us" (Farley, Lynne, &¶ Cotton, in press).

Legalizing prostitution results in higher rates of violence, rape, and sex trafficking.

Guttery 13 – Christine. ("Head to Head: Prostitution should not be legalized because it promotes inequality and human trafficking," 12/4/13, http://www.lsureveille.com/opinion/columnists/head-to-head-prostitution-should-not-be-legalized-because-it/article_f61e2f0c-5d4a-11e3-bb03-001a4bcf6878.html)

Some human rights activists seek to cut down on this crime by legalizing prostitution. This is not the answer.¶ Legalizing it only increases the demand for it by deeming promiscuous behavior socially acceptable, simply continuing the cycle of sexual abuse in the sex industry.¶ Selling sex is a dangerous, harmful profession and shouldn't be promoted by legislation.¶ Victims of trafficking or not, prostitutes suffer from violence and abuse and may face rape, beatings or other forms of torture.¶ According to a U.S. study of nearly 2000 prostitutes over a span of 30 years, mortality rates were nearly 200 times those of other people with similar demographics.¶ While some say selling sex is empowering for women, for many it's the exact opposite.¶ Pimps and sex traffickers frequently target vulnerable people with histories of abuse. Nearly all involved in the sex industry have suffered from abuse and violence.¶ According to a report on human trafficking and prostitution funded by the U.S. Department of Justice, 88 percent of female sex workers — trafficked or not — want to exit the industry, but numerous factors make it difficult, some of which include lack of employment skills, dependence on pimp, poor health, addiction, shame and lack of ID.¶ The same report revealed that nearly 80 percent of prostitutes interviewed felt they had been coerced or forced into the industry. This doesn't sound like empowerment to me.¶ Case studies show legalization actually fuels

trafficking and abuse.¶ While regulations are intended to combat trafficking and abuse, in reality, legalizing prostitution empowers pimps, traffickers and the sex industry, according to an article published by the Journal Of Trauma Practice.¶ Based on studies conducted in locations where the sex trade has been legalized, including Australia, Germany and the Netherlands, the number of sex trafficking victims significantly increased after legalization, and violence is still prevalent in the industry.

T-Curtail

1NC

A. Curtail means to, on face, cut short or reduce

Webster's 10 Webster's New World College Dictionary Copyright © 2010 by Wiley Publishing, Inc., Cleveland, Ohio. Used by arrangement with John Wiley & Sons, Inc. http://www.yourdictionary.com/curtail#websters

Curtail transitive verb
to cut short; reduce; abridge

B. The plan repeals the Mann act, and as an effect, the plan stops all of the surveillance that was conducted AS A RESULT of the Mann act. Doing the plan could have no effect on the surveillance, as other justifications can be given for surveillance.

C. THE AFFIRMATIVE INTERPRETATION IS BAD FOR DEBATE

Limits are necessary for negative preparation and clash, and their interpretation makes the topic too big.. All sorts of things affect surveillance and allowing the plan to do something that isn't directly reducing surveillance unlimits the topic.

D. Effects-T is a voter for negative preparation and clash, it becomes impossible to prepare for the infinite amount of steps until a decrease eventually occurs.

E. T is a voter because the opportunity to prepare promotes better debating

Possible Case List

Removing TSA scanners, removing drone usage, mandating no more surveillance of sex workers, FISCA

A2: We Don't Abolish

Curtail does not mean abolish

O'Niell 45 O'Niell, Chief Justice. **OPINION BY:** O'NIELL STATE v. EDWARDS No. 37719

Supreme Court of Louisiana 207 La. 506; 21 So. 2d 624; 1945 La. LEXIS 783 February 19, 1945 lexis

The argument for the prosecution is that the ordinance abolished the three open seasons, namely, the open season from October 1, 1943, to January 15, [*511] 1944, and the open season from October 1, 1944, to January 15, 1945, and the open season from October 1, 1945, to January 15, 1946; and that, in that way, the ordinance suspended altogether the right to hunt wild deer, bear or squirrels for the [***6] period of three years. The ordinance does not read that way, or convey any such meaning. According to Webster's New International Dictionary, 2 Ed., unabridged, the word "curtail" means "to cut off the end, or any part, of; hence to shorten; abridge; diminish; lessen; reduce." The word "abolish" or the word "suspend" is not given in the dictionaries as one of the definitions of the word "curtail". In fact, in common parlance, or in law composition, the word "curtail" has no such meaning as "abolish". The ordinance declares that the three open seasons which are thereby declared curtailed are the open season of 1943-1944, -- meaning from October 1, 1943, to January 15, 1944; and the open season 1944-1945, -- meaning from October 1, 1944, to January 15, 1945; and the open season 1945-1946, -- meaning from October 1, 1945, to January 15, 1946. To declare that these three open seasons, 1943-1944, 1944-1945, and 1945-1946, "are hereby curtailed", without indicating how, or the extent to which, they are "curtailed", means nothing.

Repeal means to abolish, this is in the context of law

Merriam-Webster No Date (Merriam-Webster, Merriam-Webster, Incorporated, is an American company that publishes reference books, especially dictionaries, Repeal synonyms, http://www.merriam-webster.com/thesaurus/repeal)

Repeal¶ noun¶ Synonyms and Antonyms of REPEAL the doing away with something by formal action <the repeal of Prohibition during Franklin D. Roosevelt's first term>¶ Synonyms abatement, abolishment, abrogation, annulment, avoidance, cancellation (also cancelation), defeasance, dissolution, invalidation, negation, nullification, quashing, repeal, rescindment, voiding

Neolib Link

Decriminalizing prostitution by repealing the Mann act brings the sex worker into the neoliberal markets. Prostitution is empirically a product of neoliberalism and the way the 1AC challenges prostitution is not able to solve for the implications on a global scale; the K is a prerequisite.

Svati P. Shah, 2013, ("Thinking Through "Neoliberalism" in the Twenty-first Century," S&F Online, Spring 2013, http://sfonline.barnard.edu/gender-justice-and-neoliberal-transformations/thinking-through-neoliberalism-in-the-twenty-first-century/)

Much of the present reality of prostitution is connected to the politics of global migration mainly because prostitution in general, and especially in the global South, involves some element of movement from place of origin. At the same time, an NGO-sector devoted to rescuing women from prostitution has grown exponentially since the twin policies of privatization and lowering tariffs were adopted in India in the early 1990s. These organizations have identified migrancy and "porous borders" as the key factors that encourage trafficking. According to this logic, a readily available solution to trafficking is to increase border controls further, and to limit the level of cross-border migration available to people seeking work.¶ The links between migration and economic survival for people living in poverty in India occurs against the backdrop of depleted water tables, drought-plagued arable land, and rural displacement. Such regions now supply the lion's share of economic migrants to the world's economies. Agricultural labor has generally been the main mode of survival in these areas, but this is also less and less sustainable, as food security decreases with the increased consolidation of corporatized food production, seed patenting, and decreased farm subsidies. There is a clear double standard at work in easing barriers to the migration of capital through decreased tariffs on foreign investment and international agreements like NAFTA, while increasing the barriers to cross-border migration, affecting especially landless economic migrants. This double standard has affected the sex industry by limiting access to travel for cross-border migrants, while simultaneously improving the market for trafficking in persons by making cross-border migration more legally difficult.¶ The New "Neoliberalism"¶ The lived consequences of the idea that "neoliberalism" is a period and, indeed, an ethos, **have included increased police sweeps, brothel raids, and displacement for sex workers** throughout cities in the global South. Discourses on human trafficking that have focused on sexual exploitation and prostitution, to be sure, have had a vexed relationship with the question of poverty. While prostitution was often related to economic vulnerability and the lack of economic power among the women who have formed the core research population of my own work, discourses on human trafficking have tended to conflate poverty with a generalized lack of agency, such that poverty also becomes inextricable, and, in some representations, co-equal with trafficking itself. I would argue that this rendering of poverty only becomes possible when "neoliberalism" ceases to be understood in economic terms. In the current hegemonic understanding of "trafficking-as-prostitution," conflating human trafficking with poverty has tended to render "poverty" itself as an agent of trafficking. If poverty essentially "traffics" human beings into underground economic sectors, including prostitution, then poor people are necessarily rendered as non-agentive beings with respect to the illegal and underground strategies for economic survival they may engage in. Two examples of this perspective on poverty in its relationship to trafficking are the Swedish government's 2003 report entitled Poverty and Trafficking in Human Beings: A Strategy for Combating Trafficking in Human Beings Through Swedish International Development Cooperation,[3] and a 2006 article by Sarah Gonzales, published on the Captive Daughters website, entitled "Poverty and Sex Trafficking: How will Warren Buffett's $30.7 billion donation to The Bill & Melinda Gates Foundation, earmarked to fight poverty, affect global sex trafficking, the cause of which is rooted in poverty?"[4] In the Swedish government's report, poverty and trafficking are linked because "[p]eople become the victims of human traffickers mainly due to inequitable resource allocation and the absence of viable sources of income. Families have no assets and incomes are inadequate. In the countryside, agriculture is less profitable than formerly and land has become increasingly scarce."[5] Similarly, according to the article by Gonzales:¶ What we do know is that poverty drives sex trafficking, and that sex trafficking as the delivery system for prostitution means that each day scores of young, poor women and girls will turn to sex trafficking and prostitution as a means to […] provide for themselves, and for their families, because they have no other

choice. The hope is that funds earmarked for fighting poverty will eventually fight sex trafficking, too, putting an end to this exploitative practice by offering viable economic options for poverty-stricken women and girls in developing nations who want to work.[6]¶ Both of these relatively emblematic antitrafficking perspectives are rooted in a legal and policy orientation which emphasizes combating "exploitation." The concern with exploitation is at the heart of debates and definitions of trafficking. Both of the perspectives excerpted above were generated in relation to the UN "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." The final protocol definition of trafficking was the result of much debate and disagreement between groups about the difference between trafficking and prostitution. The definition bears mentioning here, as it outlines the parameters through which juridical debates on trafficking, prostitution, and poverty are ostensibly framed. The definition reads:¶ "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[7]¶ The discourse that seems to be emerging among various governmental and nongovernmental actors concerned with the issue of trafficking is one in which poverty, exploitation, and trafficking are theorized in relation to each other in the relative absence of a discussion about class or the effects of bilateral and regional trade agreements in the global South

Queerness Michigan 7

1AC

No Plan Version

Increasingly technological surveillance practices in the status quo force queer bodies to the margins – data analysis founded upon pattern and predictability reinforces exclusion of nontraditional gender identities.

Conrad 9 Surveillance, Gender, and the Virtual Body in the Information Age, Kathryn Conrad Associate Professor and Director of Undergraduate Studies in the Department of English at the University of Kansas. Surveillance & Society 6(4) p 381-385

Tied closely to the surveillance and regulation of sexual behaviour and identity—tied in part because of the ways gender identity and sexual object choice are linked in the West—is the surveillance and regulation of gender. The genderqueer body—the intersexed, the hermaphroditic, the transgender(ed), the transexual, and even the 'effeminate male' or the 'masculine' female—is one that does not conform to the accepted biological binary of 'man' and 'woman' and/or its attendant 'masculine' and 'feminine' behaviours and physical markers.1 1 The history of lesbian and gay activism is closely tied to that of genderqueer activism (perhaps first and most obviously with the Stonewall Riots in New York in 1969, which saw the birth both of contemporary gay rights activism and transgender activism), and activism to challenge the gender system is one strategy for confronting a system into which genderqueers have not fit. But even those who are 'out' about their genderqueer status must often 'pass' as one of two genders in order to survive—quite literally—in a two-gendered world. According to the group Gender Education and Advocacy, the between 1970 and 2004, 321 murders of trans people have been tallied; and 'more than one new anti-transgender murder has been reported in the media every month since 1989' (GEA 2004a, c2004b). Although gathering reliable statistics for the number of people killed because they were genderqueer is impossible, these statistics along with more publicised cases, such as that of the murder of Brandon Teena in 1993, suggest that being readably genderqueer, at least in the West, still comes with significant risk. Information technologies, as I have suggested above, have given some gender and queer theorists people hope for liberation from the sometimes oppressive gendered discourses that accompany biological embodiment. But surveillance, whether driven by criminology or marketing, has, as I have suggested above, been the engine for the very informatisation of the body in which these feminist and queer theorists have placed their hope. Further, surveillance, particularly the surveillance tied to prediction, is not only a use to which information technologies have been put; it is also the inspiration for many of the new developments in information systems technology. And the patterns that those information systems create, collect, and circulate are, in turn, intricately and inextricably bound up with surveillance technologies. This, I would suggest, should lead gender and queer theorists away from information technologies as a tool for the transformation of the human subject. The predictive models that are at the centre of current surveillance technologies have been created with the goal of prediction and therefore control of the future, but they must rely on the past to do so. The past provides the patterns from which the models take their shape. Given this, predictive models, and the surveillance systems that feed them, are inherently conservative. By this I do not mean to suggest that they are particularly politically conservative; indeed, many political conservatives are just as invested in the ideology of privacy that surveillance constantly transgresses. Rather, predictive models fed by surveillance data necessarily reproduce past patterns. They cannot take into effective consideration randomness, 'noise', mutation, parody, or disruption unless those effects coalesce into another pattern. This inability to accommodate randomness may simply suggest that predictive models are ineffective. But they are not ineffective; like other surveillance techniques discussed above, they are normative. The potentially normative effect of predictive surveillance might be clearest, and of most concern, in the case of the transsexual body who has transitioned from one gender to another. The virtual body created by data, in the case of a transsexual person, appears contradictory, confusing; the data history for a trans person comprises two bodies (male and female) rather than one genderqueer body. A hopeful reading, inspired perhaps by an optimistic (and selective) reading

of Butler, would be that this contradictory data would have the effect of destabilising the gender system. But rather than abandoning the gender system that the transsexual / genderqueer body clearly transgresses, predictive surveillance technology, relying on past data as it does, can only reinforce it. The material body would thus be pressured to conform or be excluded from the system. Further, Lyon's concerns about 'leaky containers' of data are heightened when one's data history does not fit into accepted norms. The Director of the National Center for Transgender Equity in the United States, Mara Keisling, has discussed the potential impact of surveillance technologies on transgendered persons, expressing the fear that, for instance, radio-frequency identification (RFID) tags embedded in identification cards—an option initially considered in the United States REAL ID Act of 2005—would allow for the private gender data of a genderqueer person to be read from afar by those with RFID readers (Keisling 2007; NCTEquality 2008). As suggested above, the risks attending the exposure of personal data for a genderqueer person can be profound. Just as importantly, however, dataveillance that is tied to predictive strategies further embeds the very norms those bodies challenge. At the level of the everyday, such technologies put subjects' ability to control their own self-presentation—and their own decisions to accept, challenge, or 'pass' within the system—even further out of their hands.

This influx of surveillance begs the question of what a body is and defines the acceptable body in relation to its comprehensibility – normative gender standards determine the 'aliveness' of a subject.

Puar 09 [Jasbir Puar, professor of women's and gender studies at Rutgers University, Women and Performance: a journal of feminist theory, Vol. 19, No. 2, July 2009, http://planetarities.web.unc.edu/files/2015/01/puar-prognosis-time.pdf]//JIH

These are of course older historical questions about the changing contours of what counts as a living body, reanimated by emergent technologies. Surveillance technologies and related bioinformatic economies – DNA encoding and species preservation, stem-cell research, digitization, biometrics, life logging devices, regenerative medical sciences, whose role includes increasing the contact zones and points of interface between bodies, and their subindividual capacities (not to mention related technologies developed to manage the constant amassing of information) – renew all sorts of questions about bodies and their materialities. What is a body in informational terms? Where does a body – and its aliveness – begin and where does it end? If we view information itself as a form of life (or life itself as a compendium of information) we might be led to ask: What is a life? When does it begin and end? And, who owns it? What defines living? In turn, what counts as a death – as dying?6 Why, as Donna Haraway once asked, should a body end at the skin? (1991). Kaushik Sunder Rajan favors the formulation ''biocapital'': neoliberal circuits of political economy which he argues are generating incipient forms of materiality as well as changing the grammar of ''life itself.'' New forms of currency – biological material and information – simultaneously produce the materialization of information on the one hand, and a decoupling from its material biological source on the other. As such, we have a constitutive contradiction informing this dialectic between bodily material and information: ''information is detached from its biological material originator to the extent that it does have a separate social life, but the 'knowledge' provided by the information is constantly relating back to the material biological sample . . . It is knowledge that is always relating back to the biological material that is the source ofthe information; but it is also knowledge that can only be obtained, in the first place, through extracting information from the biological material'' (Sunder Rajan 2006, 42). If the value of a body is increasingly sought not only in its capacity to labor but in the information that it yields – and if there is no such thing as excess, or excess info, if all information is eventually used or is at least seen as having imminent utility – we might ask whether this is truly a revaluing of otherwise worthless bodies left for dying. If statistical outliers as well as species can live through DNA, what does it mean to be debilitated or extinct? Are all bodies really available for rehabilitation?

This violent social system determines the meaning individuals assign to themselves – antiqueerness functions as a system of self-surveillance and leads to the suppression of the queer soul.

Yep et al., 2003 [Lovaas, and Elia, Professors @ San Francisco University, Gust, Karen, and John, Journal of Homosexual Studies, Vol. 45, No. 2/3/4,, pp. 21-22]//JCE

These are the internal injuries that individuals inflict upon themselves. Very early in life children learn from interpersonal contacts and mediated messages that deviations from the heteronormative standard, such as homosexuality, are anxiety-ridden, guilt-producing, fear-inducing, shame-invoking, hate-deserving, psychologically blemishing, and physically threatening. Internalized homophobia, in the form of self-hatred and self-destructive thoughts and behavioral patterns, becomes firmly implanted in the lives and psyches of individuals in heteronormative society. Exemplifying the feelings and experiences of many people who do not fit in the heteronormative mandate, Kevin Jennings (1994) tells us his personal story: I was born in 1963. . .[I] realized in grade school that I was gay. I felt absolutely alone. I had no one to talk to, didn't know any openly gay people, and saw few representations of gays in the media of the 1970s. I imagined gay people were a tiny, tiny minority, who had been and would always be despised for their "perversion." Not once in high school did I ever learn a single thing about homosexuality or gay people. I couldn't imagine a happy life as a gay man. So I withdrew from my peers and used alcohol and drugs to try to dull the pain of my isolation. Eventually, at age seventeen I tried to kill myself, like one out of every three gay teens. I saw nothing in my past, my present, or (it seemed) my future suggesting that things would ever get any better. (pp. 13-14) Heteronormativity is so powerful that its regulation and enforcement are carried out by the individuals themselves through socially endorsed and culturally accepted forms of soul murder. Soul murder is a term that I borrow from the child abuse and neglect literature to highlight the torment of heteronormativity (Yep, 2002). Shengold (1999) defines soul murder as the "apparently willful abuse and neglect of children by adults that are of sufficient intensity and frequency to be traumatic . . . [so that] the children's subsequent emotional development has been profoundly and predominantly negatively affected" (p. 1). Further explaining this concept, Shengold (1989) writes, "soul murder is neither a diagnosis nor a condition. It is a dramatic term for circumstances that eventuate in crime–the deliberate attempt to eradicate or compromise the separate identity of another person" (p. 2, my emphasis). Isn't the incessant policing and enforcement, either deliberately or unconsciously, by self and others, of the heteronormative mandate a widespread form of soul murder?

The queer body is constantly forced into life as overkill – this is the naturalization of antiqueerness that perpetuates violence that renders queerness inherently dead.

Stanley 2011 [Eric, "Near Life, Queer Death Overkill and Ontological Capture," Social Text 107 s Vol. 29, No. 2 s Summer 2011]

Overkill is a term used to indicate such excessive violence **that it pushes a body beyond death**. Overkill is often determined by the postmortem removal of body parts, as with the partial decapitation in the case of Lauryn Paige and the dissection of Rashawn Brazell. The temporality of violence, the biological time when the heart stops pushing and pulling blood, yet the killing is not finished, suggests the aim is **not simply the end of a specific life, but the ending of all queer life**. This is the time of **queer death**, when the **utility of violence gives way to the pleasure in the other's mortality**. If queers, along with others, approximate nothing, then the task of ending, of killing, that which is nothing must go beyond normative times of life and death. In other words, if Lauryn was dead after the first few stab wounds to the throat, then **what do the remaining fifty wounds signify?** The legal theory that is offered to nullify the practice of overkill often functions under the name of the trans- or gay- panic defense. Both of these defense strategies argue that the murderer became so enraged after the "discovery" of either genitalia or someone's sexuality they were forced to protect themselves from the threat of queerness. Estanislao Martinez of Fresno, California, used the trans- panic defense and received a four- year prison sentence after admittedly stabbing J.

Robles, a Latina transwoman, at least twenty times with a pair of scissors. Importantly, this defense is often used, as in the cases of Robles and Paige, after the murderer has engaged in some kind of sex with the victim. The logic of the trans- panic defense as an explanation for overkill, in its gory semiotics, offers us a way of understanding queers as the nothing of Mbembe's query. Overkill names the technologies necessary to do away with that which is already gone. Queers then are the specters of life whose threat is so unimaginable that one is "forced," **not simply to murder, but to push them backward out of time, out of History, and into that which comes before**.27 In thinking the overkill of Paige and Brazell, I return to Mbembe's query, **"But what does it mean to do violence to what is nothing?"**28 This question in its elegant brutality repeats with each case I offer. By resituating this question in the positive, the "something" that is more often than not translated as the human is made to appear. Of interest here, the category of the human assumes generality, yet can only be activated through the specificity of historical and politically located intersections. To this end, the human, the "something" of this query, within the context of the liberal democracy, names rights- bearing subjects, or those who can stand as subjects before the law. The human, then, makes the nothing not **only possible but necessary.** Following this logic, the work of death, of the death that is already nothing, not quite human, binds the categorical (mis)recognition of humanity. The human, then, resides in the space of life and under the domain of rights, whereas the queer inhabits the place of **compromised personhood and the zone of death**. As perpetual and axiomatic threat to the human, **the queer is the negated double of the subject of liberal democracy**. Understanding the nothing as the unavoidable shadow of the human serves to counter the arguments that suggest overkill and antiqueer violence at large are a pathological break and that the severe nature of these killings signals something extreme. In contrast, overkill is precisely not outside of, but is that which constitutes liberal democracy as such. Overkill then is the proper expression to the riddle of the queer nothingness. Put another way, the spectacular material- semiotics of overkill should not be read as (only) individual pathology; these vicious acts must indict the very social worlds of which they are ambassadors. Overkill is what it means, **what it must mean**, to do violence to what is nothing.

And, government decrease of surveillance can never be a neutral action regarding queer bodies – the construction of intimacy becomes instrumentalized in the calculus of biopolitics.

Puar 14 [Jasbir Puar, professor of women's and gender studies at Rutgers University, "Jasbir Puar: Regimes of Surveillance," Cosmologics, Dec 4, 2014, http://cosmologicsmagazine.com/jasbir-puar-regimes-of-surveillance/]//JIH

Jasbir Puar: Much of the work in Terrorist Assemblages mapped out the dissolution of public/private divides that have in the past animated feminist scholarship regarding the state and state intrusion into the "private." This private, as women of color and transnational feminists have pointed out, has never quite existed given the level of state bureaucratic and administrative presence in the households of immigrants and people of color. One interest of mine is connecting the securitization upsurge that occurred after 9/11 with the formation of Homeland Security to both earlier and more recent discourses of security that revolve around the "home," and in particular the home as something private, national, and safe. So before the War on Terror we had the War on Drugs: this rationalized policing in the name of safe homes, in Black communities in particular. The War on Drugs no doubt provided a domestic blueprint for the foreign deployment enacted after September 11th. This is one connective point to 9/11.

Another connective tissue to 9/11 is the financial crisis of 2008, which was not a break from the securitization of the home and homeland, but a manifestation of one of its tactical failures, that of securing the home economically. I think 2008 marks the end of the "post 9/11″ moment and re-complicates the "Muslim terrorist" as the predominate target of surveillance technologies and discourses. Surveillance happens—obliquely, but it happens—through the instrument of the sub-prime mortgage, whereby once again the security and safety of

the home is determined through the surveillance of those subjects deemed financially suspect. In this case, predominantly Black and Latino populations were subject to foreclosures. Surveillance and securitization economies work through a sort of monetization of ontology—certain bodies are intrinsically risky investments via a circular logic of precarity whereby these bodies are set up as unable to take on risk in the very system that produces them as risky.

This kind of connective analysis links various kinds of figures that emerge as targets of explicit surveillance—in the case of 9/11, a religious figure, the fundamentalist terrorist—to the on-going systems of surveillance that bubble underneath. One analysis that I offer in Terrorist Assemblages is the irony of the decriminalization of sodomy in the Lawrence decision of 2004, a ruling that pivoted around the privatization of anal (and thus homosexual) sex within the sanctity of the privately-owned home. This was at a time when Homeland Security was requiring registration of men from Muslim countries, infiltrating mosques, enacting home deportations—just generally disrupting and halting the construction of any kind of private home. One interpretation, then, of who exactly the Lawrence decision protects is: not so much the lesbian or gay or homosexual or queer subject, but rather one whose private home has no reason to be suspected and is not suspicious. The construction of "intimacy," as it is anchored in the private, becomes instrumentalized within the calculus of biopolitics, a measure of one's worth to the state.

Thus, vote aff to deconstruct the necropolitical oppression of queer bodies.

Embracing the idea that bodies are undefined intensities provides possibility for a new realm of the body-as-information in which identity is determined through encounter rather than rigid sets of data.

Puar 09 [Jasbir Puar, professor of women's and gender studies at Rutgers University, Women and Performance: a journal of feminist theory, Vol. 19, No. 2, July 2009, http://planetarities.web.unc.edu/files/2015/01/puar-prognosis-time.pdf]//JIH

Out of the numerous possibilities that ''assemblage theory'' offers, much of it has already begun to transform queer theory, from Elizabeth Grosz's crucial re-reading of the relations between bodies and prosthetics (which complicates not only the contours of bodies in relation to forms of bodily discharge, but also complicates the relationships to objects, such as cell phones, cars, wheelchairs, and the distinctions between them as capacity-enabling devices) (1994), to Donna Haraway's cyborgs (1991), to Deleuze and Guattari's ''BwO'' (Bodies without Organs – organs, loosely defined, rearranged against the presumed natural ordering of bodily capacity) (1987). I want to close by foregrounding the analytic power of conviviality that may further complicate how subjects are positioned, underscoring instead more fluid relations between capacity and debility. Conviviality, unlike notions of resistance, oppositionality, subversion or transgression (facets of queer exceptionalism that unwittingly dovetail with modern narratives of progress in modernity), foregrounds categories such as race, gender, and sexuality as events – as encounters – rather than as entities or attributes of the subject. Surrendering certain notions of revolution, identity politics, and social change – the ''big utopian picture'' that Massumi complicates in the opening epigraph of this essay – conviviality instead always entails an ''experimental step.'' Why the destabilization of the subject of identity and a turn to affect matters is because affect – as a bodily matter – makes identity politics both possible and yet impossible. In its conventional usage, conviviality means relating to, occupied with, or fond of feasting, drinking, and good company – to be merry, festive, together at a table, with companions and guests, and hence, to live with. As an attribute and function of assembling, however, conviviality does not lead to a politics of the universal or inclusive common, nor an ethics of individuatedness, rather the futurity enabled through the open materiality of bodies as a Place to Meet. We could usefully invoke

Donna Haraway's notion of ''encounter value'' here, a ''becoming with'' companionate (and I would also add, incompanionate) species, whereby actors are the products of relating, not pre-formed before the encounter (2008, 16). Conviviality is an ethical orientation that rewrites a Levinasian taking up of the ontology of the Other by arguing that there is no absolute self or other,15 rather bodies that come together and dissipate through intensifications and vulnerabilities, insistently rendering bare the instability of the divisions between capacity-endowed and debility-laden bodies. These encounters are rarely comfortable mergers but rather entail forms of eventness that could potentially unravel oneself but just as quickly be recuperated through a restabilized self, so that the political transformation is invited, as Arun Saldhana writes, through ''letting yourself be destabilized by the radical alterity of the other, in seeing his or her difference not as a threat but as a resource to question your own position in the world'' (2007, 118). Conviviality is thus open to its own dissolution and self-annihilation and less interested in a mandate to reproduce its terms of creation or sustenance, recognizing that political critique must be open to the possibility that it might disrupt and alter the conditions of its own emergence such that it is no longer needed – an openness to something other than what we might have hoped for. This is my alternative approach to Lee Edelman's No Future, then, one that is not driven by rejecting the figure of the child as the overdetermined outcome of ''reproductive futurism'' (2004),16 but rather complicates the very terms of the regeneration of queer critique itself. Thus the challenge before us is how to craft convivial political praxis that does not demand a continual reinvestment in its form and content, its genesis or its outcome, the literalism of its object nor the direction of its drive.

The affirmative's method of convivial assemblage rather than search for legal inclusion is key to envision a framework independent of rigid racialized and gendered categories of personhood.

Weheliye 14. Alexander G. Weheliye, professor of African American studies at Northwestern University, Habeas Viscus, pg. 82

We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what remains outside the law, what the law cannot capture, what it cannot magically transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identity- based activism that respond to structural inequalities, legal scholar Dean Spade shows how the focus on inclusion, recognition, and equality based on a narrow legal framework (especially as it pertains to antidiscrimination and hate crime laws) not only hinders the eradication of violence against trans people and other vulnerable populations but actually creates the condition of possibility for the continued unequal "distribution of life chances."22 If demanding recognition and inclusion remains at the center of minority politics, it will lead only to a delimited notion of personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differences between full humans, not-quite-humans, and nonhumans. This can be gleaned from the "successes" of the mainstream feminist, civil rights, and lesbian-gay rights movements, which facilitate the incorporation of a privileged minority into the ethnoclass of Man at the cost of the still and/or newly criminalized and disposable populations (women of color, the black poor, trans people, the incarcerated, etc.).23 To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent in its endorsement of racial slavery, indigenous genocide, Jim Crow, the prison-industrial complex, domestic and international warfare, and so on, and that it continues to be one of the chief instruments in creating and maintaining the racializing assemblages in the world of Man. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the "racialized (trans)gender entrapment" within the prison-industrial complex and beyond with practices of "maroon abolition" (in reference to the long history of escaped slave contraband settlements in the

Americas) to "foreground the ways in which often overlooked African diasporic cultural and political legacies inform and undergird anti- prison work," while also providing strategies and life worlds not exclusively centered on reforming the law.24 Relatedly, Spade calls for a radical politics articulated from the "'impossible' worldview of trans political existence," which redefines "the insistence of government agencies, social service providers, media, and many nontrans activists and nonprofiteers that the existence of trans people is impossible."25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the incompatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable liminal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered.

A fluid understanding of identity is necessary in order to avoid sexual othering and exceptionalization.

Perry 14 [Brock Perry, Graduate Division of Religion, Drew University, "Towards an ontogenesis of queerness and divinity: Queer political theology and Terrorist Assemblages," May 30, 2014]//JIH

The historical shift in modernity and modern state formation to which the concept of homonationalism attends is marked by biopolitical control of national and transnational bodies in which those determined unworthy of homonational citizenship are relegated to racialised and perversely sexualised populations. Homonationalism is dependent upon this 'sexual othering' for the moral, sexual and cultural exceptionalisation of rights-bearing homosexual citizens over against 'Orientalist constructions of "Muslim sexuality"' as inherently homophobic, irrationally religious and sexually perverse (Puar 2007, 4). The biopolitical population management that Puar describes is based not only on particular identities taken as a whole, but also on cross-sections of information ablated from bodies and represented statistically. As statistics, race and sex are experienced as a series of transactional information flows captured or happened upon at chance moments that perceive and render bodies transparent or opaque, secure or insecure, risky or at risk, risk-enabled or risk-disabled, the living or the living dead. (160)

Thus, biopolitical control is made diffuse between populations as identities are dissected into fragments of information that never fully add up to the representational subject, but are neither unrelated to it. Puar argues that state practices of surveillance and detention make use of those fragments of information that are multiplicitously and variably manifested between and within identities in a way that identity politics and intersectional analyses, which take the representational subject for granted, have been unable to adequately counter (162, 206). She concludes that identity politics, both a symptom of and a response to these networks of control, capitulates once again to chasing the space of retribution for the subject. Control masks itself, or masks its effects, within the endless drive to recoup the resistant subject. (162)

Puar densely articulates the relation of identity and representation to biopolitics and elucidates the failure of identity politics to grasp its production by the very systems of power it seeks to resist. An ontologically static and unchanging understanding of identity lends itself to biopolitical control by confirming the stability of the information used to determine those included in life and those relegated to a racialised and perversely sexualised population. Identity politics leaves bodies in these populations always in need of reclaiming subjecthood along the lines of identity that made the subject separable under biopolitical control in the first place. Before turning with Puar to affect theory in order to think both with and beyond identity politics, I want to first turn to issues of political theology and the secular that I contend are related to the issues of modern state formation being discussed here, and which will be necessary for critical responses to the issues of homonationalism, biopolitics and identity that Puar describes.

Impact calculus should begin from the perspective of queer necropolitics – predictive scenario planning disavows zones of abandonment that perpetuate mundane forms of violence on queer bodies.

Haritaworn et al. 14. Jin Haritaworn, professor of sociology at the University of York, Adi Kuntsman, professor of humanities, research, and social sciences at Manchester Metropolitan University, and Sylvia Posocco, professor of psychological studies at the University of London, Birbeck, Queer Necropolitics, Routledge, 2014, pg. 1

Most prominently, Jasbir Puar (2007), tracing the shift from AIDS to gay marriage, identifies a recent turn in how **queer subjects are figured**, from **those who are left to die**, to those that **reproduce life**. Yet, not all sexually or gender non- conforming bodies are 'fostered for living'; just as only some queer deaths are constituted as grievable (Butler 2004),1 while others are targeted for killing or left to die.

This book comes at a time of growing interest in the necropolitical as a tool to make sense of the symbiotic co-presence of life and death, manifested ever more clearly in the cleavages between rich and poor, citizens and non-citizens (and those who can be stripped of citizenship); the culturally, morally, economically valuable and the pathological; queer subjects invited into life and queerly abjected populations marked for death. Our discussions are inspired by Achille Mbembe's concept of '**necropolitics'** — a concept he develops when analysing the **centrality** of **death in subalternity**, **race**, **war** and **terror** (Mbembe 2003) - and by Puar's (2007) insightful elaboration of '**queer necropolitics'**, which attempts to make sense of the expansion of **liberal gay politics** and its **complicity** within the US **'war on terror'**, while calling our attention specifically to the 'differences between queer subjects who are being folded (back) into life and the **racialized queernesses** that **emerge** through the **naming of populations'**, often those marked for death (p. 36).

Our collection assembles various ways of queering the necropolitical and of interrogating claims to queerness in the face(s) of death, both spectacular and banal. **Thinking through necropolitics** on the **terrain of queer critique** brings into view **everyday death worlds**, from the perhaps more expected sites of death making (such as war, torture or imperial invasion) to the ordinary and completely normalized violence of the market. As many of the contributors to this volume point out, the **distinction** between **war and peace dissolves** in the face of the **banality of death** in the 'zones of abandonment' (Biehl 2001; Povinelli 2011) that regularly accompany contemporary democratic regimes. These are not merely about exclusion; more insidiously perhaps they create **their own forms of deadly inclusion**.

The insistence on the **unremarkable**, the **ordinary** and the **mundane** is of particular **importance**. In contrast to other works in the field that deal with death in relation to queerness and beyond - such as the AIDS epidemic or the Holocaust - contributors in this book focus less on grand moments or processes of commemoration and more on the everyday and the ordinary. In that respect, our orientation (Ahmed 2006) is not so much towards a past that is remembered and celebrated. In the place of the finished past, we turn to the present and future(s), including those **haunted futures** (Ferreday and Kuntsman 2011; Gordon 2011) where **queer vitalities** become **cannibalistic** on the **disposing** and **abandonment** of others. Indeed, we argue that the **queer nostalgia** for other times, coupled with a **victim subjectivity** that **refuses accountability** for current **privileges** and **injustices**, may itself work to **naturalize** and **accelerate death-making logics** in the present (Haritaworn, 2013). Furthermore, in considering the rise of homonormative and transnormative identities as contingent on settler colonialism, anti-blackness and permanent war - which provide the conditions of queer ascendancies — we refuse a view of the past as finished and the present as democratic and post-genocidal (e.g. Morgensen 2010; Smith 2007; see also Bassichis and Spade, Chapter 9 in this book).

Using 'queer necropolitics' as a **theoretical entry point** and as a concept- metaphor, our book explores the **processes**, **conditions** and **histories** that **underpin** and **sustain** a range of '**unequal regimes** of **living** and **dying'** (Luibheid 2008: 190), consolidating and extending the existing analytical vocabulary for understanding queer politics and experiences. In putting the concept of 'queer necropolitics' at the centre of

our discussion, the book is in dialogue with the emerging scholarship focussing on the analysis of the necropolitical (see, for example, Inda 2005; Osuri 2006). We extend this body of scholarship by turning our attention to specifically queer aspects: deadly underpinnings of militarized queer intimacies, nationalized practices of queer mourning, assimilationist logics of feminist, gay and transgender rights and criminalizing policies in the name of sexual safety and queer space. Contributors explore the relations between queerness and war, immigration, colonization, imprisonment and other forms of population control in various cultural and political settings. Among the many topics addressed in the chapters of this book are racism in the name of 'LGBT rights'; queer colonialities; trans migrations; vitality and necropolitics in the new world order; the ontology and phenomenology of sexual and gender violence; the racialization of 'LGBT', queer and transgender politics in the 'wars on terror'; and regimes of remembering and oblivion of queer and non-queer lives and deaths.

Plan Text Version

Increasingly technological surveillance practices in the status quo force queer bodies to the margins – data analysis founded upon pattern and predictability reinforces exclusion of nontraditional gender identities.

Conrad 9 Surveillance, Gender, and the Virtual Body in the Information Age, Kathryn Conrad Associate Professor and Director of Undergraduate Studies in the Department of English at the University of Kansas. Surveillance & Society 6(4) p 381-385

Tied closely to the surveillance and regulation of sexual behaviour and identity—tied in part because of the ways gender identity and sexual object choice are linked in the West—is the surveillance and regulation of gender. The genderqueer body—the intersexed, the hermaphroditic, the transgender(ed), the transexual, and even the 'effeminate male' or the 'masculine' female—is one that does not conform to the accepted biological binary of 'man' and 'woman' and/or its attendant 'masculine' and 'feminine' behaviours and physical markers.1[1] The history of lesbian and gay activism is closely tied to that of genderqueer activism (perhaps first and most obviously with the Stonewall Riots in New York in 1969, which saw the birth both of contemporary gay rights activism and transgender activism), and activism to challenge the gender system is one strategy for confronting a system into which genderqueers have not fit. But even those who are 'out' about their genderqueer status must often 'pass' as one of two genders in order to survive—quite literally—in a two-gendered world. According to the group Gender Education and Advocacy, the between 1970 and 2004, 321 murders of trans people have been tallied; and 'more than one new anti-transgender murder has been reported in the media every month since 1989' (GEA 2004a, c2004b). Although gathering reliable statistics for the number of people killed because they were genderqueer is impossible, these statistics along with more publicised cases, such as that of the murder of Brandon Teena in 1993, suggest that being readably genderqueer, at least in the West, still comes with significant risk. Information technologies, as I have suggested above, have given some gender and queer theorists people hope for liberation from the sometimes oppressive gendered discourses that accompany biological embodiment. But surveillance, whether driven by criminology or marketing, has, as I have suggested above, been the engine for the very informatisation of the body in which these feminist and queer theorists have placed their hope. Further, surveillance, particularly the surveillance tied to prediction, is not only a use to which information technologies have been put; it is also the inspiration for many of the new developments in information systems technology. And the patterns that those information systems create, collect, and circulate are, in turn, intricately and inextricably bound up with surveillance technologies. This, I would suggest, should lead gender and queer theorists away from information technologies as a tool for the transformation of the human subject. The predictive models that are at the centre of current surveillance technologies have been created with the goal of prediction and therefore control of the future, but they must rely on the past to do so. The past provides the patterns from which the models take their shape. Given this, predictive models, and the surveillance systems that feed them, are inherently conservative. By this I do not mean to suggest that they are particularly politically conservative; indeed, many political conservatives are just as invested in the ideology of privacy that surveillance constantly transgresses. Rather, predictive models fed by surveillance data necessarily reproduce past patterns. They cannot take into effective

consideration randomness, 'noise', mutation, parody, or disruption unless those effects coalesce into another pattern. This inability to accommodate randomness may simply suggest that predictive models are ineffective. But they are not ineffective; like other surveillance techniques discussed above, they are normative. The potentially normative effect of predictive surveillance might be clearest, and of most concern, in the case of the transsexual body who has transitioned from one gender to another. The virtual body created by data, in the case of a transsexual person, appears contradictory, confusing; the data history for a trans person comprises two bodies (male and female) rather than one genderqueer body. A hopeful reading, inspired perhaps by an optimistic (and selective) reading of Butler, would be that this contradictory data would have the effect of destabilising the gender system. But rather than abandoning the gender system that the transsexual / genderqueer body clearly transgresses, predictive surveillance technology, relying on past data as it does, can only reinforce it. The material body would thus be pressured to conform or be excluded from the system. Further, Lyon's concerns about 'leaky containers' of data are heightened when one's data history does not fit into accepted norms. The Director of the National Center for Transgender Equity in the United States, Mara Keisling, has discussed the potential impact of surveillance technologies on transgendered persons, expressing the fear that, for instance, radio-frequency identification (RFID) tags embedded in identification cards—an option initially considered in the United States REAL ID Act of 2005—would allow for the private gender data of a genderqueer person to be read from afar by those with RFID readers (Keisling 2007; NCTEquality 2008). As suggested above, the risks attending the exposure of personal data for a genderqueer person can be profound. Just as importantly, however, dataveillance that is tied to predictive strategies further embeds the very norms those bodies challenge. At the level of the everyday, such technologies put subjects' ability to control their own self-presentation—and their own decisions to accept, challenge, or 'pass' within the system—even further out of their hands.

This influx of surveillance begs the question of what a body is and defines the acceptable body in relation to its comprehensibility – normative gender standards determine the 'aliveness' of a subject.

Puar 09 [Jasbir Puar, professor of women's and gender studies at Rutgers University, Women and Performance: a journal of feminist theory, Vol. 19, No. 2, July 2009, http://planetarities.web.unc.edu/files/2015/01/puar-prognosis-time.pdf]//JIH

These are of course older historical questions about the changing contours of what counts as a living body, reanimated by emergent technologies. Surveillance technologies and related bioinformatic economies – DNA encoding and species preservation, stem-cell research, digitization, biometrics, life logging devices, regenerative medical sciences, whose role includes increasing the contact zones and points of interface between bodies, and their subindividual capacities (not to mention related technologies developed to manage the constant amassing of information) – renew all sorts of questions about bodies and their materialities. What is a body in informational terms? Where does a body – and its aliveness – begin and where does it end? If we view information itself as a form of life (or life itself as a compendium of information) we might be led to ask: What is a life? When does it begin and end? And, who owns it? What defines living? In turn, what counts as a death – as dying?6 Why, as Donna Haraway once asked, should a body end at the skin? (1991). Kaushik Sunder Rajan favors the formulation ''biocapital'': neoliberal circuits of political economy which he argues are generating incipient forms of materiality as well as changing the grammar of ''life itself.'' New forms of currency – biological material and information – simultaneously produce the materialization of information on the one hand, and a decoupling from its material biological source on the other. As such, we have a constitutive contradiction informing this dialectic between bodily material and information: ''information is detached from its biological material originator to the extent that it does have a separate social life, but the 'knowledge' provided by the information is constantly relating back to the material biological sample . . . It is knowledge that is always relating back to the biological

material that is the source ofthe information; but it is also knowledge that can only be obtained, in the first place, through extracting information from the biological material'' (Sunder Rajan 2006, 42). If the value of a body is increasingly sought not only in its capacity to labor but in the information that it yields – and if there is no such thing as excess, or excess info, if all information is eventually used or is at least seen as having imminent utility – we might ask whether this is truly a revaluing of otherwise worthless bodies left for dying. If statistical outliers as well as species can live through DNA, what does it mean to be debilitated or extinct? Are all bodies really available for rehabilitation?

This violent social system determines the meaning individuals assign to themselves – antiqueerness functions as a system of self-surveillance and leads to the suppression of the queer soul.

Yep et al., 2003 [Lovaas, and Elia, Professors @ San Francisco University, Gust, Karen, and John, Journal of Homosexual Studies, Vol. 45, No. 2/3/4,, pp. 21-22]//JCE

These are the internal injuries that individuals inflict upon themselves. Very early in life children learn from interpersonal contacts and mediated messages that deviations from the heteronormative standard, such as homosexuality, are anxiety-ridden, guilt-producing, fear-inducing, shame-invoking, hate-deserving, psychologically blemishing, and physically threatening. Internalized homophobia, in the form of self-hatred and self-destructive thoughts and behavioral patterns, becomes firmly implanted in the lives and psyches of individuals in heteronormative society. Exemplifying the feelings and experiences of many people who do not fit in the heteronormative mandate, Kevin Jennings (1994) tells us his personal story: I was born in 1963. . .[I] realized in grade school that I was gay. I felt absolutely alone. I had no one to talk to, didn't know any openly gay people, and saw few representations of gays in the media of the 1970s. I imagined gay people were a tiny, tiny minority, who had been and would always be despised for their "perversion." Not once in high school did I ever learn a single thing about homosexuality or gay people. I couldn't imagine a happy life as a gay man. So I withdrew from my peers and used alcohol and drugs to try to dull the pain of my isolation. Eventually, at age seventeen I tried to kill myself, like one out of every three gay teens. I saw nothing in my past, my present, or (it seemed) my future suggesting that things would ever get any better. (pp. 13-14) Heteronormativity is so powerful that its regulation and enforcement are carried out by the individuals themselves through socially endorsed and culturally accepted forms of soul murder. Soul murder is a term that I borrow from the child abuse and neglect literature to highlight the torment of heteronormativity (Yep, 2002). Shengold (1999) defines soul murder as the "apparently willful abuse and neglect of children by adults that are of sufficient intensity and frequency to be traumatic . . . [so that] the children's subsequent emotional development has been profoundly and predominantly negatively affected" (p. 1). Further explaining this concept, Shengold (1989) writes, "soul murder is neither a diagnosis nor a condition. It is a dramatic term for circumstances that eventuate in crime–the deliberate attempt to eradicate or compromise the separate identity of another person" (p. 2, my emphasis). Isn't the incessant policing and enforcement, either deliberately or unconsciously, by self and others, of the heteronormative mandate a widespread form of soul murder?

The queer body is constantly forced into life as overkill – this is the naturalization of antiqueerness that perpetuates violence that renders queerness inherently dead.

Stanley 2011 [Eric, "Near Life, Queer Death Overkill and Ontological Capture," Social Text 107 s Vol. 29, No. 2 s Summer 2011]

Overkill is a term used to indicate such excessive violence **that it pushes a body beyond death**. Overkill is often determined by the postmortem removal of body parts, as with the partial decapitation in the case of Lauryn Paige and the dissection of Rashawn Brazell. The temporality of violence, the biological time when the heart stops pushing and pulling blood, yet the killing is not finished, suggests the aim is **not simply the end of a specific life, but the ending of all queer life**. This is the time of **queer death**, when the **utility of violence gives way to the**

pleasure in the other's mortality. If queers, along with others, approximate nothing, then the task of ending, of killing, that which is nothing must go beyond normative times of life and death. In other words, if Lauryn was dead after the first few stab wounds to the throat, then **what do the remaining fifty wounds signify?** The legal theory that is offered to nullify the practice of overkill often functions under the name of the trans- or gay- panic defense. Both of these defense strategies argue that the murderer became so enraged after the "discovery" of either genitalia or someone's sexuality they were forced to protect themselves from the threat of queerness. Estanislao Martinez of Fresno, California, used the trans- panic defense and received a four- year prison sentence after admittedly stabbing J. Robles, a Latina transwoman, at least twenty times with a pair of scissors. Importantly, this defense is often used, as in the cases of Robles and Paige, after the murderer has engaged in some kind of sex with the victim. The logic of the trans- panic defense as an explanation for overkill, in its gory semiotics, offers us a way of understanding queers as the nothing of Mbembe's query. Overkill names the technologies necessary to do away with that which is already gone. Queers then are the specters of life whose threat is so unimaginable that one is "forced," **not simply to murder, but to push them backward out of time, out of History, and into that which comes before**.27 In thinking the overkill of Paige and Brazell, I return to Mbembe's query, **"But what does it mean to do violence to what is nothing?"**28 This question in its elegant brutality repeats with each case I offer. By resituating this question in the positive, the "something" that is more often than not translated as the human is made to appear. Of interest here, the category of the human assumes generality, yet can only be activated through the specificity of historical and politically located intersections. To this end, the human, the "something" of this query, within the context of the liberal democracy, names rights- bearing subjects, or those who can stand as subjects before the law. The human, then, makes the nothing not **only possible but necessary.** Following this logic, the work of death, of the death that is already nothing, not quite human, binds the categorical (mis)recognition of humanity. The human, then, resides in the space of life and under the domain of rights, whereas the queer inhabits the place of **compromised personhood and the zone of death**. As perpetual and axiomatic threat to the human, **the queer is the negated double of the subject of liberal democracy**. Understanding the nothing as the unavoidable shadow of the human serves to counter the arguments that suggest overkill and antiqueer violence at large are a pathological break and that the severe nature of these killings signals something extreme. In contrast, overkill is precisely not outside of, but is that which constitutes liberal democracy as such. Overkill then is the proper expression to the riddle of the queer nothingness. Put another way, the spectacular material- semiotics of overkill should not be read as (only) individual pathology; these vicious acts must indict the very social worlds of which they are ambassadors. Overkill is what it means, **what it must mean**, to do violence to what is nothing.

And, government decrease of surveillance through a predictive model can never be a neutral action regarding queer bodies – the construction of intimacy becomes instrumentalized in the calculus of biopolitics.

Puar 14 [Jasbir Puar, professor of women's and gender studies at Rutgers University, "Jasbir Puar: Regimes of Surveillance," Cosmologics, Dec 4, 2014, http://cosmologicsmagazine.com/jasbir-puar-regimes-of-surveillance/]//JIH

Jasbir Puar: Much of the work in Terrorist Assemblages mapped out the dissolution of public/private divides that have in the past animated feminist scholarship regarding the state and state intrusion into the "private." This private, as women of color and transnational feminists have pointed out, has never quite existed given the level of state bureaucratic and administrative presence in the households of immigrants and people of color. One interest of mine is connecting the securitization upsurge that occurred after 9/11 with the formation of Homeland Security to both earlier and more recent

discourses of security that revolve around the "home," and in particular the home as something private, national, and safe. So before the War on Terror we had the War on Drugs: this rationalized policing in the name of safe homes, in Black communities in particular. The War on Drugs no doubt provided a domestic blueprint for the foreign deployment enacted after September 11th. This is one connective point to 9/11.

Another connective tissue to 9/11 is the financial crisis of 2008, which was not a break from the securitization of the home and homeland, but a manifestation of one of its tactical failures, that of securing the home economically. I think 2008 marks the end of the "post 9/11″ moment and re-complicates the "Muslim terrorist" as the predominate target of surveillance technologies and discourses. Surveillance happens—obliquely, but it happens—through the instrument of the sub-prime mortgage, whereby once again the security and safety of the home is determined through the surveillance of those subjects deemed financially suspect. In this case, predominantly Black and Latino populations were subject to foreclosures. Surveillance and securitization economies work through a sort of monetization of ontology—certain bodies are intrinsically risky investments via a circular logic of precarity whereby these bodies are set up as unable to take on risk in the very system that produces them as risky.

This kind of connective analysis links various kinds of figures that emerge as targets of explicit surveillance—in the case of 9/11, a religious figure, the fundamentalist terrorist—to the on-going systems of surveillance that bubble underneath. One analysis that I offer in Terrorist Assemblages is the irony of the decriminalization of sodomy in the Lawrence decision of 2004, a ruling that pivoted around the privatization of anal (and thus homosexual) sex within the sanctity of the privately-owned home. This was at a time when Homeland Security was requiring registration of men from Muslim countries, infiltrating mosques, enacting home deportations—just generally disrupting and halting the construction of any kind of private home. One interpretation, then, of who exactly the Lawrence decision protects is: not so much the lesbian or gay or homosexual or queer subject, but rather one whose private home has no reason to be suspected and is not suspicious. The construction of "intimacy," as it is anchored in the private, becomes instrumentalized within the calculus of biopolitics, a measure of one's worth to the state.

Thus the plan: The United States federal government should curtail its surveillance of predictive gender models.

Embracing the idea that bodies are undefined intensities provides possibility for a new realm of the body-as-information in which identity is determined through encounter rather than rigid sets of data.

Puar 09 [Jasbir Puar, professor of women's and gender studies at Rutgers University, Women and Performance: a journal of feminist theory, Vol. 19, No. 2, July 2009, http://planetarities.web.unc.edu/files/2015/01/puar-prognosis-time.pdf]//JIH

Out of the numerous possibilities that ''assemblage theory'' offers, much of it has already begun to transform queer theory, from Elizabeth Grosz's crucial re-reading of the relations between bodies and prosthetics (which complicates not only the contours of bodies in relation to forms of bodily discharge, but also complicates the relationships to objects, such as cell phones, cars, wheelchairs, and the distinctions between them as capacity-enabling devices) (1994), to Donna Haraway's cyborgs (1991), to Deleuze and Guattari's ''BwO'' (Bodies without Organs – organs, loosely defined, rearranged against the presumed natural ordering of bodily capacity) (1987). I want to close by foregrounding the analytic power of conviviality that may further complicate how subjects are positioned, underscoring instead more fluid relations between capacity and debility. Conviviality, unlike notions of resistance, oppositionality, subversion or transgression (facets of queer exceptionalism that unwittingly dovetail with modern narratives of progress in modernity), foregrounds categories such as race,

gender, and sexuality as events – as encounters – rather than as entities or attributes of the subject. Surrendering certain notions of revolution, identity politics, and social change – the ‘‘big utopian picture’’ that Massumi complicates in the opening epigraph of this essay – conviviality instead always entails an ‘‘experimental step.’’ Why the destabilization of the subject of identity and a turn to affect matters is because affect – as a bodily matter – makes identity politics both possible and yet impossible. In its conventional usage, conviviality means relating to, occupied with, or fond of feasting, drinking, and good company – to be merry, festive, together at a table, with companions and guests, and hence, to live with. As an attribute and function of assembling, however, conviviality does not lead to a politics of the universal or inclusive common, nor an ethics of individuatedness, rather the futurity enabled through the open materiality of bodies as a Place to Meet. We could usefully invoke Donna Haraway’s notion of ‘‘encounter value’’ here, a ‘‘becoming with’’ companionate (and I would also add, incompanionate) species, whereby actors are the products of relating, not pre-formed before the encounter (2008, 16). Conviviality is an ethical orientation that rewrites a Levinasian taking up of the ontology of the Other by arguing that there is no absolute self or other,15 rather bodies that come together and dissipate through intensifications and vulnerabilities, insistently rendering bare the instability of the divisions between capacity-endowed and debility-laden bodies. These encounters are rarely comfortable mergers but rather entail forms of eventness that could potentially unravel oneself but just as quickly be recuperated through a restabilized self, so that the political transformation is invited, as Arun Saldhana writes, through ‘‘letting yourself be destabilized by the radical alterity of the other, in seeing his or her difference not as a threat but as a resource to question your own position in the world’’ (2007, 118). Conviviality is thus open to its own dissolution and self-annihilation and less interested in a mandate to reproduce its terms of creation or sustenance, recognizing that political critique must be open to the possibility that it might disrupt and alter the conditions of its own emergence such that it is no longer needed – an openness to something other than what we might have hoped for. This is my alternative approach to Lee Edelman’s No Future, then, one that is not driven by rejecting the figure of the child as the overdetermined outcome of ‘‘reproductive futurism’’ (2004),16 but rather complicates the very terms of the regeneration of queer critique itself. Thus the challenge before us is how to craft convivial political praxis that does not demand a continual reinvestment in its form and content, its genesis or its outcome, the literalism of its object nor the direction of its drive.

A fluid understanding of identity is necessary in order to avoid sexual othering and exceptionalization.

Perry 14 [Brock Perry, Graduate Division of Religion, Drew University, “Towards an ontogenesis of queerness and divinity: Queer political theology and Terrorist Assemblages,” May 30, 2014]//JIH

The historical shift in modernity and modern state formation to which the concept of homonationalism attends is marked by biopolitical control of national and transnational bodies in which those determined unworthy of homonational citizenship are relegated to racialised and perversely sexualised populations. Homonationalism is dependent upon this ‘sexual othering’ for the moral, sexual and cultural exceptionalisation of rights-bearing homosexual citizens over against ‘Orientalist constructions of “Muslim sexuality”’ as inherently homophobic, irrationally religious and sexually perverse (Puar 2007, 4). The biopolitical population management that Puar describes is based not only on particular identities taken as a whole, but also on cross-sections of information ablated from bodies and represented statistically. As statistics, race and sex are experienced as a series of transactional information flows captured or happened upon at chance moments that perceive and render bodies transparent or opaque, secure or insecure, risky or at risk, risk-enabled or risk-disabled, the living or the living dead. (160)

Thus, biopolitical control is made diffuse between populations as identities are dissected into fragments of information that never fully add up to the representational subject, but are neither unrelated to it. Puar argues that state practices of surveillance and detention make use of those fragments of information that are multiplicitously and variably manifested between and within identities in a way that identity politics and intersectional analyses, which take the representational subject for granted, have been unable to adequately counter (162, 206). She concludes that identity politics, both a symptom of and a response to these networks of control, capitulates once again to chasing the space of retribution for the subject. Control masks itself, or masks its effects, within the endless drive to recoup the resistant subject. (162)

Puar densely articulates the relation of identity and representation to biopolitics and elucidates the failure of identity politics to grasp its production by the very systems of power it seeks to resist. An ontologically static and unchanging understanding of identity lends itself to biopolitical control by confirming the stability of the information used to determine those included in life and those relegated to a racialised and perversely sexualised population. Identity politics leaves bodies in these populations always in need of reclaiming subjecthood along the lines of identity that made the subject separable under biopolitical control in the first place. Before turning with Puar to affect theory in order to think both with and beyond identity politics, I want to first turn to issues of political theology and the secular that I contend are related to the issues of modern state formation being discussed here, and which will be necessary for critical responses to the issues of homonationalism, biopolitics and identity that Puar describes.

The affirmative's method of convivial assemblage is key to envision a legal framework independent of rigid racialized and gendered categories of personhood.

Weheliye 14. Alexander G. Weheliye, professor of African American studies at Northwestern University, Habeas Viscus, pg. 82

We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what remains outside the law, what the law cannot capture, what it cannot magically transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identity- based activism that respond to structural inequalities, legal scholar Dean Spade shows how the focus on inclusion, recognition, and equality based on a narrow legal framework (especially as it pertains to antidiscrimination and hate crime laws) not only hinders the eradication of violence against trans people and other vulnerable populations but actually creates the condition of possibility for the continued unequal "distribution of life chances."22 If demanding recognition and inclusion remains at the center of minority politics, it will lead only to a delimited notion of personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differences between full humans, not-quite-humans, and nonhumans. This can be gleaned from the "successes" of the mainstream feminist, civil rights, and lesbian-gay rights movements, which facilitate the incorporation of a privileged minority into the ethnoclass of Man at the cost of the still and/or newly criminalized and disposable populations (women of color, the black poor, trans people, the incarcerated, etc.).23 To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent in its endorsement of racial slavery, indigenous genocide, Jim Crow, the prison-industrial complex, domestic and international warfare, and so on, and that it continues to be one of the chief instruments in creating and maintaining the racializing assemblages in the world of Man. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the "racialized (trans)gender entrapment" within the prison-industrial complex and beyond with practices of "maroon abolition" (in reference to the long history of escaped slave contraband settlements in the Americas) to "foreground the ways in which often overlooked African diasporic cultural and political legacies inform and undergird anti- prison work," while also providing strategies and life worlds not exclusively centered on reforming the law.24 Relatedly, Spade calls for a radical politics articulated from the "'impossible' worldview of trans political existence," which redefines "the insistence of government agencies, social service providers, media, and many nontrans activists and nonprofiteers that the existence of trans people is impossible."25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the incompatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable liminal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered.]

Queer scholars must engage the law to combat normalization

Duggin 94 [Lisa Duggan, associate professor of American studies and history at New York University, Queering the State, Social Text, No. 39 (Summer, 1994), pp. 1-14]//JIH

When we turn our attention to this project, we run into difficulty the moment we step outside our classrooms, books, journals, and conferences. How do we represent our political concerns in public discourse? In trying to do this, In trying to hold the ground of the fundamental criticism of the very language of current public discourse that queer theory has enabled, in trying to translate our constructionist languages into terms that have the power to transform political practices, we are faced with several difficulties.

First, the discussion of the construction of categories of sexual identity resist translation into terms that are culturally legible and thus usable in consequential public debates. To illustrate this difficulty let 's

imagine that you are asked to appear on the Oprah Winfrey show to talk about public school curriculums. Guest A says material on gays will influence children to think gay is okay and thus to become disgusting perverts themselves. Guest B, from Parents and Friends of Lesbians and Gays, says that this will not happen because sexual identity is fixed by the age of three, if not in utero. You are Guest C-what do you say? That "the production of queer sexualities is historically and culturally conditioned," that if gay materials in class are conducive to the production of queer sexualities you are squarely in favor of their use? The difficulties here on the level of legibility and on the level of political palatability are readily apparent. Second, the use of constructionist language to discuss homosexuality tends to leave heterosexuality in its naturalized place-it can be taken up by homophobes to feed the fantasy of a world without homosexual bodies and desires." If history can make them, history can also UNmake them" seems to be the logic here. At a conference in Toronto a decade ago, Dorothy Allison and Esther Newton suggested responding to this danger in constructionist arguments by producing buttons demanding" Deconstruct Heterosexuality First." Of course, we can respond as the button suggests and work to denaturalize heterosexuality which queer studies is, in fact, doing,but this is unlikely to be received in current public debates without guffaws and disbelief.

The usual response to these difficulties is to resort to what is called "strategic essentialism" the use of essentialist categories and identity politics in public debates because that is all anyone can understand and we need to be effective in the political arena. I take the concerns that lead to the embrace of strategic essentialism seriously but I think that it is ultimately an unproductive solution. It allows sexual difference and queer desires to continue to be localized in homosexualized bodies. It consigns us, in the public imagination, to the realms of the particular and the parochial, the defense team for a fixed minority that most "special" of special interest groups- again, letting everyone else off the hook. I would argue that we need to find a way to close the language gap in queer studies and queer politics. We need to do this especially with reference to the operations of the state. Though queer politics is presently claiming public and cultural space in imaginative new ways (kiss-ins, for example), the politics of the state are generally being left to lesbian and gay civil rights strategies. These strategies are greatly embattled at present, and there are still many gains to be made through their deployment. But they are increasingly ineffective in the face of new homophobic initiatives; they appear unable to generate new rhetorics and tactics against attacks designed specifically to disable identity-based antidiscrimination policies.9We cannot afford to fallback on strategic essentialism(it will not get us out of the trouble we are now in), and we cannot afford to abandon the field.

Impact calculus should begin from the perspective of queer necropolitics – predictive scenario planning disavows zones of abandonment that perpetuate mundane forms of violence on queer bodies.

Haritaworn et al. 14. Jin Haritaworn, professor of sociology at the University of York, Adi Kuntsman, professor of humanities, research, and social sciences at Manchester Metropolitan University, and Sylvia Posocco, professor of psychological studies at the University of London, Birbeck, Queer Necropolitics, Routledge, 2014, pg. 1

Most prominently, Jasbir Puar (2007), tracing the shift from AIDS to gay marriage, identifies a recent turn in how **queer subjects are figured**, from **those who are left to die**, to those that **reproduce life**. Yet, not all sexually or gender non- conforming bodies are 'fostered for living'; just as only some queer deaths are constituted as grievable (Butler 2004),1 while others are targeted for killing or left to die.

This book comes at a time of growing interest in the necropolitical as a tool to make sense of the symbiotic co-presence of life and death, manifested ever more clearly in the cleavages between rich and poor, citizens and non-citizens (and those who can be stripped of citizenship); the culturally, morally, economically valuable and the pathological; queer subjects invited into life and queerly abjected populations marked for death. Our discussions are inspired by Achille Mbembe's concept of '**necropolitics'** — a concept he develops when analysing the **centrality** of **death in subalternity**, **race**, **war** and **terror** (Mbembe 2003) - and by Puar's (2007) insightful elaboration of '**queer necropolitics'**, which attempts to make sense of the expansion of **liberal gay politics** and its **complicity** within the US **'war on**

terror', while calling our attention specifically to the 'differences between queer subjects who are being folded (back) into life and the **racialized queernesses** that **emerge** through the **naming of populations'**, often those marked for death (p. 36).

Our collection assembles various ways of queering the necropolitical and of interrogating claims to queerness in the face(s) of death, both spectacular and banal. **Thinking through necropolitics** on the **terrain of queer critique** brings into view **everyday death worlds**, from the perhaps more expected sites of death making (such as war, torture or imperial invasion) to the ordinary and completely normalized violence of the market. As many of the contributors to this volume point out, the **distinction** between **war and peace dissolves** in the face of the **banality of death** in the 'zones of abandonment' (Biehl 2001; Povinelli 2011) that regularly accompany contemporary democratic regimes. These are not merely about exclusion; more insidiously perhaps they create **their own forms of deadly inclusion**.

The insistence on the **unremarkable**, the **ordinary** and the **mundane** is of particular **importance**. In contrast to other works in the field that deal with death in relation to queerness and beyond - such as the AIDS epidemic or the Holocaust - contributors in this book focus less on grand moments or processes of commemoration and more on the everyday and the ordinary. In that respect, our orientation (Ahmed 2006) is not so much towards a past that is remembered and celebrated. In the place of the finished past, we turn to the present and future(s), including those **haunted futures** (Ferreday and Kuntsman 2011; Gordon 2011) where **queer vitalities** become **cannibalistic** on the **disposing** and **abandonment** of others. Indeed, we argue that the **queer nostalgia** for other times, coupled with a **victim subjectivity** that **refuses accountability** for current **privileges** and **injustices**, may itself work to **naturalize** and **accelerate death-making logics** in the present (Haritaworn, 2013). Furthermore, in considering the rise of homonormative and transnormative identities as contingent on settler colonialism, anti-blackness and permanent war - which provide the conditions of queer ascendancies — we refuse a view of the past as finished and the present as democratic and post-genocidal (e.g. Morgensen 2010; Smith 2007; see also Bassichis and Spade, Chapter 9 in this book).

Using 'queer necropolitics' as a **theoretical entry point** and as a concept- metaphor, our book explores the **processes**, **conditions** and **histories** that **underpin** and **sustain** a range of '**unequal regimes** of **living** and **dying'** (Luibheid 2008: 190), consolidating and extending the existing analytical vocabulary for understanding queer politics and experiences. In putting the concept of 'queer necropolitics' at the centre of our discussion, the book is in dialogue with the emerging scholarship focussing on the analysis of the necropolitical (see, for example, Inda 2005; Osuri 2006). We extend this body of scholarship by turning our attention to specifically queer aspects: deadly underpinnings of militarized queer intimacies, nationalized practices of queer mourning, assimilationist logics of feminist, gay and transgender rights and criminalizing policies in the name of sexual safety and queer space. Contributors explore the relations between queerness and war, immigration, colonization, imprisonment and other forms of population control in various cultural and political settings. Among the many topics addressed in the chapters of this book are racism in the name of 'LGBT rights'; queer colonialities; trans migrations; vitality and necropolitics in the new world order; the ontology and phenomenology of sexual and gender violence; the racialization of 'LGBT', queer and transgender politics in the 'wars on terror'; and regimes of remembering and oblivion of queer and non-queer lives and deaths.

2AC Extensions

Internal Link

Heteronormativity - Generic

The desire of surveillance to reveal what is hidden and assumed to be shameful correlates with gendered and sexualized politics that favor heteronormativity and marginalize genderqueer and transgender communities

Ball et al 9 (Kristen, Business School, Open University; Nicola Green, Department of Sociology, University of Surrey; Hille Koskela, Department of Social Policy, University of Helsinki; David J. Phillips, Faculty of Information, University of Toronto, "Surveillance Studies Needs Gender and Sexuality," Surveillance and Society, 2009, es)

Surveillance Studies needs Gender and Sexuality. That is why this issue came into being. Although this is a comparatively short issue of Surveillance and Society, perhaps representing the fact that the critique of surveillance through these lenses is still in its infancy, its contributions highlight some of the ways in which studies of gender and sexuality are fundamental to mounting a critique of surveillance. Surveillance theory holds that surveillance processes are routine, systemic, purposeful and focused (Surveillance Studies Network 2006). They are woven into everyday life. They aggregate individuals into populations, in part by creating robust, replicable analytical categories. This is done with the strategic objective of institutional management of those populations and the everyday life of the individuals that comprise them. Marginalisation, exclusion and mass discrimination are necessary byproducts of this manageable order. On reading the papers in this issue, it emerges that the political economies, methods, outcomes, and profound normalizing tendencies associated with surveillance are deeply amenable to critiques informed by theories of gender and sexuality. These articles turn our attention to three particularly problematic phenomena that surround surveillance practices. The first is the oft-cited and fallacious public response to surveillance as being 'if I have nothing to hide then I have nothing to fear'. The second concerns the outcomes of categorisation for gendered and sexualised subjects. The third highlights how intermediated surveillant methods produce new forms of vulnerability. Nothing to hide: nothing to fear? One of the common concerns amongst the papers in this issue is that of subjectivity and the experience of surveillance. Hitherto, studies of the surveilled subject have been limited to a very narrow range of areas, as Ball (2009) describes: To date, discussions of the surveillance society have assumed a limited range of positions for the surveilled subject, reducing the experience of surveillance to one of oppression, coercion, ambivalence or ignorance. Few studies have suggested to the contrary (Koskela 2004; McGrath 2004). In some circumstances it is the case that the experience of surveillance features coercion (for example, in the mandatory provision of DNA on arrest in the UK to feed the Police National Computer DNA database), oppression (for example, those whose international mobilities are deemed 'risky') ambivalence or ignorance (for example, consumers who are unaware that their data doubles are structuring their access to goods and services), but this is not the whole story. Indeed if the subject is perfectly docile and compliant, as Foucault predicted, then we have perfect surveillance, which is rarely the case. The fact that individuals sometimes appear to do little to counter surveillance does not mean that surveillance means nothing to them. Surveillance may be tolerated or even sought after because the giving of data satisfies individual anxieties, or may represent patriotic or participative values to the individual. It may also be the case that individuals are ambivalent towards surveillance because there is sometimes no identifiable 'watcher' or perceivable 'control' being asserted, or because the pleasures of performative display override the scrutinies that come hand-in-hand with self-revelation (Ball 2009: 640-641). Papers within this issue begin to augment the documentation of the experience of surveilled subjects. In particular they challenge the normative statement of 'nothing to hide: nothing to fear,' a response which is often cited in 'vox pop' media coverage of the surveillance society. They do so by problematising the association between that which is hidden with that which is shameful - an association which is implicit within the phrase 'nothing to hide: nothing to fear'. In the Anglo-American north, the politics of what is hidden and what is revealed are imbued with gendered and sexualised politics of heteronormativity and shame, and of vulnerability and fear. In this volume, Toby Beauchamp and Kevin Walby, for example, highlight how the equating of 'what is hidden' with 'what is shameful' is problematic for transgender and genderqueer communities. Beauchamp's article on transgendered people and border security explores contradictory revelation and concealment practices across medical, political, and security discourses, and the almost insurmountable difficulty of managing a usable gender identity at their intersection. In Walby's paper 'Are you looking for fags?' we are reminded of McGrath's (2004)

accounts of the Manhattan gay bar 'Splash', and of other sexual practices within queer subcultures that embrace exposure as both political tactic and erotic thrill. Walby explores how that sort of publicness is necessarily marginalised and suppressed within institutional frameworks of "official" and normative publicness, such as that maintained and policed by Canada's 'National Capital Commission.' Categorically just? To date, one of the themes within surveillance studies has been the discriminatory and exclusionary outcomes of social sorting. Discussions of practices within inter alia consumer surveillance (Danna and Gandy 2002), the surveillance of mobile populations (Amoore and DeGoede 2005) and surveillance within political processes (Sussman and Galicio 2004) highlight the difficulties with categorisation which arises as a result of social sorting. Social sorting has very real consequences for subjects. For example, errors occur when databases are combined, inaccurate or unrepresentative data are used and missing data are 'filled in' (Danna and Gandy 2002), leading to the observation that social sorting is nearly always 'wrong' at the level of the individual (Berry and Linoff 2000). Recent evidence (Canhoto 2007; Beckett 2008) also suggests that the production of profiles is socially embedded and replicates the prejudices of data mining experts. Potential is created for prejudices to be written into algorithms which identify risk, entitlement and criminality. As a result data subjects may unwittingly suffer discrimination, or may be wrongly allocated to categories they do not belong. Moreover inadequacies tend to be perpetuated because replacing legacy systems is both expensive and complex (Head 2007). Social sorting is often based on geodemographic information, and ascribes value judgement to different groups of people. For example, particular consumption preferences, whilst forming distinct groups, are mapped onto places when combined with information such as a postcode. Lifestyles and places hence begin to merge (Burrows and Gane 2006) and neighbourhood characteristics come to determine the products and services offered to individuals living there. Some of these characteristics include discriminatory categories the likes of which would be illegal in other settings. For example, in Cherry vs. Amoco Oil Co, a noteworthy legal case in the US, it was revealed that a white woman who lived in a predominantly black neighbourhood was refused a credit card not because of her personal credit history, but because the postcode in which she lived was considered too risky in the credit checking system. One of the most important things to note about the categorisation practices usually discussed in studies of surveillance is that categories are statistically generated. Central to the operation of a category is its norm, or average: the ascription of any case – human or otherwise – to a category implies some kind of proximity to the norm expressed by the category. Categories thus have a normalising tendency. And whilst the majority of the work on categorisation to date critiques at the level of systems and practices, some of the papers within this issue address the implications of categorisation itself at the local level. Kathryn Conrad, in particular, critiques the normalizing tendency of categories in terms of the pressure it places on queer subjects, while Anthony Corones and Susan Hardy, and Kevin Walby show how essentialist discourses around gender and sexuality normalise diverse responses to surveillant processes.

Current surveillance practices reinforce heteronormativity, objectification of women, and cause global humiliation for those who don't fit neatly into our binaries.

Jakubowska 13 Gender verification in sport as a surveillance practice: An inside and outside perception Jakubowska, Honorata. The Institute of Sociology, Adam Mickiewicz University Surveillance & Society11.4 (2013): 454-465. Proquest

All the regulations concerning verifying gender apply only to women. These processes of gendering the female body are not limited to sports only (see e.g., Corones and Hardy 2009), but are highly visible in sports where the female body is prominent. Confining gender verification to women is also based on the assumption that men have better physical abilities. It is considered that only men taking part in women's competition can have an unfair advantage. A woman or feminized man therefore loses at the starting line. People associated with the sport of running agree with this way of thinking:! It doesn't make sense to examine men, because we always achieve worse results. If the man has feminine characteristics, he just will achieve worse results. (Athlete 1) With [a] man, there is no problem. Giving female hormones to the man will rather reduce his athletic potential.2 (Other Respondent 1) This approach can be considered to be right when we look at sports results in most disciplines. However, the limitation of gender verification as applying only to women can be considered a major tool for strengthening the dominant gender order in sports. Men also differ in the levels of androgens so that some of them could have a 'natural' hormonal advantage over others, yet they are not excluded from competing. In the case of men, a high level of androgens is not perceived as problematic. On the contrary, it makes them not only better athletes but also more masculine. When a woman has high androgen levels, she contradicts her femininity in two ways: either by way of the results-where the defeat of other women challenges the myth of female

weakness (or 'the frailty myth')-or, by her physical appearance, which does not fit the standards of heteronormativity. From this point of view, sex testing that was previously used for 30 years, and has been reintroduced through new rules that guard the 'natural' boundaries of gender through intricate biological surveillance of women's bodies, reproduces the social order (Lyon 2007: 3); in this case with reference to gender. Current regulations according to which only 'suspected' cases are verified have a heteronormative character. Since sex verification examinations concern primarily those athletes who do not conform to traditional feminine images, certain ideas about what a woman should look like are reinforced. The opinions of interviewees associated with running prove the power of these norms and their capacity to reinforce a dichotomous perception of gender. Some questioned the sex of Caster Semenya based on their contact with her. Frankly speaking, her behavior, the way she moves, she was [like] a man for me, every move, every gesture was not a feminine gesture but a masculine one. ... Her style of running, the way she showed her joy, the clenched fists, for me, it/she was really like a guy, to be honest. Zero femininity. There was nothing feminine about her. (Athlete 2) One can see it, physical characteristics, it is not a woman, in short, it is a man. We know that there are various things in nature, there are also genetic errors and some people are born as hermaphrodites. But in terms of these features, they have more testosterone, a different body structure etc. (Other Respondent 2) Excuse me for my language, but she is a tomboy. (Other Respondent 3) The visually aesthetic aspect is obviously not the main criterion of gender verification or the verification of androgen levels. However, due to the entertaining character of sports in the global media, the visual appearance of women plays a very important role. As Schneider (2003)3 wrote: ... in the places where sport is practiced, there intersexes, transvestites and sportswomen of extreme body image no longer appear ... television took away the right to visibility for optical deviations.! From this point of view, the surveillance of sportswomen's bodies can be perceived not only as a tool for ensuring fair competition, but also for strengthening heteronormative femininity, and thereby providing pleasure for sports viewers. The term surveillant scopophilia (Magnet and Rodgers 2011: 3; Magnet 2011) can be useful here. According to Lyon (2006a: 48), referring to Laura Mulvey (1975):! ... [when] applied to the cinema or, more broadly, to the viewer society, scopophilia (pleasure of looking) has been translated as the predominantly male gaze of Hollywood that depersonalizes women, turning them into objects to be looked at. In sport, scopophilia can be understood as the possibility to watch or peep at the female body doing sport. The outfits worn in many sports disciplines, such as tennis, volleyball and athletics, as well as the modern technology that allows people to view the body in close-ups, give aesthetic pleasure and attract many viewers to women's sports. Surveillance practices support the pleasure of looking by identifying those bodies deemed threatening, from the heteronormative point of view. Referring to Mary Douglas' theory (1966) these 'dirty bodies' must be excluded to maintain the purity of the system. Thus, both visual and biological surveillance is an important means by which female sports spaces are 'sanitized' or purified from perceived troublesome others (McCahill 2002). The privacy of 'othered bodies' Surveillance of intimate and private issues is common to both sports and many other areas of social life (see e.g. Lyon 2006a). In medical, travel or athletic contexts, it may be embarrassing for the 'othered' body to undergo this type of surveillance (Magnet and Rodgers 2011). However, one major difference between sports and other areas of social life is that elite athletes are public figures and their bodies are also on public display. With certain ideas about what an athlete should look like, there is extensive discussion of the changes in their appearance or their suitability to compete. Questioning the sex of athletes also becomes the subject of immense public discussion, which was shown very clearly by the case of Caster Semenya. Respondents in this study emphasized the harm and humiliation that such public controversy could bring to an athlete, even though they were convinced that Caster Semenya should undergo the verification of her sex. They especially stressed the impact of the media coverage of Semenya's case. It caused terrible harm to her. (Athlete 2) It was very hard for her, mentally. And I will say this-I take my hat off to her, for her ability to take and resist it all, and still show up on television ... This is a humiliation on a global scale.

The invisible violence goes on all around us. Victims are viewed as less valuable and denied basic rights, and suffer homophobic violence daily.

Lloyd 6 Lloyd, M. , 2006-08-31 "Who Counts? Understanding the Relation Between Normative Violence and the Production of Political Bodies" Paper presented at the annual meeting of the American Political Science Association, Marriott, Loews Philadelphia, and the Pennsylvania Convention Center, Philadelphia, PA Online <PDF>. 2013-12-16 from http://citation.allacademic.com/meta/p150590_index.html

But what if what we recognize as physical violence depends on certain categorizations that are, in themselves, normatively violent, that operate, in other words, to exclude certain subjects and/or

acts of violence? What if physical violence occurs precisely because some people are apprehended as less valuable than others? And, here we have only to think of homophobic or racist violence. What if we cannot see the violence that certain peoples suffer as violence at all because those people are invisible ('unreal', in Butler's lexicon) to us; that is, fail to figure within our consciousness as human and are thus denied the rights, privileges, protections and help that accrue to the human? Should we still argue for an exclusive focus on actual, empirical violence? Or would we be better evaluating how and why certain persons are construed as somehow deserving of, or soliciting, violence in the first place? It is my contention in this section that an analysis of normative violence is, in fact, something we cannot do without since it not only sheds valuable light on the kinds of political violence that characterize the contemporary world (including war, ethnic conflict, terrorism, racist violence to mention only some of the most obvious) but also because it forces us to consider how our ability to recognize certain actions as violent might itself depend on the effacement of other (violent) actions. To illustrate how this argument works, I now want to turn to Precarious Life.

Bodies that don't fit our definitions of "normal" are under constant surveillance and causes us to label them as "invalid" or less than human, denying the relevance of their experience.

Saltes '13 'Abnormal' Bodies on the Borders of Inclusion: Biopolitics and the paradox of Disability Surveillance Saltes, NatashaView Profile. Surveillance & Society11.1/2 (2013): 55-73. Ph. D Sociology, Queen's University

Recognizing the exclusionary impact of understanding disability through medical discourse, the disability rights movement has made challenging the biomedical response to disability (referred to in disability studies literature as the 'medical model" or the 'individual model") a priority by adopting the social model view and reframing 'disability" as a social construct (Oliver 1990a, 1996). The social model rejects the idea that disability emerges from functional limitations/impairment and argues instead that disability emerges through social practices that fail to account for the needs of people with impairments (Oliver 1990a, 1996). In essence, it is attitudes and perceptions of what constitutes ontological norms that result in disability. The social model takes issue with the medical model for understanding disability within a health context. The problem with this approach is that it elicits a medical response to disability as a condition that occurs within the individual and should therefore be treated and cured (Oliver 1990a, 1996: 35-36).3 The social model's argument against the medicalization of disability resonates with what Williams and Calnan (1996) refer to as the 'medicalization thesis" (1996: 1609), in which conditions that were not initially considered medical issues have become situated within the field of medicine. They note that the preoccupation and emphasis on 'locating the genetic precursors of illness, diseases, disabilities and behaviours, means that the knowledge base of scientific medicine has encroached still further into defining the limits of "normality" and proper functioning, deportment and control of the human body [8]" (1996: 1609). The genesis of normal has altered how the ontology of the body is experienced and perceived. Consequently, the 'abnormal" body has become objectified by medical discourse and its techniques of intervention. Hughes (2002) argues that 'the production of medical knowledge about disabled people has itself been disabling" (59). He explains: The definition of disability as a corporeal problem has meant that, for the most part, throughout modernity, disabled people have come under the jurisdiction, control and surveillance of (bio)medicine. This process of locating disability within the disciplinary scope of medicine has influenced profoundly the state of knowledge about it. Disability has been understood as sickness, and disabled people have been understood as invalid. (Hughes 2002: 58) In The Birth of the Clinic, Foucault (1973) articulates how the body becomes separated from the individual to become the focus of the 'medical gaze". The medical model invariably locates disability in the body as a 'body problem", placing people with impairments under the scrutiny of the medical gaze and thereby absolving society from the responsibility of removing disabling social barriers (Oliver 1990a; Rioux and Valentine 2006). By distinguishing

between disability and impairment, the social model is able to put forth a political agenda that advocates for social change. While the social model has been credited for advancing rights based disability discourse, it has also been criticized for removing the body and impairment from this discourse, thereby denying the relevance of individual experiences of impairment and disability. By understanding impairment as a functional limitation, a number of scholars have argued that the social model neglects to recognize that impairment can also be socially constructed (Hughes and Paterson 1997; Shakespeare and Watson 2001; Tremain 2008). Taking the social model into account, while being mindful of its limitations, is helpful for understanding the political response toward people with impairments. It also provides a useful means with which to recognize how the biomedical objectification of people with impairments can be linked to Foucault"s notion of biopolitics as a means of regulating populations and 'defending society from the abnormal

Legal

Specifically, the courts' policing of name changes for trans people strips them of ontological freedom

Tran 4 (Dinh Tu Tran Dinh is pursuing her L.L.M. degree at Georgetown University Law Center.She has worked as an attorney on many crucial issues facing transgender people. 25 Women's Rts. L. Rep. 222 (2003-2004). Excerpt from Call Me by My Proper Name: Legal Surveillance and Discipline of Transgender Body and Identity. Heinonline.org. *jsk*)

<Tradition differs from law and this differ- ence becomes distinctly evident in limiting how the court should decide a case. In Lawrence v. Texas, Justice Kennedy admonishes, "Our obli- gation is to define the liberty of all, not to man- date the majority's code." With this in mind, I want to introduce a new conception of liberty, that I call ontological freedom. Ontological freedom entails concrete moments in which the self manifests itself in the outside. In Hegel: The Restlessness of Negative, Jean-Luc Nancy gracefully describes the moments of freedom: "It is not starting out from myself that I decide, as if I was free; in liberating myself, it is on my- self, from out of myself that I decide. Deciding oneself, liberating oneself and giving oneself are one and the same: the self outside itself in the blossoming, the supreme manifestation of mani- festation in general." That is, ontological free- dom involves the process of becoming in which a self must embody itself, shaping, contouring, growing and changing itself as well as the em- bodied self in the world. Only through these moments, and these movements toward and in the outside could it literally become itself and truly be free.

Transgender individuals are denied their ontological freedom because their very being is restricted by the heterosexual regime of binary sex and gender. This is evident in the change of a name. Although the court maintains that transgender individuals can alter their name from either a male to female or a female to male name, it enforces two conditions that only apply to transgender individuals' application and does so for the only purpose of surveillance and discipline, ensuring the transgender individ- ual will always suit the proper name, embody- ing

the proper sex and having the proper gen- der mindset while limiting the very assumption of the proper name itself.

There are two ways in which one could change one's name. First, under common law one may use any name so long that there is no fraud, misrepresentation or interference with the rights of others. Common law does not re- quire any judicial proceeding; it just requires the mere habitual and consistent use of the name. Second, under New York Civil Rights law, Statute § 60, an individual can file a "peti- tion for leave to assume another name." And I'm going to skip over what's required, but I'm going on to what the case demands from trans- gender individuals.

Consequently, the court grants the peti- tioner's application only if the order shall not be used or relied upon by the petitioner as any evidence or judicial determination that the sex of the petitioner has in fact been changed.

In another case entitled, "In the Matter of Anonymous for Leave to change his name," (1990), the court denied the petitioner's appli- cation to change his name from William to Ve- ronica because "his purpose is only to avoid embarrassing situations due to sexual prefer- ence and physical well-being." The petitioner does not collaborate this claim by "competent medical and psychiatric evaluation, including whether he is a transves- tite or a transsexual, and if a transsexual, whether or not he has undergone a sex change operation and now is anatomically and psycho- logically a woman."

Having a court order to change one's name could be advantageous. One of the advantages is that where "the court order sets a definite date on which the new name is to be assumed, it gives the name change an 'aura of propriety and official sanction' and makes it a matter of public record." The court might be aware of the trans- gender individuals' pressing need to have a court directive; however, the court's conception of a name is wrong. Names are not property, because it cannot be an extension of self and cannot materialize. It only leaves this aura, a feeling or impression of a property. The proper name always and already functions within the social system of differences, constituting the subject as a "male" or "female."

For Butler, the constitutive moment is also a regulatory moment. In Bodies that Matter, Judith Butler refers to this interpellation as the "enabling violence," because on the one hand, violence occurs in the moment in which a trans- gender individual only can come into being or become a subject if he assume the female name; and on the other hand, through this assumption, a transgender individual acquires its agency as a female subject in this society. Under Butler's analysis, transgender individuals can never come into being or even be recognized in their very being if they do not reiterate the law of father or the dominant norm. The reason un- derlies many transgender individuals' petition and sometimes even the trajectory of their tran- sitional process. Without a clearly female name, a transgender individual cannot embody "female" according to society's eyes, and inevi- tably, falls into the realm of the abject. Trans- gender individuals'

assumption of a clearly fe- male name represents the process in which subjects come into being in this heterosexual patriarch system. Only through these align- ments of institutions and practices can domina- tions be exposed.>

Tech/Data

The convergence of technology and identity through surveillance in the status quo necessitates a new perspective on information that focuses on embodiment rather than simple representation.

Van der Ploed 03 [Irma van der Ploeg, PhD, Associate Professor at the Infonomics and New Media Research Centre, "Biometrics and the body as information: Normative issues of the sociotechnical coding of the body," 2003]//JIH

Today, the socio-technical production of social categories and identities through IT-mediated surveillance relies increasingly on a gradually extending intertwinement of individual physical characteristics with information systems (van der Ploeg 1999a). The impetus for this development stems to a considerable extent from governments and government-related authorities facing security problems relating to processes of globalization and increasing mobility of persons. The apt metaphor of states' "embrace" of their citizens in the quote from Torpey's History of the Passport used as an epigraph at the beginning of this chapter becomes particularly striking when "the files" of which he speaks show the tendency to include ever more data pertaining to bodily characteristics. But it is in various domains of society and spheres of activity, ranging from work, health care, and law enforcement, to consumption, travel and leisure, that the generation, collection, and processing of "body data" is increasing (Lyon 2001).

I argue that in order to make sense of the normative and socio-political implications of this phenomenon, we may need to let go of the idea that this merely concerns the collection of yet another type of personal information. Instead of consisting of mere information about persons, a proactive understanding of this development may be better served by considering the ways in which this "informatization of the body" may eventually affect embodiment and identity as such. We may need to consider how the translation of (aspects of) our physical existence into digital code and "information," and the new uses of bodies this subsequently allows, amounts to a change on the level of ontology, instead of merely that of representation.

As Katherine Hayles writes: When changes in incorporating practices take place, they are often linked with new technologies that affect how people use their bodies and experience space and time. Formed by technology at the same time that it creates technology, embodiment mediates between technology and discourse by creating new experiential frameworks that serve as boundary markers for the creation of corresponding discursive systems. In the feedback loop between technological innovations and discursive practices, incorporation is a crucial link. (Hayles 1992: 163)

Instead of the standard dual picture of the body as an ahistorical, natural entity, the representations of which change over time (due to scientific and technological innovations), we may need to consider how all three terms are caught in a process of co-evolution. With technological and discursive practices converging towards an ontology of "information," it is unlikely that their mediating link, embodiment – even while acknowledging its constraining and limiting power – will remain unaffected. And because embodiment concerns our most basic experience of the body and of being in the world, these developments carry profound normative and moral implications we ought to attempt to uncover.

Surveillance/Observation

Queer bodies suffer constant observation, and the dominant culture coerces them into hiding who they are. They suffer like prisoners in the panopticon, internalizing the surveillance and allowing it to change their very nature, destroying agency.

LeBlanc 10 UNQUEERING TRANSGENDER? A QUEER GEOGRAPHY OF TRANSNORMATIVITY IN TWO ONLINE COMMUNITIES by Fred Joseph LeBlanc Master of Arts in Gender & Women's Studies Victoria University of Wellington 2010 P27-30

In an early text, written with Wichins, Valentine (1997) discusses the social construction of the body and is specifically concerned with not only the ways people alter their bodies but the construction of identities around bodies that are not culturally understandable in terms of existing binary categories. To him, the altering of bodies calls into play new questions of difference and power, specifically the policing of these bodies by cultural means. In policing social space and the bodies therein, Foucault's use of Jeremy Bentham's panopticon as a metaphor for surveillance is of particular interest. The panopticon is an architectural technology of a building in the form of a ring. In the centre of this ring is a tower facing the inner face of the ring. The outer building is divided into cells, each the width of the building itself. Each of these cells has two windows: one facing the tower, the other on the opposite wall, allowing light to seep in. The tower's surveiller surveys the silhouettes of the cell's captives (see Image 1, next page). It was considered an easy and effective exercise of power. This policing produced a politics of space and visibility inscribed in architecture. Visibility is organised around a dominating gaze and the technology of the panopticon was not so much to punish wrongdoers as to prevent even the possibility of wrongdoing, by immersing people in a field of total visibility where the opinion, observations and discourse of others would restrain them from harmful acts. (Foucault 1980: 153) 27 The only downside of the panopticon was the fear of darkened, and thus unregulated, space which prevents the visibility of the person being regulated. It is in this sense that visibility produces surveillance (Thompson, 2004). Indeed, it is the technology of the panopticon that allows for interiorisation of a total, omniscient gaze. A surveiller need not watch the cells, as the potential for surveillance will result in each individual interiorising the gaze so that the individual will exercise surveillance over – and against – themselves. This ideal surveillance cancels human agency; it is this penetrative element of the gaze that polices gender "wrongdoing" and produces a "good citizen" within a certain knowledge/power matrix. The assimilationist agenda has privileged the internalised gaze as part of its politics: Gender-normative gays and lesbians self police their gender in such a way that it cannot be questioned or misinterpreted, thus demonstrating that their sexuality is distinct from their gender.

Constant surveillance assimiliates all peoples into "citizen subject" thorugh processes of discipline and total normalization, erasing difference and asserting bio-power over entire populations.

Lee 10 Bare Life, Interstices, and the Third Space of Citizenship Lee, Charles professor of Justice and Social Inquiry, Arizona State University. Women's Studies Quarterly38.1/2 (Spring 2010): 57-81 proquest

Michel Foucault has conceptualized the modern form of power as "bio -power," wherein the essential measure of liberal governance is to oversee the welfare of the population (wealth, longevity, health, etc.) through mechanisms of calculation, monitoring, regulation, and utilization, such that citizen life will be fostered productively in the interests and security of the state (1980a; 1997). Biopower taps into the bodies and souls of human subjects to ensure the reproduction of the social body in a "proper" mode and "proper" way (Foucault 1980b). As a technique of liberal governance, the inscription of subjects into modern citizenship initiates modern state's systematic surveillance of its population. David Lyon points out that the civil, political, and social rights granted to citizens in the age of modernity imply that "people had to be registered, and their personal details filed, which of course paradoxically facilitated their increased surveillance" (2001, 294). New and minute forms of surveillance and control were established via

documentary identification of citizens (i.e., birth certificates, driver's licenses, Social Security cards, passports, bankbooks, credit cards) throughout liberal societies by the last quarter of the twentieth century (294). Rather than an autonomous species standing in opposition to corporate bureaucratic power, citizenship is itself entangled in the webs of surveillance and subjection, discipline and normalization as a constitutive part of liberal governance in the making of citizen-subjects (Cruikshank I999). Aihwa Ong conceives citizenship as what Foucault calls the "technologies of government," involving a set of "policies, programs, codes, and practices . . . that attempt to instill in citizen-subjects particular values (self-reliance, freedom, individualism, calculation, or flexibility)" that are conducive to the production of the way of life in advanced liberal societies (2003, 6). These technologies of citizenship nurture a particular type of liberal subject - an entrepreneurial individual who is self-governing, selfmanaging, and self-regulating (7-9). Woven into liberal regime's biopolitical rationality, citizens are thus both made and self-making, both subject to regulatory control and "empowered" to act in their own interests as fullfledged citizen-subjects (Cruikshank 1999, 4; Ong 2003, 9). As Barry Hindess argues, however, to the extent that modern citizenship structures a biopolitical regime vis-à-vis the internal populations in advanced liberal states, it further informs the relations between states in an overarching "supranational regime of population management" (2005, 243). In other words, while during the colonial era European states sought to bring non-Western populations into the modern system of states through imperial discipline and direct domination, the decolonization process has subjected the newly independent states to a new regulatory regime of market interactions (i.e., international trading in goods and services) supervised by powerful Western states and supranational agencies to discipline the conduct of states (247). Postcolonial states have to demonstrate their fitness within the international system by participating in various international arrangements, embracing the market mechanism, and subjecting themselves to regulations by international financial agencies (250). As Hindess notes, liberalism is not merely a normative political doctrine or ideology, but a "positive project of government" that uses "market interactions to civilize and to regulate the conduct both of states themselves and of those within the particular populations under their authority" (25 1). This supranational governmental project orients posteolonial states toward a modern liberal world order as their own populations are molded into the institutions of citizenship (247, 256).

Surveillance in public-private spaces such as parks serves to regulate and exclude non-heterosexual activities

Walby 9 (Kevin Walby- Dept of Sociology and Anthropology, Carleton University, Canada. "He asked me if I was looking for fags," Surveillance and Society Vol 6 no 4 (2009). library.queensu.ca/ojs/index.php/surveillance-and-society/article/view/3268/3231 *jsk*)

<Public Sex, Parks and Surveillance The notion of 'public sex' is misleading. It assumes there is a stable difference between 'public' and 'private'. Edwards (1994: 91) uses the term 'not-private' sex, since the paradox of public sex is its hiding "in darkness, and around corners to evade constantly increased state surveillance…[oscillating] from apparent non-privacy into comparative privacy". For this reason, so-called public sex involves redefining privacy and anonymity (Bell 1995). Notions of 'public' and 'private' are also central in the regulation of sexuality (Colter et al. 1996). The 1957 Wolfenden Report, influential across the UK and North America, called for complete withdrawal of regulation of sex in the private sphere but broader policing of public sex. The Wolfenden Report became core policy for many governments, including Canada's, facilitating the decriminalization of private 'homosexuality' in a 1969 amendment of the Criminal Code of Canada. The Wolfenden Report simultaneously legitimated regulation of male with male sex in public, evidenced by crackdowns on bathhouses and tearooms that occurred in Toronto during the late 1970s through the 1980s (Walby 2009; Smith 1988). Decriminalization of 'private homosexuality' was advanced while 'public homosexuality' became criminalized.

As Califia (1994: 71) puts it, too narrow a definition of 'public' or 'private' in relation to sex "could leave us with little or no right to be visibly gay, meet each other in public places, or participate in sex outside of monogamous, closeted relationships". That we are 'free' to pursue sexuality in 'private' means that sex is subject to various forms of regulation. The surveillance

that occurs where space and pleasure-seeking intersect is only intensified in the revanchist city (Hannigan 1998; Smith 1996) where business and moral entrepreneurs seek to sanitize space and create more commercial zones.

Laws concerning public sex are written or enforced in ways that target specific types of people in specific locations (e.g. men who have sex with men in public). What results from governing public sex through law "is the performative inscription of a particular type of sexual figure who is deviant, abnormal, suspect, and in need of regulation by the criminal law" (Johnson 2007: 532). The claim here is that not all public sex is regulated equally. If laws are enforced in ways that discriminate against public male with male sexual relations, this begs the questions of why. Is it simply homophobia?

For Herek (2004: 8), the term 'homophobia' was important in that it "crystallized the experiences of rejection, hostility, and invisibility that homosexual men and women in mid-20th century North America had experienced throughout their lives". But Herek points out that the term 'homophobia' has been "too diffuse in its application" and "overly narrow in its characterization of oppression as ultimately the product of individual fear" (ibid. 11). The stereotyping, persecution and exclusion of men who have sex with men is based on more than an amorphous fear – regulation of sexuality always has a spatial element.

Some argue that 'heteronormativity' is a more precise term. Heteronormativity refers to how heterosexuality is privileged as 'natural' sexuality, favouring monogamous relations between opposite sexes that aim towards child bearing. Same sex relations, promiscuity, and kinky sex are shunned. It is not only sex acts but also urban areas that are coded through heteronormative hierarchies of property and propriety (Berlant and Warner 1998). Heteronormativity is not a thing, however, it is a process. The privileging of heterosexuality and demonization of queer sexuality is achieved and inscribed through routine text-based surveillance practices (Smith 1988) involving occurrence reports and other kinds of information sharing. Governance of homoerotic desire occurs in a field of contending discourses, where multiple techniques are used to produce regulatory knowledge in a search for 'homosexuals' (Walby 2009; Kinsman 1996).

The heteronormative order is also a spatial order. Moral contours of heterosexuality are etched into city spaces: "the city organizes and 'naturalizes' heterosexuality in so much as it divides and confines sexual identities across public and private spaces, defining the locations appropriate for specific sexual performances" (Hubbard 2000: 211). Parks are a site of such attempts at ordering. Edwards (1994) writes that parks in Britain have been used for public sex since 18th century industrialization. Merrick (2002) discusses the policing of male with male sex in the then wooded and marshy Champs-Elysées area of 18th century Paris. Men having sex with men choose the park because it is more discreet than the street corner. Parks can be public-private spaces. The park is sometimes viewed as risky by sex participants, not because of HIV/AIDS, but since gay bashing from police or homophobic community members is a possibility. This in turn contributes to how men also think of park sex as thrilling and exciting (Lee 1979). For Edwards (1994: 108), "public sex is primarily conducted within the context or parameters of pleasure and danger or eroticism and oppression due to its constant oscillation across a series of codes of decency, order and privacy". The park is a liminal zone where the rules for everyday sexual conduct are suspended.

At the same time, the park (especially at night) is thought of as a site where male against female violence occurs (Little 2005; Chan and Rigakos 2002; Pain 1997). Public parks are contested

zones because they are accessible by numerous social groups who make different use values of the locale. Even Christopher Park in New York, iconic in gay communities, is neither stably queer or heteronormative (Conlon 2004). Instead, it is through contestation that space becomes produced or intelligible as belonging to one or another social group and the conduct associated with them. It is not only 'private' and 'public' that are constituted through such regulation and surveillance. It is through surveillance that 'homosexuals' as so-called sexual deviants become intelligible as governance objects to organizations like the NCC. Examining the textual organization of surveillance practices and the work of surveillance agents (Walby 2005), in this paper I focus on how the NCC as a governance agency mobilizes against and monitors people with diverse sexualities.>

Constant observation and the assigning of terms like "trans" by the dominant mainstream erases the lived experience of the victims

LeBlanc 10 UNQUEERING TRANSGENDER? A QUEER GEOGRAPHY OF TRANSNORMATIVITY IN TWO ONLINE COMMUNITIES by Fred Joseph LeBlanc Master of Arts in Gender & Women's Studies Victoria University of Wellington 2010 P27-30

Anita shows the complications of lived experience upon the transgender category and the limits of transgender as an identity. Anita knows she is "gay" and "a man," but she also knows that everything she does is "like a woman" and is therefore read as transgender. In fact, in his field work at the New York Lesbian and Gay Community Services Center and the surrounding areas, Valentine found many people on whom the transgender category would be placed, but identified as gay men and saw their gender variance as part of their (homo)sexuality – and this was not limited to male-bodied women. Jade, an older female-bodied individual who identifies as a "mother," "lesbian," and a "man," found the word transgender not representative of her experience because "the word 'trans' was only used in 'transsexual,' meaning you were flipping over, changing your organs" (ibid.) Valentine considers that this is not merely a mis- or non-education issue and that some gay-identified people would adopt the transgender label and abandon their gay identity if they were better informed of it. Rather, for many gender-variant people, personal experiences cannot be accounted for so easily by the categories homosexuality or transgender; both sexual and gendered experiences exceed the boundaries of their categories.

Impacts

Bare Life

Bodies become occupied by the state, subjected to surveillance, ID numbers, passes, and permits. This leads to unthinkable despair and a state of bare life.

Enns 2004 Philosophy Department at the University of Toronto where she holds a postdoctoral fellowship Bare Life and the Occupied Body Diane Enns 7:3 | © 2004

If we bracket for a moment Agamben's most extreme case of the Muselmann, the concept of bare life becomes useful for thinking about the state-occupied body, the inhabitant of nowhere, stripped of political identity, nationhood, and basic human rights, by virtue of the fact of birth, a body whose very biological rhythms are regulated and controlled by a sovereign power. We could explore a number of examples here: the Iraqi's body, ravaged by hunger and disease, occupied by a sinister program of economic sanctions that Joy Gordon calls "a weapon of mass destruction" that has caused "a legitimized act of mass slaughter"36; the Tamil, the Chechen, the Tibetan, the indigenous Zapatista -- a discouragingly long list of peoples who are victimized to one extent or another by an occupying or colonizing power. It is the Palestinian occupation however, that comes most to my mind in this evocation of bare life. Tanya Reinhardt demonstrates in her detailed documentation of life in the occupied territories, how the Palestinian body is regulated, rendered vulnerable by the state power that penetrates all aspects of daily life from controlling where one can and cannot travel, where and how one can work, whether

one can import or export produce, medical supplies and cooking fuel, to whether one is safe in one's home.37 This is a systematic destruction of all semblance of normal life through a complicated and extensive web of enforcements from passes, identity numbers, permits, routine interrogations, road blocks that require leaving home in the night to get to work, to surveillance and political assassinations. Out of this emerges the figure of the "suicide bomber,"38 a figure of bare life, in this sense of abject vulnerability, reduction to a life devoid of any political meaning except that by which he is excluded, and by the fact that his or her life would be extinguished with impunity if the act did not already accomplish death. Intriguing contradictions arise however, when we consider the fact that these human bombs become martyrs to their own people through the sacrifice of their lives -- a sacrifice that defies their own Islamic faith, as well as the figure of homo sacer, whose life is not able to be sacrificed because it is meaningless already.39 In this case, the element of sacrifice appears to be the only meaning available, a final recourse to a limited resistance. This is an argument made repeatedly in the struggle to bring the plight of the Palestinians to the world's attention.40 In an oft-quoted interview, Eyad El Sarraj, a psychiatrist from the Gaza strip and recipient of several human rights awards, describes the association of sacrifice with power when asked to what he attributes the escalation of violence in the second Intifada: It's despair. The hopelessness that comes from a situation that keeps getting worse, a despair where living becomes no different from dying. Desperation is a very powerful force -- it's not only negative. It propels people to actions or solutions that previously would have been unthinkable. . . .

To affirm our own humanity, we have forced others into positions of sacred lives- they may be sacrificed without punishment. Their death at our hands doesn't constitute a crime. They have no lives worth living. There isn't even a value to their deaths.

Norris 2k GIORGIO AGAMBEN AND THE POLITICS OF THE LIVING DEAD Norris, Andrew. Andrew Norris is Assistant Professor of Political Science at the University of Pennsylvania .Diacritics30.4 (Winter 2000) http://search.proquest.com.proxy.lib.umich.edu/cv_635091/docview/746427833/fulltext/170BAD97AF434E1CPQ/1?accountid=14667

With the rise of sovereignty we witness the rise of a form of life that corresponds to it. "The sovereign sphere [sfera] is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice [sacrificio], and sacred life [sacra]-that is, life that may be killed but not sacrificed-is the life that has been captured in this sphere" [83]. Agamben does not define the sacred in terms of "what is set apart for worship of the deity." He is interested in the more fundamental question of the logic of sacrifice (from Latin sacrificium, from sacr-, sacer, holy, cursed) as revealed in the life that is sacred (from Latin sacrare, also from sacr-, sacer). What Agamben terms sacred life is, like the sovereign, both within and without the legal order (or, as its etymology suggests, both holy and cursed). It is inside the legal order insofar as its death can be allowed by that order; but it is outside it insofar as its death can constitute neither a homicide nor a sacrifice. But where sovereignty is a form of power that occupies this threshold, sacred life is nothing more than a life that occupies this threshold, a life that is excluded and included in the political order. Here this takes the form not, as in Aristotle, of a metaphysical puzzle, but rather of a mute helplessness in the face of death. "Sacredness is . . . the originary form of the inclusion of bare life [nuda vita] in the judicial order, and the syntagm homo sacer names something like the originary 'political' relation, which is to say, bare life insofar as it operates in an inclusive exclusion as the referent of the sovereign decision" [85]. This is the explicit revelation of the metaphysical requirement that politics establish a relation with the nonrelational [cf. note 8]. Indeed, the sovereign decision is the realization of the ambiguity of the distinction between bare and political life. It is law (political life) that is not law (insofar as it steps outside of the strictures and limitations of formal law) dealing with bare life (that is, nonpolitical life), and insofar as it does so that nonpolitical (bare) life it treats is political. The result is the paradox of a sacrifice that is dedicated to no legal or religious end [114] but that participates in and affirms the economy or logic of the legal/religious system as a metaphysical, political system. Where in René Girard's superficially similar account of sacrifice the victim is a scapegoat for the murderous desires of the community that unites around her, here the stakes are considerably higher. Instead of an act of self-protection on the part of the community [Girard 4, 101-02], sacrifice is the performance of the metaphysical assertion of the human: the Jew, the Gypsy, and the gay man die that the German may affirm his transcendence of his bodily, animal life.22 Contemporary instances of this threshold life abound, from refugees and people in concentration camps to "neomorts" and figures in "overcomas" whom we are tempted to turn into organ farms. Perhaps the clearest example is that of people in camps forcibly subjected to extreme medical tests and prisoners who have been condemned to death who are asked to "volunteer" for the same: The particular status of the VPs [Versuchspersonen] was decisive: they were persons sentenced to death or detained in a camp, the entry into which meant the **definitive exclusion from the political community**. Precisely because they were lacking almost

all the rights and expectations that we characteristically attribute to human existence, and yet were still biologically alive [biologicamente ancora vita], they came to be situated at a limit zone [una zona-limite] between life and death, inside and outside, in which they were no longer anything but bare life [nuda vita]. Those who are sentenced to death and those who dwelt in camps are thus in some way unconsciously assimilated to homines sacres, to a life that may be killed without the commission of homicide. Like the fence of the camp, the interval between death sentence and execution delimits an extratemporal and extraterritorial threshold [soglia] in which the human body is separated from its normal [normale] political status and abandoned, in a state of exception [in stato di eccezione], to the most extreme misfortunes. [159] When, in the United States, men condemned to death have been offered the possibility of parole in exchange for "volunteering" to undergo tests that could not be imposed upon those with full rights of citizenship [156-57], the reasoning was quite understandable, and even attractive in its economy and "fairness": given that the person has been condemned to die, he has essentially already lost his life. As far as the law is concerned his life is no longer his own, and in that sense he is a "living dead man" [131]. Hence there will be no crime against him if his life is "lost" again. But neither will that death be the imposition of the death penalty. Indeed, it is precisely insofar as he awaits execution that he remains alive: his life remains only to be taken from him in the moment of punishment. Death in the experiment thus reveals the paradoxes of death row as a sphere that delayed penalty makes possible, that of the threshold between life and death.23

Biopower Impacts

Biopower allows nations to operate with impunity, committing spectacular violence, warfare, and genocides all in the name of securing life.

Newman 4 SPECIAL ISSUE Terror, Sovereignty and Law: On the Politics of Violence By Saul Newman* is an associate professor in the Department of Government in the School of Public Affairs at American University [Vol. 05 No. 05] 2004

This inscription of violence and war in the framework of the social finds its modern permutation in what Foucault terms "biopolitics." The "race wars" of earlier periods have now become codified in modern political discourses that have as their central concern the preservation of the biological life of the species. The target of politics in contemporary societies, according to Foucault, is the administration of life itself. This designates a new form of power – "biopower." The operation of power is now aimed at the regulation, calculation and administration of populations. **Violence is still inscribed at the heart of these modern societies**. However, the crucial difference with modern regimes of biopower is that, unlike sovereign regimes, where blood was shed symbolically on behalf of the sovereign, now wars are waged on a **massive scale** by states on behalf of the populations they administer. Sovereign societies, according to Foucault, were characterised by the symbol of the sword and the right of the sovereign to either take life or to spare it. The symbolic register of these societies was a supreme power over life and death: "The sovereign exercised his right of life only by exercising his right to kill… Its symbol was, after all, the sword."24 Sovereign societies were characterised by the power of the spectacle – witness the "spectacle of the scaffold," whose grotesque horrors and excessive violence Foucault described in the execution of the regicide Damiens.25 Power was exercised here in a highly symbolic fashion, through a violence that was excessive, spectacular and ritualised. Punishment involved, for instance, the literal sacrifice of the body of the condemned. Foucault argues that this notion of violence as spectacle and symbolic sacrifice is no longer characteristic of modern societies, in which power operates in a quiet, methodical, regulative fashion. Modern societies, by contrast, are characterised by an entirely different register and technology of power – one in which the symbolic power of the sovereign to take life has been supplanted by a power that operates at the level of population and whose principle is to secure life. This modern technology of power is no less bloody, according to Foucault – having produced **unprecedented genocides and holocausts**. However, its symbolic order is non-violent. That is to say, it is based on the principle of the preservation, rather than the sacrifice, of life. 23 Again we see the parallel between violence and sovereignty - the way that the condition of sovereignty is also this undecidability, in relation to the law. That power is organised around the principle of the security and preservation of life is an undeniable fact of contemporary politics. The obsession with security

now in the wake of recent outbreaks of terrorism is perhaps paradigmatic of this modern principle of power. As Agamben argues, the concern with security and the preservation of life, while always one of the several prerogatives of modern state power, has now become the fundamental principle of state activity. We can see this new preoccupation with security in the obsession with "terrorist plots" within one's own borders, with a new invisible enemy that can strike at any time. The security and protection of internal populations from this invisible enemy – that is seen as both an external threat and an internal contaminant - has become the primary concern of political power. Questions of national security and the protection from terror are now the central feature of any political platform. Needless to say, this new raison d'être of the modern state has as its flip side **the systematic destruction of life – the meaningless military operations,** for instance, that are engaged in precisely in the name of the preservation of life

The expression of humanist biopower will destroy the planet

Bernauer, Boston College professor of philosophy, **1990**

(James, "Michael Foucault's Force of Flight: Toward an Ethics of Thought," pp. 141-142)

This capacity of power to conceal itself cannot cloak the tragedy of the implications contained in Foucault's examination of its functioning. While liberals have fought to extend rights and Marxists have denounced the injustices of capitalism, a political technology, acting in the interests of a better administration of life, has produced a politics that places man's "existence as a living being in question." The very period that proclaimed pride in having overthrown the tyranny of monarchy, that engaged in an endless clamor for reform, that is confident in the virtues of its humanistic faith -- this period's politics created a landscape dominated by history's bloodiest wars. **What comparison is possible between a sovereign's authority to take a life and a power that, in the interest of protecting a society's quality of life, can plan, as well as develop the means for its implementation, a policy of mutually assured destruction? Such a policy is neither an aberration of the fundamental principles of modern politics nor an abandonment of our age's humanism in favor of a more primitive right to kill**; it is but the other side of a power that is "situated and exercised at the level of life, the species the race, and the large-scale phenomena of population. **The bio-political project of administering and optimizing life closes its circle with the production of the Bomb. "The atomic situation is now at the end point of this process: the power to expose a whole population to death is the underside of a power to guarantee and individuals continued existence.** " The solace that might have been expected from being able to gaze at scaffolds empty of the victims of a tyrant's vengeance has been stolen form us by the noose that has tightened around each of our own necks.

Liberal biopolitical governance risks unending war against all threats to the species—that apocalyptic violence will inevitably turn against the species itself.

Dillon and Reid '9 (Michael, professor of Politics at the University of Lancaster, and Julian, Lecturer in International Relations at Kings College and Professor of International Relations at the University of Lapland, "The Liberal Way of War: Killing to Make Life Live, pg 30-33, JS)

One way of expressing the core problematic that we pursue in this book is, therefore, in the form of a question posed back to Paine on account of that definitive claim. What happens to the liberal way of rule and its allied way of war when liberalism goes global in pursuit of the task of emancipating the species from war, by taking the biohuman as its referent object of both rule and war? What happens to war, we ask, when a new form of governmental regime emerges which attempts to make war in defence and promotion of the entire species as opposed to using war in service of the supposedly limited interests of sovereigns? For the liberal project of the removal of species life from the domain of human enmity never in practice **entailed an end to war**, **or to the persistence of threats requiring war.** Paine makes this clear in his original formulation. Under liberal regimes, Paine observes, war will still be defined by relations between the human and its enemies. The enemies of the human will simply no longer be '**its**

species' (Paine 1995: 595). What that meant, in practice, was that the liberal way of rule had to decide what elements and what expressions of human life best served the promotion of the species. Those that did not were precisely those that most threatened it; those upon which it was called to wage war. Deciding on what elements and expression of the human both serve and threaten is the definitive operation by which liberalism constitutes its referent object of war and rule: that of the biohuman. Whatever resists the constitution of the biohuman is hostile and dangerous to it, **even if it arises within the species itself.** Indeed, as we shall show, since life is now widely defined in terms of continuous emergence and becoming, it is a continuous becoming-dangerous to itself. The locus of threat and danger under the liberal way of rule and war progressively moves into the very morphogenic composition and re-composability of living systems and of living material. **The greatest source of threat to life becomes life.** It is very important to emphasize that this discourse of danger is precisely not that which commonly arises in the political anthropologies of human cupidity of early modern political theory going back classically, for example, to Hobbes and Locke, which was nonetheless still formulated in a context still circumscribed by the infinity of divine providence, however obscure this was becoming, and however much this obscurity helped fuel the crisis of their times. The analytics of finitude, rather than the analytics of redemption, circumscribe late modern discourses of governance and danger now, instead. Biology, one might therefore also say, itself arose as a science of finitude; of the play of species life and death outwith the play of human life and redemption. The same might very well be said for modern 'political science.' Biology does not, of course, recognize cupidity. Cupidity arises in a different, anthro-political, order of things. These days, especially, biology recognizes only the dynamics of complex adaptive evolutionary emergence and change of living systems, whose very laws of formation it increasingly understands in informational terms. These, additionally, empower it to re-compose living material according to design rather than nature in order to rectify the infelicities of nature, or, indeed, pre-empt its expression by positively creating new nature, rather than merely negating existing nature. Pre-emption here is not negative, it is positive. It is not precaution, so much as creative production. The discourse of danger being elaborated through the liberal way of rule and war, in the age of life as information, is therefore related to the possibility that complex adaptive emergence and change can go acerbic. The possibility of catastrophe lies, immanently, in the very dynamics of the life process itself. Neither is this a discourse of danger which revolves around traditional othering practices alone, however pervasive and persistent these politically toxic devises remain. This is a discourse of danger which hyperbolicizes fear in relation to the radically contingent outcomes upon which the very liveliness of life itself is now said to depend. Biohumanity—itself an expression of the attempt to give concrete form to finitude politically—is therefore both threat and promise. The corollary is therefore also clear: enemies of the species **must be cast out from the species** as such. 'Just war' in the cause of humanity here—a constant liberal trope (Douzinas 2003)—takes a novel turn when the humanity at issue is biohumanity. For just war has constantly to be waged for biohumanity against the continuous becoming-dangerous of life itself; and less in the form of the Machiavellian or Hobbesian Homo lupus than in the form of continuously emergent being, something which also prompts the thought that Foucault's analytics of finitude might itself have to be revised to take account of the infinity of becoming which now also characterizes the contemporary ontology of the life sciences. Since the object is to preserve and promote the biohuman, **any such war to end war becomes war without end;** thus turning Walzer's arguments concerning the justification of liberal war inside out (Walzer 2000: 329-335). The project of removing war from the life of the species becomes a lethal and, in principle, continuous and **unending process**. In a way, as a matter of its biopolitical logic, there is little particularly startling about this claim. Immanent in the biopoliticization of liberal rule, **it is only a matter of where, when and how it finds expression.** As the very composition and dynamics of species life become the locus of the threat to species life, so the properties of species life offer themselves in the form of a new king of promise: war may be removed from the species should those properties be attended to differently. Consider, for example, Kant's 'Idea for a Universal History': if he lives among others of his own species, man is an animal who needs a master… he requires a master to break his self-will and force him to obey a universally valid will under which everyone can be free. But where is he to find such a master? Nowhere else but in the human species. (Kant 2005; emphasis added) 'Nowhere else but in the human species.' Here Kant, too, discloses the circumscription of his reflections by the analytics of finitude. Put simply, liberalism's strategic calculus of necessary killing has, then, to be furnished by the laws and dynamics, the exigencies and contingencies, derived from the properties of the biohuman itself. **Making life live becomes the criterion against which the liberal way of rule and war must seek to say how much killing is enough**. In a massive, quite literally **terrifying, paradox**, however, since the biohuman **is the threat**, it cannot, itself, adjudicate how much self-immolation would be

enough to secure itself against itself without destroying itself. However much the terror of the liberal way of rule and war currently revolves around the 'figure' of Al-Qaeda, the very dispositive of terror which increasingly circumscribes the life of the biohuman at the beginning of the twenty-first century is the fear induced by its very own account of life. No specific manner or form is proper, then, to the biohuman other than this: its being continuously at work instrumentally reassigning itself in order, it is said, to survive, but in fact to secure itself against its own vital processes. Within the compass of this biopolitical imaginary of species existence, the biohuman becomes the living being to whom all manner of self-securing work must be assigned. The task thus posed through the liberal way of rule and war by its referent object of rule and war—the biohuman—is no longer that, classically, of assigning the human its proper nature with a view to respecting it. The proper nature of the biohuman has become the infinite re-assignability of the very pluripotency itself. This is the strategic goal of the liberal way of war because it has become the strategic goal of the liberal way of rule. From the analytics of finitude, politically, has thus arisen an infinity of securitization and fear.

Biopower eliminates all value to life

Agamben 98 (Giorgio, U of Verona, Homo Sacer: Sovereign Power and Bare Life, p.139-40) LA

It is not our intention here to take a position on the difficult ethical problem of euthanasia, which still today, in certain countries, occupies a substantial position in medical debates and provokes disagreement. Nor are we concerned with the radicaliry with which Binding declares himself in favor of the general admissibility of euthanasia. More interesting for our inquiry is the fact that the sovereignty of the living man over his own life has its immediate counterpart in the determination of a threshold beyond which life ceases to have any juridical value and can, therefore, be killed without the commission of a homicide. The new juridical category of "life devoid of value" (or "life unworthy of being lived") corresponds exactly—even if in an apparently different direction—to the bare life of homo sacer and can easily be extended beyond the limits imagined by Binding. It is as if every valorization and every "politicization" of life (which, after all, is implicit in the sovereignty of the individual over his own existence) necessarily implies a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only "sacred life," and can as such be eliminated without punishment. Every society sets this limit; every society—even the most modern—decides who its "sacred men" will be. It is even possible that this limit, on which the politicization and the exceprio of natural life in the juridical order of the state depends, has done nothing but extend itself in the history of the West and has now— in the new biopolitical horizon of states with national sovereignty—moved inside every human life and every citizen. Bare life is no longer confined to a particular place or a definite category. It now dwells in the biological body of every living being.

The dark underside of biopower is the mobilization of whole populations for the purpose of wholesale slaughter

Foucault 72 (Michael, Professor of the History of Systems of Thought College De France, The Foucault Reader, pg. 258) LD

Since the classical age, **the West has undergone a very profound transformation of these mechanisms of power**. "Deduction" has tended to be no longer the major form of power but merely one element among others, **working to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them**. There has been a parallel ·shift in the right of death, or at least a tendency to align itself with the exigencies of a life-administering power and to define itself accordingly. This death that was based on the right of the sovereign is now manifested as simply the reverse of the right , of the social body to ensure, maintain, or develop its life . **Yet wars were never as bloody as they have been since the**

nineteenth century, and all things being equal, never before did regimes visit such holocausts on their own populations . But **this formidable power of death-and this is perhaps what accounts for part of its force and the cynicism with which it has greatly expanded its limits-now presents itself a s the counterpart of a power that exerts a positive influence on life, that endeavors to administer, optimize, and multiply it, subjecting to precise controls and comprehensive regulations . Wars are no longer waged in the name of a sovereign who must be de fended; they are waged on behalf of the existence of everyone**; **entire populations are mobilized for the purpose of wholesale slaughter** in the name of life necessity: **massacres have become vital** . **It is as managers of life and survival, of bodies and the race, that so many regimes have been able to wage so many wars, causing so many men to be killed**. And through a turn that closes the circle, as the technology of wars has caused them to tend increasingly toward all-out destruction, the decision that initiates them and the one that terminates the□ are in fact increasingly informed by the naked question of survival. **The atomic situation is now at the end point of this process: the power to expose a whole population to death is the underside of the power to guarantee an individual's continued existence**. The principle underlying the tactics of battle-that one has to be capable of killing in order to go on living-has become the principle that defines the strategy of states. But the existence in question is no longer the juridical existence of sovereignty; at stake is the biological existence of a population. **If genocide is indeed the dream of modern powers, this is not because of a recent return of the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population.**

Exclusion

Policed bodies are forced into exclusion, and made socially dead- this mind set extends to justify ethnic cleansing and bio-political extinction.

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Between the Reservation and the Camp: Neoliberal Governmentalities of Exceptional Urban Space

29 May 2012. Simon Parker

As Foucault reminds us, policed bodies have always been the subject of physical separation and removal from the healthy body politic—a process that gave rise to the physical, permanent institution of the prison, the clinic and the asylum (Foucault 1977, 2001). In these heterotopic spaces, the suspension of civic rights gave rise to a disciplinary order in which the state enjoyed qualitative and quantitative control over the abject which had as its end the intensification and extension of 'bare life' (Agamben, 1998) and where law and moral order, these most essential and fundamental aspects of the civic community, are indefinitely suspended (Parker 2010). The camp therefore represents a controlled space of the 'social dead'—the deferment of whose physical death is merely a question of expediency or technical-administrative exigency (Goldhagen 1996). But its manifestation and recombination extends beyond annihilationist regimes of biopolitical extinction and 'ethnic cleansing' into the banal spaces of the everyday urban world where the twin space of controlled exceptionality and exclusion--'the reservation'--also features strongly within more familiar landscapes of abjection.

Omnicide

Otherization of queer populations leads to mass acts of violence, psychological violence, and suffering – results in omnicide.

Sedgwick 8 [Eve, Professor of English at Duke University, Epistemology of the Closet, second revised edition, California at Berkeley Press, p. 127-130]//JIH

From at least the biblical story of Sodom and Gomorrah, scenarios of same-sex desire would seem to have had a privileged, though by no means an exclusive, relation in Western culture to scenarios of both genocide and omnicide. That sodomy, the name by which homosexual acts are known even today to the law of half of the United States and to the Supreme Court of all of them, should already be inscribed with the name of a site of mass extermination is the appropriate trace of a double history. In the first place there is a history of the mortal suppression, legal or subjudicial, of gay acts and gay people, through burning, hounding, physical and chemical castration, concentration camps, bashing—the array of sanctioned fatalities that Louis Crompton records under the name of gay genocide, and whose supposed eugenic motive becomes only the more colorable with the emergence of a distinct, naturalized minority identity in the nineteenth century. In the second place, though, there is the inveterate topos of associating gay acts or persons with fatalities vastly broader than their own extent: if it is ambiguous whether every denizen of the obliterated Sodom was a sodomite, clearly not every Roman of the late Empire can have been so, despite Gibbon's connecting the eclipse of the whole people to the habits of a few. Following both Gibbon and the Bible, moreover, with an impetus borrowed from Darwin, one of the few areas of agreement among modern Marxist, Nazi, and liberal capitalist ideologies is that there is a peculiarly close, though never precisely defined, affinity between same-sex desire and some historical condition of moribundity, called "decadence," to which not individuals or minorities but whole civilizations are subject. Bloodletting on a scale more massive by orders of magnitude than any gay minority presence in the culture is the "cure," if cure there be, to the mortal illness of decadence. If a fantasy trajectory, utopian in its own terms, toward gay genocide has been endemic in Western culture from its origins, then, it may also have been true that the trajectory toward gay genocide was never clearly distinguishable from a broader, apocalyptic trajectory toward something approaching omnicide. The deadlock of the past century between minoritizing and universalizing understandings of homo/heterosexual definition can only have deepened this fatal bond in the heterosexist imaginaire. In our culture as in Billy Budd, the phobic narrative trajectory toward imagining a time after the homosexual is finally inseparable from that toward imagining a time after the human; in the wake of the homosexual, the wake incessantly produced since first there were homosexuals, every human relation is pulled into its shining representational furrow. Fragments of visions of a time after the homosexual are, of course, currently in dizzying circulation in our culture. One of the many dangerous ways that AIDS discourse seems to ratify and amplify preinscribed homophobic mythologies is in its pseudo-evolutionary presentation of male homosexuality as a stage doomed to extinction (read, a phase the species is going through) on the enormous scale of whole populations. 26 The lineaments of openly genocidal malice behind this fantasy appear only occasionally in the respectable media, though they can be glimpsed even there behind the poker-face mask of our national experiment in laissez-faire medicine. A better, if still deodorized, whiff of that malice comes from the famous pronouncement of Pat Robertson: "AIDS is God's way of weeding his garden." The saccharine luster this dictum gives to its vision of devastation, and the ruthless prurience with which it misattributes its own agency, cover a more fundamental contradiction: that, to rationalize complacent glee at a spectacle of what is imagined as genocide, a proto-Darwinian process of natural selection is being invoked—in the context of a Christian fundamentalism that is not only antievolutionist but recklessly oriented toward universal apocalypse. A similar phenomenon, also too terrible to be noted as a mere irony, is how evenly our culture's phobia about HIV-positive blood is kept pace with by its rage for keeping that dangerous blood in broad, continuous circulation. This is evidenced in projects for universal testing, and in the needle-sharing implicit in William Buckley's now ineradicable fantasy of tattooing HIV-positive persons. But most immediately and pervasively it is evidenced in the literal bloodbaths that seem to make the point of the AIDS-related resurgence in violent bashings of gays--which, unlike the gun violence otherwise ubiquitous in this culture, are characteristically done with two-by-fours, baseball bats, and fists, in the most literal-minded conceivable form of body-fluid contact. It might be worth making explicit that the use of evolutionary thinking in the current wave of utopian/genocidal fantasy is, whatever else it may be, crazy. Unless one believes, first of all, that same-sex object-choice across history and across cultures is one thing with one cause, and, second, that its one cause is direct transmission through a nonrecessive genetic path--which would be, to put it gently, counter-intuitive--there is no warrant for

imagining that gay populations, even of men, in post-AIDS generations will be in the slightest degree diminished. Exactly to the degree that AIDS is a gay disease, it's a tragedy confined to our generation; the long-term demographic depredations of the disease will fall, to the contrary, on groups, many themselves direly endangered, that are reproduced by direct heterosexual transmission. Unlike genocide directed against Jews, Native Americans, Africans, or other groups, then, gay genocide, the once-and-for-all eradication of gay populations, however potent and sustained as a project or fantasy of modern Western culture, is not possible short of the eradication of the whole human species. The impulse of the species toward its own eradication must not either, however, be underestimated. Neither must the profundity with which that omnicidal impulse is entangled with the modern problematic of the homosexual: the double bind of definition between the homosexual, say, as a distinct risk group, and the homosexual as a potential of representation within the universal. 27 As gay community and the solidarity and visibility of gays as a minority population are being consolidated and tempered in the forge of this specularized terror and suffering, how can it fail to be all the more necessary that the avenues of recognition, desire, and thought between minority potentials and universalizing ones be opened and opened and opened?

Overkill

Queer bodies are forced into a zone of perpetual death as soon as their queerness is discovered – this serves to justify their eradication through violent and psychological means.

Stanley 11 [Eric, Prof. President's Postdoctoral fellow in the departments of Communication and Critical Gender Studies at the University of California, San Diego, "Near Life, Queer Death: Overkill and Ontological Capture]

The legal theory that is offered to nullify the practice of overkill often functions under the name of the trans- or gay-panic defense. Both of these defense strategies argue that the murderer became so enraged after the "discovery" of either genitalia or someone's sexuality they were forced to protect themselves from the threat of queerness. Estanislao Martinez of Fresno, California, used the trans-panic defense and received a four-year prison sentence after admittedly stabbing J. Robles, a Latina transwoman, at least twenty times with a pair of scissors. **Importantly, this defense is often used**, as in the cases of Robles and Paige, **after the murderer has engaged in some kind of sex with the victim**. The logic of the trans-panic defense as an explanation for overkill, in its gory semiotics, offers us a way of understanding queers as the nothing of Mbembe's query. Overkill names the technologies necessary to do away with that which is already gone. Queers then are the specters of life whose threat is so unimaginable that one is "forced," not simply to murder, but to push them backward out of time, out of History, and into that which comes before. 27 In thinking the overkill of Paige and Brazell, I return to Mbembe's query, "But what does it mean to do violence to what is nothing?"28 This question in its elegant brutality repeats with each case I offer. By resituating this question in the positive, the "something" that is more often than not translated as the human is made to appear. Of interest here, the category of the human assumes generality, yet can only be activated through the specificity of historical and politically located intersection. To this end, the human, the "something" of this query, within the context of the liberal democracy, names rights-bearing subjects, or those who can stand as subjects before the law. The human, then, makes the nothing not only possible but necessary. Following this logic, the work of death, of the death that is already nothing, not quite human, binds the categorical (mis)recognition of humanity. The human, then, resides in the space of life and under the domain of rights, whereas the queer inhabits the place of compromised personhood and the zone of death. As perpetual and axiomatic threat to the human, the queer is the negated double of the subject of liberal democracy. Understanding the nothing as the unavoidable shadow of the human serves to counter the arguments that suggest overkill and antiqueer violence at large are a pathological break and that the severe nature of these killings signals something extreme. In

contrast, overkill is precisely not outside of, but is that which constitutes liberal democracy **as such.** Overkill then is the proper expression to the riddle of the queer nothingness. Put another way, the spectacular material- semiotics of overkill should not be read as (only) individual pathology; these vicious acts must indict the very social worlds of which they are ambassadors. **Overkill is what it means, what it must mean, to do violence to what is nothing**.

Queerness is placed in a space of living death – this results in social, political, civil, and physical punishment, specifically in the forms of imprisonment and surveillance

Lamble 14. Sarah Lamble, "Queer Investments in Punishment" in *Queer Necropolitics*, pg. 161

Each of these examples involves the **direct** or **indirect mobilization** of **discursive**, **financial** or **labour-related resources** towards **state practices of imprisonment** and **punishment**. Given the ongoing **colonial legacies of the carceral state**, the **disproportionate number** of **people of colour in prison** and racial character of expanding prison populations, these **queer investments** in **punishment** are, by their very nature, investments in **state racism** and **violence**. In this way, such **investments** are **symptomatic** of what Jasbir Puar, drawing from Achilles Mbembe's work, describes as **queer necropolitics**. **Necropolitics** can be understood as **technologies of power** that (**re)produce** social relations of **living** and **dying**, such that some populations are ushered into the **worlds of life and vitality**, while others are **funnelled** into what Mbembe calls **death worlds**, worlds of **slow living death** and **dead living** (Mbembe 2003). Death here includes **literal physical death**, but also **social**, **political** and **civil death** - the **social relations of death**, **decay** and **dying** that **emerge** from **prolonged exposure** to **violence**, **neglect**, **deprivation** and **suffering**. Offering a corrective to Michel Foucault's work on biopolitics,18 Mbembe puts forward 'the notion of **necropolitics and necropower** to account for the various ways in which, in our contemporary world, weapons are deployed in the interest of the **maximum destruction of person** and the **creation of death-worlds**, **new** and **unique** forms of **social existence** in which **vast populations** are **subjected** to conditions of life conferring upon them **the status of living dead'** (2003: 40). In other words, while **biopolitical powers** work to **manage**, **order** and **foster life** for citizens worthy of **protection**, such powers work in tandem with **necropolitical powers** that produce **death** for those destined to **abandonment**, **violence** and **neglect**. Taking up this concept within contemporary queer politics, Puar thus draws attention to the ways in which the **folding into life** of **some queers** is predicated on the **folding out of life** of **others** (Puar 2007: 36). While Mbembe's analysis focuses primarily on situations of military occupa- tion, colonialism and war, the modern prison arguably constitutes **another key instantiation of necropower**. For the prison is also a site that **produces the conditions of living death**; it is a place where bodies are **subject** to **regimes of slow death** and **dying**. Not only are **deprivation**, **abuse** and **neglect** regular features of **incarceration itself**, but the **monotonous regime of caged life** - the **experience of 'doing time'** - involves the **slow wearing away** of **human vitality** and the **reduction of human experience** to a **bleak existence** (Scratonand McQulloch 2009; Taylor 2000). The prison serves as a site of mass warehousing of bodies in conditions that often resemble the death worlds that Mbembe describes. While the modern prison was designed as an institution that aimed in part to train prisoners as productive workers, obedient citizens and docile subjects a strategy that used disciplinary power in the broader service of biopolitical power (Foucault 1978/ 1995) - contemporary prisons are little more than mass warehouses for poor, racialized and otherwise disenfranchized populations (Gilmore 2007). Particularly as prison populations continue to grow to unprecedented levels, many states are abandoning even the

pretence of rehabilitation, by dramatically reducing the hours that prisoners spend out of their cells, slashing funding for educational and other programmes and leaving prisoners to increasingly spend their days in monotonous isolation.

These conditions, coupled with **overcrowding**, **lack of adequate medical care** and **disconnection from family** and **friends**, mean that prisoners have increased risks of self-harm, psychological abuse, trauma and suicide, both during imprisonment and post-release (Collins '2008; Taylor 2000). The stigma of a prison record also means that employment and housing are difficult to secure post-release, such that the consequences of imprisonment extend well beyond the duration of one's sentence. In this way, the prison thus plays a significant role in altering the 'distribution of life chances' or what Ruth Wilson Gilmore describes as 'group differentiated vulnerability to premature death' (2007: 247).

To argue that the prison is an institution of necropolitical power and that prisoners are resigned to slow death, **is not to deny** the **resilience and agency** of those who **survive** prison on a daily basis. It is instead to underscore how the **conditions of captivity govern life** in ways that are akin to **slow and prolonged death**, thus **severely restricting** the **possibilities** for **resistance** and **survival**. Ironically, and perhaps most devastatingly, it is through the act of **potentially reclaiming death** that prisoners **exercise a desperate form of agency**. As Mbembe argues, in the **realms of the living dead**, death offers **a brutal moment of power**. 'For death is precisely that **from and over which** I have power. But it is also that **space** where **freedom** and **negation operate'** (Mbembe 2003: 39). Hence it should be no surprise that the **hunger strike**, the **exercise of threat of the living** to **authorize their own death**, persists as a last **resort of collective power** in prison. As the recent prisoner hunger strikes in California, Italy, England, Palestine and elsewhere have demonstrated alongside other less visible forms of collective organizing inside **there is persistent resilience** among **prisoners** to **resist** and **survive** the **brutal conditions** of their **captivity**.

Arguably, what makes the prison an example of necropolitics and not just an instance of ruthless state brutality is that the imposition of death and suffering on some populations is **explicitly legitimized** and **authorized** in the name of **fostering** and **protecting the life** of **others**. In other words, the **enhancement and protection of life** for **some** is **predicated** on the **violent sequestering of others**. There are parallels here to what Nikolas Rose (2000) describes as circuits of security and circuits of insecurity - contemporary forms of governance that work by moving some subjects into modes of security and others into abandonment - as well as to what Judith Butler (2004) describes as the politics of 'precarious life' or what Elizabeth Povinelli (2011) refers to as 'economies of abandonment'. Necropolitics, however, draws **more explicit attention** to the **deathly logic** of these **modes of governance**, **foregrounding** the **exercise of sovereign power** to **authorize** and **legitimate** the **politics** of **death** and **killing** in the name of **vitality** and **living**.

Members of the queer community are forced into a 'near life' marked by overkill – this space of nonexistence leads to brutal murders and other forms of exceptional violence.

Haritaworn et al. 14. Jin Haritaworn, professor of sociology at the University of York, Adi Kuntsman, professor of humanities, research, and social sciences at Manchester Metropolitan University, and Sylvia Posocco, professor of psychological studies at the University of London, Birbeck, Queer Necropolitics, Routledge, 2014, pg. 8

Our understanding of queer necropolitics is further in conversation with Eric Stanley's (2011) forerunning discussion. Stanley articulates the sense in which **death-making**, figured in relation to the **brutal murders of trans/queer people** in the United States and the **exceptional violence** inflicted on **murdered subjects after death**, holds important **ontological consequences**. The piece documents how this protracted onslaught systematically fails to be registered in public discourse and public consciousness. According to Stanley, the legal category of **'overkill'** may account for the **vicious assaults** that these **working-class** and largely **people of colour gender non-conforming subjects** are **subjected to** in death, and for how their remains become **the object of further affront**. The 'overkill' of these subjects is far from an anomaly or an exceptional occurrence; rather, it is **central** to the **reproduction** of US **liberal democracy**. As Stanley explains, 'overkill' occupies the same social and political terrain as LGBT identities, where the extreme vulnerability of some can be contrasted to the security of others. LGBT identities appear to be **securely tied to subjects of rights** to the extent that they become **fully invested** in claims that **anti-queer violence** is an **exceptional occurrence** to be dealt with **through the punitive state**. 'Overkill', by way of contrast, points to a **queer ontology** of **'near life'** - a **form of existence** that **echoes** the notions of **'the living dead'** we have discussed in relation to the work of Mbembe (2003) and Agamben (1998), and with reference to the 'social death' theorized by Patterson (1982). **Spaces of nonexistence** populated by **'near life'** and marked by **'overkill'** (Stanley 2011) are not external to, but rather **constitutive of**, the **state** and the **law** and form the **substratum** of contemporary liberal democracies. The chapters in this volume tease out and explore how relations of proximity and contiguity between life and death - as graduated and mutually imbricated domains - articulate in different contexts, and fully within, not outside or beyond, the political.

Violence – Generic

The normalization of a heteronormative cisgender subject leads to violence and ostracization of queer bodies.

Mary Nardini gang [criminal/anarchist queers from Milwaukee, Wisconsin "That's Just Queer," March 13, 2010, https://undercoverqueer.wordpress.com/tag/mary-nardini-gang/]//JIH

Queerness is both a place and position. It is a space that creates room for those our culture identifies as the alien, the immoral, the criminal, the deviant. It is an anti-society; it is an insurrectionary response. But it is also an alignment against totality, against the oppression of the overwhelming majority, against the crushing popular conception. It is a revolt against a culture of privilege that designates us as being unworthy of privilege, because we do not fit within the limits of "normalcy."

Normalcy is everything that society has groomed you to be. It is the future already predetermined for you, without your consent.It is defined and structured by capitalism, by civilization, by the violence of empire. It is maintained by practices of violence and intimidation. Normalcy is every slur and every threat you have ever experienced. It is the ostracization and condemnation of the Christian right. It is the assumption that you should desire the same things as every other American, that you should assimilate into mainstream American lifestyle. It is the reasoning that gay individuals should possess the same rights as others because "they're just like us." It is the assumption that until we are "just like everyone else," with children and a lifelong partner and minivans and steady jobs, that we do not deserve those rights. Normalcy is police brutality, it is repeated rape, it is the criminal convictions of four lesbians of color who defended themselves against the hate of a heterosexual white male. Normalcy is the practice of domination, the subjugation of everything that does not neatly fall under its totality.

Normalcy does violence to both our bodies and minds; it is emotional and cultural terrorism. Anyone who has experienced the anguish of not being able to fulfill the rigid expectations of

loved ones, the pain of being considered a lesser person and of less worth and importance, of being ignored and demonized simply because one is "other," understands that normalcy rejects bodies and minds that do not fit within the social code. Normalcy mutilates, poisons and erases us, in order to "help" and "allow" us to fit within the social norm, to ascribe to the ideals of whiteness, of prosperity, of "male" and "female," of monogamy and family-oriented life. And if we cannot achieve these ideals, we are taught to hate who we are, to blame and abuse our bodies and our inner selves.

Solvency

The creation of a realm of acceptance for bodies deemed deviant in the status quo can only occur if coalition politics are centered on connection and fluid uncertainty.

Weir 2008 [Allison, "Home and Identity: In memory of Iris Marion Young", Hypatia, volume 23, Number 3, Summer, pp. 4-21, Indiana University Press]//JIH

Yet we need also to move beyond the dichotomy of home/not home, of safety and risk, to imagine an alternative: I want to argue for an ideal of home as a site of the risk of connection, of sustaining relationship through conflict. Thus, rather than oscillating between the desire for a safe, secure, conflict-free home and the recognition that homes are in fact sites of violence and abuse, predicated on oppression and exclusion, we can recognize and affirm an ideal of home as a space of mutuality and conflict, of love and its risks and struggles, of caring and conflictual connections to others. In particular, our political homes?including our identity politics?might be seen as places where we engage in the risk of connection with each other, in the conflictual, messy, dangerous, and intimate work of engagement with each other?engagement in dialogue, in arguments, in struggles, in openness to vulnerability, to critique and self-critique, and to change, with a commitment to solidarity with each other that mediates our commitment to our shared struggles. Shifting to an ideal of home as the space where we risk connection might help us set clear limits on conflict and risk, so that these do not develop into violence. This might enable us to address the violence that is a response to terror and anger at those who threaten our comfort and safety, and the violence that is an assertion of right to dominate the other within thew alls of home. Ifw e are not looking for perfect safety, for absolute privacy, for a return to the womb, for the mother who is the angel of the house, perhaps we can learn not to accept violence and oppression as the price of that dream. Perhaps we can imagine and embrace a different dream of a better home.

Thus, rather than rejecting identity politics as a false home, and turning to strategic coalitions of disconnected individuals, we might embrace the possibility of identity politics (and coalition politics?) as homes?as sites of the connections and conflicts essential to solidarity. Surely, Bernice Reagon is right to point out that when we do feminist politics we should not be looking for safety. Coalition politics are necessarily risky and dangerous, and when we are doing thisw ork we can feel ourselves "threatened to the core" (1983, 343). For Reagon, this means that we should not confuse coalition with home: we must separate the two. But ifw e are able to shift to an ideal of home as a space where we are able to recognize and confront power relations?which surely exist in the safesto f homes?and ifw e are able to sustain relationship through these confrontations, and through the feelings of risk and danger they entail, then we might question the stark opposition between the safety of home and the danger of politics; between home as a place of happy unity and politics as a site of hostile collisions. We might imagine overlapping spheres of homes that are places where we risk connection. This does not mean that everywhere should be home. But shifting to this alternative ideal of home might help us risk connection in our political lives, and itm ight help us be more realistic about our expectations of

home. It might also help those who are privileged to welcome strangers into their homes. And this might help us move closer toward Reagon's ideal of an "old-age perspective" (1983, 348). "The only way you can take yourself seriously is if you can throw yourself into the next period beyond your little meager human-body-mouth-talking all the time-You must believe that believing in human beings in balance with the environment and the universe is a good thing" (352-53). With these words, Reagon holds out for us the dream of a better home, which we can create only by expanding ourselves to embrace connection. Surely, the only way we can get closer to this dream is by recognizing that our ideal of home must include conflict and struggle.

Plan Text Version – State Engagement Good

LGBT movements through the state can be successful and are in fact necessary to challenge societal heteronormativity

Chen 11 (Jian, Assistant Professor of Queer Studies in the English Department at Ohio State University, "Entangled Spheres: Review of Eric A. Stanley and Nat Smith, eds., Captive Genders: Trans Embodiment and the Prison Industrial Complex." Postmodern Culture, May 2011 Project muse, eas)

Captive Genders: Trans Embodiment and the Prison Industrial Complex contributes to the emergent surge of U.S. based transgender cultural critique over the first decades of the 21st century. In conversation with monographs by Susan Stryker, Kate Bornstein, J. Jack Halberstam, Judith Butler, David Valentine, Gayle Salaman, Dean Spade, Micha Cárdenas, Kale Bantigue Fajardo, and Mel Y. Chen, edited anthologies such as the Transgender Studies Reader (with a second volume upcoming), Transgender Migrations: The Bodies, Borders, and Politics of Transition, Gender Outlaws: The Next Generation, Trans/Love: Radical Sex, Love & Relationships Beyond the Gender Binary, and Trans Bodies, Trans Selves (forthcoming), and an expanding trans-media network including work by Yozmit, Ignacio Rivera, Kit Yan, Wu Tsang, Felix Endara, Shawna Virago, Sean Dorsey, and the Electronic Disturbance Theater, the collection of texts that is Captive Genders produces critical interventions assembled around embodied transgender, gender deviant, and queer experiences. These interlinked works share a marked shift towards transgender and gender non-conformant bodies as material interfaces with social regimes of gender and sexual control. But to interpret these pieces together as "emergent" is to already discipline their divergent workings and our interaction with them. These transgender and gender deviant interventions are increasing self-aware of the specificities of their mediums and their networked capabilities, whether they are print book, embodied performance, digital video, cell phone video, online installation, or electronic disturbance. And they depart from late 20th century literary, cultural, and social theory that has tended to emphasize the representational economy of the public sphere—mediated by the linguistic sign—as the chosen field of inquiry and subversion. Therefore, they do not call for a politics of critical interpretation that would "read" an emergent subjectivity along a single plane of social history as much as they work through entanglements with, and transmissions of, the multiple times, spaces, and bodies subjected to the experience of so-called shared society and historical progress. Taking my cue from these transgender and gender devious works, this review of Captive Genders assembles, connects, transmits, and intensifies, rather than performing a critical interpretation.

Social movements for decolonization and racial, gender, sexual, and economic justice in the U.S. in the 1960s and 1970s, in connection with social uprisings in Third World colonies and internationally, transformed the American public sphere to include communities segregated and subordinated by the apartheid U.S. state. People of color, civil rights, feminist, Third World, gay liberation, women of color/Third World feminist, leftist, and anti-war movements developed oppositional cultural practices as critical components of mobilizing against institutional white supremacy, colonialism, patriarchy, classism, homophobia, and heterosexism. These social mobilizations, therefore, did not only inject previously barred communities into the dominant public sphere, but also dismantled institutional public culture through the infusion of divergent, subordinated cultural imaginations. The flexibility and contingency attributed to the system of the sign by Euro-American post-Marxist intellectual and cultural movements after World War II, including postmodernism and poststructuralism, are indebted to the de-structuring of the representational economy of the public sphere by U.S. and Third World anti-colonial and social justice movements, as much as anti-fascist, anti-capitalist critical lineages in Europe and "new" postindustrial and neoliberal conditions. By the 1980s, the political and cultural transformations activated by 1960s/70s liberation movements began to be translated into niche political blocs, niche markets, and niche cultures. As highlighted by several pieces in Captive Genders, this moment of incorporation and backlash coincides with the moment when the penal system under the apartheid U.S. state expands into a booming prison industrial complex, at the edges of the "post"-apartheid American public sphere. The managed inclusion of

previously excluded communities and cultural imaginations into the apparatuses of the U.S. state, including state sponsored cultural and economic industries, has had the effect of formalizing cultural and political activism into semi-technical skills and knowledge (including literary and cultural production and interpretation, 501(c)(3) community organizing, and legal and social advocacy) and severing cultural and political work from embodied communities. Also, regulated inclusion by the U.S. state has distanced marginally included, more resourced LGBT (lesbian, gay, bisexual, transgender) people, immigrants, people of color, and women from less resourced and poorer segments of these communities, whose direct experience of the state's administrative and penal systems is often not mediated by measured participation in the public sphere. The writings collected in Eric A. Stanley and Nat Smith's Captive Genders provide multi-vocal accounts of those segments of communities that have been forcibly denied access to the post-apartheid American public sphere. People of color, economically impoverished people, and people with scarce or no access to quality education, health care, and social services make up the vast majority of the nearly 2.3 million people currently incarcerated in U.S. state and federal prisons and local jails, according to the most recent records released by the U.S. Bureau of Justice Statistics in 2010. These numbers do not include those incarcerated and "detained" in U.S. territories, military facilities, U.S. Immigration and Customs Enforcement (ICE) facilities, jails in Native American lands, and juvenile facilities.1 The mass number of people imprisoned and detained in U.S. prisons, jails, and facilities is bound to increase with the Obama administration's implementation of the 2012 National Defense Authorization Act. Presently, African American people comprise 12.6 % of the national population, compared to 38% of the U.S. federal or state prison population. White people comprise 72.4% of the national population, compared to 32% of the prison population. Latino/a people comprise 16.3% of the national population, compared to 22% of the prison population. U.S. Bureau of Justice Statistics 2010 prisoner reports do not count Native Americans, Pacific Islanders, Asians, and people identifying as two or more races in the prison population separately or explicitly. By deduction, these people together make up 7.3% of the prison population, while together comprising 8.8% of the national population.2 Although females comprise 7% of the federal and state prisoner population, compared to the 93% male prison population, women make up one of the fastest growing populations in prisons.3 People in prison are predominantly from low-income backgrounds, lacking in educational and economic opportunities. Most are unemployed or under-employed prior to incarceration, do not have high school diplomas, read English below a sixth grade level, and have a history of drug addiction and/or mental illness.4

LGBT people can find a voice in political activism and that component of movements is necessary to solve

Konnoth 9 (Craig, J.D. Yale Law School, "Created in Its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s-1970s," http://www.yalelawjournal.org/pdf/832_iqr36m8v.pdf, Yale Law Journal, December 5, 2009, eas)

Serena Mayeri has pointed out that as the women's movement progressed, it became clear that women's interests were implicated in contexts untouched by the civil rights movement. Furthermore, as the Court began to limit the remedies available for race-based discrimination, women's rights activists began to decrease their dependence on the race analogy.160 Accordingly, women's rights activists did not always rely on direct, rhetorical comparisons of sex discrimination to racial discrimination in court. Rather, in the foundational sex discrimination case of Reed v. Reed, 161 the plaintiffs, represented by Ruth Bader Ginsburg, described minority status using "abstract" factors such as trait-immutability, political powerlessness, and histories of discrimination.162 Formally, these characteristics were independent of the race analogy. In actual fact, however, they were firmly based in a comparison with race, since their significance lay in their being attributed to African-Americans. Soon, however, they gained formal significance in Supreme Court doctrine on their own terms. Groups (including blacks) were not legally recognized minorities because of their resemblance to another group; technically, they were minorities because they possessed the relevant characteristics.163 This would lay the groundwork for gay activists' reliance on these categories rather than directly on the analogy. While women's rights activists proffered formal criteria of suspectness to the Court in a bid to extend the logic of antidiscrimination to areas untouched by the racial justice movement (but before the Court had accepted this argument), those considering gay equality suggested similar criteria in an academic context and stopped focusing on the race analogy. A Yale Law Journal note164 and a Journal of Family Law comment165 on gay marriage, for example, advocated that the Court use a formal characteristics approach. Like women's rights advocates, the authors were unsure how the Court would approach an area of litigation untouched by the racial justice movement. As of 1973, as the articles note, the Court did not always apply the reasoning of the race cases to other areas.166 Furthermore, family rights were not a typical locus for racial justice litigation.

Thus, while the articles suggested that it would be desirable for the Supreme Court to apply strict scrutiny to antigay discrimination, they did not rely on the direct rhetorical comparison between blacks and gays that Kameny used. Instead, they engaged in a doctrinal construction of what constituted a suspect class,167

based on the familiar notions of immutability, control over classification, history of discrimination, and lack of political power. Even if the locus of discrimination involved (family rights) was not rhetorically comparable to the areas in which African-American litigants generally filed suit, groups possessing the formal characteristics deserved protection. Instead of relying on the similarity of contexts and loci of discrimination described above,168 or a point-by-point comparison to a particular group, the authors suggested that the comparison be mediated through abstract legal categories. Later in 1973, the Court formally endorsed this approach.169 Since then, other academic writers have similarly focused on the formal criteria of suspectness, ignoring or deemphasizing the race analogy.170 This emphasis on abstract criteria rather than analogies aided gay litigants in the bid for an independent identity, without reliance on the race analogy.

These developments were significantly aided by social changes. The uprising at the Stonewall Inn consolidated the gay activism that Kameny had encouraged and deepened its sense of community; a new generation of activists came to the fore. As gays became more secure in their group status and their legal and political activism, the use of the race analogy declined in litigation— not a single brief related to gay issues filed with the Supreme Court in the early 1970s referred to the analogy.171 While it had been politic for gay activists to develop a narrative of an independent minority status distinct from the mainstream, they soon understood this status on its own terms without continued reliance on the race analogy.

Thus, in briefs filed to the Supreme Court in the 1970s, mini-histories of the discrimination that homosexuals as a group had experienced since time immemorial became regular. In ACLU litigation, references to the ban on sodomy in Justinian's Code to establish this history, for example, became almost perfunctory.172 Furthermore, activists articulated their relationship with the heterosexual majority independently, without looking to that between blacks and whites. In Baker v. Nelson, petitioners advanced "hypotheses" for earlier forms of discrimination by the majority due to their "fear and ignorance," not of minorities in general, but of "all sexual matters."173 Simultaneously, they criticized this majority outlook from the point of view of "psychiatr[y] and sociolog[y]," which were bringing about a change in the majority's "attitude."174 Thus, the appellants implied, since the ignorance of the majority regarding sexuality and homosexuals had decreased, gays deserved marriage rights, whatever the situation of other minorities. Thus, gays acknowledged that the causes of homophobia were different from and independent of the origins of racism and that the status of gays as a minority group was therefore not contingent on that of blacks.

Radical movements end up devolving to legal reform—it's the only way to solve

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

The LGBT movement is a particularly rich setting for examining the factors that foster intramovement consensus around legal issues as shared, first-order priorities. This movement comprises diverse, even oppositional activist communities. Although large, national civil rights organizations constitute the LGBT movement's mainstream, n4 a critical faction of grassroots and protest-based activists historically have taken a more confrontational approach. Radical protest groups that challenged the mainstream LGBT movement's focus on formal legal equality n5 diffused throughout the country in the early 1990s. Touting a radical, "queer" political identity, n6 these protest groups articulated a set of structural goals, such as combating the widespread homophobia propagated by media images and religious organizations and transforming heterosexual-dominated public spaces. n7 Yet despite queer groups' radical rhetoric, the protest actions they organized ultimately came to focus on many of the same formal legal priorities that they critiqued. n8 This Article aims to understand how these seemingly polarized factions within the LGBT movement have come to agree that [*1671] legal issues are important, action-worthy items - the priorities of a common LGBT movement agenda.

Marriage equality is a key example of an LGBT legal objective that queer protest groups have pursued, despite the issue's apparent dissonance with a radical critique of civil rights n9 and with calls for structural social transformation. n10 One early same-sex marriage demonstration illustrates how LGBT impact litigation, and the publicity it received, may have put this issue on the protest agenda. In 1990, an emerging national conversation about same-sex marriage began to intensify in the mainstream media. n11 News coverage gravitated toward same-sex marriage as activists prepared for marriage equality litigation in Hawaii n12 and Washington, D.C., n13 and LGBT litigators rallied n14 against the injustices created by unequal marriage [*1672] laws in other areas (e.g., insurance, employment, and child custody). n15 Protest groups seized on the public debate. San Francisco's chapter of Queer Nation, one of the major protest groups to emerge in cities across the United States in the late 1980s, staged its first "marry-in" at City Hall in September of 1990. n16 Protestors donning "signs, placards, and post-modern wedding drag" alighted on the steps of the government building en masse for a mock wedding ceremony. Though this demonstration was emblematic of the group's confrontational and irreverent tactical approach, n17 the marriage focus clearly contradicted many members' political values. n18 Queer Nation fliers advertising for the event acknowledged the problem, referring to marriage as "an institution which we all agree oppresses us." n19 Yet members were strongly encouraged to attend the protest nonetheless. n20

What compelled Queer Nation to demand the right to same-sex marriage, especially given the issue's divisive effect on Queer Nation's membership and its clash with the group's radical politics? I argue that impact litigation and the extralegal benefits it generates can refocus the priorities of protest-based activists away from their original goals and toward formal legal objectives. n21 My data on the California LGBT [*1673] movement from 1985 to 2008 show that litigation received the most news coverage of any movement tactic and that the movement organizations that used litigation had a greater likelihood of survival than organizations using other tactics. These benefits favored litigation compared to protest and other tactics, making litigation the most visible and stable tactic of the LGBT movement. An analysis of archival data collected from movement organizations further shows that protest groups seized on the mainstream media coverage of the movement to set their own agendas; protest groups organized actions in response to recent headlines (rather than members' primary issues of concern) to attract publicity and participants to the protest's timely and newsworthy focus. Because the media primarily reported on litigated issues, protest organizations' reactivity to media coverage appears to have redirected those organizations away from their original priorities and toward legal goals. n22 The protest groups' agendas came to be centered not on their members' priorities, but rather the more limited set of issues that could be translated into formal legal claims. Profound implications follow, suggesting litigation may play a role in constraining radical politics.

LGBT movements centered around legal reforms find more success and garner more attention

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

The Article proceeds in three Parts. Part I provides background on the contemporary historical trajectory of the LGBT movement, showing how a civil rights agenda focused on assimilation and formal equality came to define the mainstream LGBT movement. Part II reviews legal, sociolegal, and sociological literatures about law and social movements to examine the theoretical frameworks that inform the study of litigation's effect on this movement. A critical read of this literature suggests that litigation generates resources like media coverage and organizational funding, making litigation a highly visible and stable movement tactic. Sociological scholarship also suggests that [*1674] social movement activists, even those who operate outside the courts, strategically select claims and issues that resonate with dominant forms of legal rhetoric (e.g., individual rights), elevating those claims and issues to the forefront of a movement's agenda. I argue that these literatures in combination predict that formal legal claims pursued through litigation will become central priorities on a social movement's agenda.

Part III draws on original data from archival, media, and organizational sources to investigate the processes through which the movement issues being litigated may become primary LGBT movement agenda items. First, a quantitative analysis of mainstream newspaper coverage of LGBT movement activity from 1985 to 2008 shows that litigation was the movement tactic that received the most frequent coverage in the mainstream news media. This suggests that litigation experienced more public visibility than other movement action. n23 Second, a quantitative analysis examining the survival rates of LGBT movement organizations finds that LGBT organizations that used litigation had significantly higher survival rates (i.e., they were less likely to disband) than those that did not litigate. This suggests that litigation and the issues pursued through litigation are stable and persistent features of LGBT politics. n24 Third, a qualitative comparison of strategy-formation processes in litigating, protest, and lobbying movement organizations examines the processes through which these different types of movement groups select which substantive issues to pursue. n25 I find that litigating organizations tended to be proactive in selecting their priorities; litigating groups looked ahead to define future goals and resisted deviation from those predetermined goals. n26 In contrast, protest organizations planned actions as a post hoc reaction to media events, and lobbying organizations based strategies around the opportunities for advocacy provided by legislators. n27 Consequently, litigating groups were more independent and autonomous than other organizations in how they constructed their substantive agendas. The same logic that made litigating organizations [*1675] proactive, however, may also play a role in orienting litigating groups' agendas toward the narrow set of possibilities for change that legal doctrine affords. Thus, although litigating groups were relatively more autonomous than protest groups (in that they chose forward-thinking priorities and stayed on task to achieve them), litigating groups nonetheless appear to have been constrained by the limited set of opportunities afforded by formal law. As I argue in this Article, the rub is that this constraint may have affected not only the litigating groups themselves but also the protest and lobbying groups, because groups that did not litigate nevertheless drew their agendas from news coverage shaped by movement litigation.

Part III then synthesizes my empirical findings and suggests that litigation both defined and constrained the LGBT movement's substantive agenda. n28 Litigation generated the most media coverage and greater organizational stability than other tactics, pushing the substantive issues being litigated to the forefront of the LGBT movement's agenda. Protestors seeking newsworthy and timely action concentrated primarily on recent events, typically those they found covered in the litigation-focused mainstream news media. Sometimes the events protestors targeted were not publicized in the media but rather in other places of public access, such as government buildings; yet these public-access events, such as criminal trials, litigation, or police commission meetings, also tended to be state sponsored and related to law. Thus, the reactive approach of the protest-based activists appears to have subtly shifted their groups' actions toward litigation-generated media events or state-generated public-access events; either way would have caused radical protest groups to become redirected toward legal priorities. Taken as a whole, my findings suggest a set of systemic processes through which radical protest groups' substantive goals may become displaced by the formal equality goals pursued through impact litigation.

Sociolegal literature shows pragmatic reforms are more successful- legal rhetoric attracts media attention, resources, and support outside the original movement

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

B. Legal Mobilization Scholarship on Litigation Attracting Movement Resources

The sociolegal literature on legal mobilization provides a second theory of law's agenda-setting capacity within movements. Sociolegal [*1688] scholarship on "legal mobilization" looks at the collective translation of movement grievances into an assertion of legal claims. n88 Focal questions for legal mobilization research are how and why movement actors engage with law, what meaning this has for the actors who do it, and what implications it has for the movement. n89

Empirical studies of legal mobilization emphasize how litigation and legal rhetoric attract three primary extralegal benefits to a movement's cause (beyond the material legal remedies that may result from movement litigation). n90 First, litigation attracts significant coverage in the mainstream news media. n91 In his study of the pay equity reform movement, Professor Michael McCann found that lawsuits generated a "tremendous amount of mainstream media attention." n92 News media coverage of litigation for pay equity reform was five to ten times greater than coverage of any other tactic, including legislation, electoral politics, and protest. n93 McCann also found that "the overwhelming majority of this coverage explicitly concerned law suits and legal issues." n94 These findings square with other social science accounts, which would suggest that law and litigation are newsworthy items. The corporate structure of news organizations compels competition for readership. Reporters, operating under pressure to effectively gather stories under deadline, keep an eye on sites of routine news production such as political and legal institutions. n95 This [*1689] likely biases coverage toward movement issues and tactics that occur in those legal institutions. n96 News outlets also try to attract readership with general interest stories or drama. n97 Social movement litigation, which pits opposing parties in a dramatic, high-stakes contest over politically potent issues, offers a dramatic story line as well as identifiable protagonists for personal interest profiles. n98 Protest, by contrast, is typically much less disruptive, n99 and it may be difficult to identify individual representatives.

Second, litigation generates financial resources for social movement organizations n100 that contribute to those organizations' long-term survival. n101 The publicity that lawsuits receive generates support for movement organizations and facilitates fund-raising. n102 Litigation also attracts funding by offering a clear marker for success in the resulting judicial opinion. Organizations that specialize in litigation emphasize [*1690] the outcomes of their legal cases - regardless of whether a case is a clear win or loss - to galvanize fund-raising and organizational support. n103 An outright win incentivizes support by allowing contributors to assess the impact of their efforts. Conversely, the "denial of the claim might serve to highlight more intensely the injustice suffered by the group," creating "a sense of urgency for the movement" that motivates support. n104 Furthermore, unlike protest or lobbying tactics, the outcomes of litigation are clearly traceable to the litigating organizations themselves, whose official involvement is on public record. Protest and lobbying, by contrast, typically involve collective efforts by multiple movement entities, making it difficult to identify the impact of any particular movement actors. The contributions that result from protest and lobbying tactics are thus more likely than those that

result from litigation to be diffused throughout the movement, rather than flowing to the individual organizations involved. n105 Accordingly, litigating organizations are more likely than protest or lobbying organizations to generate organization-sustaining resources.

A third extralegal outcome of litigation is its ability to galvanize movement activism outside the courts. n106 Litigation efforts can motivate activists by helping them name particular grievances, blame responsible parties, and lay claim to a specific remedy. n107 A public lawsuit can awaken a sense of collective rights entitlement n108 or provide activists rhetorical tools for claiming injustice, n109 sparking grassroots mobilization and protest. Litigation can also focus activists' [*1691] obscure sense of grievance into pointed political effort with concrete goals. n110 These factors enable litigation to sustain the momentum of collective action in the face of virulent opposition, n111 which may otherwise sap the energy of a mobilized group.

These resource-generating facets linking litigation to increased publicity, organizational support, and movement mobilization would appear to contradict the critical legal scholarship, which sees litigation as an agent of disempowerment and deradicalization. Legal mobilization scholarship, rather, rejects the critical notion of a "competitive, zero-sum relationship among political tactics," n112 focusing instead on the "synergistic" and "mutually influential" n113 relationship between protest and litigation. In this view, litigation is a "complementary and interactive" element of a social movement's diversified tactical approach. n114

Sociological scholarship shows that legal reforms' social environment enables an organized and strong focus on a couple issues

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

C.

"Discursive Opportunity" Theory and the Privileging of a Movement's Legal Tactics and Agenda

Sociological scholarship expands on the legal mobilization research by providing insight into the mechanisms through which litigation [*1692] generates extralegal resources and the consequences this has for a movement's agenda. This research examines how a movement's social environment may constrain or enable opportunities for activism and thereby shape patterns of movement mobilization and sustained organization. n115 While sociological research has focused mostly on how activists seize on shifting political or economic conditions as opportunities for action, n116 a growing body of research suggests that movements may also respond to relatively stable features of their cultural environments. This research suggests that social movements' rhetorical strategies are constrained by "discursive opportunity structures," or the deeply embedded ideas and belief systems that dominate the political culture in which a movement operates. n117 Movement activists strategically keep ""a finger on the pulse' of the wider arena," much like business strategists do for the competitive marketplace, to perceive opportunities for action in the cues conveyed by their "targets, opponents, allies, potential allies, and the public." n118 Activists who hope to convince these broad audiences of the value of their movement's cause must select rhetoric that "resonates" with culturally dominant values and systems of meaning. n119

Legal norms and ideas derived from constitutional texts, court decisions, and statutes constitute many of the ideas and values that dominate political discourse and become privileged social movement rhetoric. n120 Social movement actors "draw upon critical concepts emphasized in the legal domain" to produce "claims [that] are more [*1693] likely to resonate, and thus to persuade potential supporters." n121 In the United States, institutionalized legal discourse emphasizes rights claims that adhere to liberal legal principles of formal equality and limited state involvement in individual liberty. Empirical work suggests that these liberal assumptions that prevail in formal legal doctrine also prevail over alternative definitions and dominate movement discourse. n122 Professor Myra Marx Ferree has shown that U.S. feminists frame abortion as a matter of individual choice, a liberal construction that defines rights as formal protections for individuals. n123 Feminists devised their strategies to conform to judicial rhetoric, which itself "drew upon longer-standing political traditions of liberal individualism." n124

The sociological literature expands theoretical understandings of litigation as a source of extralegal movement resources (i.e., media and organizational support). Litigation is the sole social movement tactic that is inextricably linked to dominant legal principles; lawyers who seek to prevail in litigation (or who are at least ethically obligated to try) must "translate" n125 or "repackage" n126 their clients' and movements' grievances into a resonant legal claim. Movement litigation thereby engages dominant legal ideas and viewpoints by necessity. Furthermore, previous work has found that movement lawyers draw on dominant legal rhetoric during litigation - even when that rhetoric is widely viewed as problematic - to a greater extent than movement lobbyists advocating for legislative change. n127 This bolsters [*1694] the hypothesis from the legal mobilization literature that movement litigation will generate rhetoric that receives greater media coverage and organization-sustaining resources than other tactics. n128

The sociological literature on "discursive opportunity structures" further suggests that legal issues will become privileged priorities on a social movement's agenda. If dominant legal principles shape social movements' rhetorical strategies, as sociological research shows, dominant legal principles may also shape activists' strategic selection of agenda items. Discursive opportunity may compel activists to prioritize grievances that may be translated into formal legal terms. Critical legal scholarship, which shows that lawyers pursue priorities that can be adapted into legal claims, supports this hypothesis. n129 Theories of discursive opportunity suggest this may be a more widespread phenomenon, wherein both lawyers and grassroots activists alike selectively focus on issues that resonate with the ideological structures of formal law.

Empirics prove that litigation focused strategies are more effective- media and organization

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

III. Empirical Evidence for the Legalization of the LGBT Movement

This Part draws on three original empirical studies to investigate potential mechanisms that may privilege litigation over other LGBT movement tactics so that the issues being litigated come to dominate the LGBT movement's substantive agenda. Considering the LGBT movement over the past thirty years, these studies investigate several questions: Which movement tactics - litigation, lobbying, or protest - have been most visible in the mainstream news media? Are organizations that use litigation, lobbying, or protest most likely to survive and become permanent movement players? n134 How do the strategy-formation processes used by primarily litigation-, lobbying-, or protest-based movement organizations vary with differences in each organization's relative ability to drive its own agenda or the agendas of others in the movement? The overarching theory here is that if litigation produces media visibility and confers organizational [*1696] stability, the organizations that litigate will rise to prominence in the movement, and their legal goals will come to dominate the movement's overall substantive agenda. I call this process the "legalization" of a social movement's agenda.

My empirical studies show that litigation received more media coverage than any other LGBT movement tactic, suggesting that litigation had greater visibility than other tactics. In addition, LGBT movement organizations that used litigation were at a statistically lower risk of demise (i.e., they were more likely to survive, and for longer) than other types of LGBT movement organizations. This finding suggests that litigation will become a stable presence in social movements and that litigating organizations will become more prominent and influential movement actors. A qualitative analysis of a small subset of LGBT movement organizations explores these findings in greater detail and reveals the processes through which litigation influences a social movement's broader agenda. Whereas litigating LGBT movement groups proactively pursued preplanned organizational priorities, protest groups formed their agendas reactively, focusing on the issues covered by the mainstream media. This phenomenon appears to have diverted protest groups away from their original priorities and toward the issues that the media found newsworthy. Given earlier findings that litigation coverage dominated news headlines, I argue that the processes identified here may enable litigation to dominate protest activism as well. These findings suggest that the media visibility and stability of social movement litigation can legalize the agendas of movement actors outside the courtroom.

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We Meet

We meet – we are the USFG. The binary established by the negative to differentiate between who is and isn't the USFG is a biopolitical method of creating an included class and an excluded class and reduces us to bare-life

Agamben, Italian philosopher who teaches at the Università IUAV di Venezia, 2000 (Giorgio, Means Without Ends: Notes on Politics, p. 30.1)

Any interpretation of the political meaning of the term people ought to start from the peculiar fact that in modern European languages this term always indicates also the poor, the underprivileged, and the excluded. The same term names the constitutive political subject as well as the class that is excluded – de facto, if not de jure – from politics.

The Italian term popolo, the French term people, and the Spanish term pueblo – along with the corresponding adjectives popolare, populaire, popular – and the late-Latin terms populus and popularis from which they all derive, designate in common parlance and in the political lexicon alike the whole of the citizenry as a unitary body politic (as in "the Italian people" or in giudice popolare" [juryman] as well as those who belong to inferior class (as in homme du peuple [man of the people], rione polplare [working-class neighborhood], front populaire is more undifferentiated – does retain the meaning of ordinary people as opposed to the rich and the aristocracy. In the American Constitution one thus reads without any sort of distinction: "We, the people of the United States…"; but when Lincoln in the Gettysburg Address invokes a "government of the people, by the people, for the people," the repetition implicitly sets another people against the first. The extent to which such an ambiguity was essential even during the French Revolution (that is, at the very moment in which people's sovereignty was claimed as a principle) is witnessed by the decisive role played in it by a sense of compassion for the people intended as the excluded class. Hannah Arendt reminds us that:

The very definition of the word was born out of compassion, and the term became the equivalent for misfortune and unhappiness – le peule, les malbeureux m'applaudissent, as Robespierre was wont to say; le peuple toujours malbeureux, as even Sieyes, one of the least sentimental and most sober figures of the Revolution, would put it.

But this is already a double concept for Jean Boldin – albeit in a different sense – in the chapter of Les Six Livres de la Republique in which he defines Democracy or Etat Popular: while the menu peuple is that which is wise to exclude from political power, the peuple en corps is intended as entitled to sovereignty.

Such a widespread and constant semantic ambiguity cannot be accidental: it surely reflects an ambiguity inherent in the nature and function of the concept of people in Western politics. It is as if, in other words what we call people was not actually a unitary subject but rather a dialectical oscillation between two opposite poles: on the one hand, the People as a whole and as an integral body politic and, on the other hand, the people as a subset and as a fragmentary multiplicity of needy and excluded bodies; on the one hand, an inclusive concept that pretends to be without remainder while, on the other hand, an exclusive concept known to afford no hope; at one pole, the total state of the sovereign and integrated citizens and, at the other pole, the banishment – either court of miracles or camp – of the wretched, the oppressed, or the vanquished. There exists no single and compact referent for the term people anywhere: like many fundamental political concepts (which, in this respect, are similar to Abel and Frueds Urworte or to Dumont's hierarchal relations), people is a polar concept that indicates a double movement and a complex relationship between two extremes. This also means, however, that the constitution of the human species into a body politic comes into being through a fundamental split and that in the concept of people we can easily recognize the conceptual pair identified earlier as the defining category of the original political structure: naked life (people) and political existence (People), exclusion and inclusion, zoe and bios. The concept of people always already contains within itself the fundamental biopolitical fracture. It is what cannot in included in the whole of which it is a part as well what cannot belong to the whole in which it is always already include.

State Engagement Bad

Queerness

Government reform is bankrupt for the queer body – attempts to create progress through the law only replicate the law's own anti-queerness and mask the structural violence that it inherently creates.

Stanley 11 [Eric Stanley, President's Postdoctoral fellow in the departments of Communication and Critical Gender Studies at the University of California, San Diego, "Near Life, Queer Death: Overkill and Ontological Capture", Social Text 107, Vol. 29, No. 2, Summer 2011, https://queerhistory.files.wordpress.com/2011/06/near-life-queer-death-eric-stanley.pdf]//JIH

Where statistics fail, scars rise to tell other histories. From the phenomenological vault of growing up different, to the flickers of brutal details, one would not have to dig deep to uncover a corpse. Yet even with the horrific details, antiqueer violence is written as an outlaw practice, a random event, and an unexpected tragedy. Dominant culture's necessity to disappear the enormity of antiqueer violence seems unsurprising. Yet I suggest that mainstream LGBT discourse also works in de- politicized collusion with the erasure of a structural recognition. Through this privatization the enormity of antiqueer violence is vanished. 21 Thinking violence as individual acts versus epistemic force works to support the normative and normalizing structuring of public pain. In other words, privatizing antiqueer violence is one of the ways in which the national body and its trauma are heterosexualized, or in which the relegation of antiqueer violence, not unlike violence against women, racist violence, violence against animals (none of which are mutually exclusive), casts the national stage of violence and its ways of mourning as always human, masculinist, able- bodied, white, gender- conforming, and heterosexual. For national violence to have value it must be produced through the tangled exclusion of bodies whose death is valueless. To this end, as mainstream LGBT groups clamber for dominant power through attachment of a teleological narrative of progress, they too reproduce the argument that antiqueer violence is something out of the ordinary. The problem of privatizing violence is not, however, simply one of the re- narration of the incidents. The law, and specifically "rights" discourse, which argues to be the safeguard of liberal democracy, is one of the other motors that works to privatize this structural violence. Rights are inscribed, at least in the symbolic, with the power to protect citizens of the nation-state from the excesses of the government and against the trespass of criminality. In paying attention to the anterior magic of the law, it is not so much, or at least not only, that some are granted rights because they are human, but that the performative granting of rights is what constitutes the promise of humanity under which some bodies are held. This is important in thinking about the murder of Brazell, and about antiqueer violence at large, because it troubles the very foundations of the notion of protection and the formative violence of the law itself. According to the juridical logic of liberal democracy, if these rights are infringed upon, the law offers remedy in the name of justice. This necessary and assumptive formal equality before the law is the precursor for a system argued to be based on justice. In other words, for the law to lay claim to something called justice, formalized equality must be a precondition. The law then is a systematic and systematizing process of substitution where the singular and the general are shuttled and replaced to inform a matrix of fictive justice. Thus for the law to uphold the fantasy of justice and disguise its punitive aspirations, antiqueer violence, like all structural violence, must be narrated as an outlaw practice and unrepresentative of culture at large. This logic then must understand acts like the murder of Brazell in the singular. Through a mathematics of mimesis the law reproduces difference as similarity. By funneling the desperate situations and multiple possibilities into a calculable trespass kneading out the contours and the excess along the way, equality appears. To

acknowledge the inequality of "equality" before the law would undo the fantastical sutures that bind the U.S. legal system. In the hope of being clear, for the law to read antiqueer violence as a symptom of larger cultural forces, the punishment of the "guilty party" would only be a representation of justice. To this end, the law is made possible through the reproduction of both material and discursive formation of antiqueer, along with many other forms of violence. I too quickly rehearse this argument in the hope that it might foreclose the singular reliance on the law as the ground, and rights as the technology, of safety.

The state acts to regulate bodies and reinforce oppressive norms – we must challenge oppression through rejection.

The Mary Nardini Gang 8 ["Towards the Queerest Insurrection", 2008, http://www.weldd.org/resources/towards-queerest-insurrection]//JIH

Susan Stryker writes that the state acts to "regulate bodies, in ways both great and small, by enmeshing them within norms and expectations that determine what kinds of lives are deemed livable or useful and by shutting down the space of possibility and imaginative transformation where peoples' lives begin to exceed and escape the state's use for them." We must create space wherein it is possible for desire to flourish. This space, of course, requires conflict with this social order. To desire, in a world structured to confine desire, is a tension we live daily. We must understand this tension so that we can become powerful through it - we must understand it so that it can tear our confinement apart. This terrain, born in rupture, must challenge oppression in its entirety. This of course, means total negation of this world. We must become bodies in revolt. We need to delve into and indulge in power. We can learn the strength of our bodies in struggle for space for our desires. In desire we'll find the power to destroy not only what destroys us, but also those who aspire to turn us into a gay mimicry of that which destroys us. We must be in conflict with regimes of the normal. This means to be at war with everything. If we desire a world without restraint, we must tear this one to the ground. We must live beyond measure and love and desire in ways most devastating. We must come to understand the feeling of social war. We can learn to be a threat, we can become the queerest of insurrections.

The political will fail – moving within the state causes a sense of pacification where the left believes they have done good while still upholding the existing inequalities

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

I believe that homosexuals are revolutionary today in as much as we have overcome politics. The revolution for which we are fighting is among other things the negation of all male supremacist political rackets (based among other things on sublimated homosexuality), since it is the negation and overcoming of capital and its politics, which find their way into all groups of the left, sustaining them and making them counter-revolutionary.

My arsehole doesn't want to be political, it is not for sale to any racket of the left in exchange for a bit of putrid opportunist political 'protection'. While the arseholes of the 'comrades' in the groups will be revolutionary only when they have managed to enjoy them with others, and when they have stopped covering their behinds with the ideology of tolerance for the queers. As long as

they hide behind the shield of politics, the heterosexual 'comrades' will not know what is hidden within their own thighs.

As always, it is only rather belatedly, in the wake of the 'enlightened' bourgeoisie, that the left-wing groups have begun to play the game of capitalist tolerance. From declared hangmen, and a thousand times more repugnant than the hustlers and fascists, given all their (ideological) declarations of revolution, the activists of these groups have transformed themselves into 'open' debaters with homosexuals. They fantasise about becoming well-meaning and tolerant protectors of the 'deviant', in this way gratifying their own virile image, already far too much on the decline, at a time when even the ultra-left have suddenly to improvise 'feminist' representatives for 'their' women. Moreover, the fantasy of protectors helps them to exorcise the problem of the repression of their own homoerotic desire. Under it all, the activists of the left always hope to become good policemen. They do not know that real policemen get in there more than they do, and that when this happens, they make love precisely with us gays. When will there be a free homosexual outlet for the activists of the ultra-left ?

Legal strategies fail- lawyers don't stick to their clients' agenda and they can hijack movements

Leachman 14 (Gwendolyn, Sears Law Fellow, Williams Institute on Sexual Orientation and Gender Identity, UCLA School of Law; J.D.; "From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda," UC Davis Law Review, June 2014, lexis, eas)

A. Critical Legal Scholarship on Lawyer Domination Within Social Movements

Litigation is an important tool for social movements, which often "lack the power to seek their demands through the normal political processes or through direct action." n73 Yet several critiques have emerged regarding the role of lawyers in the struggles of these powerless groups and the potential for social movement lawyers to exert disproportionate influence over progressive movement agendas. This critical work suggests that conventional legal practice has a deradicalizing effect on social movements. Movement lawyers, the argument goes, are often preoccupied with legally achievable ends, which are often formalistic and less radical or transformative than the substantive goals articulated at the movement's grass roots. n74 Lawyers may substitute their own agendas for those of their clients n75 or overshadow their clients in their pursuit of rights-oriented legal change. n76 Lawyers may also co-opt their activist clients by forging [*1686] relationships with activists who require the lawyers' technical expertise (e.g., to seek nonprofit tax-exempt status or to defend arrested protestors from criminal charges). n77 Through these subtle means of persuasion and domination over the lawyer-client relationship, the critical legal literature has shown, lawyers can operate as a mechanism through which conservative legal goals replace radical movement objectives.

Derrick Bell's analysis of the NAACP is a prime example from this area of scholarship. n78 Bell shows how lawyers in the civil rights movement displaced their clients' goals of substantive social change in the lawyers' pursuit of viable legal claims. n79 NAACP lawyers and their clients were part of a social movement intent on ameliorating racial inequalities in public education. n80 However, after the NAACP won a major victory in Brown v. Board of Education, n81 NAACP attorneys and their clients became divided over the specific priorities they should pursue to achieve this goal. The attorneys were focused on achieving racial integration. n82 The African American parents and public-school children they represented, however, were more concerned

with increasing the quality of education within African American schools than with pursuing a racial balance. n83 Bell argues that the lawyers' strategy, which ultimately shaped civil rights law, n84 was less effective than their clients' proposals for furthering the movement's antisubordinationist goals. n85

[*1687] Critical legal scholarship identifies instances in which lawyers have taken control of the agenda through individual strategic negotiations with their clients. However, it does not provide a comprehensive theoretical approach for explaining the sources or scope of lawyers' power within movements. Professor Sandra Levitsky's work, for instance, exposes further ways in which movement lawyering may generate intramovement power imbalances. In a study of LGBT movement organizations in Chicago, Professor Levitsky finds that litigating organizations were able, in the words of one activist, to "hijack" the movement's agenda n86 because the litigating organizations had the financial backing to act independently without seeking other groups' cooperation. n87 The grassroots organizations, which had significantly fewer resources, were forced to contend with and support the highly visible litigation agenda. Levitsky's research suggests that litigating movement actors may garner power within their movement inadvertently, owing to the unique ability of litigation to attract resources and publicity.

Biopolitics

The ethical creation of self comes before their political prescriptions -- it determines our relationship to biopolitical decisions regarding which lives and lifestyles are and are not allowed to subsist politically—their framework arguments just recreate this violence

Gabardi 2001 [Wayne, Negotiating Postmodernism pp. 77-79]

Based on his research into ancient Greek ethics, **Foucault identified four** interrelated **modes of ethical practice that formed the basis of** both **a framework of ethical analysis and a model of freedom**. They were ethical substance**,** a mode of subjectivation**,** ethical work, and telos.5° **Ethical substance refers to that aspect** or part **of** an individual's **behavior that is** determined to be **the** main **focus** or "the prime material **of** his (or her) **moral conduct**." The mode of subjectivation is the form with which the different parts or aspects of one's self are arranged. It is the model that fashions or molds one's self into a distinctive style of existence. Foucault's own mode of subjectivation fused aesthetics and politics into a model of creative resistance, making one's life into a work of art formed out of social and political struggle. **Ethical work involves the** means, the **methods, and** the **techniques by which we change ourselves into an ethical subject**. **Telos involves** committing oneself to a certain mode of being and **striving to** consciously **place one's** everyday **actions within a pattern of conduct**. Taken together, **these ethical practices inform a conception of self- hood in which a person takes an active role in shaping** his or her **identity**, **rather than conforming to existing** external standards and **systems of power/knowledge**. The self is an assemblage of practices rather than an innate entity. While both disciplined bodies and active ethical subjects are forged within the same power environments, **the** active **reflexive self appropriates practices of conduct from power/knowledge formations without being dependent on their disciplinary codes**. Foucault based this activity principally on an aesthetic model because it was his conviction that art is the most potent medium of radical reflexivity and resistance. Art is a potentially explosive transformative force. By linking it to the pursuit of an ethical life, **Foucault was able to** stabilize and **channel** its **energy into a relationship where** "**self-care" and "responsibility for the other"** inform and **enhance the aesthetic drive**. The interview "The Ethic of Care for the Self as a Practice of Freedom" (1984) illuminates how in his final work Foucault was reweaving ethics, aesthetics, and politics by making connections between power, resistance, self-care, liberty, and caring for others. **He states** that **freedom is the ontological condition and** the **basis of ethics**.5' He defines ethics as a practice, a way of life, an "ethos," rather than as a theory or a codified set of rules.52 He makes clear that self-care "implies complex relations with others" and that "this ethos of freedom is also a way of caring for others."" He states that **power means "relationships of power:' that resistance and freedom are implicit in power relations**, and that **"domination" is different from power**. **It is a situation in which** "the **relations of power are fixed in such a way that they are perpetually asymmetrical** and the margin of liberty is extremely limited?'54 Foucault further concludes that **the relationship between philosophy and politics is fundamental** and that **philosophy is charged with the duty of "challenging all phenomena of domination** at whatever level or under whatever form they present themselves'55 This leads me to conclude that **Foucault's idea of freedom as ethical agency involves choosing a life "style" and then integrating specific techniques of self-formation** within an environment of power formations. **The** power **context of life**

stylization further **requires the cultivation of self-discipline and** agonistic **struggle to** both **resist disciplinary power matrices and carve out a space for self-empowerment and creative choice.** In other words, **freedom entails a movement from resistance to ethics to political action**. **Resistance,** the most primal expression of freedom, **involves the revolt of the body against the normalizing effects of disciplinary biopower**. **This critical resistance**, largely reactive and defensive, **is channeled into an affirmative ethical project concerned with self-care**. **The rejection of an imposed identity and a set of norms becomes the impetus for fashioning one's own ethical code and conduct**. **The ethical agent becomes a political actor in joining struggles that seek to alter power relations** so that one can more freely live one's life. **The battle is joined at the local and microlevels by countering norms with norms and techniques with techniques.** I further conclude that **if**, as I have argued, **ours is a time of cultural postmodernization,** of global-local flows of postmodern goods services, and identities, of greater aesthetic-reflexive individuation, **and of the pervasive effects of information and mass media in our Lives, then quality of life** and lifestyle **issues should take** (and have taken) **on a greater importance in our daily social interactions**, economic decisions, **ethical considerations, and political concerns**. Understood in this way, **Foucault's idea of freedom as an aesthetic-ethical-political practice of lifestyle determination takes on greater significance. It is both a product of our late modern/postmodern transition and a new mode of being and normative guide in negotiating this condition**.

Analysis of biopolitics cannot succeed from a state-oriented approach

Milchman and Rosenberg 2005 [Alan & Alan, "Michel Foucault: Crises and Problemizations", The Review of Politics, Volume 67, p. 340]

According to Dean, it is through an analytics of government that the specific technologies, practices and rationalities of liberal government, and its implication in a regime of bio-politics, can be investigated. For Dean:

An analytics is a type of study concerned with the analysis of the specific conditions under which particular entities emerge, exist and change. It is thus distinguished from most theoretical approaches in that it seeks to attend to, rather than efface, the singularity of ways of governing and conducting ourselves. Thus it does not treat particular practices of government as instances of ideal types and concepts. Neither does it regard them as effects of a law-like necessity or treat them as manifestations of a fundamental contradiction. An analytics of government examines the conditions under which regimes of practices come into being, are maintained and are transformed. … These regimes also include, moreover, the different ways in which these institutional practices can be thought, made into objects of knowledge, and made subject to problematizations (pp. 20-21). Thus, an analytics of government in the Foucauldian mode, is genealogical; it examines the historicity and contingency of both liberal regimes of practices, and the modes of subjectification to which they give rise, even as it eschews any metaphysics, philosophy of history, or philosophical anthropology. Moreover, such an analytics of government also acknowledges the enormous significance of political power beyond the state in the liberal regimes of modern democracy. From the perspective of governmentality, with its arts and regimes encompassing, as Rose points out, "a multitude of programmes, strategies, tactics, devices, calculations, negotiations, intrigues, persuasions and seductions aimed at the conduct of individuals, groups, populations-and indeed oneself"(p. 5), the state is no longer the sole, or necessarily primary, power container. Indeed, for Rose: From this perspective, the question of the state that was so central to earlier investigations of political power is relocated. The state now appears simply as one element-whose function is historically specific and contextually variable-in multiple circuits of power, connecting a diversity of authorities and forces, within a whole variety of complex assemblages (p. 5). Thus, governmentality studies, which investigate power relations at the molecular as well as at the molar level, cannot limit themselves to an analysis of the state. The web of power relations in modern democracies requires an analytics of government that is, as Dean claims, pluralistic; that acknowledges the existence of "a plurality of regimes of practices in a given territory, each composed from a multiplicity of in principle unlimited and heterogeneous

elements bound together by a variety of relations and capable of polymorphous connections with one another" (p.27). Such an analytics, will investigate the distribution of power between state and civil society, public and private, juridical and social, coercive and non-coercive, disciplinary and normalizing. And according to Dean, the point of departure for such "an analytics of government is the identification and examination of specific situations in which the activity of governing comes to be called into question, the moments and the situations in which government becomes a problem" (p. 27).

Examinations must separate themselves from sovereignty—including the state makes understanding modern power relations impossible

Milchman and Rosenberg 2005 [Alan & Alan, "Michel Foucault: Crises and Problemizations", The Review of Politics, Volume 67, p. 340]

What Foucault does insist upon in "Society *Must Be Defended"* is that if we want to analyze modern power relations, we need to extricate ourselves from the theory of sovereignty. This is the meaning of his claim that in political theory we have still not cut off the head of the king. In the place of the theory of sovereignty as a basis for political theory, Foucault enjoins us to investigate the microphysics of power: "... let me say that rather than orienting our research into power toward the juridical edifice of sovereignty, State apparatuses, and the ideologies that accompany them, I think we should orient our analyses of power toward material operations, forms of subjugation [assujeissement], and the connections among and the uses made of the local systems of subjugation on the one hand, and apparatuses of knowledge on the other" (p. 34).6 and the uses made of the local systems of subjugation on the one hand, and apparatuses of knowledge on the other" (p. 34).6

A2 Roleplaying

Adopting the stance of the policymaker in debate is integrally linked to the normative practices of power that work to oppress queer and other marginalized populations – means we become apathetic spectators.

Reid-Brinkley 8 [Shanara Rose Reid-Brinkley, Ph.D. Candidate in Communication at the University of Georgia, holds an M.A. in Communication from the University of Alabama and a B.A. in Political Science and Government from Emory University, 2008, "The Harsh Realities of 'Acting Black': How African-American Policy Debaters Negotiate Representation Through Racial Performance and Style," University of Georgia Ph.D. Dissertation, Available Online at http://www.scribd.com/doc/93057917/Reid-brinkley-Shanara-r-200805-Phd, Accessed 07-09-2014, p. 117-119]//JIH

Genre Violation Four: Policymaker as Impersonal and the Rhetoric of Personal Experience.

Debate is a competitive game. 112 It requires that its participants take on the positions of state actors (at least when they are affirming the resolution). Debate resolutions normally call for federal action in some area of domestic or foreign policy. Affirmative teams must support the resolution, while the negative negates it. The debate then becomes a "laboratory" within which debaters may test policies. 113 Argumentation scholar Gordon Mitchell notes that "Although they [end page 117] may research and track public argument as it unfolds outside the confines of the laboratory for research purposes, in this approach students witness argumentation beyond the walls of the academy as spectators, with little or no apparent recourse to directly participate or alter the course of events." 114 Although debaters spend a great deal of time discussing and researching government action and articulating arguments relevant to such action, what happens

in debate rounds has limited or no real impact on contemporary governmental policy making. And participation does not result in the majority of the debate community engaging in activism around the issues they research.

Mitchell observes that the stance of the policymaker in debate comes with a "sense of detachment associated with the spectator posture."115 In other words, its participants are able to engage in debates where they are able to distance themselves from the events that are the subjects of debates. Debaters can throw around terms like torture, terrorism, genocide and nuclear war without blinking. Debate simulations can only serve to distance the debaters from real world participation in the political contexts they debate about. As William Shanahan remarks:

…the topic established a relationship through interpellation that inhered irrespective of what the particular political affinities of the debaters were. The relationship was both political and ethical, and needed to be debated as such. When we blithely call for United States Federal Government policymaking, we are not immune to the colonialist legacy that establishes our place on this continent. We cannot wish away the horrific atrocities perpetrated everyday in our name simply by refusing to acknowledge these implications"(emphasis in original).116 [end page 118]

The "objective" stance of the policymaker is an impersonal or imperialist persona. The policymaker relies upon "acceptable" forms of evidence, engaging in logical discussion, producing rational thoughts. As Shanahan, and the Louisville debaters' note, such a stance is integrally linked to the normative, historical and contemporary practices of power that produce and maintain varying networks of oppression. In other words, the discursive practices of policy-oriented debate are developed within, through and from systems of power and privilege. Thus, these practices are critically implicated in the maintenance of hegemony. So, rather than seeing themselves as government or state actors, Jones and Green choose to perform themselves in debate, violating the more "objective" stance of the "policymaker" and require their opponents to do the same.

A2 SSD

Switch side debate is irrelevant – reflexive thought about a subject pre-round is enough to solve.

Yudkowsky 08 [Eliezer Yudkowsky, research fellow of the Machine Intelligence Research Institute, June 9, 2008, "Against Devil's Advocacy," http://lesswrong.com/lw/r3/against_devils_advocacy/]//JIH

I surely don't mean to teach people to say: "Since I believe in fairies, I ought not to expect to find any good arguments against their existence, therefore I will not search because the mental effort has a low expected utility." That comes under the heading of: If you want to shoot your foot off, it is never the least bit difficult to do so. Maybe there are some stages of life, or some states of mind, in which you can be helped by trying to play Devil's Advocate. Students who have genuinely never thought of trying to search for arguments on both sides of an issue, may be helped by the notion of "Devil's Advocate". But with anyone in this state of mind, I would sooner begin by teaching them that policy debates should not appear one-sided. There is no expectation against having strong arguments on both sides of a policy debate; single actions have multiple consequences. If you can't think of strong arguments against your most precious favored policies, or strong arguments for policies that you hate but which other people endorse, then indeed, you very likely have a problem that could be described as "failing to see the other points of view". You, dear reader, are probably a sophisticated enough reasoner that if you manage to get yourself stuck in an advanced rut, dutifully playing Devil's Advocate won't get you out of it. You'll just subconsciously avoid any Devil's arguments that make you genuinely nervous, and then congratulate yourself for doing your duty. People at this level need stronger medicine. (So far I've only covered medium-strength medicine.) If you can bring yourself to a state of real doubt and genuine curiosity, there is no need for Devil's Advocacy. You can investigate the contrary position because you think it might be

really genuinely true, not because you are playing games with time-traveling chocolate cakes. If you cannot find this trace of true doubt within yourself, can merely playing Devil's Advocate help you? I have no trouble thinking of arguments for why the Singularity won't happen for another 50 years. With some effort, I can make a case for why it might not happen in 100 years. I can also think of plausible-sounding scenarios in which the Singularity happens in two minutes, i.e., someone ran a covert research project and it is finishing right now. I can think of plausible arguments for 10-year, 20-year, 30-year, and 40-year timeframes. This is not because I am good at playing Devil's Advocate and coming up with clever arguments. It's because I really don't know. A true doubt exists in each case, and I can follow my doubt to find the source of a genuine argument. Or if you prefer: I really don't know, because I can come up with all these plausible arguments. On the other hand, it is really hard for me to visualize the proposition that there is no kind of mind substantially stronger than a human one. I have trouble believing that the human brain, which just barely suffices to run a technological civilization that can build a computer, is also the theoretical upper limit of effective intelligence. I cannot argue effectively for that, because I do not believe it. Or if you prefer, I do not believe it, because I cannot argue effectively for it. If you want that idea argued, find someone who really believes it. Since a very young age, I've been endeavoring to get away from those modes of thought where you can argue for just anything. In the state of mind and stage of life where you are trying to distinguish rationality from rationalization, and trying to tell the difference between weak arguments and strong arguments, Devil's Advocate cannot lead you to unfake modes of reasoning. Its only power is that it may perhaps show you the fake modes which operate equally well on any side, and tell you when you are uncertain.

Defending both sides of the topic makes students complicit with dehumanizing violence. Their interpretation creates indifference, not engagement.

Spanos 13 — William V. Spanos, Distinguished Professor of English and Comparative Literature at the State University of New York at Binghamton, interviewed by Christopher Spurlock, 2013 ("William V. Spanos: An Interested Debate Inquiry," *kdebate*, Volume 1, Issue 1, Available Online at http://kdebate.com/spanos.html, Accessed 07-09-2014)

CS: When we had our discussion in Binghamton, you asked me if teams were ever marginalized or excluded for reading arguments based on your work. Some have argued that this move is most frequently enacted during debates with an argument aptly referred to as "framework" where one team will define and delimit their ideal 'world picture' of a carefully crafted resolution and then explain why the opposing teams argument have violated the parameters of this 'frame.' In earlier comments on debate you had criticized the disinterested nature of the activity and its participants - the detached model of debate where anything goes so long as you "score points" and detach yourself from the real (human) weight of these issues. How might debaters approach debate or relate to our resolutions in a more interested sense?

WVS: The reason I asked you that question is because I've always thought that the debate system is a **rigged process**, by which I mean, in your terms, it's framed to exclude anything that the frame can't **contain** and **domesticate**. To frame also means to "prearrange" so that a particular outcome is assured," which also means the what's outside of the frame **doesn't stand a chance**: it is "framed" from the beginning. It was, above all, the great neo-Marxist Louis Althusser's analysis of the "problematic" - the perspective or frame of reference fundamental to knowledge production in democratic-capitalist societies -- that enabled me to see what the so called distinterestness of empirical inquiry is blind to or, more accurately willfully represses in its Panglossian pursuit of the truth.

Althusser's analysis of the "problematic" is too complicated to be explained in a few words. (Anyone interested will find his extended explanation in his introduction --"From Capital* to Marx's Philosophy" -- to his and Etienne Balibar's book *Reading Capital*. It will suffice here to say that we in the modern West have been *inscribed* by our culture --"ideological state apparatuses (educational institutions, media, and so on)-- by a system of knowledge production that goes by the name of "disinterested inquiry," but in reality the "truth" at which it arrives is a construct, a fiction, and thus ideological. And this is precisely because, in distancing itself from earthly being --the transience of time --this system of knowledge production privileges the panoptic eye in the pursuit of knowledge. This is what Althusser means by the "problematic": a frame that allows the perceiver to see only what it wants to see. Everything that is outside the frame doesn't exist to the perceiver. He /she is blind to it. It's nothing or, at the site of humanity, it's nobody. Put alternatively, the problematic -- this frame, as the very word itself suggests, *spatializes* or *reifies* time -- reduces what is a living, problematic force and not a thing into a picture or thing so that it can be comprehended (taken hold of, managed), appropriated, administered, and exploited by the disinterested inquirer.

All that I've just said should suggest what I meant when, long ago, in response to someone in the debate world who seemed puzzled by the strong reservations I expressed on being informed that the debate community in the U.S. was appropriating my work on Heidegger, higher education, and American imperialism. I said then – and I repeat here to you – that the traditional form of the debate, that is, the hegemonic frame that rigidly determines its protocols—is unworldly in an ideological way. It **willfully separates** the debaters from the world as it **actually is**—by which I mean as it has been produced by the dominant democratic I capitalist culture—and it displaces them to a free-floating zone, a **no place**, as it were, where all things, nor matter how different the authority they command in the real world, are equal. But in *this* real world produced by the combination of Protestant Christianity and democratic capitalism things – and therefore their value – are never equal. They are framed into a system of binaries—Identity/ difference, Civilization/barbarism I Men/woman, Whites/blacks, Sedentary/ nomadic, Occidental/ oriental, Chosen I preterit (passed over), Self-reliance I dependent (communal), Democracy I communism, Protestant Christian I Muslim, and so on — in which the first term is not only privileged over the second term, but, in thus being privileged, is also empowered to demonize the second. Insofar as the debate world frames argument as if every position has equal authority (the debater can take either side) it **obscures** and eventually **effaces** awareness of the degrading imbalance of power in the real world and the **terrible injustices** it perpetrates. Thus framed, debate gives the **false impression** that it is a truly democratic institution, whereas in reality it is **complicitous with the dehumanized and dehumanizing system of power** that produced it. It is no accident, in my mind, that this fraudulent form of debate goes back to the founding of the U.S. as a capitalist republic and that it has produced what I call the "political class" to indicate not only the basic sameness between the Democratic and Republican parties but also its **fundamental indifference** to the plight of those who don't count in a system where what counts is determined by those who are the heirs of this quantitative system of binaries.

Grassroots Good

Non-state social movements are more influential and have a bigger impact on society

Goldberg 10 (Robert, Professor of History, University of Utah, "THE CHALLENGE OF CHANGE: SOCIAL MOVEMENTS AS NON-STATE ACTORS," 2010, Utah Law Review, http://www.epubs.utah.edu/index.php/ulr/article/viewFile/345/283, eas)

In a world of great crises—economic, environmental, and political—men and women usually turn to state actors for solutions. The United States government, the European Union, or the World Bank are seen as the agents of change and reform. This focus blurs the stimulus to change that comes from the bottom up via grassroots movements. The events of September 11, 2001, and more recently in Mombai, Thailand, and Greece suggest the power of social movements, non-state actors, to move history and create the crises of current events. In challenging state authority in American history, social movement activists have nurtured revolution, pressed suffrage and equal rights for women, and transformed the racial status quo, among other changes. In the process of staking a claim to influence, a social movement organizes itself as a community governed by alternative role models, values, and rituals. From this base, social movement agents raise hope of a better world and choose mobilization strategies in a quest to govern. Claims on power demand that activists grapple with authorities who stand ready to protect established institutions and practices. The social movement perspective on governance, then, is twofold. Activists must exercise governance within the movement to firm it for the coming struggle for power. They also must protect members from authorities who seek to disrupt and disband challengers. With its base secured and resources gathered and focused, the social movement is prepared to claim a share of governance and authority from state actors. This Article outlines internal movement characteristics and factors that effect challenges to state actors. It also considers the dynamic of contention, particularly the responses of state authorities to social movement claims on governance. When state actors deny the legitimacy of a constituency and ignore the salience of grievances, opportunities arise for social movement mobilization. A social movement is an organized group that acts with some continuity and is consciously seeking to promote or resist change. Key to social movement activism are the means of challenge. Social movements launch

collective action to influence those who make decisions about the distribution of benefits in a society. Silent vigils, parades, sit-in demonstrations, cross burnings, Boston tea parties, strikes, rallies, kidnappings, boycotts, violence, and similar collective behaviors are initiated to persuade authorities to recognize challengers and to bring change. In gathering numbers and offering inducements or adding disadvantages, activists warn rulers of their power and demand action.1 Such means, however, suggest the weakness of social movements. Powerful actors, unlike social movement activists, have easy access to those who govern. They routinely apply resources—for example, through lobbying or offers of information and funding—and successfully lay claims on authorities. These actors, in fact, may rely on the state's means of coercion to protect them from social movement challenges. In turn, in its role of preserving the status quo, government seeks support from established groups that have a stake in the system as it exists. Social movements cease to be such once they gather sufficient resources and abandon collective action for more prosaic means of influence. As contenders for influence, social movements yearn to sit on the balcony of power, but their weakness demands that they take a stand on the streets and behind the barricades.2 Challenging the status quo is hard labor. It requires that social movements sustain their members over time to withstand assaults from within and without. It means the creation of self-contained communities, non-state entities, administered by their own leaders and codes of conduct. Particularly important in beckoning followers and holding their allegiances are movement blueprints of the good society. These ideological statements diagnose the problems being faced and fix the blame. They offer means and goals. They provide a rationale that glorifies and justifies the movement and its cause. Ideology is a bulwark against frustration, resistance, and factionalism. It is the scaffolding of a new and alternative community of believers. Also necessary to mount a viable challenge is an organizational structure that anoints leaders who set policy, assign tasks, and harness movement resources to goals. Together, ideology and hierarchy create the crucible for challenge and protest. Moreover, they shelter an alternative world, a community of activists whose loyalty is to the challenging group and a vision of a better world.

2AC A2 Kritiks

Generic

Perm Cards

Critiquing the system through the lense of queerness is a way to recognize intersectionality while attacking the normative.

Mary Nardini gang 14 toward the queerest insurrection Printed clandestinely by the Mary Nardini gang, criminal queers from Milwaukee, Wisconsin Published Date: 20/06/2014 http://www.weldd.org/resources/towards-queerest-insurrection

The Perspective of queers within the heteronormative world is a lens through which we can critique and attack the apparatus of capitalism. We can analyze the ways in which medicine the prison System the church the State, marriage the media, borders, the military, and police are used to control and destroy us. More importantly we can use these cases to articulate a cohesive criticism of every way that we are alienated and dominated. Queer is a position from which to attack the normative- more a position from which to understand and attack the ways in which normal is reproduced and reiterated in destabilizing and problematizing normalcy, we can destabilize and become a problem for the Totality. The history of organized queers as borne out of this position. The most marginalized- transfolk, people of color, sex workers have always been the catalysts for riotous explosions of queer resistance These explosions have been coupled with a radical analysis wholeheartedly asserting that the liberation for queer people is intrinsically tied to the annihilation of capitalism and the state. It is no wonder then that the first people to publicly speak of sexual liberation in this country were anarchists or that those in the last century who struggled for queer liberation also simultaneously struggled against capitalism racism and patriarchy and empire. This is our history.

The LGBT movement is inherently intersectional – all revolutionary movements are fighting against the heterosexual system of oppression

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

Today, the real revolutionary movement includes above all else the movement of women and gays, in struggle against the system and the heterosexual phallocentrism that upholds it, chaining to it the (male) proletariat itself. The organisations of the left, on the other hand, essentially male and male supremacist, heterosexual and anti-homosexual, support the public and private capitalist Norm, and hence the system itself. The movement of revolutionary women has shaken the entire society, putting in crisis even those groups who call themselves revolutionary and yet have so far been ramparts of male supremacist bigotry. Even the movement of conscious homosexuals, revolutionary or at least open to a vision of themselves and the world that is different from the traditional one, can no longer be simply neglected by the left politicos. The parties of the left, great and small, now have to try and recuperate homosexuals too, though I think Stalin would still turn in his grave at the very idea.

The heterosexual left, in dealing with the homosexual question, is trying a similar recuperation, if on a lesser scale, to that which it has effected vis-a-vis feminism. Up till only recently, the thieving and 'fascist' government, for the extra-parliamentary left, was also obviously 'queer'. Today, however, it seems even a gay person can prove himself a 'good comrade', a 'valuable activist in the service of the proletariat', while it is also opportune that all 'good comrades' should begin to take account of the contradictions inherent in the sexual sphere. The contrast is blatant. On the one hand, the term 'queer' is used as an insult; on the other, the wolf dresses up as a lamb, preaching acceptance and understanding for homosexual comrades.

For almost all activists in these groups, the homosexual question is a problem of secondary importance, 'superstructural' and involving only a minority. 'We must tolerate homosexuals, so that they don't cause trouble by questioning our heterosexuality and pretending that we too would like to get fucked in the arse'. This last type of reaction enables us to grasp, behind the appearance of a new and more open attitude, the really closed mentality of the heterosexual 'comrades'. And, as a general rule, I would reply : Dear comrade, you are upset when someone questions the repression of your homosexual desire ? And don't tell me : 'You can do what you like among yourselves, but don't interfere with me', when you are not free to desire me, to make love with me, to enjoy sensual communication between your body and mine; when you rule out the possibility of sexual relations with me. If you are not free, then how can I be free ? Revolutionary freedom is not something individual, but a relation of recipocity : my homosexuality is your homosexuality.

I believe that homosexuals are revolutionary today in as much as we have overcome politics. The revolution for which we are fighting is among other things the negation of all male supremacist political rackets (based among other things on sublimated homosexuality), since it is the negation and overcoming of capital and its politics, which find their way into all groups of the left, sustaining them and making them counter-revolutionary.

Critical Race Feminism and Queer theory must be combined *to succeed.*

Saffin 8 BODIES THAT (DON'T) MATTER: SYSTEMS OF GENDER REGULATION AND INSTITUTIONS OF VIOLENCE AGAINST TRANSGENDER PERSONS: A QUEER/CRITICAL RACE FEMINIST CRITIQUE By LORI A. SAFFIN DOCTOR OF PHILOSOPHY WASHINGTON STATE UNIVERSITY Program of American Studies AUGUST 2008

The merging of Critical Race Feminism (CRF) with Queer Theory serves as one such intervention into political and theoretical dialogizing. In juxtaposing two non-analogous theoretical discourses, understandings of sexuality and race are complicated, thereby breaking down unitary and monolithic subjectivities/identifications that these theories (generally) assume and demand. The fusion of Queer Theory with Critical Race Feminism emphasizes the idea that sexuality and race are not disparate constituents of identity but systems of meaning that inherently define one another. Race and sexuality do not exist independently of each other: Race is always sexualized and sexuality is always raced.10 The integration of these two critical and theoretical postures not only makes disciplinary boundaries more permeable, but also allows for a construction of identity that accounts for the imbrication of race, class, gender and sexuality

Embracing queerness opens up space for fluidity across identity and therefore incentivizes effective coalitions across lines of class, race, and gender.

Bassi 14 Tick as Appropriate: (A) Gay, (B) Queer, or (C) None of the Above: Translation and Sexual Politics in Lawrence Venuti's A Hundred Strokes of the Brush Before Bed Serena Bassi Cardiff University, School of Modern Languages, Leverhulme Early Career Fellow Comparative Literature Studies > Volume 51, Number 2, 2014

As a response to these critiques of mainstream gay politics, a new category emerges that attempts to make sense in radically critical ways of the cultural territory inhabited by those who do not live heterosexual lives. The expression "queer," derived from an explicitly homophobic vocabulary, is reappropriated as a sign through which to reject the "homonormative" paradigm of gay politics. The rejection articulated by the term "queer" is twofold: the concept both highlights the fluid nature of identity and takes distance from the liberal political objective of inclusion. In the realm of academia, queer theory—notably in the work of authors such as Teresa de Lauretis, Eve Sedgwick, and Judith Butler—has critiqued the notion that sexual and gender identity is ever fully knowable and fixed, as well as the idea that there should be a causal link between the sex that an individual is assigned at birth (female or male), their gender expression (feminine or masculine), and their sexual desires.23 Beyond academia, "queer" has emerged as a political paradigm in its own right which seeks to generate alternative ways of imagining the political struggle of those whose lives are not knowable by means of heterosexual categories. Instead of defining an identity that is different from mainstream society exclusively on the basis of sexual desires, "queer" is an open-ended signifier which, for Allan Bérubé, stands for everything that is understood as "perverse, … odd, outcast, different and deviant."24 Instead of constituting community on the basis of a fixed, identitarian principle, "queer" has been read as able to "affirm sameness by defining a common identity on the fringes."25 In other words**, it allows us "to open up possibilities for coalition across barriers of class, race and gender**," that is, to build political alliances on the margin with a broader struggle for liberation in mind.26 Finally, "queer" may also help us imagine an intervention in public discourse that goes beyond liberal ideas of what constitutes "political action" and envisage a form of agency that is even more oppositional, as well as fluid and changeable.

Permutation solves – analyzing oppression of queer bodies alongside postcolonial, feminist, critical race, and materialist studies is necessary in order to interrogate all facets of modern oppressive power.

Oswin 08 [Natalie Oswin, Urban and Social/ Cultural Geography, Associate Professor in the Department of Geography, Critical geographies and the uses of sexuality: deconstructing queer space," 2008 http://phg.sagepub.com/content/32/1/89.full.pdf]//JIH

The experiences of non-heterosexuals are no longer excluded within critical geographical work. This important change is undoubtedly the result of various disciplinary engagements with queer theory. And for as long as non-heterosexuals are discriminated against, queer spaces will remain something that, to borrow Spivak's phrase, queers cannot not want. So there is certainly a need for the recent geographical readings of queer spaces that help us understand queer cultural politics as contested sites in which racializations, genderings and classed processes take place. There are also other geographical uses for queer theory. Much of the work that I have highlighted adopts a queer approach to such issues as transnational labour flows, diaspora, immigration, public health, globalization, domesticity, geopolitics and poverty. It demonstrates the use of queer theory to these central concerns of critical geography far beyond analysis of their relationship to gay, lesbian, bisexual or transgendered lives. Once we dismiss the presumption that queer theory offers only a focus on 'queer' lives and an abstract critique of the heterosexualization of space, we can utilize it to deconstruct the hetero/homo binary and examine sexuality's deployments in concert with racialized, classed and gendered processes. Queering our analysis thus helps us to position

sexuality within multifaceted constellations of power. As critical geographers seek to understand these constellations, the advancement of a queer approach alongside postcolonial, feminist, critical race and materialist approaches will most certainly help to ask new questions and illuminate a broader range of critical possibilities.

Ableism

Approaching disability from the starting point of queer theory

Puar 09 [Jasbir Puar, professor of women's and gender studies at Rutgers University, Women and Performance: a journal of feminist theory, Vol. 19, No. 2, July 2009, http://planetarities.web.unc.edu/files/2015/01/puar-prognosis-time.pdf]//JIH

I am particularly interested in approaching these questions from the vantage point of queer theory to put duress on assumptions about what queer bodies are, and to see what queer methods obtain once we let go of the discrete organic queer body as its literal referent. I am reminded of a recent comment by Elizabeth Povinelli, who notes that queer theories remain mired in and beholden to ''a certain literalism of the referent'' of its narrowly constructed proper object.7 (Which calls forth the following questions: Why do we need a literal referent? How literal is the referent? And then, What is that literal reference?). Queer disability studies has taken up these issues, pushing at the boundedness of bodies, by exploring the 'mutation' or deviance of a body that is purportedly whole and organic.8 While it has generally pursued these questions around the subjectivities and political agendas that are and ought to be produced through the intersections of subject formations like ''queer'' and ''disabled'' (that is, queer disabled subjects or disabled queer subjects), these intersections push at the definitional boundaries of each term. In large part, this is because these intersections remind us certainly at the very least because they remind us of the historical entanglements that have produced disabled bodies as already queer (both in their bodily debilities and capacities but also in their sexual practices regardless of sexual object choice) as well as queer bodies that are allegedly intrinsically debilitated. As Robert McRuer writes, ''despite the fact that homosexuality and disability clearly share a pathologized past . . . little notice has been taken of the connection between heterosexuality and able-bodied identity''. ''Compulsory able-bodiedness'' and compulsory heterosexuality are mutually constituitive, argues McRuer.9 But I would also add, compulsory able-bodiedness is absolutely a prerequisite not only for homonationalist subjects but also for certain exceptional queer subjects, those imbued with a self-proclaimed capacity for transgression, subversion, or resistance.

Antiblackness

The particular framework of interrogating necropolitical queer complicities is crucial in order to break down forms of violent whiteness.

Thobani 14. Sunera Thobani, professor in the Institute for Gender, Race, Sexuality and Social Justice at the University of British Columbia, "Prologue," *Queer Necropolitics*, Routledge, 2014, -pg. xv

Violence and **whiteness** constitute the **intractable foundation** of colonial sovereignty and its processes of subjection, argued Fanon (1961) in his radical anti- colonial praxis. Drawing on Fanon's insights, Mbembe (2001) points out that in the **'terror formation'** that is the colony, power takes the form of **commandment** as it **incorporates colonizing subjects** into its **murderous projects** of conquest. Embedded in the depths of such stubbornly brutal terrain, power in the postcolony assumes the form of

necropolitics as 'it makes the **murder** of the **enemy** its **primary** and **absolute objective'** (Mbembe 2003: 12).

In the 21st-century post/colonial formation that is the 'war on terror', the simultaneous constitution of the West and its many rests **relies no less** on **occupation**, **invasion** and **genocide**, albeit in changing configurations and with emergent practices enacted by differentially positioned subjects. For, as Mbembe has astutely noted, 'modernity was at the origin of multiple concepts of sovereignty' (2003: 13). In other words, while liberal democracy **celebrates its citizen-subjects**, the **mark of extermination** that **infuses** its **racial logic** of power gives rise to **the 'Indian' reserve**, the **slave plantation**, the **native quarter**, the **Bantustan**, the **Nazi camp**, as well as the **slums**, **prisons** and **refugee camps** proliferating around the world (Thobani 2012).

Western militarized states, their nationals and private mercenaries now form willing coalitions as readily as they organize death squads; Western feminists recalibrate their alignments with their states as they set out to rescue Muslim women or to protect themselves from their narcissistically construed forms of precariousnesses; and Muslim women and men supplicants to the West speak in the name of feminism and liberal democracy to indict Islam, along with their families and communities, providing vital alibis for torture and collective punishment. All the while, Muslim men around the world arc demonized as misogynist homophobes even as they are incarcerated, deported, raped, tortured and targeted for assassination; Muslim women and queers are raped, killed, bombed and compelled to surrender unconditionally to Western gender regimes if they are to survive. As for the Muslims killed in the hundreds of thousands by bombs, drones and militias, they **do not even appear** as **human** in the register of the war, featuring **only as collateral damage** - if at all.

Islamophobia has thus **become the lingua franca** that **enables trans/national allegiances** to be remade, international **accords** to be signed, **aid negotiations** to be consolidated, intelligence, security and border control agreements to be implemented, and **assassination squads** to be **deployed across the planet**. Such is the moment that **marks the (re)birth** of the **West** as the **singular model for futurity** after the age of independence.

What avenues, then, for contestation? How to strengthen the forces committed to ending the violence that characterizes the contemporary geopolitical moment? What possibilities for the politics of radical transformation? For justice?

Queer Necropolitics makes a particularly timely and critically engaged intervention. Mapping out how deployments of sexuality, gender, race and desire inform the self-constituting practices of unlikely imperialist subjects — queer, feminist, left, and yes, even critical theorists and philosophers - as they simultaneously advance the reach of the Western empire, the authors of this book highlight how these practices also mark out entire 'queerly racialized populations' for occupation, subjugation or elimination (Puar 2007). **Examining the particularities** of the instances where '**queer vitalities** become **cannibalistic** on the **disposing and abandonment** of others', the authors help to **disrupt a critical axis** on which **pivot** the imperial **heteronormative**, **homonormative** and **transnormative politics** of violence and pleasure (Introduction: p. 2).

What comes into view when **homonationalism is named homoracism**? When feminism is defined as imperialist? When human rights arc conceived of as recolonization? When queer and trans politics are identified as parasitic? The power of whiteness comes into **sharp focus**, the **everydayness of the institution** of **white supremacy** is **exposed** in all its **stark (in)visibilities**. The authors of Queer Necropolitics provide the **conceptual** and **analytical tools vital** to the **politics of resistance** against the **deathly trajectories of power** that mark these times.

Jin Haritaworn, Adi Kuntsman and Silvia Posocco point to the 'worrying tendency to dismiss queer and trans of colour critiques in particular as identitarian, pre-theoretical and inferior' (Introduction: p. 4). They are absolutely right to draw attention to such dismissal, for the displacing of radical critical race theory - with all its complexities - in the name of identity politics has become a habitual practice of the Western theoretico-political tradition, including its feminisms, left activisms and LBGTQ, movements. Refusing to acknowledge the violence of the imperial practices that incarcerate subjugated populations in their suffocatingly codified identities or to recognize the forms of violence they themselves enact as they further the universalization of their own identities in the name of humanism, these intransigent theorists and activists secure their access to white superiority by such dismissal.

Trapped between **humanism** and its **rigidly enforced politics of identities**. **Where to turn?**

It should not be forgotten that the chief architects of this 'war on terror' are the settler colonial societies established by Euro-America, namely, US, Canada, Israel, Australia, along with those seasoned imperialists, the British, the French and the Germans. The massive public support among their nationals for killing 'terrorists' wherever they are to be found, for racial profiling wherever the state deems it necessary and for ripping off Muslim women's veils whenever possible extends Islamophobia into homes, schools, workplaces, cinemas, shopping malls, social service agencies and, yes, in hearts and minds. The **public valorization** of the **statesmen** and **stateswomen**, the generals and soldiers, the corporations and journalists who **plan**, **execute** and **legitimize** the **new wars of the 21st century** chillingly echo the public celebration of **'Indian hunters'**, pioneering heroes of an earlier age of US empire and nation-building, as well as of the **white lynch mobs** who 'hunted' black men and boys in the name of defending the virtue of white women. Indeed, the continuities in such racial violence cannot but be recognized even by the perpetrators themselves, whether by design or otherwise. US and other allied soldiers regularly refer to Afghanistan and Iraq as 'Injun country' and to the black and brown bodies of Muslims as 'Injuns'; mercenaries working for the US state in Somalia define local Somali men as 'savages';1 'Project Lawrence' is launched to develop 'cultural proficiencies' among elite US forces working in secret military operations;2 and the codename 'Geronimo' is assigned to the mission to kill Bin Laden.

As Western nation-states **fortify** their various forms of **security - military**, **national** and **psychic - neoliberalism morphs** into its **audaciously murderous phase**, overtly so now; global capitalism acquires a **robust new energy** in the **privatization** of the state's **machinery of death**; new technologies of **surveillance** and **communication** are invented and enthusiastically consumed. The West is **resurgent** again and ... all this **whiteness**. .. '(a)ll this **whiteness that bums'** (Fanon 2008: 86, emphasis added).

It is wise to remember that sovereignty is not abstract. It has a particular name, a face, an address, a geographical coordinate. Its face is white, it remains housed in white bodies, it is located in Westernity. Queer Necropolitics does the very important work of teaching its readers how to **recognize the deadly workings of power**. We would do well to learn from this book's passionately principled outrage at the order of things.

AT: Lesbian/gay studies are racist

Queer theory is different- it's fluid and open ended

- This is also like a B- perm card

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However, Queer Theory (or queerness) does not lie outside of racist or classist agendas because it also organizes around singular categories that reproduce dominant structures. Nevertheless, what I find evocative about Queer Theory is its potential toward a politics that resists liberalism (and liberal pluralism). By allowing sexuality to be fluid and gender to be open-ended, "queer" insists upon a politicized and activist-oriented category of identity that acknowledges experiential differences as well as cultural and historical specificity. Queer Theory demands a politic that is not simply individual, or good for one privileged group, but sees how race, class, gender, and sexuality operate together to sustain structural and systemic oppression.12 Queer Theory and queerness do not seek integration within the existing social systems because current structures are built upon and rely on the oppression of Others. Therefore, Queer Theory makes use of contradiction, ambiguity, multivocality, and the explosion and opening of categories to destabilize normative and hierarchical binary systems of power.

Cap

Perm do both – a queer marxist-feminist perspective solves better.

Sears 5 Queer Anti-Capitalism: What's Left of Lesbian and Gay Liberation? Sears, AlanView Profile. Science & Society69.1 (Jan 2005): 92-112. Education Faculty, University of New Brunswick

A queer marxist-feminist perspective provides us with ways of envisioning a queer anti-capitalism. Many people who engage in same-sex sexual practices have won neither full citizenship nor a place within the currently existing queer public spaces. The brutalizing experiences of many queer youth (or youth perceived as queer) in high schools is an important reminder of how far we have to go to achieve full human rights (see Frank, 1994; Smith, 1998). A new queer radical agenda will have to be built around the needs, desires and organizing capacities of the young, the poor, people of color, women, transgendered people, working-class people, people living with AIDS and/or disabilities, the elderly and those who cannot or will not come out. One of the important organizing bases for this agenda will be the emerging movement of queer trade unionists, though (like the unions themselves) it will need to go much farther to organize the unorganized (people in non-union workplaces, contingent workers, people who are not employed) and the excluded (on the basis of nationality, racialization, disability or gender). A queer anti-capitalism takes us back to the best of the liberationist politics that emerged after Stonewall: the militancy, the breadth of vision and the transformative commitments. An engaged queer marxist feminism provides valuable tools for negotiating the complex issues that led to the impasse of gay libertarianism and lesbian feminism, specifically through grounding the analysis of sexuality in a rich understanding of processes of social reproduction. It is possible to combine a joyous struggle for sexual freedom with a serious and nuanced examination of the power relations that shape our experiences of gender and sexuality

Analyzing queer struggles through historical materialism naturalizes heteropatriarchy by posing capital as the only social threat, and makes the heteronormative subject the goal of liberal and radical practices.

Ferguson 03 [Roderick A. Ferguson, professor of African American and Gender and Women's Studies in the African American Studies Department at the University of Illinois, Chicago, "Aberrations in Black: Toward a Queer of Color Critique," 2003, http://researchmethodswillse.voices.wooster.edu/files/2012/01/Ferguson.pdf]//JIH

As such, she and others like her were the targets of both liberal and revorutionary regulations. Those regulations derived their motives from the fact that both bourgeois and revolutionary practices were conceived through heteropatriarchy. 'We may imagine Marx asking, "How could she-the prostitute-be entrusted with the revolutionary transformation of society?'; Likewise, we could imagine the bourgeoisie declaring, "Never could whores rationally administer a liberal society." Historical materialism and bourgeois ideology shared the tendency to read modern civilization as the racialized scene of heteronormative disruption. Marx fell into that ideology as he conflated the dominant representation of the prostitute with the social upheavals wrought by capital. Put differentl¡ he equated the hegemonic discourse about the prostiture, a discourse that cast her as the symbol of immorality vice, and corruption, with the reality of a burgeoning capitarist economy. Taking the prostitute to be the obvious and transparent sign of capital, at what point could Marx approach the prostitute and her alleged pathologies as discursive questions, rather than as the real and objective outcomes of capitalist social relations? At what point might he then consider the prostitrrì. others like her to be porenrial sites from which to critique capital? "rrd Naturalizing heteropatriarchy by posing capital as the social threat to heteropatriarchal relations meant that both liberal reform and proletarian revolution sought ro recover heteropatriarchal integrity from the ravages of industrialization. Basing the fundamental conditions of history upon heterosexual reproduction and designating capital as the disruption of heterosexual normativity

did more than designate the subject of modern society as heteronormative. It made the heteronormative subject the goal of liberal and radical practices. under such a definition of histor¡ political economy became an arena where heteronormative legitimation was the prize. universalizing heteropatriarchy and constructing a racialized other that required heteropatriarchal regulation was not the peculiar distinction of, or affinity between, Marx and his bourgeois contemporaries. on the contrary the racialized investment in heteropatriarchy bequeathed itserf to liberal and revolutionary projects, to bourgeois and revolutionary nationalisms alike. Queer of color analysis must disidentify with historical materialism so as not to extend this legacy.

The alt can't solve - body politics are sidelined in Marxist analysis to be replaced by problems deemed more political.

Warner 93 [Michael Warner, literary critic, social theorist, and Seymour H. Knox Professor of English Literature and American Studies at Yale University, "Fear of a Queer Planet: Queer Politics and Social Theory," 1993, http://ir.nmu.org.ua/bitstream/handle/123456789/142949/93ac0a0904ab819b5542a4e68d2efb70.pdf?sequence=1]//JIH

If Rubin's essay has helped to place the thinking of sexuality on the contemporary political agenda, this would appear to be a task for which Western Marxism has been and remains underprepared. A case in point would be the 1989 "Marxism Today" conference held at the University of Massachusetts at Amherst: of its fifty-eight assorted panels, many containing the word "gender" or its various cognates in their titles, one session alone was devoted explicitly to questions of sexuality. Given the U.S. government's brutally grudging response to the AIDS crisis and its renewed attacks on the reproductive freedoms of women, such scanty attention seems significant in reflecting what counts as political among the varied knowledges and practices comprising "Marxism Today." My intention here is hardly to criticize the conference (as if it simply could have proceeded otherwise), for its reluctance seems continuous with what might be described (with a few important but relatively isolated exceptions like Alexandra Kollontai)5 as Western Marxism's tradition of unthinking sex. When Marxist theorists have concerned themselves directly with sexual issues, they've tended to relate the story (impossible to repeat after Foucault) of how a natural or potentially liberatory sexuality has been set upon, repressed, commodified, or otherwise constrained by the institutions of capitalism: as if sexuality were not always already institutional, existing only in its historically sedimented forms and discourses.6 In addressing, for example, the question "What has sexuality to do with class struggle?" Reimut Reiche seemed to answer not much in describing his "personal" interests in "sexual theory" as paling before genuinely "political problems": as if the relationship between the two could in fact be figured simply as a distinction between the public and the private.7 Recognizing these shortcomings, other theorists have proposed instead to analyze the material conditions of "desire": as if this conception of desire — in tending in practice almost inevitably toward the monolithic, the unmodified, and the hetero — could seemingly unnameable sexuality.8 Why has thinking sex proven to be so difficult for Western Marxism? Why, if never simply or entirely an absence, does sexuality form an aporia, a blockage within the tradition's production-centered paradigm?

The perm solves best – the revolution will only be successful in conjunction with [insert advocacy statement/buzzword]

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

'Capital', writes Virginia Finzi Ghisi, 'has made use up till now of the erotic nature of labour in order to force man into this, having preventively withdrawn from him any other sexual adventure (relations with the woman-wife-mother in the family circle are no adventure, but only an

extended substitution) ... Heterosexuality becomes the condition for capitalist production, as a modality of loss of the body, a habituation to seeing this elsewhere, and generalised.' [15]

The struggle for communism today must find expression, among other things, in the negation of the heterosexual Norm that is based on the repression of Eros and is essential for maintaining the rule of capital over the species. The 'perversions', and homosexuality in particular, are a rebellion against the subjugation of sexuality by the established order, against the almost total enslavement of eroticism (repressed or repressively desublimated) to the 'performance principle', to production and reproduction (of labour-power).

The increase in the means of production has already virtually abolished poverty, which is perpetuated today only by capitalism. And if the sublimation of the 'perverse' tendencies of Eros into labour is thus no longer economically necessary, it is even less necessary to channel all libidinal energies into reproduction, given that our planet is already suffering from over-population. Clearly, repressive legislation on the number of children, abortion, and the wars and famines decreed by capital, will not resolve the problem of population increase. Such things can only serve to contain it within limits that are functional to the preservation and expansion of the capitalist mode of production. They serve to increase the war industry and to maintain the Third World in conditions of poverty and backwardness that are favourable to the establishment of capitalist economic and political control. The problem of over-population can be genuinely resolved by the spread of homosexuality, the (re)conquest of autoerotic pleasure, and the communist revolution. What will positively resolve the demographic tragedy is not the restriction of Eros, but its liberation.

The harnessing of Eros to procreation, in fact, has never been really necessary, since free sexuality, in conditions that are more or less favourable, naturally reproduces the species without needing to be subject to any type of constraint. On the other hand, if the struggle for the liberation of homosexuality is decisively opposed to the heterosexual Norm, one of its objectives is the realisation of new gay relations between women and men, relations that are totally different from the traditional couple, and are aimed, among other things, at a new form of gay procreation and paedophilic coexistence with children.

In a relatively distant future, the consequent trans-sexual freedom may well contribute to determining alterations in the biological and anatomical structure of the human being that will transform us, for example, into a gynandry reproducing by parthenogenesis, or else a new two-way type of procreation (or three-way, or ten-way ?). Nor do we know what the situation is on the billions of other planets in the galaxy, many of which, at least, must be far more advanced than ourselves.

If we can thus understand how the repression and sublimation of Eros, and the heterosexual Norm, are absolutely no longer necessary for the goals of civilisation and the achievement of communism, being in fact indispensable only for the perpetuation of capitalism and its barbarism, then it is not hard to discover in the expression of homoerotic desire a fertile potential for revolutionary subversion. And it is to this potential that is linked the 'promise of happiness' that Marcuse recognises as a peculiar character of the 'perversions'.

The revolution will be homophobic – the leftist revolutionaries see LGBT populations as part of the bourgeois

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

5. The 'Protectors' of the Left The left "" above all the Italian Communist Party, but also all the self-proclaimed revolutionary organisations "" were slow to adopt even an attitude of 'protection' towards gays. For a long time they simply repressed homosexuality directly, negating it by exalting the tough, virile figure of the productive (and evidently reproductive) worker. They ridiculed homosexuals, defining them as an expression of the corruption and decadence of bourgeois society, thus making their own contribution to confirming gays in an attitude that is in some respects counter-revolutionary. They put forward an image of revolution that is grotesquely bigoted and repressive (based on sacrifice and on the infernal proletarian family) and a caricature of virility (based on productive-reproductive labour and on brute militarised violence), and they held up the model of those countries defined as socialist, who liquidate homosexuals in concentration camps or 're-education centres', such as Cuba or China. It is scarcely surprising, then, that gay people saw only the system itself as their 'salvation'.

When the homosexual liberation movement started in Italy, the left did their best to induce it to silence and discourage it. We can all cite an endless series of insults, provocations and even physical attacks from militants of the left. Those of us who belonged for a while to such groups know very well the sum of humiliations and frustrations involved in being a gay activist in the heterosexual left.

The left thus did all it could to extinguish our movement. They stubbornly characterised it as 'petty-bourgeois' at the very time that we were starting to come out in a revolutionary way. As far back as 1971, Joe Fallisi could write that the left was concerned above all to 'modernise reformist politics and impose (in the heaven of the Spectacle) new ideological images of the "challenger", the "tough guy", the "extra-parliamentarist", the "new partisan".' And if the reformist politics of the left are phallocentric and heterosexual, their ideological counterpart was the 'tough guy with a big cock and muscles of steel', who sets even the fascist bullies to flight. [16] It is no accident that the extra-parliamentary groups of yesterday are today seated in Parliament.

The aff is the K – the heterosexual Norm is the same as the oppressive capitalist system – a homosexual revolution is the only revolution that will be successful

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

The solution to this problem lies in the victory of the revolution, in the creation of communism, in the ending of all war, and the definitive withdrawal of all armies. Today, the revolution is being prepared, among other things, by the conflict between the gay movement and the Norm, and by the encounter between homosexuals and deserters from the army of normality. The heterosexual males 'in crisis' must understand that we do not want war : we are forced to struggle because we have always been persecuted, because the policemen of the heterosexual law have repressed us,

because we look forward to the universal liberation of the gay desire, which can only be realised when your heterosexual identity is broken down. We are not struggling against you, but only against your 'normality'. We have no intention of castrating you. We want on the contrary to free you from your castration complex. Your arse has not really been amputated, it has only been accused [imputato], along with your entire body.

To come over to our side means, literally, to be fucked in the arse, and to discover that this is one of the most beautiful of pleasures. It means to marry your pleasure to mine without castrating chains, without matrimony. It means enjoyment without the Norm, without laws. It is only your inhibitions that prevent you from seeing that only by coming over to our side can we achieve our revolution. And communism can only be ours, i.e. belonging to us all, those of us able to love. Why do you want to be left out ?

It is capital that still so insistently opposes you to us. What you have to fear is not being fucked in the arse, but rather remaining what you at present still are, heterosexual males as the Norm wants you to be, even in crisis, as if it was not high time to oppose yourselves forever to crisis, to castration, to guilt. As if it was not time to gayly reject the discontent that the present society has imposed on us, and to stop the totalitarian machine of capital in its tracks by realising new and totalising relations. And given that we are bodies, this means erotic relations among us all.

You fear us on account of the taboo you have internalised, and which you still uphold. But this taboo is the mark of the system in you. And we don't want to be led into the catastrophe that is threatening, nor do we want the struggle for liberation, which has only one genuine enemy, capital, to be crippled by your resistances, dogmas and ditherings, by your susceptibility to images and your submission to the Father-system. Your terror of homosexuality is the capitalist terror, it is the paternal terror, the terror of the father that you have not overcome.

There have been wars in which the oppressors, sullied by atrocities, have degenerated to such a point that the only way for the oppressed to conquer has been to eliminate them to a man. In a case of this kind, it is impossible to expect many deserters. We find this in the Biblical wars : God commanded that none of the inhabitants of Jericho should survive the fall of the city. But we don't want to sound the trumpets of Jericho, rather the Internationale. What we propose is an erotic understanding. We don't want any more destruction, that is precisely why we still have to struggle. Revolutionary wars are never anything like the destruction of Jericho.

In 1917 the Bolsheviks and all other revolutionaries proclaimed war on war and preached defeatism in all armies. The Russian revolutionary soldiers fraternised with the German 'victors', they danced together, embraced one another on the occupied Russian soil and shared their rations. Today, with gay clarity, we must wage the true war against capital and no one else. Eros to you and to us, captivating sisters and attractive brothers of the universal incest that is announced and impending !

Queer theory serves to help re-imagine capitalism to allow for anti-capitalist politics to occur.

Gibson-Graham 99 Queer(y)ing capitalism in and out of the classroom Gibson-Graham, J K. Journal of Geography in Higher Education23.1 (Mar 1999): 80-85. Katherine Gibson is professor and head of the Department of Human Geography at the Research School of Pacific and Asian Studies, The Australian National University. Julie Graham is professor of economic geography and associate department head for geography in the Department of Geosciences, University of Massachusetts.

Of course, destabilising images of capitalist dominance is a big project, and I could not do it by myself. Nor could I do it without queer theory, that incredibly dynamic matrix of contemporary theory whose practitioners are not only theorising

about queers but who are also making social theory 'queer'. This latter project can be seen to involve not (or not merely) constituting a minority population based on same-sex desire, set in opposition to a heterosexual norm, but calling into question the very idea of norms and normality, calling attention to the violence entailed by normalising impulses, including the impulse to theorise a social site as subsumed to a hegemonic order [7]. What if we were to 'queer' capitalist hegemony and break apart some of its consolidating associations? We could start by reimagining the body of capitalism, that hard and masculine body that penetrates non-capitalism but is not itself susceptible to penetration (this image conveys some of the heterosexism that structures contemporary social theory). One key `coming together' (a Christmas effect that participates in consolidating a capitalist monolith) is the familiar association of capitalism with commodification and `the market'. This association, in which all three terms ultimately signify 'capitalism', constitutes the body of capitalism as dominant and expansive (at least in the space of commodity transactions). But how might we re-envision that body as more open and permeable, as having orifices through which non-capitalism might enter? We might argue, as many have done, that many different relations of production-including slavery and independent commodity production and collective or communal relations-are compatible with production for a market. What violence do we do to these when we normalise all commodity production as capitalist commodity production? Surely the market is a mobile and membranous orifice into which can be inserted all kinds of non-capitalist commodities, whose queer presences challenge the pre-eminence of capitalism and the discourses of its hegemony. Queering our pedagogy means making differences visible and calling normative impulses and forms of social closure into question. This is something that geographic researchers are increasingly doing with respect to a wide range of social and cultural sites and processes, not excluding the 'economic', where differences among industries, enterprises, economic subjects, cities and regions, national and world economies are often highlighted and explored. The fact that one sameness-their capitalist nature-- tends to unify all these forms of difference offers a challenge to us as teachers. Can we, with our students, generate different representations of the economic world, ones in which non-capitalist class relations and forms of economy are prevalent and widespread? [8] If we can, what might be the impact of these representations? Might they not help to make anticapitalist activism seem less quixotic and more realistic? Might they contribute to a non-capitalist politics of economic invention?

Queerness is an ideal starting point for fighting capitalism

Gibson-Graham 1996 *The End of Capitalism (as we knew it)* Gibson-Graham, J K. 1996 Katherine Gibson is professor and head of the Department of Human Geography at the Research School of Pacific and Asian Studies, The Australian National University. Julie Graham is professor of economic geography and associate department head for geography in the Department of Geosciences, University of Massachusetts.

By speaking a language of the diverse economy, we can begin to unravel the dense knots of meaning that sustain the hegemonic identity of "the capitalist economy." Working against the condensations and displacements that structure the discourse of capitalocentrism, we have produced an unruly economic landscape of particular, nonequivalent meanings. Our objective has been to dis-order the capitalist economic landscape, to queer it and thereby dislocate capitalocentrism's hegemony. In the space thus produced, we see opportunities for new economic becomings—sites where ethical decisions can be made, power can be negotiated, and transformations forged. A counterhegemonic politics involves dis-identification with the subject positions offered by a hegemonic discourse and identification with alternative and politically enabling positions. In the economic realm today we are confronted with no one set of possible alternative identities. Certainly the historic identity of the communist worker no longer presents itself as an imagined counter-identity. Instead, as we have shown, the terrain is littered with half-hearted and defensive "economic" identities that are largely acknowledged as social identities— houseworker, giver of gifts, volunteer, cooperator, petty trader, home producer, artisan, member of a kin network, indigenous hunter, migrant, public servant, community worker, peasant, social entrepreneur. This ragtag group has no shared sense of economic right from which it might launch an articulated attack on a neoliberal global capitalist order.48 Rather, the discourses that occupy roles as Constructing a Language.

The political will fail – moving within the state causes a sense of pacification where the left believes they have done good while still upholding the existing inequalities

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

I believe that homosexuals are revolutionary today in as much as we have overcome politics. The revolution for which we are fighting is among other things the negation of all male supremacist political rackets (based among other things on sublimated homosexuality), since it is the negation and overcoming of capital and its politics, which find their way into all groups of the left, sustaining them and making them counter-revolutionary.

My arsehole doesn't want to be political, it is not for sale to any racket of the left in exchange for a bit of putrid opportunist political 'protection'. While the arseholes of the 'comrades' in the groups will be revolutionary only when they have managed to enjoy them with others, and when they have stopped covering their behinds with the ideology of tolerance for the queers. As long as they hide behind the shield of politics, the heterosexual 'comrades' will not know what is hidden within their own thighs.

As always, it is only rather belatedly, in the wake of the 'enlightened' bourgeoisie, that the left-wing groups have begun to play the game of capitalist tolerance. From declared hangmen, and a thousand times more repugnant than the hustlers and fascists, given all their (ideological) declarations of revolution, the activists of these groups have transformed themselves into 'open' debaters with homosexuals. They fantasise about becoming well-meaning and tolerant protectors of the 'deviant', in this way gratifying their own virile image, already far too much on the decline, at a time when even the ultra-left have suddenly to improvise 'feminist' representatives for 'their' women. Moreover, the fantasy of protectors helps them to exorcise the problem of the repression of their own homoerotic desire. Under it all, the activists of the left always hope to become good policemen. They do not know that real policemen get in there more than they do, and that when this happens, they make love precisely with us gays. When will there be a free homosexual outlet for the activists of the ultra-left ?

The perm solves best – the revolution will only be successful in conjunction with [insert advocacy statement/buzzword]

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'Capital', writes Virginia Finzi Ghisi, 'has made use up till now of the erotic nature of labour in order to force man into this, having preventively withdrawn from him any other sexual adventure

(relations with the woman-wife-mother in the family circle are no adventure, but only an extended substitution) ... Heterosexuality becomes the condition for capitalist production, as a modality of loss of the body, a habituation to seeing this elsewhere, and generalised.' [15]

The struggle for communism today must find expression, among other things, in the negation of the heterosexual Norm that is based on the repression of Eros and is essential for maintaining the rule of capital over the species. The 'perversions', and homosexuality in particular, are a rebellion against the subjugation of sexuality by the established order, against the almost total enslavement of eroticism (repressed or repressively desublimated) to the 'performance principle', to production and reproduction (of labour-power).

The increase in the means of production has already virtually abolished poverty, which is perpetuated today only by capitalism. And if the sublimation of the 'perverse' tendencies of Eros into labour is thus no longer economically necessary, it is even less necessary to channel all libidinal energies into reproduction, given that our planet is already suffering from over-population. Clearly, repressive legislation on the number of children, abortion, and the wars and famines decreed by capital, will not resolve the problem of population increase. Such things can only serve to contain it within limits that are functional to the preservation and expansion of the capitalist mode of production. They serve to increase the war industry and to maintain the Third World in conditions of poverty and backwardness that are favourable to the establishment of capitalist economic and political control. The problem of over-population can be genuinely resolved by the spread of homosexuality, the (re)conquest of autoerotic pleasure, and the communist revolution. What will positively resolve the demographic tragedy is not the restriction of Eros, but its liberation.

The harnessing of Eros to procreation, in fact, has never been really necessary, since free sexuality, in conditions that are more or less favourable, naturally reproduces the species without needing to be subject to any type of constraint. On the other hand, if the struggle for the liberation of homosexuality is decisively opposed to the heterosexual Norm, one of its objectives is the realisation of new gay relations between women and men, relations that are totally different from the traditional couple, and are aimed, among other things, at a new form of gay procreation and paedophilic coexistence with children.

In a relatively distant future, the consequent trans-sexual freedom may well contribute to determining alterations in the biological and anatomical structure of the human being that will transform us, for example, into a gynandry reproducing by parthenogenesis, or else a new two-way type of procreation (or three-way, or ten-way ?). Nor do we know what the situation is on the billions of other planets in the galaxy, many of which, at least, must be far more advanced than ourselves.

If we can thus understand how the repression and sublimation of Eros, and the heterosexual Norm, are absolutely no longer necessary for the goals of civilisation and the achievement of communism, being in fact indispensable only for the perpetuation of capitalism and its barbarism, then it is not hard to discover in the expression of homoerotic desire a fertile potential for revolutionary subversion. And it is to this potential that is linked the 'promise of happiness' that Marcuse recognises as a peculiar character of the 'perversions'.

The revolution will be homophobic – the leftist revolutionaries see LGBT populations as part of the bourgeois

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5. The 'Protectors' of the Left The left "" above all the Italian Communist Party, but also all the self-proclaimed revolutionary organisations "" were slow to adopt even an attitude of 'protection' towards gays. For a long time they simply repressed homosexuality directly, negating it by exalting the tough, virile figure of the productive (and evidently reproductive) worker. They ridiculed homosexuals, defining them as an expression of the corruption and decadence of bourgeois society, thus making their own contribution to confirming gays in an attitude that is in some respects counter-revolutionary. They put forward an image of revolution that is grotesquely bigoted and repressive (based on sacrifice and on the infernal proletarian family) and a caricature of virility (based on productive-reproductive labour and on brute militarised violence), and they held up the model of those countries defined as socialist, who liquidate homosexuals in concentration camps or 're-education centres', such as Cuba or China. It is scarcely surprising, then, that gay people saw only the system itself as their 'salvation'.

When the homosexual liberation movement started in Italy, the left did their best to induce it to silence and discourage it. We can all cite an endless series of insults, provocations and even physical attacks from militants of the left. Those of us who belonged for a while to such groups know very well the sum of humiliations and frustrations involved in being a gay activist in the heterosexual left.

The left thus did all it could to extinguish our movement. They stubbornly characterised it as 'petty-bourgeois' at the very time that we were starting to come out in a revolutionary way. As far back as 1971, Joe Fallisi could write that the left was concerned above all to 'modernise reformist politics and impose (in the heaven of the Spectacle) new ideological images of the "challenger", the "tough guy", the "extra-parliamentarist", the "new partisan".' And if the reformist politics of the left are phallocentric and heterosexual, their ideological counterpart was the 'tough guy with a

big cock and muscles of steel', who sets even the fascist bullies to flight. [16] It is no accident that the extra-parliamentary groups of yesterday are today seated in Parliament.

The aff is the K – the heterosexual Norm is the same as the oppressive capitalist system – a homosexual revolution is the only revolution that will be successful

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Disease Reps

Political approaches towards addressing AIDS are the only way to bring about actual change

Boone and Batsell 01 [Catherine Boone, professor of Government @ the U of Texas, and Jake Batsell, professor of journalism @ the U of North Texas, "Politics and AIDS in Africa: Research Agendas in Political Science and International Relations," Africa Today, http://muse.jhu.edu.proxy1.cl.msu.edu:2047/journals/africa_today/v048/48.2boone.pdf]//JIH

In both cases, we see evidence of a capacity to supply "good governance" that political science does not define or measure very well. Research aimed at better understanding where state strength and effectiveness comes from in these cases could be useful. It could contribute to broader and more general understandings of what it takes to generate state capacity in Africa and it could also help identify new political resources that could be mobilized in efforts to provide public goods, including positive responses to HIV-AIDS. Political scientists can make a direct contribution by analyzing the factors that contribute to constructive public policy responses to AIDS. It is clear that there is simply no substitute for state action in this domain: governments must be at the center of AIDS-prevention and treatment efforts. Experiences from the past fifteen years show that where governments fail to act, the disease spreads faster, the eventual costs of dealing with it are higher, and the negative effects on development are more far-reaching and intractable. Conversely, governments that do respond forcefully to the issue of AIDS have registered successes in bringing HIV infection rates down, such as in Uganda and Senegal. As Peter Mameli wrote in his 1998 dissertation examining variations in state response to the AIDS pandemic, "it is essential that researchers begin to analyze which background conditions, administrative techniques and organizational forms have worked most effectively at the national and international levels of political response as we continue to address this health crisis" (Mameli 1998: 24). Nearly two decades into a pandemic that poses one of the gravest threats to public health and development that sub-Saharan Africa has ever faced, political science can no longer afford to ignore the political implications of AIDS in Africa. A rich array of research agendas linking AIDS and politics is worthy of systematic attention, including the explanation of

variations in state responses to the pandemic; the relationship between African governments and NGOs; the challenges AIDS creates for neoliberalism; AIDS in the context of North-South tensions; and international security issues. Equally important are issues that we have not addressed here; including the human rights concerns in connection with HIV testing, drug experiments, workplace rights, and access to therapies. Also included are the role of intensified exploitation of Africa's mining and forest resources and the spread (and perhaps management) of AIDS and other infectious diseases (Hardin 2000), gender politics issues (including new legal struggles over inheritance laws and norms), and issues about citizenship and popular conceptions of state responsibility and state power that are revealed in public assessments of governments' response, or lack thereof, to AIDS. These topics deserve attention from political science because they are real-world problems of critical importance. Researchers can make contributions by generating data, helping to frame and theorize issues, sorting out the conditions under which "best practices" are most likely to emerge, and getting a better handle on the institutional and macropolitical factors that shape governmental and societal responses. Such research also offers prospects for considerable theoretical innovation in political science. AIDS politics is largely unploughed territory.

Fem

Permutation solves – a queer feminism is necessary in order to transcend gender boundaries and constructions.

Rudy 2000 [Kathy Rudy, professor of women's studies at Duke University "Queer theory and feminism," Women's Studies: An inter-disciplinary journal, 29:2,195-216, 2000, http://dx.doi.org/10.1080/00497878.2000.9979308]//JIH

From a certain angle, these strategies might appear contradictory (why focus on "women" or women's sphere if that's the very category we're trying to free ourselves from?). My point here is that we need to live with this contradiction for some while, that we need to focus both on women and beyond them in order to prevent a new queer world from becoming another cover for the discrimination and disregard of women. Queer theory can provide us with interesting visions of a non-gendered, politically progressive world, but only if we recognize the need for feminist analysis as well. To my thinking, feminists today need to attend both to new queer analyses and to feminist methodologies if we hope to pursue a world that strives to be truly beyond gender discrimination rather than one that simply hides it. Queer discourse on academic and popular levels can help us avoid configuring gender as an ontological necessity and see it instead as something we construct and perform. Moving beyond the male/female binary will free us from unnecessary gender discrimination currently present in many aspects of social life. We also need feminism, however, to help us consciously focus on and recover "women's work" as a central concern in the new queer discourse. As feminists striving to live beyond gender, we need to actively remember the important relational and emotional work that has been done throughout the ages by the people called "women." Seeing "women's work" as engaging, important work throughout history will reshape the landscape of our own lives today. I suggest that what we need is a "feminist version of queer theory," which would see itself not as a set of instantaneous, deconstructive moves but rather as a collection of staggered events and uneven developments that pursue two conflicting goals simultaneously. In this feminist version of queer theory, we must strive to pay as much attention to the role of (what we used to call) women, as we do to overcoming or rising above such categorization. By understanding a feminist queer agenda not as one move but as a process, we can then see that both types of work help us reshape the world. Queer theorists and feminists agree on the idea that the secret of rebuilding the world lies at the level of interpretation. Rather than struggling over whether an event or text is either queer

or feminist, we need to recognize that both interpretations are necessary and ought to exist side-by-side. In building a new feminist queer theory in this dialectical fashion, the struggle to recover women and to move beyond them emerges as an agenda that can offer a better world for people of all sexual and gender identifications. This version of queer theory understands finally that without feminism, queer theory will simply be another fight among boys.

Engaging in an analysis of queerness is necessary in order to transcend the confining identity categories of many feminist movements and break away from traditional conceptions of identity.

Jagose 96 [Annamarie Jagose, PhD., scholar in feminist studies, lesbian/gay studies and queer theory,"Queer Theory," University of Melbourne Press, 1996, http://www.australianhumanitiesreview.org/archive/Issue-Dec-1996/jagose.html]//JIH

In the sense that Butler outlines the queer project--that is, to the extent that she argues there can't be one--queer may be thought of as activating an identity politics so attuned to the constraining effects of naming, of delineating a foundational category which precedes and underwrites political intervention, that it may better be understood as promoting a non-identity--or even anti-identity--politics. If a potentially infinite coalition of sexual identities, practices, discourses and sites might be identified as queer, what it betokens is not so much liberal pluralism as a negotiation of the very concept of identity itself. For queer is, in part, a response to perceived limitations in the liberationist and identity-conscious politics of the gay and lesbian feminist movements. The rhetoric of both has been structured predominantly around self-recognition, community and shared identity; inevitably, if inadvertently, both movements have also resulted in exclusions, delegitimation, and a false sense of universality. The discursive proliferation of queer has been enabled in part by the knowledge that identities are fictitious--that is, produced by and productive of material effects but nevertheless arbitrary, contingent and ideologically motivated.

Unlike those identity categories labelled lesbian or gay, queer has developed out of the theorising of often unexamined constraints in traditional identity politics. Consequently, queer has been produced largely outside the registers of recognition, truthfulness and self-identity.

Queer, then, is an identity category that has no interest in consolidating or even stabilising itself. It maintains its critique of identity-focused movements by understanding that even the formation of its own coalitional and negotiated constituencies may well result in exclusionary and reifying effects far in excess of those intended.

Acknowledging the inevitable violence of identity politics and having no stake in its own hegemony, queer is less an identity than a critique of identity. But it is in no position to imagine itself outside that circuit of problems energised by identity politics. Instead of defending itself against those criticisms that its operations inevitably attract, queer allows such criticisms to shape its--for now unimaginable--future directions. 'The term', writes Butler, 'will be revised, dispelled, rendered obsolete to the extent that it yields to the demands which resist the term precisely because of the exclusions by which it is mobilized'. The mobilisation of queer--no less than the critique of it--foregrounds the conditions of political representation: its intentions and effects, its resistance to and recovery by the existing networks of power.

The feminist critique of LGBT issues is flawed and discriminatory – the alt just perpetuates homophobia

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

Many feminists criticise us queens because we often tend in our dress and behaviour to copy the stereotyped 'feminine' fetish that women have to fight. But if a woman dressed like a starlet or cover girl is normal for the system today, a man dressed in a similar way is quite abnormal, as far as 'normal' people are concerned, and so our transvestism has a clear revolutionary character. There is no harm in us queens having our bit of fantasy : we demand the freedom to dress as we like, to choose a definite style one day and an ambiguous one the day after, to wear both feather : and ties, leopard-skin and rompers, the leather queen's chains, black leather and whip, the greasy rags of the street porter or a tulle maternity dress. We enjoy the bizarre, digging into (pre)history, the dustbins and uniforms of yesterday, today and tomorrow, the trumpery, costumes and symbols that best express the mood of the moment. As Antonio Donato puts it, we want to communicate by our clothing, too, the 'schizophrenia' that underlies social life, hidden behind the censorious screen of the unrecognised transvestism of everyday. From our vantage point, in fact, it is 'normal' people who are the true transvestites. Just as the absolute heterosexuality that is so proudly flaunted masks the polymorphous but sadly inhibited disposition of their desire, so their standard outfits hide and debase the marvellous human being that lies suppressed within. Our transvestism is condemned because it shows up for all to see the funereal reality of the general transvestism, which has to remain silent, and is simply taken for granted.

Far from being particularly odd, the transvestite exposes how tragically ridiculous the great majority of people are in their monstrous uniforms of man and 'woman'. You need only take a ride on the underground. If the transvestite seems ridiculous to the 'normal' person who encounters him, far more ridiculous and sad, for the transvestite, is the nudity of the person who laughs, so properly dressed, in his face.

For a man, to dress as a 'woman' does not necessarily mean projecting the 'woman-object'; above all, because he is not a woman, and the male fetishism imposed by capital decrees that he should be dressed quite differently, reified in a quite different guise, dressed as a man or at least in unisex. Besides, a frock can be very comfortable, fresh and light when it's hot, and warm and cosy when it's cold. We can't just assume that women who normally go around dressed as men, swathed tightly in jeans, feel more comfortable than a queen dressed up as a witch, with full-bodied cloak and wide-brimmed hat.

But a man can also get pleasure from wearing a very uncomfortable 'feminine' garb. It can be exciting, and quite trippy, for a gay man to wear high heels, elaborate make-up, suspender belt and satin panties. Once again, those feminists who attack us gays, and in particular transvestites, for dressing as the 'woman-object', are putting down gay humour, the transsexual aesthetic, the craziness of crazy queens. Their new morality is in fact the very old anti-gay morality, simply given a new gloss by modern categories stuffed with an ideological feminism, ideological because it provides a cover for the anti-homosexual taboo, for the fear of homosexuality, for the intention to reform the Norm without eliminating it.

Heterosexual feminists fail to hit the mark when they discuss homosexuality. And we queens, moreover, have no intention of being put down by women any more than by men. In the course of our lives, many of the educastrated educastrators we have encountered have been women, and there are certainly far more women still opposed to homosexuality today than there are gay men who are male supremacist and enslaved by the dominant ideology. Many women have abused us and still do so, they have ridiculed us and still do so, they have oppressed us and still do so. These women cannot but be opposed to us, and we cannot but 'oppose' them, if we intend, from the gay standpoint, to wage a struggle for universal liberation (a struggle, therefore, which involves them as well, fighting against their prejudices, with a view to dissolving all anti-gay resistances). I have already shown how the contradiction between men and women and the contradiction between heterosexuality and homosexuality are intertwined. And so if feminists cannot but oppose the persistence of male supremacy among us queens, we cannot but challenge fundamentally the heterosexual 'normality' with which the women's movement is still pervaded, despite the new fashion or ideology of 'homosexuality' that has become widespread in it.

Permutation card – fem (don't know the advocacy statement so don't know how to explain the perm really)

Mieli, leader in the Italian gay movement, 1980 (Mario, Libcom, "Towards a gay communism" 1980, https://libcom.org/library/gay-communism-mario-mieli, MMV)

When there are women who criticise us gays if we dress as 'women', we should not ignore the pulpit from which this preaching comes. I have never been attacked by a lesbian for my make-up, my floral gowns or my silver heels. It is true, of course, that, if for centuries women have been forced by male power to dress up in an oppressive manner, the great creators of fashion, the couturiers, hair-stylists, etc. have almost always been gay men. But the homosexual fantasy has simply been exploited by the system "" it still is [2] "" in order to oppress women and adorn them in the way that men want to see them. For centuries, the system has exploited the work of homosexuals to subjugate women, just as it has made abundant use of women to oppress gays (any gay man need only recall his mother). For this reason, if it is very important for women today to reject certain ways of dress, i.e. being dressed and undressed by men, it is equally important that gays should recapture and reinvent for themselves the aesthetic that they were obliged for centuries to project onto women.

If Marlene Dietrich in her glitter is an emblem of the oppression of women, she is at the same time a gay symbol, she is gay, and her image, her voice, her sequins form part of a homosexual culture, a desire that we queens recognise in ourselves. It is true that for a woman today to present herself like a Vogue cover girl is in general anti-feminist and reactionary. But for a gay man to dress as he pleases, boldly expressing a fantasy which capital has relegated to the reified pages of Vogue, has a certain revolutionary cutting edge, even today. We are fed up with dressing as men. We ask our sisters in the women's movement, then, don't burn the clothes that you cast off. They might be useful to someone, and we have in fact always longed for them. In due course, moreover, we shall invite you all to our great coming-out ball.

There can be no doubt that queens, 'effeminate' homosexuals and transvestites are among those men closest to trans-sexuality (even if frequently, because of oppression, they live their transsexual desire in alienated forms, infected by false guilt). Queens and transvestites are those males who, even though male, understand better what it means to be a woman in this society, where the men most disparaged are not the brutes, phallocrats or violent individualists, but rather those who most resemble women.

It is precisely the harsh condemnation of 'effeminacy' that sometimes leads gay men to behave in a way that is functional to the system, to become their own jailors. They then balance their 'abnormal' adoration for the male, the tough guy, the hoodlum, with a 'normal' and neurotic anti-woman attitude, which is counterrevolutionary and male supremacist. But the homosexual struggle is abolishing this historical figure of the queen enslaved by the system (the 'queer men' whom Larry Mitchell distinguishes from 'faggots'), and creating new homosexuals, whom the liberation of homoeroticism and trans-sexual desire brings ever closer to women, new homosexuals who are the true comrades of women. To the point that they can see no other way of life except among other homosexuals and among women, given the increasingly detestable character of heterosexual males. Whenever we gays see 'normal' males discussing one another, or rather tearing one another to pieces, whenever we see them attack one another in a profusion of thrusting insertions, then we truly do think they have understood nothing, if they are still unaware of the homoerotic desire that pushes them towards one another and yet confuses them because it is repressed. And if the gay struggle elevates the acidic and put-down queen (acidic even when she's not on acid), transforming her into a folle, a gay comrade who is ever more trans-sexual, it also negates the heterosexual man, since it tends towards the liberation of the queen that is in him too.

The feminist critique of LGBT issues is flawed and discriminatory – the alt just perpetuates homophobia

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Many feminists criticise us queens because we often tend in our dress and behaviour to copy the stereotyped 'feminine' fetish that women have to fight. But if a woman dressed like a starlet or cover girl is normal for the system today, a man dressed in a similar way is quite abnormal, as far as 'normal' people are concerned, and so our transvestism has a clear revolutionary character. There is no harm in us queens having our bit of fantasy : we demand the freedom to dress as we like, to choose a definite style one day and an ambiguous one the day after, to wear both feather : and ties, leopard-skin and rompers, the leather queen's chains, black leather and whip, the greasy rags of the street porter or a tulle maternity dress. We enjoy the bizarre, digging into (pre)history, the dustbins and uniforms of yesterday, today and tomorrow, the trumpery, costumes and symbols that best express the mood of the moment. As Antonio Donato puts it, we want to communicate by our clothing, too, the 'schizophrenia' that underlies social life, hidden behind the censorious screen of the unrecognised transvestism of everyday. From our vantage point, in fact, it is 'normal' people who are the true transvestites. Just as the absolute heterosexuality that is so proudly flaunted masks the polymorphous but sadly inhibited disposition of their desire, so their standard outfits hide and debase the marvellous human being that lies suppressed within. Our transvestism is condemned because it shows up for all to see the funereal reality of the general transvestism, which has to remain silent, and is simply taken for granted.

Far from being particularly odd, the transvestite exposes how tragically ridiculous the great majority of people are in their monstrous uniforms of man and 'woman'. You need only take a ride on the underground. If the transvestite seems ridiculous to the 'normal' person who encounters him, far more ridiculous and sad, for the transvestite, is the nudity of the person who laughs, so properly dressed, in his face.

For a man, to dress as a 'woman' does not necessarily mean projecting the 'woman-object'; above all, because he is not a woman, and the male fetishism imposed by capital decrees that he should be dressed quite differently, reified in a quite different guise, dressed as a man or at least in unisex. Besides, a frock can be very comfortable, fresh and light when it's hot, and warm and cosy when it's cold. We can't just assume that women who normally go around dressed as men, swathed tightly in jeans, feel more comfortable than a queen dressed up as a witch, with full-bodied cloak and wide-brimmed hat.

But a man can also get pleasure from wearing a very uncomfortable 'feminine' garb. It can be exciting, and quite trippy, for a gay man to wear high heels, elaborate make-up, suspender belt and satin panties. Once again, those feminists who attack us gays, and in particular transvestites, for dressing as the 'woman-object', are putting down gay humour, the transsexual aesthetic, the

craziness of crazy queens. Their new morality is in fact the very old anti-gay morality, simply given a new gloss by modern categories stuffed with an ideological feminism, ideological because it provides a cover for the anti-homosexual taboo, for the fear of homosexuality, for the intention to reform the Norm without eliminating it.

Heterosexual feminists fail to hit the mark when they discuss homosexuality. And we queens, moreover, have no intention of being put down by women any more than by men. In the course of our lives, many of the educastrated educastrators we have encountered have been women, and there are certainly far more women still opposed to homosexuality today than there are gay men who are male supremacist and enslaved by the dominant ideology. Many women have abused us and still do so, they have ridiculed us and still do so, they have oppressed us and still do so. These women cannot but be opposed to us, and we cannot but 'oppose' them, if we intend, from the gay standpoint, to wage a struggle for universal liberation (a struggle, therefore, which involves them as well, fighting against their prejudices, with a view to dissolving all anti-gay resistances). I have already shown how the contradiction between men and women and the contradiction between heterosexuality and homosexuality are intertwined. And so if feminists cannot but oppose the persistence of male supremacy among us queens, we cannot but challenge fundamentally the heterosexual 'normality' with which the women's movement is still pervaded, despite the new fashion or ideology of 'homosexuality' that has become widespread in it.

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Foucault

Perm do both – the 1ac is consistent with Foucault's strategy for queer resistance.

Spargo 99 [Tamsin Spargo, Reader in Cultural History and teaches creative writing in the Liverpool Screen School, "Foucault and Queer Theory," 1999]//JIH

A crucial feature of Foucault's analysis is his emphasis on the production of 'reverse discourse': 'There is no question that the appearance in nineteenth-century psychiatry, jurisprudence, and literature of a whole series of discourses on the species and subspecies of homosexuality, inversion, pederasty, and "psychic hermaphrodism" made possible a strong advance of social controls into this area of "perversity"; but it also made possible the formation of a "reverse" discourse: homosexuality began to speak in its own behalf, to demand that its legitimacy or "naturality" be acknowledged, often in the same vocabulary, using the same categories by which it was medically disqualified.'6 It is possible to see in this model of reverse discourse the germ of identity politics. Those who are produced as deviant subjects, 'homosexuals', may find a common cause, a common dissenting voice that turns confession to profession.The discourse of sexology, for example, produced the identity category of the 'invert' as an aberration from the norm, but it might also enable that individual to question his or her social and political position. It provided a vocabulary and knowledge which could be strategically used by its subjects. As recent work has revealed, there were a number of explicit attempts to redeploy the knowledge and rhetoric of inversion and of homosexuality to appeal for decriminalisation in the late 19th century.

But Foucault's analysis of the 'perpetual spirals of power and pleasure' that were produced in the discourses of sexuality cannot be easily reduced to a binary opposition of discourse versus reverse discourse.7 The 'sexual mosaic' of modern society is a dynamic network in which the optimisation of power is achieved with and through the multiplication of pleasures, not through their prohibition or restriction.8 It is difficult to view power except in traditional terms as a negative force acting upon individuals or groups, but Foucault's subtler analysis of its status as a relation that simultaneously polices and produces, demands that we think beyond a conventional political logic of domination and resistance. Power relations cannot be simply overturned or inverted.

Neg Answers

K Links

AntiBlackness

The queer political body is inevitably fetishized and participates in the sustenance of racial structures – suffocates all possibilities for racial liberation.

Agathangelou 13 [Anna M. Agathangelou, Associate Professor at Department of Political Science, "Neoliberal Geopolitical Order and Value," International Feminist Journal of Politics, 15:4, 453-476, December 17 2013, http://dx.doi.org/10.1080/14616742.2013.841560]//JIH

This essay tracks a range of often neglected politics, texts, policies, legal practices, spaces and theories to reveal an emergent political body: the reconstructed sexual queer, whose recognizable humanity (i.e., imminent living-capacity) is constituted into a recognizable sexual orientation and gender identity, part of an emerging form of a sovereign body politic, which presupposes immanent (a Deleuzian outside) slave incapacity for suture (Dayan 2011). Concomitantly, this suffering fetishized 'queer' political body participates in the redaction and subsequent sustenance of racialized structures with its recognizable sexual orientation and gender identity, whereby white bodies become signifiers of 'legitimate', radical alterity in the form of queerness and blacks are presumed imminently incapacious, never registering in the 'legitimate' global political economy of sex and sexuality (Agathangelou 2004) as well as law. I offer a peripatetic presentation of the Human Rights Watch reports on Iraq (2011) and Hillary Clinton's speech to the UN to articulate their political positions, yoking them without collapsing them into comparison. In so doing, I suggest that the three moves outlined above constitute not only the 'straightjacketing' of sexuality, but also racial terror – where 'gay rights' becomes a discourse and a practice of (perceived) racial economic superiority and (actual) racial subordination. Querying the genealogy of sex, neoliberalism and capitalism from the vantage point of black terror (i.e., lynchings, convict leasing to political disenfranchisement, chain gangs; see Morrison 1987; Dayan 2011) accords us an orientation from which to understand such 'terror [that] allow[s] to demonise others . . . to do unspeakable things to them' all in the name of 'order' (Dayan 2011: 32–3) as well as the visions of radical justice emanating from antislavery and anti-colonial struggles. In the following sections, I theorize the ways in which slavery becomes collapsed as sexuality into the neoliberal imperium within which blacks and black life serve as the literal raw materials to guarantee long-term growth (Davis 2003: 94). I also point to insurgent social life as a struggle for 'total freedom' (Goddard 2006). In so doing, I work with two political (ethico-juridical) archives tracing their force on bodies directly. First, I reengage with Hillary Clinton's UN speech to trace how the queer is constituted as value in a speculative economy (i.e., the 'rational' basis for passing laws that integrate them as capacious civil subjects) that reconfigures capital and globality by distinguishing between different forms of governance and violence, placing the queer on the inside of the civil society and relegating the hovering black outside the 'bounds of the civil' (Dayan 2011: 22) consequently changing the world itself and 'all levels of social existence' (Quijano 2000: 547). Second, I use the Human Rights Reports in Iraq to trace how sexual and racial technologies are deployed, exposing how the suturing of a queer speculative economy 'here' and 'there' depends fundamentally on 'value' as an abstraction device and a risk threshold that distinguishes between queers, racialized gays as well as the structurally impossible and ontologically dead (i.e., blacks; see Agathangelou 2009). Central to my analysis is the concept that queer economies could not and do not escape being entangled with capital's foundational terror. In fact, analysing these reports, I show the ways the neoliberal imperium biopolitically constitutes and manages queer life while ignoring the wailing, the sounds of living death emitting from the chains and the screams from the slave ships of the Atlantic crossing and from places such as Attica, Abu Ghraib and US prison states (Morrison 1987: 2010–11 cited in Childs 2009; Dayan 2011). I end with some thoughts on the possibility that queer projects and the Black Struggle can contravene, noting how differentiations between bodies, sexualities, and races in world politics emerge as strategies that foreclose and suffocates a range

of possibilities, globally constituted imaginaries and freedoms all in the name of overcoming limits, such as death, stagnation and the loss of material value.

Cap

The affirmative's focus on decentering identity traits and individual queer liberation promotes the goals of global capitalism and destroys hope for political action.

Kirsch 06 [Max Kirsch, PhD Florida Atlantic University, "Queer Theory, Late Capitalism and Internalized Homophobia," Journal of Homosexuality, Harrington Park Press, Vol. 52, No. ½, 2006, pp. 19-45]//JIH

Jameson has proposed that the concept of alienation in late capitalism has been replaced with fragmentation (1991, p.14). Fragmentation highlights the it also becomes more abstract:

What we must now ask ourselves is whether it is precisely this semi-autonomy of the cultural sphere that has been destroyed by the logic of late capitalism. Yet to argue that culture is today no longer endowed with the relative autonomy is once enjoyed as one level among others in earlier moments of capitalism (let alone in precapitalist societies) is not necessarily to imply its disappearance or extinction. Quite the contrary; we must go on to affirm that the autonomous sphere of culture throughout the social realm, to the point at which everything in our social life–from economic value and state power to practices and to the very structure of the psyche itself–can be said to have become 'cultural' in some original and yet untheorized sense. This proposition is, however, substantially quite consistent with the previous diagnosis of a society of the image or simulacrum and a transformation of the "real" into so many pseudoevents. (Jameson, 1991, p. 48)

The fragmentation of social life repeats itself in the proposal that sexuality and gender are separate and autonomous from bureaucratic state organization. If, as in Jameson's terms, differences can be equated, then this should not pose a problem for the mobilization of resistance to inequality. However, as postmodernist and poststructuralist writers assume a position that this equation is impossible and undesirable, then the dominant modes of power will prevail without analysis or opposition. The danger, of course, is that while we concentrate on decentering identity, we succeed in promoting the very goals of global capitalism that work against the formation of communities or provide the means to destroy those that already exist, and with them, any hope for political action.

For those who are not included in traditional sources of community building–in particular, kinship based groupings–the building of an "affectional community . . . must be as much a part of our political movement as are campaigns for civil rights" (Weeks, 1985, p. 176). This building of communities requires identification. If we cannot recognize traits that form the bases of our relationships with others, how then can communities be built? The preoccupation of Lyotard and Foucault, as examples, with the overwhelming power of "master narratives," posits a conclusion that emphasizes individual resistance and that ironically, ends up reinforcing the "narrative" itself.

Capitalism is the root cause of your impacts, and your impacts are inevitable until capitalism is destroyed.

Khader 13 Will the Real Robert Neville Please, Come Out? Vampirism, the Ethics of Queer Monstrosity, and Capitalism in Richard Matheson's I Am Legend? Journal of Homosexuality Jamil Khader PhD* Volume 60, Issue 4, 2013

Despite its multiculturalist politics of recognition, no matter how progressive it was for its time, Matheson's I Am Legend is as interpellated as Lawrence's (2007) film within capitalist ideology, in that they both translate "antagonism into difference" (Žižek,

2006, p. 362), substituting sexual difference for the importance of class struggle. Transvaluing the antagonism (class struggle) underpinning capitalist relations of production into the politics of identity and difference obscures the problematic relationship between capitalism and queer subjectivity. Indeed, the text establishes neoliberal capitalism as an absent presence, by reproducing the ultimate capitalist fantasy of commodity fetishism, while at the same time eliding the extent to which capitalism commodifies and exploits queer sexuality. In other words, neoliberal capitalism is invested with the power to assert itself as the end of history, to the extent that it has subtracted itself from public discourse to become a completely invisible signifier around which everything revolves but that refuses to be named. As D'Emilio (1993) memorably states in his article on capitalism and gay identity, "In the most profound sense, capitalism is the problem" (p. 474). The absent presence of capitalism as the transcendent signifier especially, for sexual minorities, constitutes the ultimate site for their doing and undoing. For D'Emilio (1993), sexual minorities inhabit an ambivalent position within the neoliberal capitalist system, since it facilitates both their emergence as consumers and producers, allowing, thus, their integration into the labor market as well as their exploitation to benefit corporate interests, and the homophobic backlash against them. 5 He attributes this ambivalence to the contradictory position that the nuclear family occupies in the capitalist system: Capitalism, he argues, has not only subverted the material basis of heteronormative families, allowing family members to live outside of the family structure, but has also enshrined these families for their reproductive value as the only functional model of intimate and personal relationships. He thus states, "in divesting the family of its economic independence and fostering separation of sexuality from procreation, capitalism has created conditions that allow some men and women to organize personal life around their erotic/emotional attraction to their own sex" (pp. 473–474). Moreover, capitalism has provided the conditions for commodifying sexuality and erotic desire as a matter of choice outside the parameters of procreative sexual economy. As long as such erotic choices are coopted and contained as a "form of play, positive and self-enhancing," in D'Emilio's (1993) words (p. 474), sexual identity can be evacuated from its excessive threats and history of struggle, only to circulate as a fetish of erotic pleasure. To this extent, sexual identity becomes then the grounds for collective organization that, nonetheless, substitutes consumption for production. Not all forms of queer transgression, that is, are necessarily subversive, until the proliferation of the semiotics of queer identity is understood in relation to the larger social inequalities (Taylor, 2009, p. 201). While capitalism continues to undermine the fabric of social relations, moreover, queer communities have been paradoxically blamed for the social ills and instabilities of the capitalist system. As such, capitalism as the name of the social totality is left untouched and invisible. Similarly, Matheson's (1954) text naturalizes and normalizes capitalism and its social relations, by disavowing the need for recognizing class struggle in "its terrifying dimension" (Žižek, 1986, p. 5). As a work of fantasy, that is, Matheson's novella tries to deny the specific conflicts that embody the capitalist conditions of its production: What the power of the hegemonic capitalist ideology will not have disclosed, in short, is the presence of capitalism itself. Throughout the text, therefore, Neville takes for granted the free commodities he consumes, be it the lathe from Sears, the gasoline, and the water bottles, allowing him to push a shopping cart, what he calls "the metal wagon," "up and own the silent dust-thick aisles" (Matheson, 1954, p. 26), clinging as much as he can to the norms of his bourgeois suburban life as if nothing happened around him. Indeed, Neville lives the pure fantasy of commodity fetishism that does not only offer him the opportunity to fulfill his fantasy of living in a world of abundant free commodities and surplus enjoyment (which for the last man on earth can indeed be considered infinite—he would have to live many more lives to be able to exhaust all these resources), but also to kill the undead owners of the store in which he was shopping, and, thus, foreclose the question of labor altogether. 6 Moreover, Neville's death operates as a nostalgic affirmation of neoliberal capitalism. After all, it is only when he can no longer maintain his sovereignty over his private property that the vampires could intrude upon it; in its absent presence, neoliberal capitalism could at least guarantee his safety inside of his private property. This critique of capitalism in Matheson can also be supplemented by an attention to the ways in which Matheson (1954) represents revolutionary societies and forms of enjoyment, and more specifically, the Soviet Union with its spies, collaborators, and purges. Since this new vampire society is specifically structured by the same violent forms of enjoyment embodied in revolutionary movements, I contend that Matheson's alleged subversion of the us-them binary of Cold War politics constitutes, in fact, both a thinly disguised liberal critique of Stalinist terror and a nostalgic affirmation of neoliberal capitalism. Moreover, it is worth pointing out, Matheson's representation of revolutionary society blends and obscures in an Arendtian fashion, as Žižek (1986) would say, the distinction between fascism and Stalinism in their differential relations to class struggle. (For a very useful and clear discussion of Žižek's political views, see Dean [2006, pp. 45–94].) While fascists neutralize class struggle and displace it on a racialized other such as the case of the Jews in Nazi Germany, as Žižek contends, Stalinism abolishes the class struggle and reenacts the capitalist fantasy of unbridled production and consumption without adhering nonetheless to the constraints of the capitalist form (private property). For Matheson (1954), recognizing the monstrosity of one's own nonnormative desire facilitates the relational understanding of the dialectical relationship between the self and the other, in a way that reinscribes them both within a democratic site of multicultural exchange and tolerance. Nonetheless, the belief in the legitimacy of sexual rights is

maintained without rethinking its ramifications in relation to the ability of the capitalist system to coopt and contain any threat that may be embedded in queer sexuality. Identity politics, therefore, cannot effectively serve as the basis for a genuine politics of gay liberation. **Only acknowledging class struggle**, **as the fundamental gap that constitutes the totality of the social field, can render the absence and invisibility of capitalism present**, by clearing a space for a radical reconfiguration of the ethical relationship to the other, and recharting alternative forms of solidarity, beyond identity politics, that can struggle with other oppressed constituencies in order to dismantle and reimagine the neoliberal capitalist system itself.

Historical Marxism provides a better frame for analyzing queerness than queer theory itself

Drucker 11 [Peter, International Institute of Research and Education; 2011; http://booksandjournals.brillonline.com/content/journals/10.1163/156920611x606412**; The Fracturing of LGBT Identities under Neoliberal Capitalism; 06/29/15; jac]**

Sexuality, once a largely unexplored continent for historical materialism, has long since ceased to be so. In the 1970s and early '80s lesbian/gay historians, using Marxist and feminist analytical tools among others, began to chart the 1. Some initial thoughts for this article originated as a talk at the IIRE Lesbian/Gay/Bisexual Strategy Seminar in Amsterdam in August 2000; many thanks to the 2000, 2002 and 2009 IIRE Seminar participants for their comments and ideas. Criticisms and observations by Nina Trige Anderson, Pascale Berthault, Terry Conway and Jamie Gough, and especially comments, suggestions and written exchanges with Alan Sears, were particularly helpful. Thanks as well to David Fernbach and to the editorial committee of Science & Society for comments on earlier versions, to Christopher Beck for his support and stimulating comments and questions, and to Historical Materialism board-members, especially Paul Reynolds, for their comments and suggestions. This article is dedicated to Torvald Patterson (1964–2005), in-your-face revolutionary queer, in loving memory. 4 P. Drucker / Historical Materialism 19.4 (2011) 3–32 emergence of contemporary lesbian/gay identities.2 Although historical materialist categories have been supplemented and then to a large extent supplanted in the field by Foucauldian approaches since the 1980s and queer theory since the 1990s, elements contributed by the first, Marxist-influenced generation of historians and theorists still survive to some extent within a broad range of social-constructionist perspectives. Most historians and theorists – if not necessarily most lesbian and gay laypeople – agree that modern lesbian/gay identities are unique, clearly distinguishable from any of the same-sex sexualities that existed before the last century or so and from many that still exist in various parts of the world. Whether they cite Marx, Foucault, or both, historians' analysis of lesbian/gay identity has linked its emergence to the development of modern, industrialised, urbanised societies. Some historians3 have linked its emergence, in a more-or-less explicitly Marxist way, to the development of capitalism. This connection has continued to be made by writers working within a Marxist framework.4 Recently, Kevin Floyd has detected more broadly a 'greater openness [in queer thought] to the kind of direct engagement with Marxism that emphasizes its explanatory power'.5 Yet some theorists have seemed uneasy in recent years about the questions that were initially not asked in these accounts. Once this specific form of lesbian/gay identity has been explored and its emergence mapped, the question arises: is this the end of the story? Especially as more writings have charted the spread of LGBT communities in Asia and Africa, some have wondered whether all other forms of same-sex sexuality are surrendering to what Dennis Altman has critiqued as the triumphant 'global gay', a monolithic figure riding the wave of capitalist globalisation.6 In much the same way that homo sapiens was once naively viewed as the culmination of biological evolution, and liberal democracy (according to Francis Fukuyama) as the culmination of human history, one might have sometimes imagined that all roads of LGBT history 2. For example, Fernbach 1981; D'Emilio 1983a and 1983b. A word on terminology: the term 'lesbian/gay' in this article refers to a historically specific phenomenon, defined in Section I below. 'LGBT' (lesbian, gay, bisexual and transgender) is used as a broader term for people with same-sex sexualities or identities. Although the word 'queer' is sometimes used by others to refer generally to LGBT people, I try to reserve the word in this article to those who self-identify as queer, who are often rebelling, not only against the heterosexual norm, but also against the dominant forms of lesbian/gay identity. I sometimes use 'gay', 'lesbian/gay' or 'LGB' particularly to refer to more 'respectable' people who emphatically do not identify as queer. 3. See, for example, D'Emilio 1983a. 4. See, for example, Hennessy 2000; Sears 2005. 5. Floyd 2009, p. 2. 6. Altman 2003. P. Drucker / Historical Materialism 19.4 (2011) 3–32 5 led to Castro Street in San Francisco. A few queer theorists have tried to undermine any such monolithic vision of gay identity, rejecting the onedimensional focus on gender-orientation that underlies it.7 But, despite their abstract championing of 'difference', they have rarely engaged concretely with the historiography that sometimes seems to suggest that LGBT history is a one-way street. In Paul Reynolds's words, they have 'centred on the social production of categories discursively rather than determinantly through essential causality and power of the social relations of production'.8 This article argues that there are socioeconomic forces that have been leading LGBT people to question lesbian/gay identity as it took shape by the 1970s. A historically-based, social constructionist, Marxist approach9 can examine historically different sexual identities under capitalism, without privileging any particular form of identity; can chart

not only the emergence of lesbian/gay identities, but also shifts in sexual identities in recent decades, exploring connections between shifting identities and successive phases of capitalist development. One useful tool is the Marxist theory of capitalist long waves, and specifically Marxist analyses of the mode of capitalist accumulation that was on the upswing until the early 1970s and turned sharply downward with the recessions of 1974–5 and 1979–82.10 A historical-materialist analysis of this kind may provide a more solid theoretical basis for addressing a central political concern of recent queer theory – the defence of nonconformist or less privileged LGBT people against 'homonormativity'11 – than queer theory itself offers, while helping to lay the foundation for a queer anticapitalism. It is by now nothing new to link the rise of what might be called classic lesbian/gay identity to the rise of a 'free' labour-force under capitalism. This has taken centuries, and historians have generally looked at it as a long process. But the breakthrough of gay identity as we know it on a mass-scale is in fact very recent, more a matter of decades than of centuries. On closer examination, 7. For example, Seidman 1997, p. 195. 8. Reynolds 2003. 9. This article uses the term 'social constructionism' simply as the opposite of 'essentialism' (a view of sexual identities as biologically determined or otherwise transhistorical), not to refer to a specific school of thought contrary to Marxism. Although Marxists such as Klara Zetkin and Alexandra Kollontai wrote insightfully about sexuality within a purely Marxist framework, more recent Marxist treatments of the subject have almost always engaged critically with other approaches, such as psychoanalysis, feminism, Foucauldianism, post-colonialism and queer theory. I believe that a rigorous Marxist approach to sexuality is not only compatible with an engagement with other social-constructionist approaches, but in fact requires it. 10. Mandel 1978 and 1995. 11. Lisa Duggan has defined 'homonormativity' as a set of norms that 'does not contest dominant heteronormative assumptions and institutions but upholds and sustains them' (Duggan 2002, p. 179). 6 P. Drucker / Historical Materialism 19.4 (2011) 3–32 the consolidation and spread of gay identity, especially among the mass of working-class people, took place to a large extent during what some Marxist economists refer to as the expansive long wave of 1945–73. Gay identity on a mass-scale, emerging gradually after a period of repression from the 1930s to the 1950s,12 was dependent on the growing prosperity of the working and middle-classes, catalysed by profound cultural changes from the 1940s to the 1970s (from the upheavals of the Second World-War13 to the mass-radicalisation of the New Left years) that prosperity helped make possible. This means that gay identity was shaped in many ways by the mode of capitalist accumulation that some economists call 'Fordism': specifically by mass-consumer societies and welfare-states.14 The decline of Fordism has also had implications for LGBT identities, communities and politics. The decades of slower economic growth that began with the 1974–5 recession had a differentiated impact on LGBT people and their communities. On the one hand, commercial gay scenes and sexual identities compatible with these scenes advanced and were consolidated in many parts of the world, particularly among middle-class layers. On the other hand, commercial scenes have not been equally determinant for the lifestyles or identities of all LGBT people. In the dependent world, many poor people simply have a hard time taking part in commercial gay scenes. In developed capitalist countries, while commercial scenes are more accessible to even lowerincome LGBTs, growing economic inequality has meant increasingly divergent realities in LGBT people's lives. Alienation has mounted among some LGBT people from the overconsumption increasingly characteristic of many aspects of the commercial gay scene, which inevitably marginalises many LGBT people. Alternative scenes of various sorts (not always necessarily less commercial) have proliferated.

Resistance purely rooted in queer studies cannot effectively confront neoliberalism

Drucker 11 [Peter, International Institute of Research and Education; 2011; http://booksandjournals.brillonline.com/content/journals/10.1163/156920611x606412**; The Fracturing of LGBT Identities under Neoliberal Capitalism; 06/29/15; jac]**

There is of course no one-to-one correspondence between economic and social developments and shifts in sexual, cultural and political identities. In LGBT communities, as in the world at large, there is a whole set of institutions that produce (among other things) lesbian/gay ideology and identity, mediate the underlying class and social dynamics, and represent 'the imaginary 12. See, for example, Chauncey 1994, pp. 334–46. 13. Bérubé 1983. 14. The concept of Fordism has been largely associated with the French 'régulation' school, the current of Marxist economics relied on by, for example, Floyd (Floyd 2009). Many of the basic elements of what regulationists call the Fordist mode of accumulation are also to be found in Mandelian long-wave theory or the 'social structure of accumulation'-approach. These different schools differ with each other particularly about the causes of the rise and decline of different modes of accumulation. While important, these debates are not directly relevant to this article. P. Drucker / Historical Materialism 19.4 (2011) 3–32 7 relationship of individuals to their

real conditions of existence'.15 To analyse how all these institutions – from newspapers and magazines to porn-video producers to (divisions of) publishing houses to websites and chat-rooms to lesbian/gay-studies departments to small-business associations to sports clubs and beyond – functioned ideologically under Fordism, and tended to function differently with the rise of neoliberalism, would go beyond this article's scope. Nevertheless, no aspect of capitalist culture, including sexual culture, exists in complete isolation from the mode of production as a whole; fundamental shifts in capitalism are detectable, however indirectly, at the level of gender and sexuality as at other levels of the systemic totality.16 This basic understanding can give us the audacity, even in the absence of fully worked-out mediations, to point out some trends that correspond to changing class-dynamics in LGBT communities. A large proportion of the institutions that define LGBT communities and produce their self-images tend to reproduce and defend a unifying lesbian/gay identity in apparent continuity with the identity that took shape by the 1970s. But even a schematic analysis can show that classic lesbian/gay subcultures and identities were put under pressure or into question in various ways by the decline of Fordism. Ultimately, as the class and social reality of LGBT communities became more fragmented and conflict-ridden, so did their ideological and even sexual expressions. In the end, the 'mode of production of material life condition[ed] [their] social, political and intellectual life process in general'; their 'social being . . . determine[d] their consciousness'.17 The changes have included development of a queer identity seen at least in part as in opposition to existing lesbian/gay identities, a growing visibility of transgender identities, and the proliferation of a variety of other identities linked to specific sexual practices or rôles. Despite these identities' extraordinary diversity, their rootedness in characteristics of contemporary capitalism can be detected in a number of more-or-less common features. Whether or not they are explicitly defined as queer, they respond to the increasingly repressive character of the neoliberal order through their stubborn affirmation of sexual practices that are still – or are increasingly – stigmatised. They also reflect the growing inequality and polarisation of neoliberal capitalism by making sexual power-differentials explicit, and above all through gender-nonconformity. To understand these features better, this article looks briefly, first, at the material basis of the emergence of lesbian/gay identity by the 1970s, and second at the material basis of factors that have been fracturing it. It then 15. Althusser 1971, p. 162. 16. Floyd 2009. 17. Marx 1968, p. 182. 8 P. Drucker / Historical Materialism 19.4 (2011) 3–32 examines the ways in which economic changes have been ideologically mediated in new expressions of gender and sexual identity, particularly among transgendered and other queers. The last section discusses the political implications of these changes and the challenges facing twenty-first-century LGBT communities.

LGBT identity and culture emerged and were formed under the development of modern capitalism

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I. Classic gay identity Classic lesbian/gay identity, as opposed to the many other forms of same-sex identity that have existed in human history, is (or was) an identity reserved for people whose primary sexual and emotional ties are with their own sex; who generally do not conclude heterosexual marriages or form heterosexual families (unlike, say, latter-day gay icon Oscar Wilde); who do not radically change their gender-identity in adopting a lesbian/gay sexuality (unlike transgendered people in a great variety of cultures); and in which both partners in relationships consider themselves part of the same lesbian/gay community (a bizarre notion to millions of men around the world who fuck men or boys without considering themselves gay, and to millions of women at the less explicit end of the 'lesbian continuum').18 This kind of gay identity emerged in developed capitalist countries in the late-nineteenth and early-twentieth centuries mainly among middle-class layers (middle-class consumption was particularly crucial to capitalaccumulation in the expansive long wave that lasted from the mid-1890s to the mid-1910s). In this same period, declining birth-rates and advancements in birth-control made procreation less crucial as a focus of at least middle-class sexuality, and sexual desire and object-choice more crucial. The growing importance of consumption and desire helped foster a shift in the construction of gender under capitalism, from

conceptions of ‘manhood’ and ‘womanhood’ focused on the innate character required for production and reproduction, to conceptions of masculinity and femininity that were (in Judith Butler’s term) more ‘performative’,19 defined to a greater extent by patterns of consumption, dress and everyday behaviour.20 In this same period, middle-class men and women (particularly women with education and professions) increasingly had 18. Rich 1983; Wekker 1999. Fernbach (Fernbach 1981, pp. 71–5) gave an early and clear account of the uniqueness of lesbian/gay identity among historically existing forms of same-sex sexuality. Greenberg 1988 provides the most comprehensive survey available of the range of same-sex sexualities. 19. Butler 1999. 20. Floyd 2009, pp. 57–66. P. Drucker / Historical Materialism 19.4 (2011) 3–32 9 the economic and social resources to live independently of their families and to defy convention. As John D’Emilio explained in a seminal article, capitalist development in this way created the conditions for the rise of gay identity.21 The result was the reification of sexual desire based on gendered object-choice, the rapid spread among the middle-classes of medical and later specifically psychoanalytical visions of sexuality,22 and ‘the invention of heterosexuality’ as well as homosexuality as sexological and social categories.23 Working-class and poor people even in developed countries, by contrast, tended well into the twentieth century to focus on conceptions of manhood and womanhood rather than reified conceptions of sexuality.24 Working-class men in the US in particular continued to form relationships between transgendered people (‘fairies’) on the one hand and non-transgendered, often married men on the other,25 or to engage in sex with other men for money or social benefit without taking on any distinctive sexual identity. In the same period in Germany, a homosexuality defined as masculine was notably championed by the middle-class ‘Community of the Special’, while Magnus Hirschfeld’s studies of same-sex relations among largely working-class men led him to uphold a transgender ‘third sex’-model.26 After 1945, however, working-class living standards in capitalist countries went up rapidly under the Fordist order, in which increases in labourproductivity were matched to a large extent by increasing real wages that sustained increasing effective demand, and various forms of social insurance cushioned the blows that hit working people during dips in the business-cycle. As a result, for the first time masses of working-class people – living off what D’Emilio, following Marx, calls ‘free’ labour – as well as students and others were also able to live independently of their families, and give sexual objectchoice a greater rôle in their lives and identities. Working-class family-structures and gender-rôles also changed. For the first time since the mid- to late-nineteenth century – when the family-wage had become a cherished ideal, and sometimes a reality, for broad working-class layers – the Second World-War made waged work at least temporarily normal for even respectable working-class and middle-class women. This made a dent in the pronounced gender-polarisation that had been characteristic of both working-class heterosexuality and homosexuality in the first decades of the 21. D’Emilio 1983a. 22. Floyd 2009, pp. 43–5, following Foucault 1978, pp. 118–23. 23. Katz 1995. 24. Foucault 1978, p. 121. 25. Chauncey 1994. 26. Drucker 1997, p. 37. 10 P. Drucker / Historical Materialism 19.4 (2011) 3–32 twentieth century. In fact, as evidence from both the US and the Netherlands shows, emerging lesbian/gay communities and organisations in the postwar period tended increasingly to squelch effeminacy among gay men and masculinity among lesbians.27 At the same time, higher funding for education and expansion of a social safety-net (in developed countries at least) decreased people’s economic dependence on parents to support them as students or young people, on spouses to help pay the rent, and on children to save them from poverty in old age. Full employment meant more job-opportunities for some people who had previously been marginalised. The combination of increased economic possibilities and a reconfiguration of gender-rôles helped many more people in the 1950s and 1960s shape a sexually hedonistic culture extending beyond the largely middle-class limits of the earlier nonconformist milieu of the 1910s and 1920s. Within this broad hedonistic culture it became possible for a growing minority to form same-sex relationships and networks. While ‘Fordist mass consumption was, above all, an attempt to secure a broad and sustained accumulation of capital’, the diversification of consumer-marketing that it entailed created space for an ‘underground circulation of homoerotic images’ in ‘an increasingly less underground gay male [and lesbian] network’.28 What remained to prevent people from

living openly lesbian/gay lives were the constraints of the law, police, employers, landlords, and social pressure of many sorts. The lesbian/gay movements of the 1960s and ’70s rebelled against these constraints, inspired by a wave of other social rebellions: black, youth, anti-war, feminist and (at least in some European countries) working-class.29 Supplementing the attempts of early lesbian/gay groups to discipline their members’ gender-norms, the second wave of feminism was key in drastically reining in the butch-femme patterns that were still largely hegemonic in 1950s lesbian subcultures (or at least in turning them into ‘a subterranean game’).30 The first lesbian/gay legal victories in the 1970s made mass, open lesbian/ gay/bisexual (LGB) communities possible in the developed countries for the first time in history. Among the preconditions for these communities were the general increase in people’s living standards and economic security, which made autonomous lesbian/gay lives possible; the fact that the millions of people who came out around the 1970s had a certain relative social homogeneity, thanks in part to generational bonds of the baby-boom and in part to the narrowing of economic divides in the 1950s and ’60s, so that there 27. Warmerdam and Koenders 1987, pp. 125, 153, 169; Floyd 2009, pp. 167–8. 28. Floyd 2009, p. 174. 29. D’Emilio 1983b. 30. Califia 2003, p. 3. P. Drucker / Historical Materialism 19.4 (2011) 3–32 11 were fewer barriers to a common sense of identity; and a relatively favourable political/cultural climate. The homogeneity of 1970s lesbian/gay communities was of course relative. Class and sexual differences always existed. The relative ease with which women and men coexisted in the early years of gay liberation lasted only until women became too fed-up with the treatment they often received at the hands of gay men. Although gender-norms relaxed to a certain extent in the 1960s and ’70s, this led to a true devaluation of masculinity and femininity only in the context of a radical-feminist critique, which was never hegemonic;31 even in the New Left, gender-relaxing countercultural influences coexisted with Third-Worldist macho posturing.32 Racism was always a reality. Differences that existed in the 1970s became far greater in the 1980s and 1990s, however, for reasons that go deeper than an inevitable sorting-out.

Capitalism fractures LGBT society, hinders the development of individual identities and renders LGBT resistance impossilbe

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II. Gays in the post-Fordist economy The depressive long wave that began by 1974–5 was met by the late 1970s with a neoliberal offensive. This offensive included (to be very schematic): a shift to ‘Toyotist’ production-techniques and to ‘lean production’ generally; economic globalisation, liberalisation and deregulation, taking advantage of new technologies that ‘accelerated the speed and dispersed the space of production’;33 privatisation of many public enterprises and social services; an increase in the wealth and power of capital at labour’s expense; an increase in inequality among countries (through the debt-crisis and structural-adjustment policies) and within countries (through regressive tax and welfare-‘reforms’ and attacks on unions), and luxury-consumption that increasingly replaced mass-consumption as a motor of economic growth. This offensive among other things fragmented the world’s working classes. Big differences (re) surfaced between better and worse-paid workers, permanent and temporary workers, white and black, native-born and immigrant, employed and unemployed.34 The less pronounced differences in income and job-security in 31. See Floyd 2009, pp. 177–8. 32. Floyd 2009, pp. 168–9. 33. Hennessy 2000, p. 6. 34. One study of wage-trends shows that among manufacturing workers in the US, ‘inequality soared in the 1970s and 1980s, reaching levels far higher than those existing during the Depression. The recovery after 1994 brought inequality down again, but only to just below that of the worst years of the 1930s’ (Galbraith and Cantú 2001, p. 83). Mike Davis noted ‘extreme income/skill polarization’ in the growing US healthcare, business-service, banking and real-estate sectors, resulting in a ‘split-level economy’ and ‘reshaping the traditional income pyramid into a 12 P. Drucker / Historical Materialism 19.4 (2011) 3–32 national working classes in the 1960s, which were the backdrop to the rise of lesbian/gay identity, became a thing of the past. One factor complicating the neoliberal offensive was the difficulty of rolling back some of the achievements of black, women’s and lesbian/gay movements. The contradictions of these emancipatory movements in a time of workingclass weakness and growing inequality were played out in many of the ideological debates of the 1980s and ’90s. Women’s equality and racial equality became steadily more established as political commonplaces (in rhetoric if not in reality) at the same time that

redistributive and counter-cyclical economic policies, far less controversial 40 years ago, were dismissed as outmoded and counterproductive (until the 2008 crisis prompted massive redistribution of wealth to the world's biggest banks and various forms of stimulus). What has the effect of all this been on LGBT people, communities and movements? The end of the Fordist expansive long wave was not bad news for everyone by any means, and not for all LGB people specifically. Particularly among some middle-class and upper-working-class social layers that prospered in the 1980s and '90s, especially but not only in developed capitalist countries, commercial gay scenes continued to grow, continuing to underlie lesbian/gay identity.35 Market-friendly lesbian/gay identities prospered in commercialised spaces, in the construction of two-income households among better-off gays and to a lesser extent lesbians, and in the tolerant public space fostered by gay-rights victories. Many relatively better-paid lesbian/gay people who benefited from both economic success and gay-rights reforms have some cause to be contented with the progress they have made: 'inside a cozy brownstone, curled up next to a health-insured domestic partner in front of a Melissa Etheridge video on MTV, flipping through Out magazine and sipping an Absolut and tonic, capitalism can feel pretty good'.36 While all social relations under capitalism are reified – distorted so that relations between people are perceived as relations with or even between things – the shift under neoliberalism to economic growth founded increasingly on middle-class overconsumption raised the reification of human relations among neoliberalism's beneficiaries to new heights. This applied notably to sexual and emotional relations among middleclass gay men and lesbians. new income hourglass' (Davis 1986, pp. 214–18). Figures from the US Federal Reserve show that income-inequality increased further at the end of the 1990s (Andrews 2003). 35. Altman 1982, pp. 79–97. 36. Gluckman and Reed 1997, p. xv. P. Drucker / Historical Materialism 19.4 (2011) 3–32 13 The 1970s, '80s and '90s and the first decade of the new millennium were also years in which open LGBT communities and identities became more prominent in much of the dependent world, first in Latin America and later in many Asian and African countries. Given that dependent countries as a whole have suffered especially with the decline of the old forms of capitalaccumulation, communities and identities there have taken on very contrasting forms.37 The period of slower growth and neoliberal reaction in the global North was a time of recurrent and devastating crisis in many parts of the South even before the generalised crisis of 2008 (notably in Latin America after 1982, in Mexico again after 1994, in much of Southeast Asia after 1997, in Brazil for several years after 1998, and in much of Africa with scarcely a breathing-space). But this did not prevent the growth of middle-classes in the South with incomes far above their countries' averages and linked to global consumer-capitalism – including gay consumer-capitalism. Commercialised, Western-oriented lesbian/gay identities seem in this context to have a complex and contradictory relationship with other same-sex sexualities that co-exist with them in the dependent world. In many ways 'gay' and 'lesbian' are still largely middle or upper-class, US or Eurocentric concepts, even if in other ways they provide a reference-point in struggles for sexual emancipation.38 In both developed and dependent capitalist countries, the ideological and cultural sway of gay identities in LGBT communities has spread beyond the more privileged social layers in which people's lives fit these identities most comfortably. LGBT media in dependent countries rely to some extent on lesbian/gay media in the capitalist metropoles for their material and imagery.39 In the developed capitalist countries, despite the proliferation of websites and zines defining identities and subcultures for minorities within the minorities, the most widely circulated books, periodicals and videos tend to be those most closely linked to the new, predominantly middle-class, gay mainstream. Even those who are economically least well-equipped for the commercial gay scene are often dependent on it as a market for potential (short or long-term) partners; more fundamentally, even celibate or monogamous people who are at least temporarily not in the market for a partner still tend to define themselves in the culturally hegemonic categories of lesbian, gay, bisexual or straight. Even poor transgendered and queer people whose lives are most remote from the images of the gay mainstream sometimes incorporate aspects of gay mainstream-culture into their aspirations and fantasies, constructing 37. Drucker 2009, pp. 826–8. 38. Altman 2000; Oetomo 1996, pp. 265–8. 39. Drucker 2000a, pp. 26–7. 14 P. Drucker / Historical Materialism 19.4 (2011) 3–32 their identities in part from images that may be borrowed and adapted from very different social realities. This hegemony of lesbian/gay identity over much of the LGBT world, and the physical coexistence of LGBT people of different classes in lesbian/gay spaces, provides arguments to those who downplay the importance of class in 'mixed-class' LGBT communities.40 It is true that the class-segregation that characterised early-twentieth-century LGBT scenes eased in the Fordist period. But cultural commonalities and cross-class relationships do not make lesbian/gay identity and spaces class-neutral, any more than the existence of sexual relationships between masters and slaves meant that slavery was not a significant factor in them. ' "Undifferentiated" accounts of gay life tend to narrate relatively well-

resourced and privileged experience as gay experience, and normatively promote this as a script for how gay life should be conceived and lived.'41 Lesbian/gay spaces are not islands, but heavily influenced by the structures of class in the surrounding societies: research on young LGBT people's schooling in Britain, for example, identifies 'social class as a major axis of power which positions LGBT people unequally and unjustly'.42 Moreover, as the next section shows, the fracturing of LGBT scenes in recent decades also has a class-dimension. Both in the centres and at the margins of the world-capitalist system, three aspects of the lesbian/gay identity that stabilised by the early 1980s fit well with the emerging neoliberal order: the community's self-definition as a stable minority, its increasing tendency towards gender-conformity, and marginalisation of its own sexual minorities. Lesbians' and gay men's self-definition as a minority group, which built on the reification of sexual desire that progressively consolidated the categories of gay and straight over the course of the twentieth century, at the same time expressed a profound social fact about lesbian/gay life as it took shape specifically under neoliberalism. To the extent that lesbians and gays were increasingly defined as people who inhabited a certain economic space (went to certain bars, bathhouses and discos, patronised certain businesses, and, in the US at least, even lived to some extent in certain neighbourhoods), they were more ghettoised than before, more clearly demarcated from a majority defined as straight. The fact that a fair proportion of those in the bars and bathhouses were always people with at least one foot in the straight world, sometimes even married people with children, was always an open secret, but one which few people announced with fanfare; they were generally seen as 40. For example, Seidman 2011. 41. Heaphy 2011. 42. McDermott 2011, p. 64. P. Drucker / Historical Materialism 19.4 (2011) 3–32 15 people who were still half 'in the closet', tended to be discreet in order to avoid unpleasantness, and were in any event generally marginal to the developing lesbian/gay culture. The fact that people continued to come out and join the community at all ages – or, for that matter, sometimes form heterosexual relationships at later ages and as a result often decrease their participation in the community – was also none too visible. The tendency of many early theorists of lesbian/gay liberation to question the categories of heterosexuality and homosexuality, emphasise the fluidity of sexual identity and speculate about universal bisexuality tended to fade away with time as the community's material reality became more sharp-edged. The lesbian/gay-rights movement accordingly ran less risk of seeming sexually subversive of the broader sexual order of gendered capitalism. The decline of butch/femme rôle-playing among lesbians and of camp culture among gay men also contributed to a hardening of the genderboundaries that remain central to capitalist societies. The drag queens who, rebelling against the postwar tightening of gender-discipline, had played a leading rôle in the 1969 Stonewall rebellion found that as social tolerance of lesbians and gays in general began to increase in the 1970s, social tolerance for gender-nonconformity in many lesbian/gay spaces decreased once more. In the earlier, smaller community of the immediate post-Stonewall years, nongender-conforming gay men and lesbians, less able or less inclined to hide, had been a higher proportion of the visible lesbian/gay milieu; as lesbian/gay communities expanded, the influx of more 'normal-seeming' lesbians and gay men diluted the prominence of transgendered people. In addition, the less polarised gender-rôles in the broader culture, which had initially facilitated the emergence of lesbian/gay identities, now increasingly restricted the room available for more gender-polarised lesbian/gay identities. Although the temporary relaxation of gender-norms in the 1960s had created some space for playful gender-bending, full-fledged drag often seemed anomalous and even embarrassing in the context of the androgynous imagery that was in vogue in the early 1970s. LGB communities thus increasingly defined themselves in ways that placed transgendered people – whose communities predated the new lesbian/gay identity by millennia – and other visible nonconformists on the margins, if not completely out of bounds. Kevin Floyd's identification of 'an ongoing, radical uncertainty about whether gay male sexual practice necessarily feminizes any of the men involved'43 does not do justice to the ways in which the relation between gender and sexuality is configured differently at different times and 43. Floyd 2009, p. 64. 16 P. Drucker / Historical Materialism 19.4 (2011) 3–32 locations within a global-capitalist totality that is neither static nor uniform, but rather strongly differentiated by period, class, gender, and the processes of combined and uneven development. We have seen, for example, that transgendered sexuality was more common in the working class than in the middle-class in developed countries in the early-twentieth century, as it still tends to be in some parts of the dependent world. The late 1970s, at the cusp of the transition from Fordism to neoliberalism, was the time in developed countries when space for transgendered sexualities (and thus Floyd's 'radical uncertainty') was at its historical nadir. While gay-male sexuality was masculinised and lesbianism feminised, the increased centrality of consumption to LGB identity resulted in a series of shifts in its sexual contours, some already apparent by the late 1970s and early '80s, others emerging only in the '90s or later. Obviously these shifts did not reflect an instantaneous, spontaneous sea-change in all LGBT people's felt desires or sexual practices. Individual desire and psychology are more resilient than that and are shaped over the course of lifetimes, not totally transmuted by the social developments of a decade or two. In some cases the winds of erotic fashion undoubtedly have shallower causes than profound socioeconomic change, and it would be a mistake to read too much into them. But

when sexual identities and imagery took on more unequal and gender-polarised forms at just the time when the surrounding societies were undergoing a sharp, long-term rise in inequality, it would be implausible to dismiss the correlation as pure coincidence. In any event, as the decline of Fordism put welfare-state programmes under pressure, a renewed emphasis on the centrality of the family to social reproduction helped put a brake on the relaxation of gender-norms that had characterised the 1960s. This conservative turn in the broader society was accompanied by a shift among gay men from the largely androgynous imagery and occasional gender-bending of the early 1970s to the more masculine 'clone'-culture that took hold by the early '80s. Feminine forms of selfpresentation that lesbian feminists once frowned on had also become more common and acceptable among 'lipstick-lesbians' by the 1990s – a 'celebration of femininity' that Gayle Rubin, for example, thought could 'reinforce traditional gender roles and values of appropriate female behavior'.44 A higher degree of gender-conformity among LGB people facilitated their incorporation into a neoliberal social and sexual order. This conformity was congenial for the growing number of gay men and lesbians who pursued professional, business or political careers in a number of 44. Rubin 1982, p. 214. P. Drucker / Historical Materialism 19.4 (2011) 3–32 17 capitalist societies, without necessarily renouncing or hiding their sexuality but preferably without 'flaunting' it. Even the lesbian/gay middle-class layers that live off gay businesses and nonprofits – far from all of whom were among the real economic winners of recent decades, but who tended to be spoken for by those among them who were – preferred in general to keep LGB communityexpressions culturally inoffensive. Another layer of middle-class or middleclass-identified lesbian/gay people, who were making their careers inside mainstream businesses and institutions, sometimes cringed at manifestations of a lesbian/gay community that marked them off too much from other people of their class. Many of these people would like to be able to pursue their careers in straight companies and institutions while being open about their same-sex relationships – fewer people are willing to contract heterosexual marriages these days and to keep their homosexual lives completely hidden and marginal – and for the rest deny or minimise differences between them and middle-class straights. This professional layer has provided the solid social base for the most moderate currents of LGB movements, which have often seen same-sex marriage as the culminating moment in the process of gay emancipation. And, in fact, same-sex marriage and adoption can be the culmination of some LGBT people's integration into the productive and reproductive order of gendered capitalism. Paradoxically, while neoliberalism has in many ways undermined the direct and obvious domination of wives and daughters by husbands and fathers under the original Fordist gender-régime,45 neoliberal cutbacks in social services, by privatising the provision of basic needs, have been restoring the centrality of the family-unit to the social reproduction of labour – in classed ways. While legal same-sex marriage or partnership can in this context secure new benefits for middle-class and privileged working-class lesbians and gays, for those most dependent on the welfare-state in countries such as Britain and the Netherlands legal recognition of their partnerships can lead to cuts in benefits.46 As the number of children being raised in households headed by same-sex couples has risen, same-sex marriage and adoption can serve to legitimise and regulate the growing rôle that lesbian and gay couples are playing in social production, consumption and reproduction. Yet the rise of same-sex-coupleheaded nuclear families redefines and even reinforces rather than overcomes the gay-straight divide, since the ways in which lesbians and gay men form 45. Brenner 2003, pp. 78–9. 46. Browne 2011. 18 P. Drucker / Historical Materialism 19.4 (2011) 3–32 families (through sperm-donorship, adoption, the break-up of straight families or other trajectories) necessarily remain distinctive. In the twenty-first century, an ideological factor has also played a crucial rôle in integrating lesbian/gay people into the neoliberal order: the instrumentalisation of lesbian/gay rights in the service of imperialist and Islamophobic ideologies, which Jasbir Puar has defined as 'homonationalism'.47 Particularly but not only in countries such as the Netherlands48 and Denmark, where both same-sex partnership-rights and anti-immigrant racism are strongly developed, this homonationalism has been key to consolidating and taming lesbian/gay identity. III. Social and sexual roots of alternative identities The apparent uniformity of lesbian/gay culture in the mid-1970s in fact helped disguise social and economic fractures opening up among LGB people. As a result, the relatively homogeneous lesbian/gay identities that had taken shape in North America and Western Europe by the 1970s were challenged and fragmented over the following decades, though to different degrees in different countries. There has been, in particular, a proliferation of alternative sexual or gender-identities, more-or-less outside of the mainstream commercial scene. Some, though far from all, of these alternative identities represent challenges to the basic parameters of the gay/straight divide that emerged and was consolidated through much of the twentieth century. Contrary to much right-wing anti-gay rhetoric, the prosperous couples focused on by glossy lesbian/gay magazines were never typical of LGBTs in general. Data gathered by the US National Opinion Research Center's General Social Survey in the 1990s suggested that lesbian and bisexual women were still far less likely than other women to have professional or technical jobs and more likely to have service or craft/operative jobs, while gay and bisexual men were more likely than other men to have professional/technical, clerical/sales or service-jobs but less likely to have managerial jobs.49 The heteronormative constraints of many economic sectors – the pressures to abide by a heterosexual norm of behaviour – seems to drive many 'low-wage service workers . . . to accept a lower wage than they would be paid elsewhere in exchange for the relative comfort of working in a queer environment'.50 47. Puar 2007, pp. xxiv, 38–9. 48. Mepschen, Duyvendak and Tonkens 2010. 49. Badgett 1997, p. 81. 50. Sears 2005, p. 106. P. Drucker / Historical Materialism 19.4 (2011) 3–32 19 Whatever the causes (less ability or willingness to meet gendered jobexpectations, migration to more competitive job-markets, discrimination), the net result (contrary to unfounded claims made not only by anti-gay ideologues but also by some gay publications) was that, at least in the US, both gay men and lesbians were under-represented in the higher-income brackets (with family-incomes of $50,000 or more), while gay men in particular were over-represented in the lower-income brackets (with familyincomes of $30,000 or less).51 A more recent study showed that men in samesex couples were still earning significantly less on average than their straight counterparts in 2005 ($43,117 compared to $49,777); while women in samesex couples earn more on

average than straight married women, their income is, of course, less than men's.52 Transgendered people are even worse off: a 2006 study found that in San Francisco 60% of them earned less than $15,300 a year, only 25% had fulltime jobs, and nearly 9% had no source of income.53 The expansion of LGBT communities centred on gay commercial scenes did not improve the situation of lower-income LGBTs. On the contrary, Jeffrey Escoffier has noted that 'the gay market, like markets in general, tends to segment the lesbian and gay community by income, by class, by race and by gender'.54 This is especially true of same-sex couples, particularly same-sex couples raising children together, since two women living together are in a sense doubling the economic disadvantages they both experience as women. LGBTs are, moreover, more likely to be cut off from broader family-support networks, and as the social safety-net has frayed, inequalities resulting from wage-differentials have affected them with particular intensity.55 Across the capitalist world, the welfare-state has been shredded, unions have been weakened, and inequality has grown. In this context, polarisation within LGBT communities has been particularly great. Lower-income LGBs, transgendered people, street-youth and LGBT people of colour have been under assault in various ways in recent decades, as attacks on poor people and minorities have multiplied, racism has intensified even more in the US, and new forms of antagonism to black and immigrant communities (especially of Muslim origin) have grown up in European countries. Young LGBTs and sexworkers in particular have been victims of intensified forms of coercive 51. Badgett and King 1997, pp. 68–9. 52. Romero, Baumle, Badgett and Gates 2007, p. 2, cited in Wolf 2009, p. 241. 53. Transgender Law Center and San Francisco Bay Guardian 2006, cited in Wolf 2009, p. 147. 54. Escoffier 1997, p. 131. 55. Jacobs 1997. 20 P. Drucker / Historical Materialism 19.4 (2011) 3–32 policing.56 Social polarisation within LGBT communities has coincided with greater prominence for forms of sexual identity and practice that focus explicitly on gender and power-differences and rôle-playing. One of the first notable mutations in LGBT identity with the rise of neoliberalism was the rôle that SM and leather played in the more masculine culture that took hold among gay men by the early 1980s. While one gaymale leather-bar opened in New York as early as 1955 and many more followed by the early 1970s, only from 1976 on did leather-culture become a subject of attention and debate in the broader lesbian/gay community.57 Soon SM came 'to be linked with male homosexuality in the eighties as firmly as effeminacy and an attack on gender roles was in the sixties and early seventies',58 while SM clubs such as New York's Mineshaft became 'an arena for the masculinization of the gay male'.59 Paradoxically at this stage, while divisions between 'tops' and 'bottoms' that would earlier have been widely rejected on liberationist grounds became acceptable and sometimes blatant, virtually all the men in the scene were masculinised in the process. It was as if SM, while celebrating 'difference and power', served, in Dennis Altman's term, as a ritual of 'catharsis', of both acting out and exorcising the growing violence and inequality of the broader society.60 As Gayle Rubin put it, 'class, race, and gender neither determine nor correspond to the roles adopted for S/M play'.61 By the early 1980s, forms of sexuality that diverged from the perceived feminist norm also affected the previously hegemonic lesbian-feminist culture. Lesbian-feminist culture in a sense already struck a divergent note in the 1970s. The sense has persisted that lesbians in general play less of a rôle in commercial scenes and persevere more in trying to sustain alternative scenes. While of course some lesbians, like some gay men, are middle-class or rich, the fact that women trying to survive independently of men have lower incomes on average and are thus more likely to be working-class or poor has contributed to this sense. But while lesbian feminists had put working-class and poor women under great pressure in the 1970s to abandon butch-femme relationships that had been common among them for decades, some lesbians began in the 1980s to 56. Sears 2005, p. 103. 57. Rubin 1982, p. 219; Califia 1982, pp. 280, 244–8. 58. Altman 1982, p. 191. 59. Ira Tattleman, 'Staging Masculinity at the Mineshaft', cited in Moore 2004, p. 20. 60. Altman 1982, p. 195. 61. Rubin 1982, p. 222. P. Drucker / Historical Materialism 19.4 (2011) 3–32 21 defend butch-femme vigorously.62 At about the same time some lesbians took a visible part in SM culture, particularly in San Francisco. This dovetailed with a general upheaval in the lesbian world through conflict between currents that defined themselves as 'anti-pornography' and others that defined themselves as 'pro-sex'.63 The most explosive issue in the 'sex-wars' was, briefly, the issue of intergenerational sex, which was the subject of a major confrontation during the organisation of the first US national lesbian/gay-rights march in 1979. Going beyond understandable and legitimate concerns about coercion and abuse of authority, some currents perceived power-differences between adults and youths as precluding the possibility of consent to sex.64 However, the very explosiveness of the issue quickly placed it beyond the pale of discussion. In hindsight, the 'clone' and SM subcultures, lipstick-lesbianism and sex-wars of the 1980s were only an initial phase in a longer-term fracturing of LGBT identity. The consolidation of Reaganism and Thatcherism by the mid-1980s coincided for LGBT people with the onslaught of the AIDS epidemic, a trauma experienced as a sharp generational break. While some men who survived the epidemic followed a gay variant of the trajectory of the middle-class baby-boom generation, many younger people who came of age in the era of AIDS and neoliberalism found the road to a safer middle-class existence strewn with obstacles. Beginning in the mid-1980s a queer social milieu emerged, made up to a large extent of young people on the bottom of the unequal social hourglass that had resulted from economic restructuring.65 One aspect of the underlying social reality is that the lower young queers' incomes were and the more meagre their job-prospects, the less on average they identified with

or wanted to join the lesbian/gay community that had grown up since the 1960s and ’70s. ‘Economic changes . . . meant more part-time and contract work, especially for young people, which left many unable to see a place for themselves in the by then established gay middle class.’66 Above all initially in English-speaking developed-capitalist countries – the developed countries where social polarisation is greatest – young queers resisted disco-culture, a bar-centred ghetto, and the kind of segregation that fit 62. Nestle 1989; Hollibaugh and Moraga 1983, pp. 397–404. 63. Vance (ed.) 1989; Linden, Pagano, Russell and Star (eds.) 1982; Califia 1982, pp. 250–9. 64. The state enforces a related point of view, as shown in hundreds of prosecutions of LGBT people each year under age-of-consent laws, the repeated prosecutions of the Canadian gay paper Body Politic for discussing the issue in print, and US Senator Jesse Helms’s successful move to block UN recognition of any LGBT group that condones ‘paedophilia’. 65. Drucker 1993, p. 29. 66. Patterson 2000. 22 P. Drucker / Historical Materialism 19.4 (2011) 3–32 with ethnic-style minority-group politics. Self-identified queers refused ‘to be comfortable on the social periphery – in the ghettos’.67 English-speaking queer scenes have been echoed in some ways by queers in squatters’ milieus in continental Western Europe. This generation had also grown up in far more diverse and changeable family-structures, which made the notion of modelling lesbian/gay households on traditional straight ones all the more implausible for them. In some milieus of young rebels, gender and sexual categories have become more fluid than would be usual in mainstream straight, gay male or lesbian scenes. Economic marginalisation and cultural alienation were closely interlinked in the emergence of a queer milieu, making it hard in many cases to say to what extent poverty was a cause of alienation, to what extent the choice of a queer lifestyle contributed to more-or-less voluntary poverty, and to what extent some queers were middle-class gays – particularly students and academics – dressing and talking like down-and-outs, in some cases perhaps only for a period of a few years of ‘float[ing] in and out of deviance or propriety’.68 In other cases queerness may be defined so much by dress, style or performance that it becomes as much a matter of consumer-choice and an expression of reification as the middle-class gay identities it rejects.69 Nevertheless, the overall correlation between lower incomes and queer selfidentification seems clear. **If economic pressures made integration into the dominant lesbian/gay culture a dubious proposition for many young and disadvantaged queers in developed countries, the barriers have been all the greater for poor and working-class LGBTs in Asia, Africa and Latin America.** Dependent capitalist countries have been the site over the last forty years of social constructions of sexuality that are neither completely different from the predominant lesbian/ gay identities in imperialist countries in the 1970s nor merely expressions of a single ‘modern’, globalised identity.70 Sexualities that were indigenous to the dependent world’s precapitalist or early-capitalist social formations (such as the traditional transgender identities of Southeast Asia and Latin America) have persisted, while coexisting with lesbian/gay identities. The result of this intersection of dependent development, sexuality and culture was that poor and working-class LGBT people in the dependent world were less likely than middle-class LGBs to have identities (let alone incomes) that facilitated their integration into a Westernised, commercialised 67. Seidman 1997, p. 193; Drucker 1993, p. 29. 68. Califia 2003, p. xiv. 69. Hennessy 2000, pp. 140–1. 70. Drucker 1996. P. Drucker / Historical Materialism 19.4 (2011) 3–32 23 gay scene.71 They were more likely to be transgendered people, more likely to be subject to violence, and more likely to be dependent on family and/or community-structures for their survival. The economic marginalisation that they experience tended to make post-Fordist lesbian/gay identity at least as problematic and alien for them as for young self-identified queers in North America or Britain. Marginalisation of millions of LGBT people worldwide because they are poor, young or black has impelled many of them towards developing or adopting identities that have broken to some extent with the dominant patterns of post-Fordist gay identity. As we have seen, the dominant trend since the 1980s, based particularly on the reality of more prosperous LGB people’s lives, was for the lesbian/gay community to define itself as a stable and distinct minority, tend increasingly towards gender-conformity, and marginalise its own sexual minorities. By contrast, the nonconformist sexual and genderidentities that have grown up among more marginalised layers have tended to be non-homonormative: to identify with broader communities of oppressed or rebellious people, to fail to conform to dominant gender-norms, and/or to emphasise power-differentials that dominant lesbian/gay imagery tends to elide. While these counter-identities have shown little sign of coalescing into any overarching alternative identity – on the contrary, different counteridentities can and do clash with each other72 – they do share a number of features that correspond to structural similarities in their bearers’ positions under neoliberal capitalism. Non-homonormative identities defined by marginalisation on the basis of age, class, region and/or ethnicity have overlapped with the growth or persistence of subcultures that have been marginal in the commercial scene because they constitute (sometimes extensive) niche markets at best and illicit ones at worse. The relationship between alternative identities and marginalised sexual practices is elusive, but there does appear to be a correlation. There are, of course, many LGBTs who limit their sexual rebellion to the safety of a particular brand of bar. But the more attached people are to their sexual identities, the more reluctant many of them become to give them up at work or in public. Not coincidentally, the more visible transgendered people are, the less likely they are in most societies to get one of the well-paid, permanent, full-time jobs that

have become scarcer and more coveted commodities in post-Fordist economies. Moreover, some people are virtually or entirely incapable of hiding 71. Oetomo 1996, pp. 265–8. 72. See, for example, Drucker 1993, p. 29. 24 P. Drucker / Historical Materialism 19.4 (2011) 3–32 aspects of their identities, particularly effeminacy in men or butchness in women, that are often rightly or wrongly associated with sexualities that are neither hetero- nor homonormative. Voluntary or involuntary, tell-tale signs of sexual deviance often lead to management's excluding people from professional or service-jobs or to fellow workers' hostility that impels people to avoid or flee certain workplaces. Paradoxically, in the absence of general guarantees for workers' job-security or free expression at work, antidiscrimination laws that protect LGB people in general may be of less than no use to the sexually marginalised, as Ruthann Robson has noted: 'If a company employs four lesbians, a new manager can fearlessly fire the one who has her nose pierced or who is most outspoken or who walks the dykiest.'73 These factors help explain the correlation that exists between subaltern social positions and various alternative sexual scenes and identities that do not fit into standard post-Fordist lesbian/gay moulds. This is not a straightforward correlation between non-homonormative identities and working-class affiliation. On the contrary, working-class lesbians and gays and lesbians and gays of colour (sometimes, of course, the same people) have sometimes reacted against self-defined queer or other sexually dissident groups when such groups demanded visibility of them that would make their lives more difficult in particular workplaces or communities.74 The correlation has been rather with particular sectors of the working class – on average younger, less skilled, less organised and lower-paid – that have expanded since the 1970s. Part of the younger queer generation has taken up, and to some extent recast, claims for some of the stigmatised sexual practices that were made during the sex-wars of the early 1980s. In doing so they have rebelled against homonormative 'confining straightjackets that inserted some queers as the tolerated "others" within the existing social relations of gender and sexuality and marginalized others'.75 ' "Queer" [thus] potentially includes "deviants" and "perverts" who may traverse or confuse the homo/hetero division'.76 By contrast with the earlier period, SM has been less in the forefront – SM seems less politically laden now than it was in the sex-wars of the early 1980s – and gender-bending and transgender all the more. SM seems to have become less central to LGBT culture as it has increasingly, in diluted form, come to permeate the broader sexual culture, as seen in the spread of piercing, tattooing, and leather-fashion and accessories. Among LGBTs, the queer generation has 73. Robson 1992, p. 87, cited in Robson 1997, p. 175, n. 13. 74. Drucker 1993, p. 29. 75. Sears 2005, p. 100. 76. Hennessy 2000, p. 113. P. Drucker / Historical Materialism 19.4 (2011) 3–32 25 tended more to play with issues of inequality and power-difference in other ways that expose their artificiality and facilitate their subversion. The contradictions of gender and power have been particularly visible in transgender and gender-bending subcultures since the 1990s. As Dennis Altman points out, drag has always to a certain extent subverted mainstream gender-rôles through 'veneration of the strong woman who defies social expectations to assert herself';77 and Judith Butler has argued that drag subverts gender by exposing it as a 'performatively enacted signification'.78 Forms of gender-bending have shifted over the decades, however. In the 1980s, Amber Hollibaugh proclaimed that her vision of butch/femme was not a reaffirmation of existing gender-categories but a new system of 'gay gender'. More recently, younger transgendered people seem more likely to take on gender-identities that are difficult to subsume (if at all) under existing feminine or masculine rôles. 'Today lesbian butch/femme is acquiring more flexibility than it had in the '70s when I came out', says Patrick Califia, thanks in part to a crosspollination of butch/femme with SM which creates space for 'butch bottoms' and 'femme tops'.79 These more flexible and ambiguous forms of transgender can be associated simultaneously with the myriad forms of transgender that have existed for millennia around the planet, and with queer milieus that have only emerged since the late 1980s in rebellion against the lesbian/gay mainstream. They are thus, in a sense, very old and very new. New forms of transgender contrast with the forms of transexuality, which themselves arose only in the 1950s and '60s, as defined by a wing of the medical establishment. The medical experts not only tend to prescribe sexreassignment surgery as the standard cure for intense gender-nonconformity but also tend to urge transexuals to adapt (perhaps somewhat less rigidly than in the past) to the norms of their 'new gender'.80 Queer-identified transgendered people do not necessarily reject hormone-treatments or surgery, but they can be selective in what they do or do not choose for themselves. Califia links this new trend among transgendered people to SM people's attitude towards 'body-modification': 'A new sort of transgendered person has emerged, one who approaches sex reassignment with the same mindset that they would obtaining a piercing or a tattoo'.81 Often these transpeople do not see themselves as transitioning from male to female or vice versa, but rather as transgendered as opposed to male or female. 77. Altman 1982, p. 154. 78. Butler 1999, p. 44. 79. Califia 2000, pp. 186–9. 80. Califia 2003, pp. 52–85. 81. Califia 2003, p. 224. 26 P. Drucker / Historical Materialism 19.4 (2011) 3–32 More traditional poor and working-class transpeople for their part can often struggle for years to save the money for their operations, including in dependent countries, or simply change each others' genitals without resorting to official medicine. The thousands of transgender hijras in South Asia, increasingly visible and militant among the poorest people of their region and notably at the 2004 World Social Forum in Mumbai, do not often seem to share European and North American queers' interest in transcending or blurring gender-categories. For that matter, even many intersex people (born with genitals that do not identify them as unambiguously male or female) 'are perfectly comfortable adopting either a male or female gender identity'.82 Just the same, many LGBTs in dependent countries have been trying in their own ways to resist pressures to claim them for a homogeneous, middleclass-dominated lesbian/gay community, purge them of 'old-fashioned' aspects of their identities, or make them come out in ways that would tear them away from their families and communities without providing them with equivalent support-systems. Chilean writer Pedro Lemebel, for example, has expressed his identification with Santiago's downtrodden locas [transvestites] and his rejection of the gay-male model he encountered in New York.83 To a greater or lesser extent, different forms of transgender are radically subversive of the lesbian/gay identity that emerged under Fordism, in a way that the would-be all-encompassing acronym LGBT fails to successfully subsume in a single social subject. Transexuals who identify as straight (albeit 'born in the wrong body') often question what they have in common with lesbians, gays or bisexuals. South Asian hijras, identifying with neither gender, cannot be legitimately classified as either gay or straight. Nor can transgendered queers who insist that they have moved beyond male and female. In capitalism both North and South in this time of crisis, then, lesbian/gay identity has been undergoing simultaneous construction and fracturing.84 A very diverse and diffuse set of alternative sexual identities has been diverging more and more from the post-Fordist, gender-

conformist, consumerist lesbian/ gay mainstream, and in some cases challenge the very social and conceptual basis of straight or lesbian/gay self-definition.

Class struggles and LGBT struggles are not mutually exclusive-queer conceptions of sexuality solve for a free society

Drucker 11 [Peter, International Institute of Research and Education; 2011; http://booksandjournals.brillonline.com/content/journals/10.1163/156920611x606412**; The Fracturing of LGBT Identities under Neoliberal Capitalism; 06/29/15; jac]**

IV. Implications for liberation Recognising the deep roots of the fracturing of same-sex identities necessarily puts in question any universalism that ignores class, gender, sexual, cultural, 82. Herndon 2006, p. 1, cited in Wolf 2009, p. 230. 83. Mansilla 1996, p. 23, cited in Palaversich 2002, p. 104. 84. Drucker 2000a. P. Drucker / Historical Materialism 19.4 (2011) 3–32 27 racial/ethnic and other differences within LGBT communities. These communities and identities are being fractured in large part by fundamental changes in the productive and reproductive order of gendered capitalism. Young queers, working-class and poor LGBTs, transgendered people and other marginalised groups have increasingly found themselves in objectively different situations from people in the consolidating gay mainstream. It is thus no surprise that they have tended to some extent to define distinct identities. The forms taken by alternative, non-homonormative sexual identities do not necessarily win them easy acceptance among feminists or socialists. The lesbian/gay identity that emerged by the 1970s had much to commend it from the broad-Left's point of view (once the Left had largely overcome its initial homophobia). By contrast, transgendered and other queers can raise the hackles of many on the Left, since their sexuality strikes many as at variance with the mores to be expected and hoped for in an egalitarian, peaceful, rational future. One may doubt, however, whether any sexuality existing under capitalism can serve as a model for sexualities to be forecast or desired under socialism. Nor is it useful to privilege any particular existing form of sexuality in present-day struggles for sexual liberation. Socialists' aim should not be to replace the traditional 'hierarchical system of sexual value'85 with a new hierarchy of our own. As Amber Hollibaugh pointed out many years ago, sexual history has first of all to be 'able to talk realistically about what people are sexually'.86 And in radical struggles over sexuality, as in radical struggles over production, the basic imperative is to welcome and stimulate self-organisation and resistance by people subjected to exploitation, exclusion, marginalisation or oppression, in the forms that oppressed people's own experience proves to be most effective. This is not to say that Marxists should simply adopt a liberal attitude of unthinking approval of sexual diversity in general, in a spirit of 'anything goes'. Our central concern must be to advance the sexual liberation of the working class and its allies, who today include straights, LGBs and – particularly among its most oppressed layers – transgendered and other queers. Resisting the retreat from class in LGBT activism and queer studies, Marxists should combat heterosexism and bourgeois hegemony among straights, homonormativity and bourgeois hegemony among LGBs, and blanket hostility to straights and non-queer-identified gays where it exists among 85. Rubin 1989, p. 279. 86. Hollibaugh and Moraga 1983, p. 396. 28 P. Drucker / Historical Materialism 19.4 (2011) 3–32 self-identified queers. This will require seeking new tactics and forms of organising within LGBT movements. The post-Stonewall lesbian/gay movement waged an effective fight against discrimination and won many victories on the basis of an identity widely shared by those engaged in same-sex erotic or emotional relationships. But this classic lesbian/gay identity has not been the only basis in history for movements for sexual emancipation. In the German homophile-struggle from 1897 to 1933, for example, Magnus Hirschfeld's Scientific-Humanitarian Committee, the wing of the movement closer to the social-democratic Left, tended to put forward polarised 'third sex'-theories.87 This is what one might predict on the basis of the evidence that egalitarian gay identities were at first primarily a middle-class phenomenon, while transgender and gender-polarised patterns persisted longer in the working class and among the poor.88 Today in the dependent world as well, transgender identities seem to be more common among the less prosperous and less Westernised.89 Rather than privileging same-sex sexualities more common among the less oppressed, however superficially egalitarian, the Left should be particularly supportive of those same-sex sexualities more common among the most oppressed, however polarised. Another important consideration is the challenge that alternative, nonhomonormative sexualities can sometimes pose to the reification of sexual desire that the categories of lesbian, gay, bisexual and straight embody. Marxists question the fantasy of consumers under neoliberalism that obtaining the 'right' commodities will define them as unique individuals and secure their

happiness; we should not uncritically accept an ideology that defines individuals and their happiness on the basis of a quest for a partner of the 'right' gender.90 How will LGBT communities and movements be structured in a time of increasingly divergent identities? Self-defined queer activist-groups, which emerged initially in the US and Britain in the early 1990s, have also appeared in recent years in a number of countries in continental Europe. They pose a 87. See Fernbach 1998, p. 51; Drucker 1997, p. 37. 88. Chauncey 1994. 89. Oetomo 1996, pp. 265–8. 90. Kevin Floyd argues that 'the reifying of sexual desire needs to be understood as a condition of possibility for a complex, variable history of sexually nonnormative discourses, practices, sites, subjectivities, imaginaries, collective formations, and collective aspirations' (Floyd 2009, pp. 74–5). Having earlier recalled Lukács's later criticism of the conflation of objectification and reification in his History and Class Consciousness, Floyd here reproduces it upside down, celebrating both as Lukács had rejected both. Objectification, the alternate adoption of subject and objectpositions in an interplay between different human individuals, is inherent to sexuality; reification, the petrifaction of specific rôles and sexual identities, is not. P. Drucker / Historical Materialism 19.4 (2011) 3–32 29 radical challenge to mainstream lesbian/gay organisations, although they have yet to show much of an orientation towards large-scale mobilisation, to take root among the racially and nationally oppressed, or to prove their adaptability to the dependent world.91 In countries where civil rights and same-sex marriage have been won, the process of seeking new horizons and finding appropriate forms of organising seems likely to be a prolonged one – especially since the LGBT social and political landscape seems likely to remain more fragmented and conflict-ridden than it was in the immediate post-Stonewall period. While lesbian/gay identity has lost the central place it occupied in the LGBT world of the 1970s and '80s, it is still far from marginalised; on the contrary, the new homonormativity shows no signs of succumbing to queer assaults in the foreseeable future. In the dependent world particularly, the diversity of LGBT communities has resulted in an alliance-model of organising as an alternative or a supplement to the model of a single, broad, unified organisation. The broadest possible unity across different identities remains desirable in basic fights against violence, criminalisation and discrimination as well as more ambitious struggles for equality, for example in parenting. On other issues, LGBT rights can be best defended by working and demanding space within broader movements, such as trade-unions, the women's movement and the globaljustice movement.92 At the same time, an alliance-model has in some cases facilitated the process of negotiating unity among constituencies – such as transgendered people on the one hand and lesbian/gay people on the other93 – who are unlikely to feel fully included in any one unitary structure. It can constitute a united front between those whose identities fit the basic parameters of the gay-straight divide and those whose identities do not, fostering the development of a truly queer conception of sexuality that, in Gloria Wekker's words, is 'multiple, malleable, dynamic, and possessing male and female elements'.94 In a more visionary perspective, developing an inclusive, queer conception of sexuality can be seen as a way to move towards that 'truly free civilization' that Herbert Marcuse described a half-century ago in Eros and Civilization, in which 'all laws are self-given by the individuals', the values of 'play and display' triumph over those of 'productiveness and performance', the entire human 91. For discussions from an anticapitalist perspective of the potential and limits of queer radicalism, see Drucker 1993 and Drucker 2010. 92. On sexual politics in the global-justice movement, see Drucker 2009. 93. Califia 2003, p. 256. 94. Wekker 1999, p. 132. 30 P. Drucker / Historical Materialism 19.4 (2011) 3–32 personality is eroticised, and the 'instinctual substance' of 'the perversions . . . may well express itself in other forms'.95

Disease Reps K

Their construction of AIDS as an apocalyptic threat via policy discourse only reinforces the hegemonic authority of security – They act only out of fear of contamination and lead to xenophobia.

Taylor 98 [Tonya Nicole Taylor, Professor of Anthropology at the University of Pennsylvania, "Blaming the Infected African Other: An Epidemic of Discrimination," http://www.africa.upenn.edu/Workshop/tonya98.html]//JIH

Blaming the infected African other is a dangerous epidemic of discrimination and racial prejudice. What is central in this discussion of 'blaming the African other' is not the veracity of the statements but how they are sustained through the inappropriate use of western cultural constructs to define and interpret epidemiology cross culturally. The authority of epidemiology to define risk is a politics of knowledge that is produced, reproduced, contested, and sustained through the discursive hegemonic authority of biomedicine and science as the truth. According to Glick Schiller an "understanding of the hegemonic processes have given us new insights into the historical, structural, and authoritative location of symbolic construction" (1992: 248). However, an examination of the micro-politics behind the maintenance of such stereotypes, illuminates how also discourses of stigmatization and otherness govern the construction, negotiation, contestation, and maintenance of boundaries between the self and the HIV infected other through fear of contamination by the

dangerous African outsider. These stigmatizing discourses and counter-discourses are ideological terrains used to insulate the perceived uninfected other from the afflicted. Stereotypes and generalizations about particular populations perceived to be at risk have provided a misleading backdrop for policy formation because they underestimate the diversity of sexual culture within seemingly homogenous sub-groups. Although the social and political consequences of culturally constructing risk of HIV/AIDS are innumerable, there are three primary consequences: (1) wide spread misunderstanding of who is at risk and who is not; (2) the continued spread of the diseases by those infected who are define themselves outside of those populations at risks; (3) and the perpetuation of the stigmatization of people living with HIV or AIDS.

The representations of HIV/AIDS are controlled by international institutions and perpetuate biopolitical forms of surveillance upon bodies.

Vieira 07 [Marco Antonio Vieira, Senior Lecturer in International Relations and Postgraduate Research Director at University of Birmingham, Department of Political Science and International StudiesBraz. political sci. rev. (Online) vol.2 no.se Rio de Janeiro, Dec. 2007, http://socialsciences.scielo.org/scielo.php?pid=S1981-38212007000200005&script=sci_arttext&tlng=en]//JIH

It is beyond the scope of this study to engage in a comprehensive historical sociology of the HASN. However, the argument here is that the social construction of the HIV/AIDS Securitisation Norm would not be comprehensible without the previous acknowledgment of the historical (social, material and interest-based) conditions that led to its creation. At the ontological level, this means that the HIV/AIDS actors constituted their social world in the same way that the social world they created defined the possibilities of their future interaction (Wendt 1987). This dimension also corresponds to an externalist (Stritzel 2005) understanding of securitisation that is generally neglected by the Copenhagen School. Contrary to its view of the securitisation process, the argument put forward here claims that the semantic articulation of security should be analytically integrated with the larger process of securitisation that involves social/political phenomena other than solely the speech-act. Stephan Elbe's (2005) exploration of the biopolitical dimension of the securitisation of HIV/AIDS sheds some light on the contextuality problem in most of the securitisation literature. Foucault designates biopower as the power that " brought life and its mechanism into the realm of explicit calculations and made knowledge-power an agent for the transformation of human life" (Foucault quoted in Elbe 2005, 405). In demonstrating the biopolitical dimension of HIV/AIDS, Elbe uses the example of UNAIDS, " as an institutional apparatus for the detailed statistical, monitoring and surveillance of world population in relation to HIV/AIDS" (p. 405). Borrowing from Foucault's reflections on the concept, he further argues that

The unfolding of the securitization of AIDS follows a net-like deployment of biopower, as it is being simultaneously driven by a plethora of actors […] The net of the securitization of AIDS has been widely cast, corroborating Foucault's view that biopower is never solely the property of one agent; it is always plural, decentralized and capillary in nature. " Power" , he reminded his readers, " is everywhere; not because it embraces everything, but because it comes from everywhere" . (p. 407/408)

What is interesting in Elbe's transposition of biopower to illuminate the securitisation of HIV/AIDS is that it allows for a holistic understanding of the securitisation process. Rather than being solely the activity of isolated securitising actors performing speech-acts, the securitisation process is seen through these lenses in the form of a chain of events and actors, or something that historically mutates and evolves into something else. In line with Elbe's biopolitical stance on the securitisation of HIV/AIDS, I argue that the historical and social construction of the disease eventually led to the creation of a hegemonic grammar that portrays

the epidemic in terms of a special type of problem, which demands special institutions and policies.

In this sense, the securitisation of HIV/AIDS can be understood as a constitutive element of a larger hegemonic world order that encompasses long-term political, ethical, economic and ideological spheres of activity on a global scale. This is what Gramsci called a historic bloc (Gramsci 1971). According to Robert W. Cox, in the historic bloc " there is an informal structure of influence reflecting the different levels of real political and economic power which underlies the formal procedures for decisions" (Cox 1993, 63). For him, " international institutions perform an ideological role. They help define policy guidelines for states and to legitimate certain institutions and practices at the national level. They reflect orientations favourable to the dominant social and economic forces" (p. 63). I do not use here the concept of historic bloc in precisely the same sense Gramsci (and also Cox, concerning international relations) gave to it. International relations are more diffused and complicated than the big power-centred concept of world order those authors conceived. However, Gramsci's interpretation of history as a successive movement of powerful hegemonic forms of collective subjectivity is fully applicable to what was called here the first dimension of the HASN. This means that the proposed securitisation of the epidemic is the result of social and political processes that are organically integrated into the current dominant historic bloc.

Solvency

Queer theory fails in practice

Saffin 8 BODIES THAT (DON'T) MATTER: SYSTEMS OF GENDER REGULATION AND INSTITUTIONS OF VIOLENCE AGAINST TRANSGENDER PERSONS: A QUEER/CRITICAL RACE FEMINIST CRITIQUE By LORI A. SAFFIN DOCTOR OF PHILOSOPHY WASHINGTON STATE UNIVERSITY Program of American Studies AUGUST 2008

Despite the productive and effective strategies offered by Queer Theorizing, I am hesitant to firmly adhere only to this body of knowledge. Many academics and activists alike have challenged the political efficacy of queer theory, pointing out that the pluralizing of identity, though important, continues to denigrate the importance of race, class, and gender, as sexuality becomes the signifying element of identification. Likewise, I have concerns about the open ended politics proclaimed under Queer Theory. As John D'Emilio illustrates in 12 his account of American gay and lesbian politics, "identity" and "difference" have simultaneously served as the crux as well as the crisis for most gay and lesbian organizing.13 So, if "queer" is fluid, boundariless, oppositional, and multiplicitous, how do "we" organize around "difference" or ground in politics? What are these politics, and who sets the agenda? Queer Theory seeks ^definition in order to combat the inherent divisiveness created within identity politics and disrupt rigidly constructed binaries. However, materiality, material reality, and the lived experiences of individuals/communities residing in the margins and overlaps of structural racism, classism, sexism, and heterosexism seem overlooked. Therefore, Queer Theory, perhaps, purports alternative and liberatory strategies in theory, but encounters many difficulties when attempting coalitional politics and everyday activism

State Good

Queer theory is too suspicious of the state to succeed

Rhetoric? Kinda powerful. Warrants? Somewhat Lacking.

Edgar 8 ENGAGING WITH THE STATE: CITIZENSHIP, INJUSTICE, AND THE PROBLEM WITH QUEER Edgar, Gemma. is a research fellow at The Australia Institute Gay and Lesbian Issues and Psychology Review4.3 (2008): 176-187. http://search.proquest.com.proxy.lib.umich.edu/docview//21403791/7D43C20E17E146FCPQ/1?accountid=14667

When I began my fieldwork I was especially interested to explore how queer theory had, or could, be used to address the injustices experienced by the young people of Twenty10. However, after meeting and interviewing some of Twenty10's young people and staff, I began reassessing the utility of queer theory as a tool for addressing the coalescence of injustices the young people faced: **Queer theory,** it is my position, **is too suspicious of the** state's normalising capacities for it to provide a practical plan of activism for an organisation like Twenty10, which relies upon the financial support of both the Federal and NSW State Governments. This support allows Twenty10 to supply diverse and strategic services for LGBT young people. In other words, Twenty10 relies upon the state in order to do its work. This form of activism, in which an organisation engages closely with the state, is rejected by many proponents of queer theory, who build on Foucault's govern mentality thesis to instead push for a style of activism that is "at odds with the normal, the legitimate, the dominant" (Halperin, 1995, p. 62). This form of activism has been useful in many contexts, for example in the early days of ACT UP (Halperin, 1995, pp. 15-16). But, it is my position, it may not be so useful when addressing the injustices experienced by LGBT young people who require the support of the state. Rather than advocating for the use of queer theory, then, I have turned to citizenship discourses as a more effective tool for addressing the concerns of these young people. Citizenship, while demanding some forms of 'normalisation' for those included within its sphere, is, on balance, better equipped to respond to the injustices experienced by the young people at Twenty10. This is because citizens are able to make demands upon the state for help. This paper is hence an argument for the value of citizenship discourses and engaging with the state when addressing the concerns of young LGBTI people experiencing economic disadvantage.

The State allows for inclusive citizenship, protection from neoliberal exploitation, and provision of basic necessities.

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Marshall's analysis of social rights has been particularly influential for modern citizenship theorists, because he questioned the legitimacy of democracy without equity. He did this by describing the resources required by individuals to access their civil and political rights. He argued that to achieve participatory equality, the state must provide a welfare scheme, an accessible education system, and universal health care. These policy tools were about equipping the individual so that they could **"share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society"** and hence to participate fully as a citizen (Marshall, 1965, pp. 78-79). Therefore, central to Marshall's thesis is the role played by the state in addressing injustice. For Marshall, the state is a structure able to prevent the isolation and disadvantage of its citizens by upholding political and civil rights, and the provision of social services. This is a relatively thick conception of citizenship because it assumes that those more economically advantaged members of the community will support those less well off, and that this redistribution will occur through the mechanism of the state. As Bryan S. Turner (1993) has noted, the worth of Marshall's concept of citizenship was the protection it sought to provide for the economically disadvantaged. For Turner: Citizenship, once inscribed in the institutions of the welfare state, is a buffer against the vagaries of the marketplace and the inequalities of the class system, because citizenship is a method of redistribution of resources to those who are unable to provide for their own needs as a consequence of some contingent feature of their life circumstances (p. xi). It is my position that citizenship is even thicker than as explained by Marshall. It is not just about the progression to full civil, political and social rights. Citizenship is also about being acknowledged, recognised and included, by both the state and the community (Phelan, 2001). Within this paper then, I define citizenship as including the rights mapped by Marshall, and hence, I give the state a crucial role in ensuring participatory equality. But I also use the term more thickly, to suggest, as former Prime Minister John Howard has said, that being a citizen is about being part of the "national family" (Howard 2007) and about "belonging" (Nolan & Rubenstein forthcoming; Weeks 1995, 1998). It is perhaps, then, not difficult to understand why LGBTI

movements have sought full enfranchisement through citizenship claims. It is not just that they have desired the rights mapped by Marshall: They have also have demanded the creation of a "differencefriendly world" (Fraser, 2003, p. 8), and a place in Howard's "national family" (2007).8

Queer rejection of the state re-entrenches neoliberalism, and prevents actually beneficial policies from benefiting those who need them.

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Queer theorists are not the only ones who are suspicious of giving the state a large role, indeed this position is probably more often associated with neo-liberalism. Michael Warner has suggested that it is no coincidence that the success of queer theory, as an activist strategy and as an academic discipline, **should coalesce with that of neo-liberalism.** He has argued that queer's "potential for transformation seems mostly specific to a cultural context" (1995, p. 361) and that context is born post 1991, in an Anglo-American space, in a period in which neoliberalism has all but triumphed in policy making arenas. In fact, when we consider queer perceptions of the state through the use of Foucault's governmentality thesis, it becomes clear that queer and neoliberalism have more in common than a joint appearance towards the end of the twentieth century. Queer's move away from making claims upon the state parallels that of neoliberal discourses, which also argue for a society free from the intrusive hand of government (Self, 2000, p. 99-101). Neoliberalism argues that citizens should be 'self-reliant' and hence not be dependent upon welfare. Similarly, those relying upon a Foucauldian view of the state argue that there are "dangers ... in looking to the state as provider, equalizer, protector, or liberator" (Brown. 1995, p. 196, 195) because "the rise of welfare states have been accompanied by more insidious methods of surveillance in information-gathering technologies" (Gorham, 1995, p. 36).11 My concern with queer activism is this similarity with neoliberalism. Through rejecting the dominant role played by the state, and in arguing against the worth of LGBTI citizens making demands upon the state, just like neoliberalism, queer supports a form of activism that is unable to rectify socio-economic injustice. Or perhaps more accurately, it is suspicious of the mechanism that would best do so. A movement away from the state, and a focus instead upon culture, may well destabilise the foundations of heteronormativity as the hetero/homo binary is thrown into question, **but what use is it to those who rely on the state to house them**? How is it useful for these individuals, such as the young people of TwentylO, for theorists to undermine the value of the welfare state, especially when it has been so undermined through neoliberal reforms? How, in this thinking, are injustices of redistribution to be addressed? Marshall was rightly criticised for presenting the developments of rights as a linear, teleological progression (Turner 1991: 122). He was criticised because welfare clearly is reversible and should not be taken for granted; supporting it should be a goal for all those who seek to redress economic disadvantage. The queer suspicion of the state and therefore of its welfare programmes, makes it difficult to accept the argument that queer activism is useful for those experiencing economic disadvantage. Gorham embodies the governmental concern about the normalising capacities of welfare.

State succeeds empirically to help the LGBT community and confront heteronormativity.

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Reconstituting Citizenship and the State

One response to the worry that LGBTI individuals and other minorities will be subsumed by heteronormativity is that the inclusion of LGBTI and other non-mainstream individuals into the body politic also **reconstitutes citizenship**. It is my position that the work performed by Twenty10 evidences the ability of citizenship claims to both challenge heteronormativity and redress redistributive injustice. Twenty10 engages with the state through the receipt of both Federal and NSW State Government funding. In a Marshellian vein it takes advantage of the redistributive capacity of the state in order to provide programmes that redress both the socio-economic and identity based disadvantages experienced by its young people. Financial support from government has allowed Twenty10 to provide significant services to its young people, including: medium term supported accommodation; counselling; case management; social and support groups; family support services; and community-based early intervention. That is, a politics of citizenship, of engaging with the state, has allowed Twenty10 to attempt to address injustices of both redistribution and recognition. One example of this work is Twenty10's provision of six medium-term, LGBTI specific units. As medium-term housing, these units offer the young people who live in them a safe and secure place to live for 3-18 months. I interviewed one young person who was living in one of these apartments. She described what it was like as: I guess it just feels more familiar and safe you know ... I've been to like different youth centres that aren't queer and like here I just feel like I can make myself at home and like feel safe ... And it's just nice to have queer people all around you like you know people that you identify with (God Pie).13 God Pie's comments highlight the value of LGBTI specific accommodation for queer young people, which is that 'mainstream' services are not always safe places for LGBTI people. LGBTI specific accommodation is one way to create safer places for LGBTI individuals experiencing homelessness. These units, however, would be extremely difficult for Twenty10 to provide if it did not have the financial support of the state. In this example, we can see how relying upon a mechanism to redistribute economic resources is a valuable way to address redistributive injustice experienced by LGBTI young people. More, however, is occurring in this example than just a response to redistributive injustice. By funding Twenty10, the Government recognises the citizenship of LGBTI young people. Receiving government funding is a symbol of community inclusion, as well as being a redress to redistributive injustice. If you are concerned about community embrace, acknowledgment and ultimately, belonging, then it matters that the welfare of young LGBTI people is supported by the government, because it means that they are being acknowledged. Another example of how engaging with the state has allowed Twenty10 to address the injustices experienced by their young people is their community-based early intervention programme called Ready or Not. Ready or Not is funded through the Federal Government's Reconnect programme. This funds Twenty10 staff to travel throughout NSW to conduct training sessions with key community members, such as police, teachers and health, youth and welfare workers. This training is intended to resource communities so that queer young people are less likely to become isolated. The idea is that if key community members know how to work with and support queer young people, then these young people are less likely to turn up on the doorstep of Twenty10 needing help. Ready or Not is one way Twenty10 attempts to create community change, and it is able to provide it only because of the financial support of the state. One staff member explained the impact of it as: ... the Ready Or Not training ... we certainly get our message across and we do talk about, we talk about how homophobia hurts, so we talk about things like, increased rates of suicidality and a whole range of things, so we don't just gloss it over so it's in a nice little tidy package, so people find it palatable. But at the same time I think the way that we do it, in that professional way has more of an impact, people can actually take it and I kind of think that by the way that we are doing, I think if we were running around with banners here and there, that maybe that would make people a little bit more defensive about hearing our message. Ready or Not again highlights the advantages of Twenty10's relationship with the state. In this example, Twenty10 addresses injustices of both recognition and redistribution because by challenging heteronormativity and homophobia (recognition), they are also attempting to address the causes of LGBTI youth homelessness (redistribution). What is occurring is not to do with LGBTI individuals conforming to the demands of the state. Rather, the 'mainstream' community is being challenged by Twenty10 staff to itself change. Rather than the demand that young LGBTI people must become 'like' the majority, the majority itself is what is being disrupted. Ready or Not fits squarely with the argument that engaging with the 'mainstream' in order to make it more accepting, and relying upon the state to do so, can reconstitute citizenship and is hence an effective way to address both recognition and redistributive based injustice. Twenty10 is, I would posit, only able to provide LGBTI specific housing and the Ready or Not programme because it presents a face that is not "at odds with the normal, the legitimate, the dominant" (Halperin, 1995, p. 62). That is, Twenty10 appears to be the good gay citizen that the governmental thesis warns us of, in that it works in the 'mainstream' community and relies upon the state to support it. However, Twenty10 **still confronts heteronormative notions** of citizenship through challenging youth and community workers to recognise the needs of LGBTI young people. Further, Twenty10 uses state funds to assist young LGBTI people experiencing homelessness. It also provides further services, including: counseling, case management, social and support groups and family support services. All of these examples highlight how a reliance upon the state can help to address the injustices of redistribution and recognition experienced by LGBTI young people. As queer theorists warn us, there are costs to this and the constraints of the purchaser-provider contracts required by government evidence this. But the idea of citizenship as always being heteronormative and exclusionary is difficult to

maintain when citizenship tools are able to provide a response to the injustices experienced by the young people at Twenty10. Twenty10 would not be able to do this work if it engaged in the style of politics suggested by queer, that is, if it was suspicious of the state. As Altman writes, "queer theories are relatively unhelpful in constructing this sort of politics because of their lack of emphasis on political institutions as distinct from discourse" (2001, p. 158). It is Twenty10's emphasis on political institutions, its demand to fully belong, that has allowed it to do the work it does.

Racial Surveillance SDI

Politics Links

Politics Link – Informant Reform Unpopular

Restricting informant intelligence collection is unpopular.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Due to the popularity and longstanding use of informants, it is unrealistic to think that the FBI will stop using immigration law as a way to leverage cooperation. In the past, informants have aided national security by providing useful intelligence, and so they are highly valued as a source of intelligence. Hence, no matter how narrow in scope the proposed changes are, changes to the S-6 visa would greatly benefit the FBI, informants, and Muslim and Middle Eastern communities. Better intelligence may mean the difference between wasting government resources on empty threats and preventing the loss of life in future terrorist attacks.

Surveillance Authority not passing now- needs Congressional support

Edwards 2015

(Julia, Reuters, "Heightened Islamic State threat requires surveillance action: U.S. official", May 27th, http://www.reuters.com/article/2015/05/27/us-usa-security-whitehouse-idUSKBN0OC2UQ20150527)//PG

The threat of Islamic State to the national security of the United States has heightened in the last two weeks, making it critical for Congress to renew surveillance authority, a senior U.S. administration official said on Wednesday. The law authorizing the U.S. government to conduct domestic surveillance searches through a court approval process is due to expire if Congress does not pass an extension by Sunday. The Senate so far has been unable to pass legislation despite overwhelming support in the House of Representatives for a bill that amends the current program with much more limited powers to collect information. Senate Majority Leader Mitch McConnell has called for the Senate to meet at 4 p.m. EDT on Sunday, but it is not clear whether there will be enough support to pass any legislation before the law's expiration. Another U.S. administration official said it will take time for the government to instruct phone companies to shut down or reboot data storage capabilities. The federal government will begin instructing phone companies on how to stop collecting data by 4 p.m. EDT on Sunday and the instructions would be irreversible by 8 p.m. EDT. If a lapse occurs, it is expected to take 24 hours after the passage of new surveillance powers by Congress for the program to resume, the official said.

Obama will not change NSA policies

Burnett ’14 (Bob,Berkeley writer, activist, and Quaker. Before starting a second career as a journalist, he was a technologist and one of the founding executives at Cisco Systems,”Why Hasn't Obama Reined in NSA?,”1/10,The Huffington Post,http://www.huffingtonpost.com/bob-burnett/obama-nsa_b_4574910.html,LS)

After the 2008 election, Barack Obama supporters had high expectations for his national-security policy. We thought he'd end U.S. involvement in Iraq and Afghanistan, and open talks with Iran. We expected he would close down Guantanamo and end the National Security Agency's (NSA) domestic surveillance program that collects Americans' phone and email data. He's accomplished some of these objectives but he hasn't reined in the NSA. Why not? Writing in The New Yorker, Ryan Lizza observed that before becoming president, Obama was inconsistent on national security policy and the NSA. "In 2003, as a Senate candidate, he called the Patriot Act 'shoddy and dangerous.' And at the 2004 Democratic Convention... he took aim at the 'library records' provision of the law." Nonetheless, in in 2006 Obama voted for a renewal of the Patriot Act. As a presidential candidate, Obama's attitude appeared to shift. In 2007 Obama criticized Bush, "This administration acts like violating civil liberties is the way to enhance civil liberties. It is not. There are no shortcuts to protecting America." In an August 2007, campaign speech Obama criticized, "unchecked presidential power" and vowed a change in national security policy: "that means no more illegal wiretapping of American citizens, no more national-security letters to spy on citizens who are not suspected of a crime... [and] no more ignoring the law when it is inconvenient." Nonetheless, Obama's presidential record has been disappointing. Lizza noted: It is evident from the Snowden leaks that Obama inherited [from George Bush] a regime of dragnet surveillance that often operated outside the law and raised serious constitutional questions. Instead of shutting down or scaling back the programs, Obama has worked to bring them into narrow compliance with rules--set forth by a court that operates in secret--that often contradict the views on surveillance that he strongly expressed when he was a senator and a Presidential candidate. A recent New York Times editorial noted: ■ The N.S.A. broke federal privacy laws, or exceeded its authority, thousands of times per year, according to the agency's own internal auditor. ■ The agency broke into the communications links of major data centers around the world, allowing it to spy on hundreds of millions of user accounts and infuriating the Internet companies that own the centers. ■ The N.S.A. systematically undermined the basic encryption systems of the Internet, making it impossible to know if sensitive banking or medical data is truly private, damaging businesses that depended on this trust. There are three explanations for the president's weak NSA policy. 1. Obama decided not to expend political capital changing it. Given the economic problems he inherited from George Bush, plus the difficulty of working with a divided Congress, Obama may have decided it was not worth the effort to rein in the NSA. That's been true of national security in general. Obama had increased defense spending, expanded the national-security state, and maintained the hundreds of US military bases that dot the globe. Obama tried to shut down Guantanamo but was thwarted by Congress. 2. Since becoming President, Obama has been in a national security bubble. Writing in the New York Times, Peter Baker reported that "the evening before he was sworn into office, Barack Obama [was informed] of a major terrorist plot to attack his inauguration." (This turned out to be a false alarm.) In December of 2009, the President was shaken by the failed attack of Umar Farouk Abdulmutallab who tried to detonate an underwear bomb as his plane landed in Detroit. Over the past five years, the intelligence community has alerted Obama to dozens of potential attacks. That's affected him. This past June Obama defended NSA surveillance, saying, "We know of at least 50 threats that have been averted because of this information." (Pro Publica reports that the NSA has provided specifics on only four of these cases and there is little support for the president's contention that NSA surveillance actually "averted" these threats.) 3. The National Security State is too powerful to change. The president may have decided that it was impossible to make major changes to NSA, and the gargantuan national-security state, so he opted to "bring them into

narrow compliance with rules." Obama inherited a pit bull and decided to handle it with extreme care. Both the New York Times and Ryan Lizza reported that James Clapper, the director of National Intelligence who oversees NSA, lied to Congress, in March, when he denied that NSA was collecting data on millions of Americans. It wasn't the first time the national-security state deceived us. Their litany of falsehoods and screw-ups stretches from Pearl Harbor through the Vietnam War to the 9/11 attacks and the decision to invade Iraq. We may never know why President Obama has continued the Bush-era domestic surveillance programs. Whatever his reasoning, it's time for him to rein in the NSA.

To Change the surveillance program, Obama is going to have to use his political Capital

Page '13 (Susan, current Washington Bureau Chief for USA Today, She has won several awards for her work, including the Merriman Smith Memorial Award, the Aldo Beckman Memorial Award, the Gerald R. Ford Prize for Distinguished Reporting on the Presidency (twice) and the Sigma Delta Chi Distinguished Service Award for Washington Correspondence, president of the White House Correspondents Association in 2000, "Ex-NSA chief calls for Obama to reject recommendations",12/30,USA TODAY, http://www.usatoday.com/story/news/politics/2013/12/30/gen-michael-hayden-urges-obama-reject-nsa-commission-recommendations/4249983/,LS)

WASHINGTON — Retired general Michael Hayden, former director of the National Security Agency and the Central Intelligence Agency, called on President Obama Monday to show "some political courage" and reject many of the recommendations of the commission he appointed to rein in NSA surveillance operations. "President Obama now has the burden of simply doing the right thing," Hayden told USA TODAY's Capital Download. "And I think some of the right things with regard to the commission's recommendations are not the popular things. They may not poll real well right now. They'll poll damn well after the next attack, all right?" Obama, who received the report from the five-member advisory committee just before he left to vacation in Hawaii, has promised to make "a pretty definitive statement" in January about its 46 recommendations. He appointed the panel in the wake of a firestorm over disclosures by former NSA contractor Edward Snowden about surveillance of all Americans' telephone calls and spying on German Chancellor Angela Merkel and other friendly foreign leaders. The commission, led by former acting CIA director Michael Morell, said the recommendations were designed to increase transparency, accountability and oversight at the NSA. Hayden, who headed the super-secret agency from 1999 to 2005, oversaw the launch of some of the controversial programs after the Sept. 11 attacks on New York and Washington in 2001. He defended them as effective and properly overseen by congressional intelligence committees and a special court. "Right now, since there have been no abuses and almost all the court decisions on this program have held that it's constitutional, I really don't know what problem we're trying to solve by changing how we do this," he said, saying the debate was sparked after "somebody stirred up the crowd." That's a reference to Snowden, who was granted asylum in Russia. Snowden's revelations have fueled objections by civil liberties advocates that the NSA goes too far in collecting information about Americans not suspected of any wrongdoing. This month, a federal judge in Washington called the program "almost Orwellian," although a few days later, another federal judge in New York said it was legal. Hayden's blunt warnings about the risks he sees in accepting the commission's recommendations underscore the difficult balancing act Obama faces between ensuring the nation's security and respecting citizens' privacy. No decision he makes is likely to avoid criticism. "Here I think it's going to require some political courage," said Hayden, 68, a retired Air Force general whose service in the nation's top intelligence posts gives him particular standing. "Frankly, the president is going to have to use some of his personal and political capital to keep doing these things." In the interview with USA TODAY's weekly video newsmaker series, Hayden: •Said the vast data on Americans' phone records are "far safer and privacy is far more secured with NSA holding the data than some third party." The commission recommended that the phone companies or a third party take over responsibility for storing the data. •Protested that requiring the NSA to seek individual court orders when it wants to search the data would reverse changes put in place after the 9/11 attacks. •Ridiculed a proposal to increase protections for personal data about non-citizens abroad. "The Fourth Amendment to our Constitution is not an international treaty," he said. For those who aren't covered by its protections, he said, "if your communications contain information that make Americans more safe and more free, game on." •Said the idea of requiring the president and his advisers, not the intelligence community, to approve any spying operation on foreign leaders would be "a little cumbersome" but not a significant change from the way things effectively work already. "If you don't think the national command authority had a broad understanding of what we're doing, I've got a bridge I want to interest you in," he said. •Endorsed the recommendation to split leadership of the NSA from the Cyber Command, the military's cyber-warfare unit. The two positions were combined in 2009. Obama has rejected the proposal. "That might be an OK idea, not because Keith Alexander, the general who now holds both positions ... has too much power but because Keith has too much work. I just can't understand how one man can do both jobs." Hayden opposed the idea of granting Snowden amnesty, in part to learn more about what he did and how he did it and to prevent him from leaking additional information. "It's kind of like negotiating with terrorists," he said. "All that does is tell the next Edward Snowden out there, if you're going to do this, make sure you steal enough."

Obama will not spend his political capital on reforming surveillance

SHEAR '15 (MICHAEL D., White House correspondent for The New York Times. He joined The Times in September 2010 as a lead writer on The Caucus blog. Previously, Mr. Shear wrote for the Washington Post as a metro reporter covering Virginia politics, the 2008 presidential election and, most recently, as White House correspondent.Mr. Shear received a B.A. degree from Claremont McKenna College and a M.A. degree in public policy from the John F. Kennedy School at Harvard University., "In Pushing for Revised Surveillance Program, Obama Strikes His Own Balance", 6/3, The New York times, http://www.nytimes.com/2015/06/04/us/winning-surveillance-limits-obama-makes-program-own.html?_r=0, LS)

WASHINGTON — For more than six years, President Obama has directed his national security team to chase terrorists around the globe by scooping up vast amounts of telephone records with a program that was conceived and put in place by his predecessor after the Sept. 11, 2001, attacks. Now, after successfully badgering Congress into reauthorizing the program, with new safeguards the president says will protect privacy, Mr. Obama has left little question that he owns it. The new surveillance program created by the USA Freedom Act will end more than a decade of bulk collection of telephone records by the National Security Agency. But it will make records already held by telephone companies available for broad searches by government officials with a court order. "The reforms that have now been enacted are exactly the reforms the president called for over a year and a half ago," said Lisa Monaco, the president's top counterterrorism adviser. She called the bill the product of a "robust public debate" and said the White House was "gratified that the Senate finally passed it." The president is trying to balance national security and civil liberties to put into practice the kind of equilibrium he has talked about since he was in the Senate, when he expressed support for surveillance programs but also vowed to rein in what he called government overreach. Mr. Obama entered the Oval Office with what he called "a healthy skepticism" about the system of surveillance at his command. But Ms. Monaco said that, in part because of his often grim daily intelligence briefing, the president was also "very, very focused on the threats" to Americans. "He weighs the balance every day," she said. The compromise on collections of telephone records may end up being too restrictive for the president's counterterrorism professionals, as some Republicans predict. Or, as others vehemently insisted in congressional debate during the past week, it may leave in place too much surveillance that can intrude on the lives of innocent Americans. Either way, Mr. Obama's signature on the law late Tuesday night ensures that he will deliver to the next president a method of hunting for terrorist threats despite widespread privacy concerns that emerged after Edward J. Snowden, a former N.S.A. contractor, revealed the existence of the telephone program. "He owned it in 2009," said Michael V. Hayden, a former N.S.A. director under President George W. Bush, who oversaw the surveillance programs for years. "He just didn't want anyone to know he owned it." Jameel Jaffer, the deputy legal director of the American Civil Liberties Union, called the USA Freedom Act "a step forward in some respects," but "a very small step forward." He said his organization would continue to demand that the president and Congress scale back other government surveillance programs. "Obama has been presented with this choice: Are you going to defend these programs or are you going to change them?" Mr. Jaffer said. "Thus far, we haven't seen a lot of evidence that the president is willing to spend political capital changing those programs." In the case of the telephone program, Mr. Obama's preferred compromise was originally the brainchild of his N.S.A. officials, who embraced it as a way to satisfy the public's privacy concerns without losing the agency's ability to conduct surveillance more broadly. In the lead-up to last week's congressional showdown, Mr. Obama and his national security team insisted that broad surveillance powers were vital to tracking terrorist threats, while admitting that the new approach to data collection would not harm that effort. White House officials said Mr. Obama was comfortable that history would show that he struck the right balance.

Advantage CP – S-6 Visa Reform CP

S-6 Visa Reform CP – Solvency

Reforming the S-6 visa solves.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

While the FBI appears to recruit most terrorism informants through informal means, an existing visa program already formally offers immigration benefits to informants in exchange for their cooperation with terrorism investigations. As part of the Violent Crime Control and Law Enforcement Act of 1994, 32Link to the text of the note Congress specifically designed the S-6 visa to attract and reward immigrants who were willing to cooperate by giving terrorism intelligence. 33Link to the text of the note However, given the small number of S-6 visas issued, the program likely fails to meet the FBI's intelligence recruitment needs. The fifty allotted S-6 visas per year 34Link to the text of the note do not match up with the number of informants (fifteen thousand) used by the FBI. 35Link to the text of the note In order to qualify for the S-6 visa, an informant must also meet the eligibility requirements of the Department of Justice's Rewards for Justice Program, a separate program designed to elicit and monetarily reward terrorism intelligence. 36Link to the text of the note Lastly, access to the S-6 visa is further restricted by the requirement that the informant be subject to danger if he or she is returned to his or her home country. 37Link to the text of the note Since the FBI has long used immigration law as an incentive to compel terrorism informants to act, it has little motivation to use a rewards program that presents additional barriers. The stringent eligibility requirements to obtain an S-6 visa explain its ongoing underuse. 38Link to the text of the note [242] This Comment proposes the S-6 visa requirements should be modified in a way that encourages trust and cooperation from informants by allowing informants to enforce their bargains with the FBI**. A legislative overhaul that emphasizes pre-existing ties to terrorist organizations, increases the number of available visas, and lowers the barriers to the S-6 visa's use would produce more reliable and actionable intelligence, and provide greater protection for the informants' civil liberties and free speech**. Congressional oversight of the FBI's use of S-6 visas would also provide a valuable check on the FBI's largely unlimited control over terrorism informants.

S-6 Visa Reform CP – 2nc Solvency

CP solves.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

As it currently exists, the S-6 visa may be a way of controlling the FBI-informant relationship in cases involving promised immigration benefits. The S-6 visa rewards terrorism informants with permanent residency status. However, as discussed infra, in order for the S-6 visa to effectively

restrain the FBI and produce useful intelligence, the S-6 visa needs to be modified. The examples discussed supra in Part II illustrate how the overbroad and indiscriminate use of informants, particularly those recruited with immigration threats or rewards, harms the acquisition of useful information, fails to identify and protect against legitimate threats, chills speech, and encourages ethnic and religious profiling. Immigration law offers less protection to informants than promises of leniency in criminal matters, thus increasing the potential for informants to produce faulty intelligence. Part III, supra, demonstrates that limitations on FBI dealings with informants are practically nonexistent. This Part proposes a revision to the S-6 visa that would help diminish the harmful effects discussed in Part II by increasing transparency and providing [268] more procedure for FBI informant recruitment via immigration law. Specifically, providing immigrant informants with better bargaining power and ways to vindicate their agreements through the S-6 visa would alleviate some of the aforementioned harms. Although there have been few reports of the FBI abandoning immigration promises in counterterrorism investigations, 223Link to the text of the note the FBI has repeatedly broken alleged immigration and monetary 224Link to the text of the note promises made to informants in exchange for participation in drug investigations, 225Link to the text of the note human trafficking investigations, 226Link to the text of the note and pre-9/11 terrorism prosecutions. 227Link to the text of the note Providing a more straightforward and transparent way for the FBI to offer immigration benefits to informants would help decrease informants' potential vulnerability and limit the FBI's power. With modifications, the S-6 visa could help resolve these problems.

S-6 Visa Reform CP – 2nc Solvency

S-6 Visa Reform solves terrorism informant cooperation sufficiently.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Ethnic and religious profiling, combined with the indiscriminate surveillance carried out by informants, can entrap individuals who do not pose a threat. Entrapment wastes government resources and undermines public confidence in the justice system and law enforcement. Although the FBI's problematic surveillance of Muslim and Middle Eastern communities stems from the use of all types of informants and not merely those recruited with immigration promises, a modification to the use of immigration law in rewarding or coercing terrorism informants would provide a step toward producing more useful intelligence and reducing the risk of harm to innocent individuals.

S-6 Visa Reform CP – 1nc Solvency

The CP solves but doesn't curtail domestic surveillance.

This CP could be done by the Court or Congress.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Greater use of the S-6 visa would ensure judicial review of government practices by forcing the FBI to be more careful about following procedures in recruiting and dealing with informants. Changes to the S-6 visa program that provides material witness visas to informants with intelligence about terrorist activities could formalize the use of immigration rewards for terrorism intelligence in ways that would benefit the FBI and potential informants, and could help reduce the unnecessary and harmful surveillance of Muslim and Middle Eastern communities. In order for the S-6 visa to become a useful tool for the FBI without compromising civil liberties, the S-6 visa must be more readily available, easier to grant, and carefully tailored. The low numbers of S-6 visas used by law enforcement agencies may indicate several potential problems with the program. It may seem paradoxical to suggest that the available number of S-6 visas is too low when congressional reports reveal no S-6 visas were issued between 1994 and 2006. 255Link to the text of the note However, these low numbers likely reveal more about the drawbacks of the S-6 visa program than they do about the value of immigration incentives as an intelligence tool. In particular, the inconveniences the S-6 visa application process imposes are barriers to efficient and productive use of the S-6 visa program. If FBI informants number in the thousands, as reports suggest, 256Link to the text of the note and the FBI continues to make terrorism prevention a priority, then it seems Congress has failed to offer an appropriate number of S-6 visas for counterterrorism investigations. Whether or not the current number of informants in use is necessary for effective terrorism prevention is outside the scope of this Comment. Nevertheless, the current allotment of fifty S-6 visas per year seems low when compared to the premium the FBI places on terrorism investigation and prevention and the estimated fifteen thousand informants in use. 257Link to the text of the note Although not all of these informants work on terrorism-related investigations, it [272] is reasonable to assume that since terrorism prevention tops the list of FBI priorities, 258Link to the text of the note there are more than fifty of them that do. If Congress truly intends the S-6 visa to become a viable instrument in fighting the war on terror, it must give the FBI the appropriate tools?and number of tools?to work with. In determining a useful and appropriate number of S-6 visas to allot, under this proposal Congress would also be forced to determine the number of terrorism informants in use and whether the FBI plans to reward these individuals with S-6 visas for themselves and their families. Furthermore, **were a court to find that the FBI cannot bypass the S-6 visa process, and modify the eligibility requirements, the number of S-6 visas would likely rise. In sum, increasing** 259Link to the text of the note **the statutory allotment of S-6 visas could ensure that there are enough S-6 visas available** to cover the increased number of terrorism informants employed by the FBI. S-6 visa eligibility requirements also lack the proper tailoring to allow the FBI to make use of them while still guarding against overbroad informant recruitment and use which leads to religious and ethnic profiling. Changing the eligibility standards could better protect informants and produce more reliable intelligence for the FBI. For example, one potential change would do away with requiring informants to also be eligible for the State Department's Rewards for Justice Program established by the Act to Combat International Terrorism. 260Link to the text of the note As previously mentioned, the Act gives the Secretary of State sole discretion to monetarily reward individuals who provide information leading to the arrest or conviction of anyone committing or conspiring to commit international terrorism against the United States. 261Link to the text of the note Those who frustrate acts of terrorism or dismantle terrorist organizations are also covered by the Act. 262Link to the text of the note In short, the Rewards for Justice Program eligibility requirements are quite high. Many informants may have useful terrorism intelligence that may not necessarily lead to an arrest or conviction. Furthermore, both the Attorney General and the Secretary of State approve awards on a discretionary basis not subject to judicial review. 263Link to the text of the note Abolishing the requirement that an informant be eligible for a monetary reward under the Rewards for Justice Program would make S-6 visas available to more terrorism informants. While **this would not [273] necessarily curtail the FBI's ethnic and religious profiling**, making the visa available to

more informants may encourage the FBI to actually use it, thereby creating a more legitimate and transparent path to immigration rewards than that afforded by current government practices. Similarly, the S-6 visa requirement that informants be in danger of retaliation for providing critical and reliable intelligence 264Link to the text of the note will likely not be met when immigration benefits are the impetuses for cooperation. Because informants recruited for counterterrorism investigations often have no connection to foreign terrorist organizations, 265Link to the text of the note and are tasked with preventing "lone wolf" terrorists, they would likely not face threats from legitimate terrorist organizations if deported to their country of origin. Abolishing the "danger of retaliation" requirement would make the S-6 visa available to more informants and give them more incentive to cooperate with the FBI. It would also give the FBI greater assurance that informants' cooperation is not based on empty promises. In all, removing this requirement, along with the requirement that informants be eligible for the Rewards for Justice Program, would remove some of the barriers to receiving an S-6 visa. To limit the religious and ethnic profiling created through the widespread use of informants, the S-6 visa should also require that informants possess critical and reliable intelligence prior to agreeing to inform. Critical and reliable information is based on preexisting ties to terrorists or terrorist organizations rather than on ethnicity or religion. In the cases at issue in this Comment, the FBI typically recruits informants without a specific surveillance target in mind. In some cases, "FBI handlers have tasked [informants] with infiltrating mosques without a specific target or "predicate' - the term of art for the reason why someone is investigated. They were, [informants] say, directed to surveil law-abiding Americans with no indication of criminal intent." 266Link to the text of the note Informants receiving such directions from the FBI would not meet the "critical and reliable information" requirement. Hence, requiring informants to have potentially useful information that is not based purely on ethnicity or religion, but rather on preexisting ties to terrorists or terrorist organizations, would lessen the indiscriminate surveillance practices of the FBI without implementing the higher standards imposed by the Rewards for Justice Program. Finally, individuals who agree to provide information in exchange for an S-6 visa should not be forced to waive their right to a deportation hearing. Currently, informants must knowingly waive their rights to any deportation hearings and appeals should deportation proceedings occur. They must also waive their rights to contest their detention pending deportation until lawful [274] permanent resident status is obtained. 267Link to the text of the note Strikingly, informants relinquish all access to judicial review if their applications are mishandled or forgotten and they subsequently face deportation. In the past, informants have alleged that the FBI has mismanaged and reneged on promises, including immigration promises. 268Link to the text of the note Allowing judicial review of the S-6 visa process would help lift the veil of secrecy under which the FBI operates. Furthermore, through redaction or other methods that preserve informants' identities, judicial review could be carried out without threatening national security. 269Link to the text of the note Another benefit of this requirement would be increased transparency in the way the FBI recruits informants. Wider use of the S-6 visa, as well as greater judicial review, would allow the government to ascertain the number of individuals enlisted by the FBI as counterterrorism informants. **This may further help curb informant mishandling, a problem that plagues the agency**. Because informants would still be required to provide critical and reliable intelligence, the FBI would be required to articulate clear predicates for recruiting individuals, such as a close relationship between an individual and a known member of a foreign terrorist organization. This, in turn, would provide due process and could vindicate informants' rights. The proposed changes to the S-6 visa program would not only force the FBI to adjust its recruitment and use of counterterrorism informants, but would also help the FBI obtain more reliable and valuable intelligence while rebuilding relationships with Muslim and Middle Eastern communities. Despite the FBI's limited resources

and financial limitations, the FBI and Congress should focus on finding the most accurate and efficient methods of acquiring intelligence. 270Link to the text of the note Although the FBI's budget has not suffered greatly in the financial crisis, 271Link to the text of the note the agency does have a finite amount of resources to work with. Sending unwilling informants into mosques in search of vulnerable and receptive attendees with no ties to terrorist organizations and with no independent plans to commit terrorist acts is not efficient. Requiring the FBI to only use a modified version of the S-6 visa would channel the FBI's pursuit of existing leads. In turn, the FBI's presence in mosques would decrease, which would assuage community fears. Lastly, requiring the FBI to seek informants [275] who possess reliable terrorist intelligence has the potential to reduce the possibility of informant entrapment, which would help repair the FBI's relationship with Muslim and Middle Eastern communities.

S-6 Visa Reform CP – 2nc Solvency

CP is sufficient to solve – or if it doesn't, neither does the aff.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Changing the S-6 visa program and focusing on the FBI's use of immigration incentives to recruit informants may seem too narrow to appreciably influence national security and community relations. However, the point of this Comment is a narrow one: to showcase one problematic aspect in the way the FBI handles human intelligence. The recommendations here would not fully solve the problems of privacy violations, ethnic and religious profiling, and informant misuse. The use of immigration law and status to leverage informants is not the only way that the FBI recruits informants, and the S-6 visa program would likely remain relatively small even if expanded. However, as previously explained, the proposed changes to the S-6 visa would generate a more transparent system and more fruitful intelligence, and would help ensure the FBI operates within the scope of its power. Individuals pressured to provide intelligence information would have a legitimate chance to receive an S-6 visa, and the FBI would have a greater incentive to stop its overtly coercive recruitment tactics such as deportation threats. Due to the popularity and longstanding use of informants, it is unrealistic to think that the FBI will stop using immigration law as a way to leverage cooperation. In the past, informants have aided national security by providing useful intelligence, and so they are highly valued as a source of intelligence. Hence, no matter how narrow in scope the proposed changes are, changes to the S-6 visa would greatly benefit the FBI, informants, and Muslim and Middle Eastern communities. Better intelligence may mean the difference between wasting government resources on empty threats and preventing the loss of life in future terrorist attacks. While narrow, the proposed changes to the S-6 visa provide a promising way for expending law enforcement resources where needed, preventing manipulative informant recruitment tactics, and adding transparency to informant dealings with the FBI. Congress has the power to increase the allotment of S-6 visas and to explicitly restrict the FBI from promising immigration benefits outside of this program. The FBI should be forced to use the S-6 visa program when using immigration status as an incentive. The proposed changes would allow the FBI to use the S-6 visa as an incentive, while inhibiting its use of unnecessarily forceful tactics that lead to faulty intelligence, entrapment, and religious and ethnic profiling.

S-6 Visa Reform CP – 2nc Solvency

CP solves.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Offering S-6 visas to immigrant informants with established connections to terrorist organizations in exchange for their cooperation would be a legitimate way for the FBI to reward these informants. Further, informants would be able to rely on the FBI's promise and seek review should the [276] agreement go awry. Gaining informants' trust and lessening the coercive aspect of recruitment would lead to more trustworthy intelligence, and thereby enhance national security. A larger but less committed group of informants - characterized by the current underused S-6 visa program - does the country little good. Likewise, the indiscriminate and widespread surveillance of Muslims and Middle Easterners damages American communities and reifies assumptions and stereotypes about terrorists' identities and backgrounds. These assumptions may also blind law enforcement to real threats taking place in non-Muslim or non-Middle Eastern communities. Expanding and modifying the use of S-6 visas would turn a small, poorly designed program into a helpful law enforcement tool that better procures reliable intelligence. Furthermore, providing more oversight for FBI informant use and restricting practices that contribute to ethnic and religious profiling would improve Muslim and Middle Eastern communities' confidence in and cooperation with the government. This, in turn, would encourage communities to effectively work with law enforcement and report suspicious activities. Information offered from within a community is more likely to be accurate, 272Link to the text of the note leading to more counterterrorism prosecutions that enhance national security and less waste of law enforcement resources on bogus threats. 273Link to the text of the note In the end, only Congress can reform the S-6 visa program to better effectuate the law's aim of rewarding informants and procuring credible intelligence on real threats. Reform would allow the FBI to more efficiently channel its resources, and would afford informants a fairer agreement?changes that would better serve the security interests of the United States.

Solvency Answers

Uniqueness – Surveillance Increasing

Surveillance has hidden itself – it has become panspectric instead of panoptical

Kullenberg '09 (Kullenberg, Christopher, PhD, University Gothenburg, His dissertation concerns the statistical social sciences, their epistemic problems and their role in modern societies, and contains a case-study of the SOM-institute, a Gothenburg research center that has been very successful in providing large surveys, "The social impact of IT: Surveillance and resistance in present-day conflicts." How can activists and engineers work together pg. 37-40. http://fiff.de/publikationen/fiff-kommunikation/fk-2009/fiff-ko-1-2009/fiko_1_2009_kullenberg.pdf DA: 7/8/15 CB)

Since the 9/11 attacks the world has been challenged with intrusive legislation upon civil liberties and increased use of surveillance technologies. As this development is proceeding rapidly, both from a legal point of view and the technological side, it takes more than parliamentary politics to pursue a democratic and open discussion about these matters. This is where the civil society, or rather the civil societies, need to collaborate. Thus, I will propose that engineers, software-programmers and people in the private sector of Information Technology could co-operate with activists, human-rights organizations and citizen-journalists in a very productive manner. I will also give tangible examples on how such activities have been pursued in Sweden during a controversy on the role of signals intelligence. Surveillance and war. Issues that keep arising in the backwaters of the "wars" on terrorists, drugs, and trafficking are often complex and require technical and legal expertise, not only to be understood, but more importantly, to be taken seriously in the public debate by the media. In order to avoid laws are passed without a proper debate or that technologies are implemented as merely technical solutions, I will propose that criticism could have a positive task in building a collaborative informational infrastructure, an effective media strategy, and other innovations. Let me give an example from Sweden. During 2008, a law was passed which allowed the government to pursue extensive signals intelligence on the Internet. It was termed the FRA-law in the press, since the authority responsible for signals intelligence is called Forsvarets Radioanstalt [1], which is the equivalent to the NSA in the United States, or the BND in Germany. The FRA was previously only allowed to search and intercept radio traffic, but this new law would allow the authority to intercept all internet traffic, by monitoring so-called "co-operation points" at the Internet Service Providers. By copying all the information passing through the cables, the FRA will be able to extract traffic-data from, the multitude of data, both domestic and international. Consequently, a mode of operation which was developed in the context of the post-war arms race will be transferred to the Internet as this law is effectuated during 2009. However, the Internet is largely used by private and corporate communication, rather than military information, a fact that raises questions concerning privacy, integrity and the rights to private communication. I will argue that if it were not for the active formation of a public, this law would have been passed without resistance or criticism. In order to understand how this works, the notion of a "public" is borrowed from the philosopher John Dewey, who explicitly stresses the importance of communication: "But participation in activities and sharing in results are additive concerns. They demand communication as a prerequisite. /…/ Communication of the results of social inquiry is the same thing as the formation of public opinion." [2] Crucial to the formation of a participatory public issue, and to allow it to build political pressure, is there free flow of information in the sense that it operates without restrictions, something which is very different compared to traditional theories of mass-communication. This is where the Internet has a very interesting potential since its architecture, at least ideally, promotes participation, sharing and communication, which is precisely what Dewey is asking for. However, it seems that this free flow cannot be guaranteed by the internet alone, since the same abilities can be used for intrusive surveillance. Panspectric Surveillance. How are we then to conceive of contemporary technologies of surveillance? One way is to ask how technologies are used throughout society, by analyzing their performances and abilities in socio-technical assemblages. Digital technologies, besides sharing certain properties in hardware such as microprocessors, electricity-based operations and abilities to process instructions and algorithms, usually share many networked, or social effects. The internet as an assemblage of computers, routers, switches and all kinds of IP-based technologies, such as mobile devices and satellites, shapes emergent forms of effectuation. For example file-sharing, voice-transmission, e-mails etc. are all dependent on interconnectivity. Also, they operate on the potentiality of decentralization and read-write capacities, and on the ability to transfer the analogue world to a digital realm, which we see in the digitalization of images, sounds, and even in the keystrokes of keyboard. There is however a critical paradox built into our mundane technologies. We may use digital cameras on our mundane

technologies. We may use digital cameras on our holiday trips and post the images on a blog, but we may also use the same capacities for an IP-based surveillance camera. The present any technologies are this at the same time what may liberate sounds, texts, images and videos from their "material imprisonment" and geographical spatiality, while they simultaneously make possible for what is called panspectric surveillance [3] The concept of panspectrocism comes from philosopher Manuel DeLanda, who situates the origin of these technologies in war. It is worthwhile to quote from his work War in the Age of Intelligent Machines (1991) in length: "There are many differences between the Panopticon and the Panspectron /…/ Instead of positiong some human bodies around a central sensor, a multiplicity of sensors is deployed around all bodies: its antenna farms, spy satellites and cable-traffic intercepts feed into its computers all the information that can be gathered. Thus is then processed through a series of "filters" or key-word watch lists. The Panspectron does not merely select certain bodies and certain (visual) data about them. Rather, it compiles information about all at the same time, using computers to select the segments of data relevant to its surveillance tasks [4]." DeLanada thus argues that the technologies we face in contemporary debates on Internet surveillance, originate in post-war setting which culminated during the cold war. Signals intelligence which culminated during the cold war. Signals intelligence was born in a combination of radio interception, transferring analogue signals to digital information, and computers which calculated patterns, attached meta-data, and filtered out only the relevant pieces of information in a multiplicity of signals. The birth of the panspectric technological framework, at least an abstract sense, this came from warfare. However, it was developed and refined during times when consumer technologies were not yet digital, and usually not even made for two-way communication (TV. Press, radio). What we see today is a complete change of orders. Signals intelligence performed by governments, such as the NSA, the FRA or the BND have entered a territory populated by ordinary citizens, rather than tanks, spy satellites and nuclear weapons. Contemporary panspectric surveillance depends on the interconnectedness of sensors and computational methods such as data mining, sociograms and databases. Sensors include RFID-chips, digital CCTV-cameras, credit cards, mobile phones, internet surveillance etc., and they all have the ability to record an ever increasing part of our everyday lives. This is where we get close to the etymology of the words pan-, which means everything, and spectrum which is the entire range of detectable traces. The radical digitalisation of our societal functions and everyday lives, reconfigures and prolongs the range of surveillance. However, to make sense of this enormous abundance of data, methods of reducing complexity and finding relevant traces are needed. This is where the other pole of panspectrocism emerges; the need for supercomputers and advanced software and statistics. The FRA has bought one of the fastest supercomputers in the world, and it is plugged directly into the central fibre-cables of the Swedish Internet Service Providers. They will consequently receive a copy of all traffic-data, and then process it in several steps in order to find patterns. The problem is, however, that traffic-data (which contains information about with whom, at what time, how frequently etc. we communicate) can say a great deal about you and your life. If we make social network analyses of the meta-data you give off during a normal day, the surveyor can probably find out who most of your friends are, and where you are most likely to be located. With more and more data, the surveyor is able to tell your religion, sexuality, political affiliation and consumer behaviour. Citizen Journalism, Pirate Parties and Activists We can make a tripartite division of activities that may challenge the increasing use of legal and technological means of mass surveillance; citizen journalism, pirate parties and activism. They may sometimes resonate in the same direction, towards a clear goal, but their basic properties and relations are essentially heterogeneous. Issues, such as the FRA-law, can only stir up reactions and become "issues proper" if, following Dewey, there is communication between actors allowing them to react to what is imposed on them. It has been said that the case of the FRA-law was the first time in Swedish history that traditional newspapers lagged the blogosphere, and for the centre-conservative government the force of citizen journalism came as quite a surprise. The blogosphere displayed a few interesting abilities by cooperating and sharing knowledge. One important aspect of raising issues, needed to be accounted for in this case, is speed. Paul Virilio argues in his book Speed and Politics, that: "If speed thus appears as the essential fall out of styles of conflicts and cataclysms, the current arms race is in fact only the arming of the race toward the end of the world as a distance, in other words as a field of action." [5] Speed turns distance into action, and citizen journalism has a higher velocity than the traditional media, being dependent on printing presses, paid and professional journalists, or hierarchical organisations. During the passing of the FRA-law, the only ones being able to read legal documents, do proper research, and have a constructive discussion, were bloggers. In this case (and I do not want to generalise this observation to be valid for „the media" in general) we may say that the allocation of resources was much more efficient than that of large media corporations. The critical task for the blogosphere in making a successful

attempt at stopping this law is knowledge production. Surveillance technologies and intrusive legislations are complex matters which are often secretive in character. Signals intelligence is maybe an extreme case, since details about methods and search criteria is necessarily kept away from the public. The first step in the case of the FRA was ontopolitical, in the sense that there was (and still is) a struggle to define whether signals intelligence is mass-surveillance, which would be a disaster for integrity, or simply a means to target very few „enemies of society" (terrorists). Bloggers analysed legal documents and government white papers, as a kind of swarm intelligence, and could argue convincingly that they entailed many legal exceptions for the FRA in registering political opinions, sexual orientation or religious background. The counter-argument from advocates of the law did not convince the bloggers, and the traditional media started covering the issue extensively. During the summer of 2008, there were articles in the newspaper almost every day for months, and many bloggers wrote extensively in both arenas

AT: Solvency – Circumvention – Racist Practices

No solvency – executive agencies circumvent – too much discretion makes abuses of power inevitable.

- Can't just end the FBI or DHS surveillance – racial, ethnic, and religious surveillance is widespread across government agencies

- Laws exist to stop racial, ethnic, and religious targeting – empirically ignored by surveillance agencies DESPITE absolute bans

- No enforcement – there is no way to check governmental abuses.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

The authority to spy and monitor domestic individuals has been granted to various agencies within the government, such as the FBI and the DHS. 104Link to the text of the note This power, granted through the establishment of the NCTC and the DIOG, has led to various improper surveillance practices, such as using race, ethnicity, or religion as a basis for monitoring an individual when there is no suspicion of criminal or terrorist activity. 105Link to the text of the note The government has used race and ethnicity as a basis for selecting individuals to monitor and for conducting threat analysis in the past. 106Link to the text of the note Furthermore, with the additional surveillance power that has been given to the government, **the use of race and ethnicity as a basis for surveillance is disconcerting.** Past Department of Justice national security guidance has **explicitly disallowed** the consideration of race or ethnicity, except to the extent permitted by the Constitution [450] and laws of the nation. 107Link to the text of the note Although a constitutional analysis of the government's surveillance efforts will be conducted later in this Comment, it is important to note that the Justice Department's past guidance stated that "**in absolutely no event** … may Federal officials assert a national security or border integrity rationale as a mere pretext for invidious discrimination." 108Link to the text of the note This 2003 guidance explains what efforts regarding race or ethnicity are allowed and not allowed as a means to protect national security; however, **the DIOG has permitted measures that are contrary to the standards** outlined in the 2003 Department of Justice Guidance. 109Link to the text of the note

AT: Solvency – Circumvention – Loopholes Inevitable

No solvency – total ban key – loopholes for circumvention are inevitable.
- If the aff only deals with one of race, ethnicity, or religion, law enforcement will just one of the others as the basis for its enforcement policies.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

Although the DIOG prohibits the FBI from considering race or ethnicity as the sole factor in determining whether an individual or group will be subject to intense monitoring, 110Link to the text of the note ethnicity may be considered in evaluating whether an individual is a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping as that individual. 111Link to the text of the note Furthermore, the DIOG permits the FBI to identify areas of concentrated ethnic communities if the locations will reasonably aid in threat analysis. 112Link to the text of the note The locations of "ethnic-oriented" businesses and facilities may be gathered if their locations will reasonably contribute to an awareness of threats, vulnerabilities, and intelligence collection opportunities. 113Link to the text of the note Just as **race or ethnicity is often closely correlated to religious affiliation**, the FBI has been granted the authority, although accompanied with many restrictions, to utilize religion as a basis for examination. 114Link to the text of the note

AT: Solvency – Circumvention – Discretion

The government has too much discretion to conduct surveillance – circumvention is inevitable.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

Furthermore, the government has received criticism in the past for misusing its surveillance authority. 128Link to the text of the note In March of 2007, the Director of the FBI, Robert Mueller III, acknowledged that the bureau had improperly used the Patriot Act to obtain surveillance information. 129Link to the text of the note An investigation into the government's surveillance practices found that national security letters, which allow the bureau to obtain records from telephone companies, internet service providers, banks, credit companies, and other businesses without a judge's approval, were improperly, and sometimes illegally, used. 130Link to the text of the note Additionally, incorrect recordkeeping was exposed, in which the actual number of national security letters utilized were frequently understated when reported to Congress. 131Link to the text of the note Several legislatures have expressed concern about the misuse of government surveillance. 132Link to the text of the note It is apparent that this concern is not misguided since the Justice Department's Office of the Inspector General noted, in a 2007 audit report, that many FBI failures had occurred as a result of its surveillance procedures. 133Link to the text of the note These failures include a lack of internal controls 134Link to the text of the note and the absence of required information in national security letter approval memoranda. 135Link to the text of the note

AT: Solvency – Circumvention – Congress Won't Enforce

Congress can't enforce the plan – institutional barriers and secrecy.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

Although the NCTC itself was enacted under the authority of the executive branch, the additional surveillance authority given to the government through the NCTC guidelines was not vetted through congressional channels, which are supposed to be representatives of the people. In fact, many argue that the configuration of the guidelines result in surveillance procedures that will be very difficult for [462] other government authority, like Congress, to monitor and ensure that the civil liberties of domestic individuals remain intact. 183Link to the text of the note

AT: Solvency – Circumvention – FBI – Informants

FBI will circumvent – this evidence is specific to the informant program.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Despite the FBI's long history of problematic relationships with informants, 39Link to the text of the note both Congress and the Department of Justice - the FBI's parent agency - provide very little oversight of FBI informants. The lack of transparency, control, and accountability give the FBI almost unlimited power over how it recruits, handles, and rewards informants. 40Link to the text of the note In particular, because of the greater secrecy afforded to national security investigations, the use of terrorism informants presents unique problems not present in traditional, nonterrorism use of informants.

AT: Solvency – Circumvention – Courts Won't Enforce

Courts won't enforce the plan.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Second, law enforcement dealings with terrorism informants receive greater deference from courts and other limiting actors because terrorism is considered a national security matter instead of simply a domestic law enforcement matter. 53Link to the text of the note The executive branch has greater control over national security and foreign intelligence matters than over domestic law enforcement, an area traditionally reserved to the states. 54Link to the text of the note Thus, the post-9/11 characterization of terrorism as a national security matter results in courts affording more leeway to terrorism investigations than domestic criminal investigations. 55Link to the text of the note In other words, the federal government is afforded more secrecy in matters of national

security. 56Link to the text of the note Hence, because the government can invoke national security concerns to keep information about the informant and handler privileged, there is less regulation governing the recruitment and handling of terrorism informants than traditional criminal informants. 57Link to the text of the note

AT: Solvency – Circumvention – FBI – Informants

FBI will not comply.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, "COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa" Lexis, accessed 7-12-15, TAP]

Evidence shows that in many cases, FBI agents fail to follow the Guidelines when recruiting and handling informants. A 2005 study conducted by the Department of Justice Office of the Inspector General found that the FBI did not provide enough support to agents to properly follow the pre-2006 Attorney General Guidelines Regarding the Use of Confidential Informants. 167Link to the text of the note In fact, noncompliance with the guidelines was a problem in 87 percent of the cases the Inspector General reviewed. In particular, agents failed to properly review the suitability of potential informants, properly document informants' illegal activities, and notify informants of their limitations. 168Link to the text of the note Given the high levels of noncompliance and agents' nearly unlimited discretion in extending immigration rewards, agent abuse is likely also high.

Racial Surveillance Adv Answers

AT: Solvency – Public Education Fails

Targeted surveillance is inevitable. The Black body is a victim of government surveillance.

Cyril '15 Cyril, Malkia A.- Malkia Amala Cyril is founder and executive director of the Center for Media Justice (CMJ) and co-founder of the Media Action Grassroots Network, a national network of 175 organizations working to ensure media access, rights, and representation for marginalized communities. April 15 2015 "Black America's State of Surveillance" http://www.progressive.org/news/2015/03/188074/black-americas-state-surveillance. July 7, 2015

Today, media reporting on government surveillance is laser-focused on the revelations by Edward Snowden that millions of Americans were being spied on by the NSA. Yet my mother's visit from the FBI reminds me that, from the slave pass system to laws that deputized white civilians as enforcers of Jim Crow, black people and other people of color have lived for centuries with surveillance practices aimed at maintaining a racial hierarchy. It's time for journalists to tell a new story that does not start the clock when privileged classes learn they are targets of surveillance. We need to understand that data has historically been overused to repress dissidence, monitor perceived criminality, and perpetually maintain an impoverished underclass. In an era of big data, the Internet has increased the speed and secrecy of data collection. Thanks to new surveillance technologies, law enforcement agencies are now able to collect massive amounts of indiscriminate data. Yet legal protections and policies have not caught up to this technological advance. Concerned advocates see mass surveillance as the problem and protecting privacy as the goal. Targeted surveillance is an obvious answer—it may be discriminatory, but it helps protect the privacy perceived as an earned privilege of the inherently innocent. The trouble is, targeted surveillance frequently includes the indiscriminate collection of the private data of people targeted by race but not involved in any crime. For targeted communities, there is little to no expectation of privacy from government or corporate surveillance. Instead, we are watched, either as criminals or as consumers. We do not expect policies to protect us. Instead, we've birthed a complex and coded culture—from jazz to spoken dialects—in order to navigate a world in which spying, from AT&T and Walmart to public benefits programs and beat cops on the block, is as much a part of our built environment as the streets covered in our blood.

Even if more surveillance policy is passed, it is unlikely to be effective

<Glenn **Greenwald** Journalist, constitutional lawyer, author of four New York Times bestselling books on politics and law. Including *No Place to Hide:* a book about government surveillance. November 19th **2014** https://firstlook.org/theintercept/2014/11/19/irrelevance-u-s-congress-stopping-nsas-mass-surveillance/ "Congress is Irrelevant in Mass surveillance- Here's what matters Instead" Accessed 7-8-2015 PAM>

The entire system in D.C. is designed at its core to prevent real reform. This Congress is not going to enact anything resembling fundamental limits on the NSA's powers of mass surveillance. Even if it somehow did, this White House would never sign it. **Even if all that** miraculously **happened**, the fact **that** the U.S. intelligence community and National Security State operates with no limits and no oversight **means they'd**

easily co-opt the entire reform process. That's what happened after the eavesdropping scandals of the mid-1970s led to the establishment of congressional intelligence committees and a special FISA "oversight" court—the committees were instantly captured by putting in charge supreme servants of the intelligence community like Senators Dianne Feinstein and Chambliss, and Congressmen Mike Rogers and "Dutch" Ruppersberger, while the court quickly became a rubber stamp with subservient judges who operate in total secrecy.

Prison Industrial Complex Link

State and local police arrest minorities utilizing information provided by unwarranted racialized federal surveillance –DEA agent admits- The legal system doesn't solve because its hidden from the rest of the government.

Shiffman and Cooke '13 (August 5th 2013, John Shiffman is an enterprise correspondent based in Washington. He is co-author of Priceless, a NYT bestseller published in nine languages, and author of the forthcoming Operation Shakespeare, Kristina Cooke is an investigative reporter based in San Francisco. Before joining Reuters, she worked at CNN International and The Economist's "World In" journal She studied International Relations and History at the London School of Economics, Reuters, "Exclusive: U.S. directs agents to cover up program used to investigate Americans" http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805 DA: 7/8/15 CB)

A secretive U.S. Drug Enforcement Administration unit is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans. Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin - not only from defense lawyers but also sometimes from prosecutors and judges. The undated documents show that federal agents are trained to "recreate" the investigative trail to effectively cover up where the information originated, a practice that some experts say violates a defendant's Constitutional right to a fair trial. If defendants don't know how an investigation began, they cannot know to ask to review potential sources of exculpatory evidence - information that could reveal entrapment, mistakes or biased witnesses. "I have never heard of anything like this at all," said Nancy Gertner, a Harvard Law School professor who served as a federal judge from 1994 to 2011. Gertner and other legal experts said the program sounds more troubling than recent disclosures that the National Security Agency has been collecting domestic phone records. The NSA effort is geared toward stopping terrorists; the DEA program targets common criminals, primarily drug dealers. "It is one thing to create special rules for national security," Gertner said. "Ordinary crime is entirely different. It sounds like they are phonying up investigations." THE SPECIAL OPERATIONS DIVISION The unit of the DEA that distributes the information is called the Special Operations Division, or SOD. Two dozen partner agencies comprise the unit, including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security. It was created in 1994 to combat Latin American drug cartels and has grown from several dozen employees to several hundred. Today, much of the SOD's work is classified, and officials asked that its precise location in Virginia not be revealed. The documents reviewed by Reuters are marked "Law Enforcement Sensitive," a government categorization that is meant to keep them confidential. "Remember that the utilization of SOD cannot be revealed or discussed in any investigative function," a document presented to agents reads. The document specifically directs agents to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD." A spokesman with the Department of Justice, which oversees the DEA, declined to comment. But two senior DEA officials defended the program, and said trying to "recreate" an investigative trail is not only legal but a technique that is used almost daily. A former federal agent in the northeastern United States who received such tips from SOD described the process. "You'd be told only, 'Be at a certain truck stop at a certain time and look for a certain vehicle.' And so we'd alert the state police to find an excuse to stop that vehicle, and then have a drug dog search it," the agent said. "PARALLEL CONSTRUCTION" After an arrest was made, agents then pretended that their investigation began with the traffic stop, not with the SOD tip, the former agent said. The training document reviewed

by Reuters refers to this process as "parallel construction." The two senior DEA officials, who spoke on behalf of the agency but only on condition of anonymity, said the process is kept secret to protect sources and investigative methods. "Parallel construction is a law enforcement technique we use every day," one official said. "It's decades old, a bedrock concept." A dozen current or former federal agents interviewed by Reuters confirmed they had used parallel construction during their careers. Most defended the practice; some said they understood why those outside law enforcement might be concerned. RELATED COVERAGE › How DEA program differs from recent NSA revelations "It's just like laundering money - you work it backwards to make it clean," said Finn Selander, a DEA agent from 1991 to 2008 and now a member of a group called Law Enforcement Against Prohibition, which advocates legalizing and regulating narcotics. Some defense lawyers and former prosecutors said that using "parallel construction" may be legal to establish probable cause for an arrest. But they said employing the practice as a means of disguising how an investigation began may violate pretrial discovery rules by burying evidence that could prove useful to criminal defendants. A QUESTION OF CONSTITUTIONALITY "That's outrageous," said Tampa attorney James Felman, a vice chairman of the criminal justice section of the American Bar Association. "It strikes me as indefensible." Lawrence Lustberg, a New Jersey defense lawyer, said any systematic government effort to conceal the circumstances under which cases begin "would not only be alarming but pretty blatantly unconstitutional." Lustberg and others said the government's use of the SOD program skirts established court procedures by which judges privately examine sensitive information, such as an informant's identity or classified evidence, to determine whether the information is relevant to the defense. "You can't game the system," said former federal prosecutor Henry E. Hockeimer Jr. "You can't create this subterfuge. These are drug crimes, not national security cases. If you don't draw the line here, where do you draw it?" Some lawyers say there can be legitimate reasons for not revealing sources. Robert Spelke, a former prosecutor who spent seven years as a senior DEA lawyer, said some sources are classified. But he also said there are few reasons why unclassified evidence should be concealed at trial. "It's a balancing act, and they've doing it this way for years," Spelke said. "Do I think it's a good way to do it? No, because now that I'm a defense lawyer, I see how difficult it is to challenge." CONCEALING A TIP One current federal prosecutor learned how agents were using SOD tips after a drug agent misled him, the prosecutor told Reuters. In a Florida drug case he was handling, the prosecutor said, a DEA agent told him the investigation of a U.S. citizen began with a tip from an informant. When the prosecutor pressed for more information, he said, a DEA supervisor intervened and revealed that the tip had actually come through the SOD and from an NSA intercept. "I was pissed," the prosecutor said. "Lying about where the information came from is a bad start if you're trying to comply with the law because it can lead to all kinds of problems with discovery and candor to the court." The prosecutor never filed charges in the case because he lost confidence in the investigation, he said. A senior DEA official said he was not aware of the case but said the agent should not have misled the prosecutor. How often such misdirection occurs is unknown, even to the government; the DEA official said the agency does not track what happens with tips after the SOD sends them to agents in the field. The SOD's role providing information to agents isn't itself a secret. It is briefly mentioned by the DEA in budget documents, albeit without any reference to how that information is used or represented when cases go to court. The DEA has long publicly touted the SOD's role in multi-jurisdictional and international investigations, connecting agents in separate cities who may be unwittingly investigating the same target and making sure undercover agents don't accidentally try to arrest each other. SOD'S BIG SUCCESSES The unit also played a major role in a 2008 DEA sting in Thailand against Russian arms dealer Viktor Bout; he was sentenced in 2011 to 25 years in prison on charges of conspiring to sell weapons to the Colombian rebel group FARC. The SOD also recently coordinated Project Synergy, a crackdown against manufacturers, wholesalers and retailers of synthetic designer drugs that spanned 35 states and resulted in 227 arrests. Since its inception, the SOD's mandate has expanded to include narco-terrorism, organized crime and gangs. A DEA spokesman declined to comment on the unit's annual budget. A recent LinkedIn posting on the personal page of a senior SOD official estimated it to be $125 million. Today, the SOD offers at least three services to federal, state and local law enforcement agents: coordinating international investigations such as the Bout case; distributing tips from overseas NSA intercepts, informants, foreign law enforcement partners and domestic wiretaps; and circulating tips from a massive database known as DICE. The DICE database contains about 1 billion records, the senior DEA officials said. The majority of the records consist of phone log and Internet data gathered legally by the DEA through subpoenas, arrests and search warrants nationwide. Records are kept for about a year and then purged, the DEA officials said. About 10,000 federal, state and local law enforcement agents have access to the DICE database, records show. They can query it to try to link otherwise disparate clues. Recently, one of the DEA officials said, DICE linked a man who tried to smuggle $100,000 over the U.S. southwest border to a major drug case on the East Coast. "We use it to connect the dots," the official said. "AN AMAZING TOOL" Wiretap tips forwarded by the SOD usually come from foreign governments, U.S. intelligence agencies or

court-authorized domestic phone recordings. Because warrantless eavesdropping on Americans is illegal, tips from intelligence agencies are generally not forwarded to the SOD until a caller's citizenship can be verified, according to one senior law enforcement official and one former U.S. military intelligence analyst. "They do a pretty good job of screening, but it can be a struggle to know for sure whether the person on a wiretap is American," the senior law enforcement official said. Tips from domestic wiretaps typically occur when agents use information gleaned from a court-ordered wiretap in one case to start a second investigation. As a practical matter, law enforcement agents said they usually don't worry that SOD's involvement will be exposed in court. That's because most drug-trafficking defendants plead guilty before trial and therefore never request to see the evidence against them. If cases did go to trial, current and former agents said, charges were sometimes dropped to avoid the risk of exposing SOD involvement. Current and former federal agents said SOD tips aren't always helpful - one estimated their accuracy at 60 percent. But current and former agents said tips have enabled them to catch drug smugglers who might have gotten away. "It was an amazing tool," said one recently retired federal agent. "Our big fear was that it wouldn't stay secret." DEA officials said that the SOD process has been reviewed internally. They declined to provide Reuters with a copy of their most recent review.

The mass arrests of the black body by state and local police is justified by the racialized surveillance of federal agencies.

Prison Culture '13 (June 12 2013, Site dedicated to exposing racism of the military-industrial complex, "On (Some) Black People and the Surveillance State…", http://www.usprisonculture.com/blog/2013/06/12/on-some-black-people-and-the-surveillance-state/ DA: 7/6/15 CB)

Some black folks in my life have no patience for some white people's new found interest/discovery of Cointelpro and particularly of their (now incessant) invocation of the FBI's surveillance of Martin Luther King Jr. The interest seems to them instrumental and transactional. It's as if folks who have had little concern about black people's daily experiences of state violence are now demanding our support in safeguarding their rights. There has been no prior relationship or trust-building so some black folks are feeling used and exploited. It brings to mind the lyric: "Will you still love me, tomorrow?" This sentiment is understandable. As the revelations about NSA surveillance roil the political world, media outlets & others are suddenly very interested in Americans' views on matters of privacy, civil liberties, and individual rights. A poll was released a few days ago. It apparently found that "blacks were more likely than whites and hispanics to consider the patriot act a necessary tool [that helps the government find terrorists] (58% to 42% and 40% respectively). On my Twitter timeline, several people mused about why this would be the case. After all, black people are the disproportionate targets of government surveillance at all levels (city, county, state, and federal). We've always been under the gaze of the state and we know that our rights are routinely violable. Moreover, we are used to these abuses being ignored by the majority of our fellow citizens. Shouldn't black people then be the most opposed to violations of civil liberties and to laws that encroach on those liberties? Civil liberties and individual rights have different meanings for different groups of people. They also have different priorities depending on social contexts. A review of black history suggests that considerations of civil liberties are always embedded within concepts of equality and social justice. In other words by design or necessity, black people have focused on our collective rights over our individual liberties. This makes sense in a society where we don't just assume individual black guilt and suspicion. We are all guilty and we are all suspicious (even if we may want to deny this reality). In that context, individual liberties and rights take a back seat to a collective struggle for emancipation and freedom. Additionally, as a people, we have always known that it is impossible for us to exercise our individual rights within a context of more generalized social, economic, and political oppression. Individual rights are necessarily rooted within a larger social context. Civil liberty concerns take a back seat to putting food on the table and to survival more generally. To guarantee our individual rights as black people, we know that we must address broader social concerns. We don't have the luxury to ignore this fact. For others not to understand this reality is to foreclose on any opportunities to recruit more black people to the cause of dismantling the surveillance state. Returning to the poll: what might account for a majority of (polled) black people's seeming 'support' of using the Patriot act to find 'terrorists?' Are they indirectly expressing their support for President Obama's foreign policy through their response? It's possible. Are some black people answering yes & perhaps hoping that concentrating on 'terrorists' might shift the focus away from the government's targeting of African-Americans? Maybe. It isn't crazy to think that if the government develops a new public enemy #1,

it might lower its black people as threat matrix just a little bit. This is of course wishful thinking but it's a plausible explanation. My personal hypothesis is that black people living in the U.S. are Americans and that we have, like millions of other Americans, bought into some of the law & order rhetoric espoused by the government. In this context, it should be unsurprising that some black people would express support for the Patriot act. Many other Americans do too. picimage2 Black people are disproportionately incarcerated in the U.S. Prisoners have no presumption of 'privacy'; that idea is an abstraction. Blacks are disproportionately subjected to bodily searches and seizures through practices like stop and frisk. Stop and frisk is a neon 'no tresspassing sign' for young black people in particular. Unfortunately too many of us have become acclimated to the daily assaults on our persons and the trampling of our individual rights. Can you blame us? If you are a black woman, then you may have the direct experience of the state policing your body in various ways. Many of us resist policies intended to do this but some of us don't (for a number of good and bad reasons). The examples that I have cited suggest that for most of us (black people) government surveillance and being perceived as threats are a daily fact of life; not an academic/analytical exercise. Many black people living in public housing, for example, can attest to the fact that they aren't seen as having any privacy rights when law enforcement routinely kicks down their doors supposedly looking for narcotics. The vast majority of the country accepts these "law and order" practices as the price of "freedom" and "safety." The outcry against mass incarceration and stop & frisk is still overwhelmingly confined to people of color and other marginalized communities like LGBTQ individuals. Yet even in those communities, many have become inured to the routine violations of rights and liberties. In order to have an elusive sense of "safety," we are told by politicians and law enforcement that these practices are necessary and that they are in fact "color-blind." We mostly swallow their propaganda. It doesn't matter that incarceration and intense policing & surveillance are actually decimating black communities. Black people know that the state and its gatekeepers exert their control over all aspects of our lives. So when we mention that the NSA surveillance regime isn't new to us, the appropriate response is not to mock, ridicule, belittle and berate. No. The response that conveys solidarity and a desire to partner is to say: "Yes that's true and while I may have been personally concerned about these issues, I am sorry that more of my peers haven't been outraged for years. How can we work together to dismantle the surveillance state that harms us all?" Check your privilege, please.

AT: Racial Surveillance Adv – Surveillance Not Key

The plan doesn't solve racial profiling – surveillance isn't key.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

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AT: Racial Surveillance Adv – No Mindset Shift

The plan doesn't solve – mindset shift is a prerequisite.

Unegbu, Howard University JD candidate, 2013

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Surveillance Not So Bad

Non-Unique – the war on terror exists solely in political theater. In reality US security Policies are humane and effective.

Adams, Nordhaus, and Shellenberger '11 (Nick Adams is the director of national security and counterterrorism policy at the Breakthrough Institute, Ted Nordhaus is the co-founder of the Breakthrough Institute, Michael Shellenberger is the co-founder of the Breakthrough Institute, The Atlantic, "Who Killed the War on Terror?" http://www.theatlantic.com/national/archive/2011/08/who-killed-the-war-on-terror/244273/ DA: 7/7/15 CB)

The death of Osama bin Laden at the hands of Navy Seals last May marked a turning point in the fight against al Qaeda. But one thing it did not mark was an end to the War on Terror. That's because the War on Terror was already dead, abandoned by the very agencies responsible for implementing it after 9/11. 9-11 Ten Years Later There are, of course, still terrorists plotting to kill Americans, and the U.S. continues to take aggressive measures to stop them. But it would be a mistake to confuse all counterterrorism strategies with the War on Terror. The War on Terror was based on the notion that Islamic terrorism represented a unified, ideologically coherent, and operationally centralized threat, demanding a singular and predominately military response. This notion was rejected by U.S. security officials long before the killing of Bin Laden. Indeed, it was abandoned well before the election of President Obama. By the latter years of the Bush administration, the exceptional tactics that defined the War on Terror -- preventative detentions, pain-based interrogation, ethnic and religious profiling, and widely expanded domestic surveillance powers -- were either abandoned or dramatically scaled back based on overwhelming evidence that they were ineffective. Meanwhile, the actual wars initiated in the name of the War

on Terror, in Afghanistan and Iraq, rapidly evolved into counter-insurgency and then counterterrorism campaigns as military leaders recognized that the U.S. was unable to replace theocrats and autocrats with stable, western-style democracies. The War on Terror lives on today only as political theater. Policymakers, from President Obama to Members of Congress, continue to fear the accusation of being "soft on terror," and hence continue to describe contemporary counterterrorism efforts in martial terms. Congress continues to legislate War on Terror approaches that the security establishment, for the most part, hasn't asked for and, in some cases, has even explicitly rejected. But while the political class remains stuck in the past, the security establishment has moved on. Virtually all of the progress that U.S. authorities have made in dismantling al Qaeda and countering terrorism has been accomplished in spite of, not because of the War on Terror. As we consider the future of U.S. counterterrorism after Bin Laden, we would do well to consider what we have learned from the evolving security response to the 9/11 attacks, and how those lessons might keep us safer in a world where the War on Terror may be over but the threat of terrorism still remains. In many ways, the War on Terror ended because the American security state relearned forgotten lessons. Over the past four centuries, modernizing nation-states have become increasingly effective at securing their citizens' safety and allegiance through ever more refined and subtle means. Where sovereignty was once invested in a single monarch -- think Louis XIV's famous quip, L'État, c'est moi ("The state, it is me") -- gradually the state became all of us. Populations who were "subjects" beholden to state authority became "citizens" willing and empowered to defend it. By granting increasing freedoms and privileges to their citizens, extending the bonds of trust and mutualism, and organizing public education campaigns around the notions of etiquette, civic duty, and love of country, modernizing states inspired their citizens to identify with the state and internalize its security interests. This shift represented a dramatic evolution in the way states achieved security. Earlier brutal intimidation tactics -- publicly torturing and executing deviants in what social historian Michel Foucault dubbed "festivals of pain" -- gradually gave way to softer means of control like "panoptic" powers, which create the impression that one is always being observed, mostly by fellow citizens. The conventional reading of this shift has imagined that state's relinquished coercive security powers in response to citizens' rising demands for new political and economic freedoms, but this is at best only half the story. The evolution of our expanding freedoms has been inseparable from the development of state security practices that are both more effective and more humane. Today, profiling, suspecting, and punishing wide swaths of society have faded from practice because states found it more effective to maintain the good will and allegiance of increasingly empowered citizens. States developed better tools to discern innocence and guilt on an individual basis rather than punishing whole villages. And as states learned more about individual psychology, they found they could get better information out of detained enemies by "befriending" them than brutalizing them. Since World War II, states have also found that they can more effectively accomplish their international objectives using highly targeted military power, as opposed to large occupying forces. During WWII, all sides, including the U.S., deliberately bombed civilians -- think London, Dresden, Tokyo, Hiroshima. Contrast such blanket, deliberate bombardments to the surgical bombings in Libya and the use of drones in Pakistan. Whatever Orwellian anxieties the new technologies of state security may incite, it is difficult to say - when touring the torture chambers of Venice or considering the pogroms of Eastern Europe, for example -- that the move to the use of softer and more sophisticated security powers does not represent a form of human progress. The turn back towards "the dark side," as former Vice President Dick Cheney described it after 9/11, required a deep forgetting and misunderstanding of the previous centuries' evolutions in state security powers.

Status Quo solves oppressive Security Policies and Terrorism-modern policies are humane and effective

Adams, Nordhaus, and Shellenberger '11 (Nick Adams is the director of national security and counterterrorism policy at the Breakthrough Institute, Ted Nordhaus is the co-founder of the Breakthrough Institute, Michael Shellenberger is the co-founder of the Breakthrough Institute, The Atlantic, "Who Killed the War on Terror?" http://www.theatlantic.com/national/archive/2011/08/who-killed-the-war-on-terror/244273/ DA: 7/7/15 CB)

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Counterplan: The United States Federal Government should declassify its files regarding anti-terrorism for rigorous evaluation.

Rigorous Evaluation is the only way to prevent horrific national security policies. The aff's method fails to modernize policies and creates a new war on terror.

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from the economy to social policy to even domestic law enforcement - has been opened up to engagement with and evaluation by civil society. The practice of national security is long overdue for a similar transformation. Maintaining the nation's security of course will continue to require some degree of secrecy. But there is little reason to think that appropriate secrecy is inconsistent with a fact-based culture of robust and multiplicative inquiry. Indeed, to whatever partial extent that culture already exists within the national security establishment, it has led the move away from many of the counterproductive security measures established after 9/11. Yet, in the ten years that Congress has been debating issues like coercive interrogation, ethnic profiling, and military tribunals, the House and Senate Intelligence committees, which have all the proper security clearances to evaluate such questions, have never established any formal process to consistently evaluate and improve the effectiveness of U.S. counterterrorism measures. Establishing proper oversight and evaluation of the efficacy of our security practices will not come easily, for the security craft guards its claims to privileged knowledge jealously. But as long as the practice of security remains hidden behind a veil of classified documents and accepted wisdoms handed down from generation to generation of security agents, our national security apparatus will never become fully modern. In a world in which efforts to attack Americans are ongoing, developing a formal capacity for critical evaluation is as urgent as ever. Such capacity will not guarantee that we will avoid all future security failures, or the cruder and less effective responses they tend to provoke. But it will give the security establishment the tools it needs to improve its practices and resist impractical, unproven, and downright dangerous policies. Lacking those tools, the next high profile attack could well inspire another forgetting of history, another War on Terror, and another danger-filled decade spent relearning old lessons about how to keep our people safe.

Terror Adv Answers

Uniqueness – Terror Low

US airstrikes have been combating ISIS positions.

Fox News 7/5

Fox News, 7-5-2015, "16 airstrikes destroy key sites in ISIS Syrian stronghold of Raqqa," http://www.foxnews.com/world/2015/07/05/16-us-airstrikes-destroy-key-sites-in-isis-syrian-stronghold-raqqa/

U.S.-led coalition forces conducted 16 airstrikes Saturday and early Sunday against key ISIS buildings and transit routes in the terror group's stronghold of Raqqa, Syria, a U.S. Army official said. At least 16 airstrikes were reported late Saturday and early Sunday, triggering successive explosions that shook the city and created panic among residents, activists said. The U.S.-led coalition often targets ISIS-held towns and cities in Syria, but the overnight strikes on Raqqa were rare in their intensity. "The significant airstrikes tonight were executed to deny Daesh the ability to move military capabilities throughout Syria and into Iraq," Lt. Col. Thomas Gilleran said in a statement, using the Arabic acronym for the Islamic State group. Gilleran, the spokesperson for the Combined Joint Task Force's Operation Inherent Resolve, also called it one of the "largest deliberate engagements" executed in Syria to-date. **"It will have debilitating effects on [ISIS's] ability to move from Raqqa**," he said. Raqqa is the de facto capital of the so-called Islamic caliphate declared a year ago by the Islamic State group in territories it controls in Iraq and Syria. An ISIS-affiliated militant website confirmed the strikes on the center of the city, saying 10 people were killed and dozens wounded. It also published purported photos of dead victims, including two of young boys suggesting they were civilians.

US airstrikes are having an impact on Al-Quada's leadership

Browning and Ghobari 6/16

Noah Browning and Mohammed Ghobari, 6-16-2015, Noah Browning and Mohammed Ghobari are reuters reporters in the Middle East. "Al-Qaeda deputy leader killed in US bombing in Yemen," Irish Times, http://www.irishtimes.com/news/world/middle-east/al-qaeda-deputy-leader-killed-in-us-bombing-in-yemen-1.2251496

The deputy leader of al-Qaeda, Nasser al-Wuhayshi, has been killed in a US bombing in Yemen, the group said on Tuesday, removing the director of a string of attacks against the West and a man once seen as a successor to leader Ayman al-Zawahri. A close associate of Osama bin Laden in the years leading up to the September 11th, 2001 attacks on US targets, Wuhayshi, a Yemeni in his late 30s, was named by Zawahri as al-Qaeda's effective number two in 2013. With a $10 million price on his head offered by US authorities, Wuhayshi was also leader of al-Qaeda in the Arabian Peninsula (Aqap), and his death potentially weakens the group, widely seen as the militant network's strongest branch. He led the group as it plotted foiled bomb attacks against international airliners and claimed responsibility for the deadly shooting at the French satirical newspaper Charlie Hebdo, calling it punishment for insulting the Prophet Mohammed. Senior Aqap member Khaled Batarfi said in a video statement posted online that Wuhayshi "passed away in an American strike which targeted him along with two of his mujahideen brothers, may God rest their souls". The group had met and appointed its former military chief Qassim al-Raymi, also a Yemeni, as his replacement, he said. **"It's a significant blow. He could have moved up to the top spot** [in al-Qaeda]qap is widely considered the most capable terrorist group in the world," said Mr Reardon, a veteran of the Federal Bureau of Investigation, referring to its focus on attacks on the West. The group has also orchestrated spectacular attacks inside Yemen in recent years, targeting government ministries, military camps and soldiers, in which hundreds of people were killed. Al-Qaeda did not specify how or when Wuhayshi was killed. Some residents of the southeastern Yemeni city of Mukalla reported a suspected drone strike on Friday. But eyewitnesses said that last Tuesday, townspeople were gathering on the city's seaside corniche after evening prayers when an explosion killed three men, spreading their limbs across a street as panicked residents fled. In an unusual move, al-Qaeda gunmen cordoned off the area and gathered the

bodies, residents said, leading them to believe a militant leader was among the dead. **Wuhayshi is the sixth major Aqap leader killed in suspected US bombings this year,** despite political turmoil in Yemen that led to the closing of the US embassy and the evacuation of its military and intelligence personnel.

AT: Solvency – Policy Not Key

Governmental policy can't help fight counterterrorism- only small community changes can cause effective change

Al-Marayati 14 (Salam Al-Marayati Salam Al-Marayati is executive director of the Muslim Public Affairs Council, an American institution which informs and shapes public opinion and policy by serving as a trusted resource to decision makers in government, media and policy institutions, 1/7/14, Las Angeles Times, 5 better ways to enlist U.S. Muslims in the fight against terrorism, http://articles.latimes.com/2014/jan/07/news/la-ol-terrorism-radicalization-almarayati-blowback-20130107, 7/8/15, HDA)

As someone who has been involved in counter-terrorism for more than 20 years, I was intrigued with former Democratic Rep. Jane Harman's Op-Ed article Monday on effective strategies to combat radicalization. I appreciate Harman's suggestion that we build bridges with Muslim communities, but prominent counter-terrorism thinkers like Harman come across as out of touch with those communities when they suggest that we in the U.S. need to be more effective in arguing how Muslims need to convert to the right side. This is pretentious and full of pitfalls. **What I was hoping to read from Harman was how the U.S. government can offer a healthy role for American Muslim communities in these efforts. American Muslim leaders cannot be an extension of law enforcement. In fact, our communities have proved effective in pushing back against Al Qaeda rhetoric and shunting radicals out of mosques**. Unfortunately, this creates another problem: lone wolves like alleged Boston Marathon bomber Tamerlan Tsarnaev. There are five issues. First, the U.S. government is not the most authentic voice in preaching nonviolence to potential terrorists. In fact, the very people targeted by American efforts view the U.S. as a terrorism sponsor itself, given numerous civilian deaths in drone attacks and other military ventures. Instead, the government must seek out Muslim leaders who oppose U.S. policies but demand that change take place through nonviolence. This voice is muffled by violent extremists gaining ground in war-torn countries such as Iraq, Syria and Afghanistan, or when Muslim political groups are designated as terrorist organizations, as in Egypt. The voices in Muslim communities calling for change through nonviolence exist; they could even occupy space in forums and hearings in Washington. Second, we need to ask ourselves an important question: Can we prevent or at least minimize radicalization by outcasts like Tsarnaev or even Adam Gadahn, the Orange County teenager who was kicked out of a mosque and became a spokesman for Al Qaeda? If so, an effective counter-radicalization strategy would involve prevention and intervention, not just expulsion or calling the police. Prevention could involve replacing violent ideology with good theology. Intervention might call for religious and peer counseling. But for this kind of counter-radicalization to work, our mosques and gatherings need to be safe harbors free of sting operations or surveillance by the government. We need to foster open and healthy conversations about extremism. Third, while engagement by law enforcement on issues important to the Muslim community is commendable, it also leads to a stigmatization of us as having only a security-based relationship with government. A police chief

might be found at many Muslim celebrations and social events -- Harman cites the work of L.A. County Sheriff Lee Baca. But why not a congressman or a senator? Why haven't we had a summit with the president on using interfaith relations as a way to prevent extremism from arising from any group? This lack of a meaningful political relationship at the national level hurts the partnership we have been developing with law enforcement over the last 20 years. Fourth, **the respective work of law enforcement and our community needs to be strictly divided. Police ought to take the lead on criminal investigations, and Muslims should be responsible for developing counter-narratives to radicalization**. Mosque and Muslim community leaders need to learn how to discuss radicalization with young people, but we must do it independently, without interference from law enforcement. Finally, young men who are sold on extremism often display signs of psychosis. They are typically depressed and have become disillusioned with the world or even their own religion. We need to connect these young men to good mental healthcare. Bottom line**, our community is only further marginalized when U.S. policymakers view Muslim moderates as only those who support American policies in the Muslim world, even if it means unwavering support for war against Muslim countries and communities. In reality, Al Qaeda's nightmare is the image of a well-integrated American Muslim community in the U.S. -- socially, economically and politically.**

Muslim communities unwilling to let FBI back in after past injustices

Pavlich 15 (Katie Pavlich is an American conservative journalist, primarily known for her work at the online news magazine Townhall.com as well as for authoring the book Fast and Furious: Barack Obama's Bloodiest Scandal and Its Shameless Cover-Up, 2/23/15, The Hill, "Why the WH didn't invite the FBI to its extremism summit" http://thehill.com/opinion/katie-pavlich/233569-katie-pavlich-why-the-wh-didnt-invite-fbi-to-extremism-summit, 7/8/15, HDA)

The much-anticipated White House summit on combating generic extremism is over, and outside of a handful of feel-good statements and speeches, little was accomplished. A number of activists from various organizations were present for discussion, but one person was noticeably absent from the summit: FBI Director James Comey. The FBI is one of first lines of defense in combating extremism — Islamic terror in particular — and keeping Americans at home and abroad safe. FBI input about root causes of terrorism at the White House summit would have been beneficial not only to its mission, but to ultimately defeating the enemy we face. "It's our top priority — protecting the U.S. from terrorist attacks," the FBI website states. "Working closely with a range of partners, we use our growing suite of investigative and intelligence capabilities to neutralize terrorist cells and operatives here in the U.S., to help dismantle extremist networks worldwide, and to cut off financing and other forms of support provided by terrorist sympathizers." Comey wasn't at the White House last week because he wasn't invited. The reason why can be found by taking a look at the summit guest list, which included **a variety of groups whose members have urged Muslims in America to shut the FBI out of their communities and to be non-cooperative with terrorism investigations**. **The Council on American–Islamic Relations is once of those groups, and has a long history of telling its supporters in Muslim communities in the U.S. to avoid working with the FBI on counterterrorism and intelligence-gathering operations.** In 2011**, CAIR published a poster** on its website **showing slammed doors in the face of an FBI agent walking through a predominantly Muslim neighborhood. "Build a wall of resistance," the poster read. "Don't talk to the FBI**." After public backlash, CAIR eventually took the poster down, citing a

"misinterpretation" — but would not apologize. In 2008, CAIR was named as an unindicted co-conspirator in the 2008 Holy Land Foundation trial; it has direct connections to Hamas. Over the years, many of the group's members have been arrested and indicted on terrorism-related charges. As reported by Breitbart News this week, members of the Islamic Society of Boston's radical Cambridge mosque, where the Boston bombing brothers went to worship, attended the summit. The ISB has a history of telling its members and Muslim communities in Boston not to work with the FBI. Breitbart also pointed out that 12 members of the ISB are either on the run for involvement in terrorist activity or died fighting with Islamic terrorist groups. While the State Department and the White House claim they want to get to the "root" of extremism, their actions speak otherwise. We cannot get to the root of any problem without identifying it for what it is: Islamic terrorism. Further, we cannot combat Islamic extremism without the FBI, and we certainly can't solve the problem by working with groups that are part of the problem. It's a shame the White House was willing to listen to the words and ideas of radical Islamic activists who don't have the best interests of the country in mind while shutting out the FBI from the discussion. Despite administration denials and generic extremism rhetoric, the radical Islamic threat we face right at home is real, and the FBI has been issuing concerns about it for months as agents grapple with the new threats. "The FBI remains concerned the recent calls by ISIL [the Islamic State in Iraq and the Levant] and its supporters on violent extremist Web forums and the recent events in Europe could continue to motivate homegrown extremists to conduct attacks in the homeland," Deputy Assistant Director of the FBI Counterterrorism Division Michael Steinbach testified in front of the House Homeland Security Committee recently. "Online supporters of ISIL have used various social media platforms to call for retaliation against the U.S. in the homeland. In one case, an Ohio-based man was arrested in January after he obtained a weapon and stated his intent to conduct an attack on the U.S. Capitol in Washington, D.C. Using a Twitter account, the individual posted statements, videos and other content indicating support for ISIL, and he planned his attack based on this voiced support." "The FBI, in partnership with the Department of Homeland Security, is utilizing all investigative techniques and methods to combat the threat these individuals may pose to the United States," he continued. "In conjunction with our domestic and foreign partners, we are rigorously collecting and analyzing intelligence information as it pertains to the ongoing threat posed by ISIL, AQAP [al Qaeda in the Arabian Peninsula], and other foreign terrorist organizations." **Here's the frightening reality: Many of the groups invited to the White House summit on combating extremism have either been raided by the FBI or are subjects of FBI investigations into terrorism, which is exactly why the FBI wasn't invited to the table for discussion.**

No solvency - Past counterterrorist operation have estranged Muslim communities- won't work along with the FBI

German 14 (Michael German is a fellow with the Brennan Center for Justice's Liberty and National Security Program, which seeks to ensure that our government respects human rights and fundamental freedoms in conducting the fight against terrorism. His work focuses on law enforcement and intelligence oversight and reform. Prior to joining the Brennan Center, Mr. German served as the policy counsel for national security and privacy for the American Civil Liberties Union Washington Legislative Office, 10/9/14, Brennan Center for Justice, "Stigmatizing Boston's Muslim Community is No Way to Build Trust", https://www.brennancenter.org/analysis/stigmatizing-boston-muslim-community-no-way-build-trust, 7/8/14, HDA)

The Justice Department announced last week that it is partnering with the White House, Department of Homeland Security, and the National Counterterrorism Center to launch a new pilot program to "counter violent extremism (CVE)" in Boston, Minneapolis and Los Angeles. The program, which aims to bring community and religious leaders together with law enforcement to "develop comprehensive local strategies and share information on best practices" may sound nice, but no one should be surprised that civil rights groups and American Muslim communities were less than enthusiastic about this news. CVE meetings are not new. **Previous FBI outreach efforts to Muslim communities have been less about curbing violence than thinly veiled attempts to recruit informants and gather intelligence**. Some Justice Department-sponsored community outreach events, like a workshop in Seattle focused on improving police relations with the Muslim community, was seen as offensive. Other unannounced FBI "community outreach" visits to people's homes have bordered on harassment. DHS launched a "new" outreach effort in 2011 which generated similar frustrations. Last April, National Security Advisor Lisa Monaco announced to community groups at Harvard's Kennedy School that DHS would be sending an "envoy" to Boston to conduct training to community groups so they could recognize extremist behaviors that need to be reported to police. There is no doubt that many dedicated federal employees at these agencies are deeply committed to building relationships and addressing community concerns about crime and policing issues that affect them. But **the unmistakable implication behind "CVE" programs is that certain communities are suspect and particularly vulnerable to becoming terrorists**. There were no DHS or Justice Department CVE programs, for example, directed to white, Christian communities after former Ku Klux Klansman Fraizer Glenn Miller murdered people at a Jewish community center last April, even though West Point's Combatting Terrorism Center reported that far right extremists attack and kill more Americans than any other terror groups. **The overarching problem with CVE programs is their reliance on simplistic theories of terrorist radicalization that have long been discredited by empirical studies. The overwhelming consensus from these studies is that there is no profile for terrorists, no discernible pattern or pathway that individuals follow to becoming terrorists, and no reliable indicators that can be used to predict who will become a violent**. Yet these CVE programs pretend there are, based on flawed theories promulgated by the FBI and others. The FBI's theory of terrorist radicalization claims that the commonplace activities of many American Muslims, including wearing traditional religious attire, frequent attendance at mosques, participating in a pro-Muslim social group or political cause, or even growing facial hair, are "indicators" in a four-step process toward becoming a terrorist. A 2008 FBI counterterrorism textbook teaches agents they can "quantitatively gauge" whether a Muslim is militant by asking a series of questions about his or her political and religious beliefs. It is no wonder that civil rights groups are concerned about CVE programs that falsely identify religious practices and political opinions as terrorism indicators. Monaco told the Harvard Kennedy School audience that community members could help prevent violence by identifying even more subtle warning signs of radicalization, which included "sudden personality changes in their children," "clashes over ideological differences," or "watching violent material." Many parents of teenagers would recognize their children in some or all of these attributes, and become unnecessarily alarmed about entirely normal adolescent behavior. After the Kennedy School speech, the Brennan Center for Justice and several national and local civil rights and advocacy groups wrote a letter to DHS requesting a meeting to discuss the program and review the materials supporting it. There was no response, raising further concerns that these "new" CVE programs will rely on the same old discredited theories. All communities want to protect themselves from crime and violence. CVE programs that rely on

false theories of terrorist radicalization will only spread fear, distrust and dissension within communities, and lead to unwarranted law enforcement reporting. Instead of wasting resources chasing false leads, police should focus their resources where they have evidence of criminal activity**. If the Justice Department and DHS want to educate and empower communities they need to ground their counterterrorism programs in sound empirical research, and tailor their community outreach programs to address community needs. Stigmatizing Boston's minority communities as potential terrorists, however, is no way to build trust.**

There is zero trust between Muslim communities and the FBI- even with new programs past injustice have made counter terror efforts impossible

Glionna 14 (John M. Glionna is a national reporter for the Los Angeles Times, based in Las Vegas. He covers a large swath of the American West, writing about everything from people to politics. He has also served as the Seoul bureau chief on the newspaper's foreign desk, where he covered the 2011 Japanese earthquake and tsunami and the subsequent death of North Korean strongman Kim Jong Il. He has also written extensively about California. He teaches a journalism course at the University of Nevada, Las Vegas, 11/3/14, Las Angeles Times, U.S. Muslim leaders say FBI pressuring people to become informants, http://www.latimes.com/nation/la-na-muslims-fbi-20141103-story.html, 7/8/15, HDA)

Muslim leaders nationwide say the FBI is pressuring some Islamic community members and religious leaders to spy on fellow Muslims as part of a government effort to combat extremist recruiting in the U.S. The campaign has intensified in recent weeks, with mosques in California, Texas, Minnesota, Ohio, Florida and other states reporting unannounced visits by FBI agents, according to the Council on American-Islamic Relations, or CAIR, the nation's largest Muslim civil rights and advocacy organization. In a nationwide alert**, the group urged mosque and community leaders to seek the advice of an attorney if they are approached by the FBI for questioning. They worried that the civil rights of numerous imams were being violated as the religious leaders were asked to meet with FBI agents**, who then pressed them to inform on members of their congregations. "It's happening all over the country," said Ibrahim Hooper, a Washington-based spokesman for CAIR. "The agents are approaching these community leaders at mosques with basic questions that quickly turn into something different: pressure to become informants." **Leaders at several mosques in California and Minnesota contacted for comment said they were afraid to speak out for fear of becoming a government target**. The FBI would not comment on the CAIR alert, but spokesman Paul Bresso said in an email that the agency respected the rights of all citizens and "we value our partnerships with the Arab, Muslim and Sikh communities as they are partners in our efforts to stem crime, violence and civil rights violations." One agent said such visits were standard procedure. "It's not unusual for us to go out and talk to, I don't want to call them at-risk folks, but people dealing with issues," said the agent, who declined to give his name because he was not authorized to talk about the matter. Jennifer Wicks, an attorney who heads the civil rights department for CAIR, said she knew of no crimes committed by FBI agents. "No one has been detained in any way or taken from one setting to another," she said. She said the interrogation tactics depended on the agent and the situation. "These visits aren't based on people being suspected of doing anything wrong. It's because this is a Muslim community. That's

why people are being targeted," Wicks said. "However, the FBI's over-broad and coercive use of informants in mosques, reports of outreach meetings being used for intelligence gathering and other acts of abuse demonstrate that community leaders should engage legal professionals to ensure the protection of their rights and those of their congregations," Wicks said in a statement on the CAIR website. Activists said the visits were tantamount to religious profiling. "For us, the issue is one of civil rights," Hooper said. "Too often these interactions are done in private and people feel coerced. Because ISIS is a hot topic, they're going to mosques. It's all based on the round-up-the-usual-suspects style of law enforcement." Federal officials are calling for new ways to fight what they see as the nation's latest national security threat: people indoctrinated by extremists returning to plan terrorist acts here. The Justice Department recently unveiled a pilot program in Los Angeles, Boston and Minneapolis that enlists social and mental health workers, religious leaders and police to thwart Islamist group recruiters. Orlando, Fla., attorney Hassan Shibly said he had represented 33 clients this year who claimed they had been pressured by the FBI to release information on their religious beliefs and practices. He said the number of cases had risen dramatically in the last few weeks. "In Orlando, they pressured one citizen who happened to be Muslim to spy on mosques, Islamic restaurants and hookah lounges or they would throw him in jail," he said. "In another case, they approached an imam with pictures of a woman they claimed would testify of an affair unless he helped them. These are law-abiding Muslims, not criminals." He has taken those and other cases to court, alleging the FBI was using illegal tactics to gain information. Shibly said Muslims were targets because many didn't know their legal rights. "The FBI thinks it can get away with bending the law," he said. "Many Muslims come from Third World countries where such practices are common fare for the secret police. But in the U.S. you don't expect such blackmail, with threats of deportation or worse." In several cases, Shibly said, imams were asked about their opinions on political affairs and other matters. Agents return and tell the imams that informants have contradicted their previous statements. "They are laying the groundwork for a charge of giving false information to a law enforcement officer. That's the trick to get them to cooperate," he said. In Florida, tips from the Muslim community led to the arrest of Sami Osmakac, later convicted of planning a terrorist attack at a Tampa-area nightclub. Osmakac was found guilty in June of attempted possession of a weapon of mass destruction.

No Solvency - Islamic communities feel target by any counter terror operation- means that they won't want to participate in the aff

Bender 15 (Bryan Bender is the defense editor for POLITICO Pro. He was previously a D.C.-based reporter for the Boston Globe and Jane's Defence Weekly, where he covered U.S. military operations in the Middle East, Asia, Latin America, and the Balkans. He also writes about terrorism, the international arms trade, and government secrecy. He is author You Are Not Forgotten, the story of an Iraq War veteran's search for a missing World War II fighter pilot in the South Pacific. He is currently a board member of the Military Reporters and Editors Association, 2/18/15, The Boston Globe, Islamic leader says US officials unfairly target Muslims, https://www.bostonglobe.com/news/nation/2015/02/18/islamic-leader-boston-says-justice-department-effort-identify-homegrown-terrorists-unfairly-targeting-muslim-community/uqzG0M3czJeuVH8HhSDtRN/story.html, 7/8/15, HDA)

A top leader of Boston's Muslim community on Wednesday strenuously objected to a new Justice Department strategy to prevent disaffected youth from taking up terrorism, complaining that the effort is "exclusively targeting the American Muslim community." In a strongly worded protest to a report that US Attorney Carmen Ortiz delivered to a White House summit on Wednesday, Yusufi Vali said he could not support the framework because the programs "are founded on the premise that your faith determines your propensity towards violence**." The comments** by Vali, executive director of the Islamic Society of Boston Cultural Center, **demonstrate the difficulty the Obama administration faces in taking preemptive action to prevent troubled youths from becoming violent extremists, while not trampling on individual rights or singling out particular communities for scrutiny**. Last fall, Boston was chosen along with Los Angeles and Minneapolis to spearhead a Justice Department effort known as "Countering Violent Extremism." Vali has been one of the local participants, and the Boston experience was the subject of a 28-page report released at the White House summit. "It clearly appears that the CVE initiative is exclusively targeting the American-Muslim community, in spite of the best efforts of the local US attorney to redefine it expansively," Vali wrote, using the acronym for the administration effort. Ortiz did not respond to requests to comment directly on Vali's charge, and some other members of the local Muslim community said the emerging outreach effort seemed to be working. President Obama, in remarks to the attendees on Wednesday, insisted that the effort would not single out Muslims for their religion. "Nobody should be profiled or put under a cloud of suspicion simply because of their faith," he said, pledging that outreach to the Muslim community would not be a "cloak for surveillance." The FBI is increasingly worried that a number of young Americans are being indoctrinated, largely through social media, to commit violence in the name of political or religious ideology. Some youths have reportedly taken up arms with the Islamic State in Iraq and Syria and other terrorist groups. Counterterrorism officials fear they could also be planning attacks inside the United States. Religious, political and law enforcement leaders from across the United States and the world attended the White House Summit on Countering Violent Extremism. Religious, political and law enforcement leaders from across the United States and the world attended the White House Summit on Countering Violent Extremism. All three US cities selected to test new outreach and education efforts have recent experience with homegrown terrorism: the 2013 Boston Marathon bombings allegedly carried out by two immigrant brothers influenced by Al Qaeda propaganda; the 2013 killings of three by an Egyptian limousine driver at Israel's El Al terminal at LAX airport; and reports that a number of youths of Somali descent in Minnesota have traveled to Somalia in recent years to fight with Al-Shabab, an Al Qaeda splinter group. The three-day Washington summit, which began Tuesday, is bringing together international leaders, local officials, civil society groups, and faith-based organizations to discuss new ways to confront the problem both domestically and internationally. A central contribution on Wednesday was the release of the report about Boston's efforts, which was drafted by Ortiz with the help of several dozen local law enforcement officials, school administrators, educators, mental health experts, and academics from the Boston region. Ortiz, speaking to what was called the White House Summit on Countering Violent Extremism, said the approach was to help all communities, "regardless of their ethnicities." "Whether it is dealing with vulnerable youth, whether it's dealing with distrust in the government, whether it's dealing with vulnerabilities to social media," Ortiz said, the intent is "to try to identify those individuals who are on the path to violent extremism." To do that, Ortiz's report outlined seven "focus areas" — including

expanding what it called "limited intervention programs" in schools and religious organizations; combating the extremist ideology being spread on the Internet with countermessages; and providing "specialized support and services" to individuals convicted of hate crimes before and after they are released from prison. Participants in the Boston effort expressed confidence Wednesday the strategies can build on proven antiviolence efforts by law enforcement and community leaders — such as in confronting gangs in schools. "Both street gangs and violent extremists lure the most vulnerable in with promises of a better life with a purpose and a place to belong," said Jodie Elgee, director of the Counseling and Intervention Center for the Boston public schools. But Vali said he believes **Muslims are being unfairly targeted by the initiative.** "**The data show that violent extremism is an extremely rare phenomena," he wrote in his dissent to the report. "The everyday reality of nearly all American-Muslims is like that of any other American: We simply do not meet or experience individuals interested in violent ideologies." Indeed, at the White House presentation officials cited FBI statistics that show less than 6 percent of domestic terrorist attacks are perpetrated by Muslims. "**For the government to offer us services based on concerns of violent extremism in our community – as implied by this framework – seems to reinforce the same stereotype that society holds of American-Muslims: that they or Islam are inherently violent," Vali added in his dissent. "**This is unacceptable to our Boston-Muslim community**." Vali, asked in an interview if he will continue to participate in the effort, said "I am not sure what the next steps are." But his views are almost certain to fuel the debate over how the threat of violent extremism should be defined: as a primarily Muslim problem or a wider phenomenon. Michael German, a former FBI agent who is now fellow at the Brennan Center for Justice at New York University School of Law, said numerous studies have shown that the majority of politically motivated attacks inside the United States are not connected to Islam but right-wing antigovernment or white supremacist groups. "We know unfortunately that terrorism comes in many guises," he said in an interview. Focusing almost exclusively on Muslims, he added, "reinforces the false perception that extremist violence is primarily a Muslim problem when the facts show that is not true." Vali stressed that he does not blame Ortiz for what he considers a one-sided approach. "I think she has done a phenomenal job of engaging the community," he said, pointing fingers at "the federal government and the White House." Other members of the Muslim community in Boston involved in the effort said they thought the approach being pursued by the Justice Department is fair. Saida M. Abdi, director of community relations at the Refugee Trauma and Resilience Center at Boston Children's Hospital, told the summit the approach is "both sensitive and inclusive." "**Islam is not to blame for the threat of violent extremism luring our youth but it can be and will be a solution for helping them become spiritually educated and morally strong to resist the impulse of violence**," said Nabeel Khudairi, of the Islamic Council of New England.

Nuclear Terror Won't Happen

Nuclear terrorism is not an existential threat- framing it as one creates flawed analysis and bad policy

Mueller 15 (John Mueller, a political scientist at Ohio State University and a senior fellow at the Cato Institute. He is the editor of the webbook, Terrorism Since 9/11: The American Cases, and, with Mark Stewart, the author of the forthcoming Chasing Ghosts: The Costly Quest to Counter Terrorists in the United States. February 24, 2015, "Terrorism Poses No Existential Threat to America. We Must Stop Pretending Otherwise" http://www.cato.org/publications/commentary/terrorism-poses-no-existential-threat-america-we-must-stop-pretending 7/8/15 ZEC)

One of the most unchallenged, zany assertions during the war on terror has been that terrorists present an existential threat to the United States, the modern state and civilization itself. This is important because the overwrought expression, if accepted as valid, could close off evaluation of security efforts. For example, no defense of civil liberties is likely to be terribly effective if people believe the threat from terrorism to be existential. At long last, President Barack Obama and other top officials are beginning to back away from this absurd position. This much overdue development may not last, however. Extravagant alarmism about the pathological but self-destructive Islamic State (Isis) in areas of Syria and Iraq may cause us to backslide. The notion that international terrorism presents an existential threat was spawned by the traumatized in the immediate aftermath of 9/11. Rudy Giuliani, mayor of New York at the time, recalls that all "security experts" expected "dozens and dozens and multiyears of attacks like this" and, in her book The Dark Side, Jane Mayer observed that "the only certainty shared by virtually the entire American intelligence community" was that "a second wave of even more devastating terrorist attacks on America was imminent". Duly terrified, US intelligence services were soon imaginatively calculating the number of trained al-Qaida operatives in the United States to be between 2,000 and 5,000. "President Obama and other top officials are backing away from this absurd assertion. But others are resisting reality." Also compelling was the extrapolation that, because the 9/11 terrorists were successful with box-cutters, they might well be able to turn out nuclear weapons. Soon it was being authoritatively proclaimed that atomic terrorists could "destroy civilization as we know it" and that it was likely that a nuclear terrorist attack on the United States would transpire by 2014. No atomic terrorists have yet appeared (al-Qaida's entire budget in 2001 for research on all weapons of mass destruction totaled less than $4,000), and intelligence has been far better at counting al-Qaida operatives in the country than at finding them. But the notion that terrorism presents an existential threat has played on. By 2008, Homeland Security Secretary Michael Chertoff declared it to be a "significant existential" one - carefully differentiating it, apparently, from all those insignificant existential threats Americans have faced in the past. The bizarre formulation survived into the Obama years. In October 2009, Bruce Riedel, an advisor to the new administration, publicly maintained the al-Qaida threat to the country to be existential. In 2014, however, things began to change. In a speech at Harvard in October, Vice President Joseph Biden offered the thought that "we face no existential threat — none — to our way of life or our ultimate security." After a decent interval of three months, President Barack Obama reiterated this point at a press conference, and then expanded in aninterview a few weeks later, adding that the US should not "provide a victory to these terrorist networks by over-inflating their importance and suggesting in some fashion that they are an existential threat to the United States or the world order." Later, his national security advisor,

Susan Rice, echoed the point in a formal speech. It is astounding that these utterances — "blindingly obvious" as security specialist Bruce Schneier puts it — appear to mark the first time any officials in the United States have had the notion and the courage to say so in public.

Nuclear terrorism is exaggerated and the threat is small

Iqbal 15 (Air Commodore Khalid Iqbal, a consultant to IPRI on Policy and Strategic Response. He is a former assistant chief of air staff, Pakistan Air Force. November 13, 2014, "Nuclear Terrorism: Myth and Reality" http://www.criterion-quarterly.com/nuclear-terrorism-myth-and-reality/#_ftn1 7/8/15 ZEC)

Despite a number of claims, there is no credible evidence that any terrorist group has yet succeeded in obtaining a nuclear bomb or the materials needed to make one. The nuclear intent and capability of terrorist groups such as Al Qaeda has been "fundamentally exaggerated." Almost all of the stolen HEU and plutonium that has been seized over the years had not been missed before it was seized. The likelihood that a terrorist group will come up with an atomic bomb seems to be vanishingly small;" and Policymakers are guilty of an "atomic obsession" that has led to "substantively counterproductive" policies premised on "worst case fantasies". Anxieties about terrorists obtaining nuclear weapons are essentially baseless: a host of practical and organizational difficulties make their likelihood of success almost vanishingly small"[xxxi]. John Mueller, a scholar of international relations at the Ohio State University, is a prominent nuclear skeptic. He makes three claims: (1) the nuclear intent and capability of terrorist groups such as Al Qaeda has been "fundamentally exaggerated;" (2) "the likelihood a terrorist group will come up with an atomic bomb seems to be vanishingly small;" and (3) policymakers are guilty of an "atomic obsession" that has led to "substantively counterproductive" policies premised on "worst case fantasies."[xxxii] In his book, "Atomic Obsession: Nuclear Alarmism from Hiroshima to Al-Qaeda" he argues that, "anxieties about terrorists obtaining nuclear weapons are essentially baseless".[xxxiii] Decades after Cheney's forecast, how many nuclear weapons from the former Soviet arsenal have proliferated to rogue states or terrorists? Not the 250 Cheney predicted. Not 25. Miracle of miracles, not a single nuclear weapon has been discovered outside the control of Russia's nuclear custodians[xxxiv].

Nuclear terrorism highly unlikely and improbable

Weiss 15 (Leonard Weiss, a visiting scholar at the Center for International Security and Cooperation at Stanford University, USA, and a member of the National Advisory Board of the Center for Arms Control and Non-Proliferation in Washington, DC. For more than two decades, he was staff director of the US Senate Committee on Governmental Affairs and its Subcommittee on Energy and Nuclear Proliferation, during which time he wrote major legislation on nuclear nonproliferation and led investigations of nuclear programs of other countries. He is a former professor of applied mathematics and engineering at Brown University and the University of Maryland. March/April 2015, "On fear and nuclear terrorism" from edition of "Bulletin of the Atomic Scientists", 7/8/2015 ZEC)

There is clearly some risk of nuclear terrorism via theft of weapons, but the risk is low, and a successful theft of a nuclear weapon would likely require a team of insiders working within an otherwise highly secure environment. There is also some risk that a nuclear-armed country might use a terrorist group to launch a nuclear attack on an adversary. This possibility is also of low probability, because the sponsor country would almost inevitably risk nuclear annihilation itself.

Finally, a terrorist group might try to design and build its own weapon, possibly with the help of disaffected persons from a weapon state who might provide them with nuclear know-how and/or materials. Given all the steps needed to achieve a weapon that is workable with high probability-without being discovered and without suffering an accident-this scenario is also fraught with risk for the terrorists. As a result, terrorists are much more likely to try to achieve their aims using conventional weapons, which are cheaper, safer, and technically more reliable. Thus, while no one can discount completely the acquisition by a terrorist group of a nuclear explosive weapon, such an event appears to be of very low probability over the next decade at least, and can be made still lower using techniques or policies that do not require constitutionally problematic steps by the federal government or an optional war whose death rate could match or exceed what the terrorists are capable of. There is a tendency on the part of security policy advocates to hype security threats to obtain support for their desired policy outcomes. They are free to do so in a democratic society, and most come by their advocacy through genuine conviction that a real security threat is receiving insufficient attention. But there is now enough evidence of how such advocacy has been distorted for the purpose of overcoming political opposition to policies stemming from ideology that careful public exposure and examination of data on claimed threats should be part of any such debate. Until this happens, the most appropriate attitude toward claimed threats of nuclear terrorism, especially when accompanied by advocacy of policies intruding on individual freedom, should be one of skepticism.

Impact Turns to Terror

Excessive fear of nuclear terrorism creates wars

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For nearly two decades, predictions of nuclear catastrophe at the hands of terrorists have become an accepted part of the national security debate, overshadowing to some extent the concerns about proliferation of national nuclear programs. It appears that a belief in the effectiveness of deterrence has assuaged the fears of many people about nuclear war waged by countries (whether justified or not), while at the same time the belief that terrorists cannot be deterred has raised nuclear terrorism fears more than ever. These fears have been fanned in published predictions of nuclear terror attacks (within a given 10- year period) by prominent persons in nuclear security circles, or by informal polls, such as the one issued nine years ago by Sen. Richard Lugar when he chaired the Senate Foreign Relations Committee. The poll asked persons working in nuclear policy areas what they thought the risk was of a nuclear terrorist attack over a 10-year period, with guesses suggesting a high threat but based on no hard data that was provided or referenced. Much has been written about the horrific consequences of a successful nuclear terrorist attack**.**

Less has been written about the horrific consequences of excessive fear of nuclear terrorism. Here is a partial listing of negative policy initiatives that have flowed from overblown fears of terror by atomic weaponry. **The war in Iraq**. On October 7, 2002, President George W. Bush gave a national address in which he said: The evidence indicates that Iraq is reconstituting its nuclear weapons program. Saddam Hussein has held numerous meetings with Iraqi nuclear scientists, a group he calls his "nuclear mujahideen"-his nuclear holy warriors ...If the Iraqi regime is able to produce, buy, or steal an amount of highly enriched uranium a little larger than a single softball, it could have a nuclear weapon in less than a year. And if we allow that to happen, a terrible line would be crossed. Saddam Hussein would be in a position to blackmail anyone who opposes his aggression. He would be in a position to dominate the Middle East. He would be in a position to threaten America. And Saddam Hussein would be in a position to pass nuclear technology to terrorists. (White House, 2002) Insiders in the George W. Bush administration have revealed that when the administration was seeking internal support for the decision to attack Saddam's Iraq, there were disagreements over how the decision should be framed. Saddam had been tagged as a supporter of terrorism, and he had begun a nuclear program that was halted as a result of the Desert Shield campaign in 1991 but whose status of dismantlement required more verification following 9/11, a task being carried out by the International Atomic Energy Agency (IAEA). In a 2003 Vanity Fair telephone interview conducted by Sam Tannenhaus with Paul Wolfowitz, transcribed by the Defense Department, in which the reasons for going to war again with Iraq were raised, Wolfowitz states: ÒThe truth is that for reasons that have a lot to do with the US government bureaucracy, we settled on the one issue that everyone could agree on, which was weapons of mass destruction as the core reason.Ó He then elaborates, saying that among ÒfundamentalconcernsÓ the ÒoverridingÓ one was the connection between weapons of mass destruction and support for terrorism (Defense Department, 2009). Recall also Condoleezza RiceÕs comment of not waiting for a Òmushroom cloudÓ as a threat warning. So the IAEA investigation was shoved aside, President Bush made his speech, and the war was launched, ostensibly to prevent Saddam from manufacturing nuclear weapons that he might turn over to terrorists. The war has resulted in the deaths of hundreds of thousands of civilians, exceeding the number who died at Hiroshima or Nagasaki, and has spawned the rise of offshoots of Al Qaeda like the Islamic State, whose brutality matches or exceeds that of the original. All this has occurred even thoughÑas revealed by the failure to find weapons of mass destruction following the warÑSaddamÕs nuclear program had been completely shut down in the wake of the 1991 Persian Gulf War.

The hyper focus on terrorism's potential impact led to the creation of the surveillance state and is the main driver behind surveillance

Weiss 15 (Leonard Weiss, a visiting scholar at the Center for International Security and Cooperation at Stanford University, USA, and a member of the National Advisory Board of the Center for Arms Control and Non-Proliferation in Washington, DC. For more than two decades, he was staff director of the US Senate Committee on Governmental Affairs and its Subcommittee on Energy and Nuclear Proliferation, during which time he wrote major legislation on nuclear nonproliferation and led investigations of nuclear programs of other countries. He is a former professor of applied mathematics and engineering at Brown University and the University of Maryland. March/April 2015, "On fear and nuclear terrorism" from edition of "Bulletin of the Atomic Scientists", 7/8/2015 ZEC)

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Saddam Hussein has held numerous meetings with Iraqi nuclear scientists, a group he calls his "nuclear mujahideen"-his nuclear holy warriors ...If the Iraqi regime is able to produce, buy, or steal an amount of highly enriched uranium a little larger than a single softball, it could have a nuclear weapon in less than a year. And if we allow that to happen, a terrible line would be crossed. Saddam Hussein would be in a position to blackmail anyone who opposes his aggression. He would be in a position to dominate the Middle East. He would be in a position to threaten America. And Saddam Hussein would be in a position to pass nuclear technology to terrorists. (White House, 2002) Insiders in the George W. Bush administration have revealed that when the administration was seeking internal support for the decision to attack Saddam's Iraq, there were disagreements over how the decision should be framed. 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All this has occurred even thoughÑas revealed by the failure to find weapons of mass destruction following the warÑSaddamÕs nuclear program had been completely shut down in the wake of the 1991 Persian Gulf War. **The rise of the national surveillance state.** Lowering the risk of terrorism, particularly the nuclear kind, is the quintessential reason that the mandarins of the national security state have given for employing the most invasive national surveillance system in history. ÒFinding the needle in the haystackÓ is how some describe the effort to discern terrorist plots from telephone metadata and intercepted communications. But the haystack keeps expanding, and large elements of the American population appear willing to allow significant encroachments on the constitutional protections provided by the Fourth Amendment. The fear of terrorism has produced this change in the American psyche even though there is no evidence that the collection of such data has resulted in the discovery of terrorist plots beyond those found by traditional police and intelligence methods. It is doubtful that we shall soon (if ever) see a return to the status quo ante regarding constitutional protections. This reduction in the freedom of Americans from the prying eyes of the state is a major consequence of the hyping of terrorism, especially nuclear terrorism. This is exemplified by the blithe conclusion in the previously referenced paper by Friedman and Lewis (2014), in which readers are advised to Òbe more proactive in supporting our governmentÕs actions to ameliorate potential risks.Ó The National Security Agency should love this**.**

The overhype of terrorism serves as an obstacle in the way of nuclear disarmament

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In that case, a weapon stateÕs obligation under Article VI of the Nuclear Non-Proliferation Treaty to move toward disarmament is trumped by what is deemed a more immediate national security need to prevent nuclear terrorism. Distortion of national politics and government spending. When nuclear safety became subject to government regulation, a question frequently

raised during public and private debates about regulation was formulated as: ÒHow safe is safe enough?Ó Although the risk of nuclear terrorism is very low, there is no public debate on the issue of Òacceptable risk.Ó No politician will publicly allow that we are or will ever be ÒsafeenoughÓ from a nuclear terrorist attack. Indeed, reputations have been made and enhanced in the public and private spheres by loud proclamations that we are not safe enough and that more needs to be done if we are to avoid catastrophe. There is no surer way for the national labs or the intelligence agencies to receive more money from the Treasury than by hyping the terrorist threat, particularly if the word ÒnuclearÓ can be attached to it, and by claiming that oneÕs work is directly applicable to mitigating the threat. And there is no surer way for politicians to give themselves immunity from a charge of supporting wasteful spending than by citing their votes as protecting the country from terrorism, nuclear or otherwise.

Traditional Investigation Solves

When terrorists are captured it is because of traditional investigation not mass surveillance

Schneier 15 (Bruce. Bruce Schneier is a renowned security and cryptology technologist, a fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc. He has testified before Congress and is the author of *Data and Goliath*. 3-24-2015. "Why Mass Surveillance Can't, Won't And Never Has Stopped A Terrorist". The Daily Digg. http://digg.com/2015/why-mass-surveillance-cant-wont-and-never-has-stopped-a-terrorist. Accessed 7-9-2015. KC)

Adversaries vary in the sophistication of their ability to avoid surveillance. Most criminals and terrorists — and political dissidents, sad to say — are pretty unsavvy and make lots of mistakes. But that's no justification for data mining; targeted surveillance could potentially identify them just as well. The question is whether mass surveillance performs sufficiently better than targeted surveillance to justify its extremely high costs. Several analyses of all the NSA's efforts indicate that it does not. The three problems listed above cannot be fixed. Data mining is simply the wrong tool for this job, which means that all the mass surveillance required to feed it cannot be justified. When he was NSA director, General Keith Alexander argued that ubiquitous surveillance would have enabled the NSA to prevent 9/11. That seems unlikely. He wasn't able to prevent the Boston Marathon bombings in 2013, even though one of the bombers was on the terrorist watch list and both had sloppy social media trails — and this was after a dozen post-9/11 years of honing techniques. The NSA collected data on the Tsarnaevs before the bombing, but hadn't realized that it was more important than the data they collected on millions of other people. This point was made in the 9/11 Commission Report. That report described a failure to "connect the dots," which proponents of mass surveillance claim requires collection of more data. But what the report actually said was that the intelligence community had all the information about the plot without mass surveillance, and that the failures were the result of inadequate analysis. Mass surveillance didn't catch underwear bomber Umar Farouk Abdulmutallab in 2006, even though his father had repeatedly warned the U.S. government that he was dangerous. And the liquid bombers (they're the reason governments prohibit passengers from bringing large bottles of liquids, creams, and gels on airplanes in their carry-on luggage) were captured in 2006 in their London apartment not due to mass surveillance but through traditional investigative police work. Whenever we learn about an NSA success, it invariably comes from targeted surveillance rather than from mass surveillance. One analysis showed that the FBI identifies potential terrorist plots from reports of suspicious activity, reports of plots, and investigations of other, unrelated, crimes. This is a critical point. Ubiquitous surveillance and data mining are not suitable tools for finding dedicated criminals or terrorists. We taxpayers are wasting billions on mass-surveillance programs, and not getting the security we've been promised. More importantly, the money

we're wasting on these ineffective surveillance programs is not being spent on investigation, intelligence, and emergency response: tactics that have been proven to work. The NSA's surveillance efforts have actually made us less secure.

Terrorism Alt Cause

Alt cause – Lack of information sharing causes terrorism

Bergen et al 14 (Peter, David Sterman, Emily Schneider, and Baily Cahall. Peter Bergen is the director of the National Security Program at the New America Foundation, where David Sterman and Emily Schneider are research assistants and Bailey Cahall is a research associate. 1-2014. "Do NSA's Bulk Surveillance Programs Stop Terrorists?" New America Foundation – National Security Program. https://www.newamerica.org/downloads/IS_NSA_surveillance.pdf. Accessed 7-9-2015. KC)

However, the Mihdhar case does not provide a good justification for the bulk collection of metadata. The government missed multiple opportunities to catch Mihdhar, and the primary failure was one of informationsharing inside the U.S. intelligence community rather than the lack of an additional data point. Furthermore, the information regarding the supposedly fateful phone call could likely have been obtained without the bulk collection of metadata. The missed opportunities in the Mihdhar case are well documented.55 The CIA failed to "watch list" Mihdhar and another suspected al-Qaeda terrorist, Nawaf al-Hazmi, whom the agency had been tracking since they attended an al-Qaeda summit in Malaysia on January 5, 2000. The failure to watch-list the two with the State Department meant that they were able to enter the United States under their real names with ease. Ten days after the meeting in Malaysia, on January 15, 2000, Hazmi and Mihdhar flew into Los Angeles.56 The CIA also did not alert the FBI about the identities of the suspected terrorists so that the bureau could look for them once they were inside the United States. An investigation by the CIA inspector general – published in unclassified form in 2007 – found that this was not the oversight of a couple of agency employees, but rather that a large number of CIA officers and analysts had dropped the ball: "Some fifty to sixty" agency employees read cables about the two al-Qaeda suspects without taking any action.57 Some of those officers knew that one of the alQaeda suspects had a visa for the United States, and by March 2001 some knew that the other suspect had flown to Los Angeles.58 The soon-to-be hijackers would not have been difficult to find in California if their names had been known to law enforcement. Under their real names they rented an apartment, obtained driver's licenses, opened bank accounts, purchased a car, and took flight lessons at a local school. Mihdhar even listed his name in the local phone directory.59 It was only on August 24, 2001, as a result of questions raised by a CIA officer on assignment at the FBI, that the two al-Qaeda suspects were watch-listed and their names communicated to the bureau. Even then the FBI sent out only a "Routine" notice requesting an investigation of Mihdhar.60 A month later, Hamzi and Mihdhar were two of the "muscle" hijackers on American Airlines Flight 77 that plunged into the Pentagon, killing 189 people. The CIA inspector general's report concluded that "informing the FBI and good operational follow-through by CIA and FBI might have resulted in surveillance of both alMihdhar and al-Hazmi. Surveillance, in turn, would have had the potential to yield information on flight training, financing, and links to others who were complicit in the 9/11 attacks."61 These multiple missed opportunities challenge the administration's claims that the NSA's bulk surveillance program could have prevented the 9/11 attacks. The key problem was one of information-sharing, not lack of information. If information-sharing had been functioning, Mihdhar would likely have been caught regardless of the collection of telephone metadata, and if information sharing was not functioning, it is unclear why collecting more information would have changed the result. Even if Mihdhar's phone calls from San Diego to Yemen is considered a moment for preventing the 9/11 attacks, it is likely that more targeted surveillance of that phone number rather than bulk collection of metadata would have been sufficient. Communications to and from the house in Yemen were already being intercepted by the NSA as a result of investigations into the 1998 U.S. embassy bombings in Africa and the USS Cole bombing in 2000. 62 According to U.S. officials quoted by Josh Meyer, a leading national security reporter at the Los Angeles Times, the information from the calls could have been shared through a FISA warrant under the authorities the NSA had even before 9/11.63 The United States government could and should have been alerted to Mihdhar's phone calls even without the expanded authority to collect the telephone metadata of all Americans under Section

215. Indeed, Richard Clarke, the national coordinator for security, infrastructure protection, and counterterrorism from 1998 to 2001, has explained that the Justice Department "could have asked the FISA Court for a warrant to all phone companies to show all calls from the U.S. which went to the Yemen number. As far as I know, they did not do so. They could have."64 Clarke played down the need for bulk collection in such a scenario, continuing, "My understanding is that they did not need the current All Calls Data Base FISA warrant to get the information they needed. Since they had one end of the calls (the Yemen number), all they had to do was ask for any call connecting to it."65 (Clarke was one of the five members of the White House review group that President Obama established in August 2013 to review the U.S. government's surveillance activities and which issued its report on December 18, 2013). The overall problem for U.S. counterterrorism officials is not that they need the information from the bulk collection of phone data, but that they don't sufficiently understand or widely share the information they already possess that is derived from conventional law enforcement and intelligence techniques. This was true of the two 9/11 hijackers living in San Diego and it is also the unfortunate pattern we have seen in several other significant terrorism cases: Chicago resident David Coleman Headley was central to the planning of the 2008 terrorist attacks in Mumbai that killed 166 people. Yet, following the 9/11 attacks, U.S. authorities received plausible tips regarding Headley's associations with militant groups at least five times from his family members, friends, and acquaintances.66 These multiple tips were never followed up in an effective fashion. Maj. Nidal Hasan, a U.S. Army psychiatrist, killed 13 people at Fort Hood, Texas, in 2009. Before the attack, U.S. intelligence agencies had intercepted multiple emails between Maj. Hasan and Anwar al-Awlaki, a U.S.- born cleric living in Yemen who was notorious for his ties to militants. The emails included a discussion of the permissibility in Islam of killing U.S. soldiers. Counterterrorism investigators didn't follow up on these emails, believing that they were somehow consistent with Maj. Hasan's job as a military psychiatrist.67 Carlos Bledsoe, a convert to Islam, fatally shot a soldier at a Little Rock, Ark., military recruiting office in 2009, several months after returning from a stay in Yemen. As a result of that trip, Bledsoe was under investigation by the FBI. Yet, he was still able to buy the weapons for his deadly attack when he was back in the United States.68 Nigerian Umar Farouq Abdulmutallab attempted to blow up Northwest Flight 253 over Detroit on Christmas Day 2009 with an "underwear bomb." Fortunately, the bomb failed to explode. Yet, a few weeks before the botched attack, Abdulmutallab's father contacted the U.S. Embassy in Nigeria with concerns that his son had become radicalized and might be planning something.69 This information wasn't further investigated. Abdulmutallab had been recruited by al-Qaeda's branch in Yemen for the mission. The White House review of New America Foundation Page 15 the bomb plot concluded that there was sufficient information known to the U.S. government to determine that Abdulmutallab was likely working for al-Qaeda in Yemen and that the group was looking to expand its attacks beyond Yemen.70 Yet, Abdulmutallab was allowed to board a plane bound for the United States without any question. All of the missed opportunities in these serious terrorism cases argue not for the gathering of ever-more vast troves of information, but simply for a better understanding of the information the government has already collected that was derived from conventional law enforcement and intelligence methods.

Turn – Mass Surveillance = Harder To Find Terrorists

Turn – Additional surveillance data makes it harder to find terrorists

Schneier 15 (Bruce. Bruce Schneier is a renowned security and cryptology technologist, a fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc. He has testified before Congress and is the author of *Data and Goliath*. 3-24-2015. "Why Mass Surveillance Can't, Won't And Never Has Stopped A Terrorist". The Daily Digg. http://digg.com/2015/why-mass-surveillance-cant-wont-and-never-has-stopped-a-terrorist. Accessed 7-9-2015. KC)

Terrorist plots are different, mostly because whereas fraud is common, terrorist attacks are very rare. This means that even highly accurate terrorism prediction systems will be so flooded with false alarms that they will be useless. The reason lies in the mathematics of detection. All detection systems have errors, and system designers can tune them to minimize either false positives or false negatives. In a terrorist-detection system, a false positive occurs when the system mistakenly identifies something harmless as a threat. A false negative occurs when the system misses an actual attack. Depending on how you "tune" your detection system, you can increase the number of false positives to assure you are less likely to miss an attack, or you can reduce the number of false positives at the expense of missing attacks. Because terrorist attacks are so rare, false positives completely overwhelm the system, no matter how well you tune. And I mean completely: millions of people will be falsely accused for every real terrorist plot the system finds, if it ever finds any. We might be able to deal with all of the innocents being flagged by the system if the cost of false positives were minor. Think about the full-body scanners at airports. Those alert all the time when scanning people. But a TSA officer can easily check for a false alarm with a simple pat-down. This doesn't work for a more general data-based terrorism-detection system. Each alert requires a lengthy investigation to determine whether it's real or not. That takes time and money, and prevents intelligence officers from doing other productive work. Or, more pithily, **when you're watching everything, you're not seeing anything.** The US intelligence community also likens finding a terrorist plot to looking for a needle in a haystack. And, as former NSA director General Keith Alexander said, "you need the haystack to find the needle." That statement perfectly illustrates the problem with mass surveillance and bulk collection. When you're looking for the needle, the last thing you want to do is pile lots more hay on it. More specifically, there is no scientific rationale for believing that adding irrelevant data about innocent people makes it easier to find a terrorist attack, and lots of evidence that it does not. You might be adding slightly more signal, but you're also adding much more noise. And despite the NSA's "collect it all" mentality, its own documents bear this out. The military intelligence community even talks about the problem of "drinking from a fire hose": **having so much irrelevant data that it's impossible to find the important bits.** We saw this problem with the NSA's eavesdropping program: the false positives overwhelmed the system. In the years after 9/11, the NSA passed to the FBI thousands of tips per month; every one of them turned out to be a false alarm. The cost was enormous, and ended up frustrating the FBI agents who were obligated to investigate all the tips. We also saw this with the Suspicious Activity Reports —or SAR — database: tens of thousands of reports, and no actual results. And all the telephone metadata the NSA collected led to just one success: the conviction of a taxi driver who sent $8,500 to a Somali group that posed no direct threat to the US — and that was probably trumped up so the NSA would have better talking points in front of Congress. The second problem with using data-mining techniques to try to uncover terrorist plots is that each attack is unique. Who would have guessed that two pressure-cooker bombs would be delivered to the Boston Marathon finish line in backpacks by a Boston college kid and his older brother? Each rare individual who carries out a terrorist attack will have a disproportionate impact on the criteria used to decide who's a likely terrorist, leading to ineffective detection strategies. The third problem is that the people the NSA is trying to find are wily, and they're trying to avoid detection. In the world of personalized marketing, the typical surveillance subject isn't trying to hide his activities. That is not true in a police or national security context. An adversarial relationship makes the problem much harder, and means that most commercial big data analysis tools just don't work. A commercial tool can simply ignore people trying to hide and assume benign behavior on the part of everyone else. Government data-mining techniques can't do that, because those are the very people they're looking for. Adversaries vary in the sophistication of their ability to avoid surveillance. Most criminals and terrorists — and political dissidents, sad to say — are pretty unsavvy and make lots of mistakes. But that's no justification for data mining; targeted surveillance could potentially identify them just as well. The question is whether mass surveillance performs sufficiently better than targeted surveillance to justify its extremely high costs. Several analyses of all the NSA's efforts indicate that it does not. The three problems listed above cannot be fixed. Data mining is simply the wrong tool for this job, which means that all the mass surveillance required to feed it cannot be justified. When he was NSA director, General Keith Alexander argued that ubiquitous surveillance would have enabled the NSA to prevent 9/11. That seems unlikely. He wasn't able to prevent the Boston Marathon bombings in 2013, even though one of the bombers was on the terrorist watch list and both had sloppy social media trails — and this was after a dozen post-9/11 years of honing techniques. The NSA collected data on the Tsarnaevs before the bombing, but hadn't realized that it was more important than the data they collected on millions of other people. This point was made in the 9/11 Commission Report. That report described a failure to "connect the dots," which proponents of mass surveillance claim requires collection of more data. But what the report actually said was that the

intelligence community had all the information about the plot without mass surveillance, and that the failures were the result of inadequate analysis. Mass surveillance didn't catch underwear bomber Umar Farouk Abdulmutallab in 2006, even though his father had repeatedly warned the U.S. government that he was dangerous. And the liquid bombers (they're the reason governments prohibit passengers from bringing large bottles of liquids, creams, and gels on airplanes in their carry-on luggage) were captured in 2006 in their London apartment not due to mass surveillance but through traditional investigative police work. Whenever we learn about an NSA success, it invariably comes from targeted surveillance rather than from mass surveillance. One analysis showed that the FBI identifies potential terrorist plots from reports of suspicious activity, reports of plots, and investigations of other, unrelated, crimes. This is a critical point. Ubiquitous surveillance and data mining are not suitable tools for finding dedicated criminals or terrorists. We taxpayers are wasting billions on mass-surveillance programs, and not getting the security we've been promised. More importantly, the money we're wasting on these ineffective surveillance programs is not being spent on investigation, intelligence, and emergency response: tactics that have been proven to work. **The NSA's surveillance efforts have actually made us less secure.**

Turn – Anti-Terrorism Increase Terrorism

Turn – aggressive anti-terrorist policies increase terrorism

Democracy Now 15 (Democracy Now is an independent news source. In this article they are quoting Noam Chomsky, a professor emeritus at MIT where he has taught for over fifty years, and working in areas including linguistics, cognitive science, and social justice. 3-3-2015. "Chomsky on Snowden & Why NSA Surveillance Doesn't Stop Terror While the U.S. Drone War Creates It". Democracy Now. http://www.democracynow.org/2015/3/3/chomsky_on_snowden_why_nsa_surveillance. Accessed 7-9-2015. KC)

NOAM CHOMSKY: If they want to—first of all, it's—we can raise this question, but it's academic, because they are not preventing terrorism. You'll recall, when the Snowden revelations came out, the immediate reaction from the government, the highest level—Keith Alexander, others—was that these NSA programs had stopped, I think they said, 54 or so acts of terror. Gradually, when the press started asking questions, it was whittled down to about 12. Finally, it came down to one. And that act of terror was a man who had sent, I think, $8,500 to Somalia. That's the yield of this massive program. And it is not intended to stop terrorism. It's intended to control the population. That's quite different. You have to be very cautious in accepting claims by power systems. They have no reason to tell you the truth. And you have to look and ask, "Well, what is the truth?" And this system is not a system for protecting terrorism. Actually, you can say the same about the drone assassination program. That's a global assassination program, far and away the worst act of terror in the world. It's also a terror-generating program. And they know it, from high places. You can find quotation after quotation where they know it. Take this one case that I mentioned before, this child who was murdered in a drone strike after having watched his family burn to death by drone strikes. AMY GOODMAN: In Yemen. NOAM CHOMSKY: What's the effect of this on people? Well, it's to create terror. The close analyses have shown that that's exactly what happens. There's a very important book by Akbar Ahmed, who's an important anthropologist, who is a Pakistani, who studies tribal systems and worked in the North-West territories and so on, and it's called The Thistle and the Drone. And he goes through, in some detail, the effect on tribal societies of simply murdering—from their point of view, just murdering people at random. The drone attacks, remember, are aimed at people who are suspected of maybe someday wanting to harm us. I mean, suppose, say, that Iran was killing people in the United States and Israel who they thought would—might someday want to harm them. They could find plenty of people. Would we consider that legitimate? It's again, we have the right to carry out mass murder of suspects who we think might harm us someday. How does the world look at this? How do the people look at this in this village where this child was who said that they're terrorized by constant drone strikes all over North-West Pakistan? That's true. Now it's over most of the world. The U.S. war—so-called war against terror has been a smashing success. There was a small

group up in the tribal areas of mostly Pakistan and Afghanistan, al-Qaeda, and we have succeeded in spreading it over the whole world. Now they're all everywhere—you know, West Africa, Southeast Asia—simply generating more and more terror. And I think it's—you know, it's not that the U.S. is trying to generate terror. It's simply that it doesn't care.

Terrorism's Inevitable

We can't fight Terrorism – killing terrorists just perpetuates the problem – State Department admits

Benen '15 (Feb 18th 2015, Steve Benen, is a producer for MSNBC's "The Rachel Maddow Show" and an MSNBC contributor. Before joining MSNBC, Benen was a contributing writer to the Washington Monthly, headlining the "Political Animal" blog. His background includes writing for a variety of publications, including Talking Points Memo, The American Prospect, the Huffington Post, the New York Daily News, and Salon.com. He is also the former publisher of The Carpetbagger Report. 2009, The Atlantic named Benen one of the top 50 most influential political commentators in the United States. Benen got his Master's degree at the George Washington University, MSNBC, "'We cannot kill our way out of this war" http://www.msnbc.com/rachel-maddow-show/we-cannot-kill-our-way-out-war DA: 7/9/15 CB)

If you generally avoid conservative media, you may not realize that the right has thrown a fit over its latest Villain of the Week. It's not President Obama, former Secretary of State Hillary Clinton, or Attorney General Eric Holder. Rather, it's U.S. State Department spokesperson Marie Harf. On Monday's edition of "Hardball" here on msnbc, Harf talked with host Chris Matthews about ISIS and explained that the United States can't "kill our way out" of the problem. "We're killing a lot of them, and we're going to keep killing more of them. So are the Egyptians. So are the Jordanians. They're in this fight with us. But we cannot win this war by killing them. We cannot kill our way out of this war. We need, in the longer term – medium and longer term – to go after the root causes that leads people to join these groups. […] "You're right, there is no easy solution in the long term to preventing and combatting violent extremism, but if we can help countries work at the root causes of this – what makes these 17-year-old kids pick up an AK-47 instead of trying to start a business? Maybe we can try to chip away at this problem, while at the same time going after the threat, taking on ISIL in Iraq, in Syria, and helping our partners around the world." The right went from zero to apoplexy in record time. Conservative blogs could hardly contain their outrage, while Fox News spent yesterday playing snippets of Harf's interview, over and over again, as some kind of attempt at mockery. Fox's Kimberly Guilfoyle said Harf believes "we should open up car wash that's in Iraq and Syria and provide jobs to the evil doers, and then these problems will all go away." Fox's Bill O'Reilly called Harf's comments "nonsense." Fox's Brit Hume added, "What [Harf] said was manifestly silly." Fox's Eric Bolling called the State Department official's comments "incomprehensible." I guess we were due for a manufactured controversy rooted in nothing, and the right pretending to be upset with President Obama's Prayer Breakfast remarks didn't have legs, so we're stuck with Marie Harf leading far-right personalities to reach for the fainting couch. In fairness, Harf was clearly inviting trouble when she told a national audience, "We can't kill our way out of this mess." Wait, did I say that was Harf? Actually, that's what Mitt Romney said during a 2012 presidential debate. But clearly Harf was out of line when she said combating poverty "is an answer to terror," right? Well, actually it was George W. Bush who said that. Look, from time to time, the right needs a new toy to play with. It doesn't have to make sense, but if conservatives aren't outraged by a perceived foe saying something they deem offensive, the right gets visibly uncomfortable. It's entirely possible Harf became the Villain of the Week because some Republicans are just bored. But for grown-ups, condemning Marie Harf's comments is pointless. She articulated a vision plenty of officials, in both parties, have presented many times – a forceful confrontation with terrorists in the short term, coupled with a more comprehensive approach that prevents terrorism in the longer term. Why is this controversial? It's not. Just as important, those whining the loudest probably know it's not. If you want to see the whole Harf interview, instead of the parts Fox found amusing, the clip is below. She was also on msnbc this morning, clarifying the comments that, to my mind, didn't need clarification.

Terrorism's inevitable – Iran supports them – Empirics

Flurry '03 (November 2003, Gerald Flurry, Editor in Chief for the Trumpet, The trumpet, "Why We Cannot Win the War Against Terrorism" https://www.thetrumpet.com/article/833.31733.57.0/world/terrorism/why-we-cannot-win-the-war-against-terrorism?preview DA: 7/9/15 CB)

History teaches us some powerful lessons—if we are willing to learn. For example, history teaches us that we cannot win our war against terrorism. We can learn some essential lessons about our future through history. History is a wonderful teacher. So we'll start there. Then we can move on to a far greater teacher of why we can't conquer terrorism unless massive changes are made—if it isn't already too late! The Root of Terrorism The Iraq campaign is the latest round in America's global war on terrorism. But where did all of this world terrorism begin? Iraq is a dangerous part of the equation, but it is not the head of the terrorist snake. We must go back in history to see terrorism's roots. It's not enough to destroy the branches. We must pull the terrorist tree up by the roots. It's the only way to win this war. When Shah Mohammed Reza Pahlavi led Iran, he was a strong ally of America. But our liberal press and politicians thought he was too undemocratic, so they helped to drive him from power. As he was falling, America gave him little or no support. Then, in 1979, Ayatollah Ruhollah Khomeini overthrew the shah. Khomeini established Iran as the world's number-one state sponsor of terrorism. When Khomeini died 10 years later, he was succeeded by Hashemi Rafsanjani, who intensified Iran's international network of terrorism. It was only then that some observers began to see what a terrible mistake liberals had made in assisting the shah's downfall. Back in 1994, then-Secretary of State Warren Christopher called Iran "the world's most significant state sponsor of terrorism." How pathetic to make such a statement and do nothing about it! Just how much of a superpower is America? America has known for years who "the world's most significant state sponsor of terrorism" is. But it lacks the will to deal with Iran—to hold Iran accountable for its terrorist acts of war! In the 1990s, state-sponsored terrorism became deeply entrenched in Iran, and America's leaders did almost nothing to combat it. More than any other nation (apart from Iran), America is responsible for the overthrow of the shah and the ushering in of Ayatollah Khomeini. Our weakness could prove to be the biggest foreign-policy disaster of the 20th century! How did it all happen? We must understand how this relates to the present situation in Iraq. History shows how Islamic extremism can dramatically change the politics within a country, and it gives us an indication of the kind of power Iran could be very close to achieving. Let's look at Egypt, where Islamic extremism—which spawns terrorism—is gaining power at a frightening pace. THERE, ONE ASSASSINATION TURNED THE COURSE OF THE ENTIRE MIDDLE EAST! Radical Changes in Egypt A few years before the fall of the shah of Iran, Anwar al-Sadat was the warrior leader of Egypt and the Middle East. For example, he was the key leader of the Arab world in the Yom Kippur War against the Jews. But, then the world was shocked—especially the Arab world. About the time Iran's shah fell, Mr. Sadat was becoming an astounding Middle East peacemaker. He enraged the Arab radicals by speaking at the Jewish Knesset (their congress, or parliament). One man was literally swinging the Middle East toward peace with the West. But Mr. Sadat was working against the tide of radical Islam. It is interesting that the late Herbert W. Armstrong visited with two Egyptian presidents: Sadat and Hosni Mubarak. He gave both men a strong warning that we were not going to have peace until Allah, or God, gave it to us! In 1981, Mike Wallace of the television program 60 Minutes interviewed Ayatollah Khomeini (who had come to power only two years before). He told the ayatollah that Sadat had called him a "lunatic." Almost immediately afterward, in just days, President Sadat was assassinated! That is the kind of power the leader of radical Islam has! America and the world allowed this evil power to change history. Now terrorism is rampant around the world! America didn't have the will to stop such state-sponsored madness. When the Sadat assassination occurred, Mr. Armstrong said it was a turning point in Middle East history! And that was almost an understatement. But virtually nobody in the media saw—or they refused to see—what A WORLD-CHANGING EVENT that was! Iran's terrorist network was working frighteningly well. Mr. Sadat was in the process of changing the Middle East for the good of the world. He took a stand against many of his own people and the Arab world to make peace with Israel. He proved to be a truly great man by putting the interests of the world and Egypt above his personal safety. IF THE LEADERS OF THE U.S. AND BRITAIN HAD SHOWN HIS COURAGE, THEY WOULD HAVE DEALT WITH IRAN THEN. Because of U.S. weakness, the Middle East began to look to the king of terror for leadership. It all happened because of American, British and Israeli weakness. Islamic radicals are very effective in assassinating top leaders. They probably also assassinated the speaker of Egypt's parliament, Rifaat al-Mahgoub (the country's second-ranking official at the time), in 1990. Gunmen on motorcycles sprayed his chauffeured sedan with automatic rifle fire. Radicals likely were behind the killing of Algeria's President Mohammed

Boudiaf in 1992. These are just a few examples of how Islamic extremism can influence Mideast politics. President Mubarak, a moderate, could be assassinated just as Anwar el-Sadat was. This could implement another gigantic change in Egyptian politics, similar to what happened in Iran's 1979 revolution. Daniel 11:42 implies that Egypt will be allied with the king of the south, or Iran. (Request our free booklet The King of the South.) This prophecy indicates that there would be a radical change in Egyptian politics! It is happening before our eyes in this end time, and it is mainly because Iran's "push" toward radicalism. But that pushy foreign policy is going to lead to its downfall, in a way that most people cannot imagine! Iran's Global Ambitions A Stratfor intelligence brief dated August 22 explained that back in May, following what was seen as a decisive allied military victory in Iraq, the surrounding countries, including Saudi Arabia, Syria and Iran, saw the U.S. as the "ascendant power in the region" and recognized the need to accommodate U.S. demands. However, as events on the ground have changed since then, with stability in Iraq deteriorating, these nations now see things differently. The U.S. is no longer seen as being the ascendant force—it is seen as weak and needing help. This change will have the most impact on Iran, which has control over the Shiites in Iraq. As they see the U.S. becoming desperate, the Iranians will no longer feel the need to appease the U.S. (see article on p. 7). Stratfor stated, "[I]f the Iranians start to believe that the situation in the region is out of control from the U.S. point of view, then either their price for keeping the lid on the Shiites will become astronomical or, more likely, they will decide not to bet on what they see as the losing horse. [I believe that Iran is more aggressive in this scenario than he does.] "The situation in the region is, in our view, reaching the crisis stage for the United States. Things are going very wrong for the Bush administration. The threat of AN ISLAMIST RISING FROM THE MEDITERRANEAN TO THE PERSIAN GULF NO LONGER IS AN INTERESTING THEORETICAL CONCEPT. [This influence and control would even extend beyond the Mediterranean, into North Africa.] Except for Jordan, it is becoming a reality. Under the circumstances, Jordan's stability and security should not be assumed in the next year or so. If Iran—or native Iraqi leaders—send the Shiites into the streets, then all of Iraq will be in chaos, and a perfect storm will have formed. "Our perception of the U.S. strategy has been that the basic assumption was that the United States has the time to let the guerrillas burn themselves out or that it has enough time to craft an effective strategy. We do not think that basic assumption is valid any longer. The collapse of the cease-fire between the Israelis and Palestinians creates a regional force that can be contained only by decisive U.S. action in Iraq" (Aug. 22; emphasis mine throughout). But decisive action in Iraq, without dealing with Iran, will not stop the terrorism. The real power behind the Palestinians is Iran. No other nation would dare finance and blatantly encourage such terrorism in Israel. Iran has even been caught publicly sending enormous amounts of weapons to the Palestinians. Just a couple of years ago, Israel captured a boatload of arms going to the Palestinian terrorists. Virtually the whole world knows what Iran is doing, and Israel's terrorist problem keeps rapidly getting worse. Israel is losing its war with the terrorists, and so will the U.S. and Britain. Such terrorism will tear any free society apart. Israel is a classic example. The only way to win such a war is to deal with the main source of the terrorism, or cut off the head of the terrorist snake. But neither the U.S. nor Israel has the will to tackle Iran—even though it is the key part of the "axis of evil" in the Middle East. President Bush labeled Iran, Iraq and North Korea the "axis of evil." Iraq's government has been toppled. However, we can't win this war unless we also remove Iran's leadership. But American and British leaders are overwhelmingly liberal. And the press is dangerously pacifist. Our peoples lack the will to win this war against terrorism.

Terrorism is Inevitable – It's a permanent international phenomenon with too many motivations – nations don't even have a unified definition to fight.

Mesadieu '13 (April 1st 2013, Jeff Mesadieu, Master of Arts in Liberal Studies (MALS), Social/Public Policy, Georgetown University, "IS TERRORISM INEVITABLE?: THE IMMORTALITY OF TERRORISM" pg 1-3 https://repository.library.georgetown.edu/bitstream/handle/10822/558372/Mesadieu_georgetown_0076M_12091.pdf?sequence=1&isAllowed=y DA:7/9/15 CB)

Terrorism, known as the systematic use of terror, primarily as a means of coercion, is a phenomenon that is merely described, rather than defined. In the efforts of the international community attempting to universalize a definition of terrorism to combat it more effectively, it is difficult to imagine the likelihood of reaching an internationally agreed-upon concept of terrorism in its entirety. Laws vary from country to country and the punishments that ensue vary as well. The diversity in motivations when it comes to terrorists' attacks widens the field, which however, can often be viewed as foreshadowing elements of how these terrorist groups will meet their demise. Nevertheless, there are four motivational factors generally associated with terrorism, which are described to be political, ideological, religious and financial - with the possibility of even a combination of two or more. In our own

democratic system, the agencies that work directly on terrorism in the intelligence community have developed their own definitions of the term. For example, the Federal Bureau of Investigation defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives."1 The Department of Defense defines terrorism as "the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological objectives."2 It is advantageous to have several agencies develop their own definition of terrorism because the topic can be addressed in multiple ways simultaneously. The principal question in this matter concerns the immortality of Terrorism. It is well documented that terrorism is a permanent threat transnationally3 and that the global community must cooperate to combat such an issue effectively, since it is a threat to all nations. Therefore, the principal question that will be examined is: Will a working, universalized definition of terrorism help to curtail terrorist attacks or will it make little to no difference? I propose that a working, universalized definition of terrorism will simultaneously bolster the defenses of all nations threatened by terrorism, which will significantly slow the rate at which it occurs. Thus, resulting in the dismantling of terrorist groups to blot out any future plans. In order to address a problem, one must first identify the issue, then define the overarching complexity of the issue - which brings forth understanding of the issue - in order to develop resolutions to combat the problem on all fronts. Although there is the possibility that a universalized working definition may still be subject to the perception of a nation, its applicability will increase the effectiveness in combatting terrorism transnationally; even in how it is perceived relative to the nation.

Terrorism's Inevitable – Motivations and independent thought means there will always be "Terrorists" –Empirics

*** Gender Paraphrased

Mesadieu '13 (April 1st 2013, Jeff Mesadieu, Master of Arts in Liberal Studies (MALS), Social/Public Policy, Georgetown University, "IS TERRORISM INEVITABLE?: THE IMMORTALITY OF TERRORISM" pg 28 https://repository.library.georgetown.edu/bitstream/handle/10822/558372/Mesadieu_georgetown_0076M_12091.pdf?sequence=1&isAllowed=y DA:7/9/15 CB)

All in all, terrorism is collectively a complex issue, with no signs of slowing down, as ideologies are formed daily and religion becomes even more distorted by a variety of internal and external factors. As humans, we choose to hear, accept, and apply what is heard or completely reject what is told. Interestingly enough, the vast majority of people fall into the grey area, where factors looming from everywhere influence one's decision to accept what others have already or propelling an individual down a path that opposes the majority. The challenging thing is sometimes, people are born into situations that leave no "wiggle-room" to express one's individual thoughts (i.e. Slavery). Nevertheless, everyone is driven by either good or evil, and even that is particularly relative to every individual. For example, a person may argue that one ~~man~~ [Person]'s freedom fighter is another ~~man~~[person]'s terrorist, yet freedom is an end while terror is a means to an end. Therefore, the same individual can employ terror (since these things are tactics) while attaining freedom (a relative term as well) in the end, which is a desired outcome for virtually every terrorist group.

Terrorism's Inevitable – Recruitment impossible to fight and surveillance can't prevent all threats – technology.

Mesadieu '13 (April 1st 2013, Jeff Mesadieu, Master of Arts in Liberal Studies (MALS), Social/Public Policy, Georgetown University, "IS TERRORISM INEVITABLE?: THE IMMORTALITY OF TERRORISM" pg 29-33

https://repository.library.georgetown.edu/bitstream/handle/10822/558372/Mesadieu_georgetown_0076M_12091.pdf?sequence=1&isAllowed=y DA:7/9/15 CB)

The definitive issue at the heart of this paper is the inevitability of terrorism - as it is a means to justify an ends regarding political change, ideological transformation, religious establishment, or simply financial gain to remain relatively influential in daily governmental processes of the host nation-state. As to whether a working, universalized definition of terrorism will have the potential to stop terrorist attacks or at least dramatically slow the rate at which it occurs, my hypothesis argues that this will very well be the case while helping to bolster the defenses of all nations highly threatened by terrorism. Furthermore, a working definition (receiving information about a subject, having understanding of it and its applicability) will - at the very minimum - significantly slow the rate at which it occurs and thus, result in the dismantling of many more terrorist groups and the blotting out any future plans. This is not to say that the solution to best contain terrorism is by merely creating a framework through intelligence and analysis in which a group or an act is assessed by "pre-set qualifiers" (which could run the risk of premature categorization), but rather by understanding a phenomenon from its very core in an effort to combat it on all fronts. Furthermore, as the world becomes more globalized and interconnected, these terrorists groups become more cunning in recruitment, since it is now much easier for people to be informed (due to information that is readily available and accessible on many platforms such cellular phones, laptops, tablets, etc.) or influenced. 25 Interestingly enough, transparency of the individual is becoming even more commonplace in the world with the ever-expansion of social media,1 in light of events of the recent past. Transparency is a desirable trait of a government because citizens value a sense of connection to political leaders that genuinely consider the interests of the people. A true government, relatively speaking, is obliged to reflect such a characteristic by duty to some degree.2 Nevertheless, when it comes to transparency, there are always concerns regarding the contents of information that is dispersed to the public, the amount that is released, the broad spectrum of varying audiences that will receive it, and so forth. One of the primary purposes for transparency is to create, establish and sustain a direct relationship between citizens and governments. This, in itself, demands much fostering and commitment. President Obama has made it a point to create an administration that is committed to open government in an effort to give people more of an opportunity to participate in 1 26 governmental processes.3 For instance, the Open Government Initiative actually lists transparency at the forefront of its cause, along with participation and collaboration. Peter R. Orszag, the Director of the Open Government Initiative, describes the initiative's three key prongs explicitly: The three principles of transparency, participation, and collaboration form the cornerstone of an open government. Transparency promotes accountability by providing the public with information about what the Government is doing. Participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society. Collaboration improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government and private institutions.4 However, considering the relativity of transparency in itself, it also creates a platform for terrorists to thrive in their advances soundly by utilizing information and communications technology (ICT's) to assist in supporting their cause, especially in regards to dissemination tactics and the recruitment process.5 Furthermore, considering the "shadowy," yet, attentive makeup of a terrorist group, the beckoning question here is how great of a risk is transparency in accordance to our national security? Naturally, that 3 27 which is made readily accessible and transparent to the people by the government has surely gone through a series of screenings, but truly - how safe is it to ever give the public full disclosure about a subject or event (which could give terrorists momentum by learning the inner-workings of a specific government)? The answer has proven to be elusive - nevertheless, the 'greatest good' must be served, which unfortunately, is also relative. Thus, the output of readily accessible information and its regulation (its management, security, and so forth), in all likelihood, are key determinants to a terrorist group's planning and formulation of future terror plots. In an multi-faceted approach to combatting terrorism and generally national security issues, the United States' international community - comprised of 17 members6 - uniquely define terrorism in a way that seemingly reflects the agency, their goals and responsibilities concerning threats to the homeland. It is beneficial to have numerous agencies and organizations develop their own definition of terrorism because this long standing issue can be assessed from varying vantage points simultaneously. However, considering the valiant efforts from the collection of great minds in the IC, miscalculations in intelligence gathering and analysis can occur, resulting in devastating repercussions.7 Therefore, it is of great importance that as intelligence is gathered, 6 Intelligence.gov. http://www.intelligence.gov/about-the-intelligence-community/ (accessed March 11th, 2013). The U.S. Intelligence Community (IC) is a coalition of 17 agencies and organizations within the executive branch that work both independently and collaboratively to gather the intelligence necessary to conduct foreign relations and national security activities. Our primary mission is to collect and convey the essential information the President and members of the policymaking, law enforcement, and military communities require to execute their appointed duties. 7 "As the comparison suggests, quantifying signals and noise tells part of the warning story, but not the most important part. In both cases [the Cuban Missile Crisis and 9/11] the crucial warning problem was not

the precise number of signals; whether there were three or 30 or even 300 signals made little difference in the end. Instead, the crucial problem had to do with organizational deficiencies that ensured 28 collected, analyzed and presented to other agencies working on terrorism (or any threat to the homeland for that matter), thoughts must be shared and ideas compared in order to produce more accurate results. Richard Kerr, Thomas Wolfe and others, mentions some of the challenges associated with gathering intelligence: The Intelligence Community's uneven performance on Iraq from 2002–4 raised significant questions concerning the condition of intelligence collection, analysis, and policy support. The discussion of shortcomings and failures that follows is not meant to imply that all surprises can be prevented by even good intelligence. There are too many targets and too many ways of attacking them for even the best intelligence agencies to discover all threats in time to prevent them from happening. Nonetheless, improving performance requires an acknowledgement of past mistakes and a willingness to change.8 Nevertheless, as it seems, some of the commonalities that we find in assessing terrorism as a whole stem from the use of fear tactics and the desire for change, ideally motivated by political, ideological, religious, or financial goals; however, settling on the intricacies of terrorism such as the making of a terrorist, how targets or sites are chosen and so forth, has been a "slippery" task. To further engage this topic, several agencies within the United States, will be highlighted as their definition of terrorism is examined.

Alternatives to stop Terrorism other than NSA
United States should stop imperial conquests for Arab oil- terroristic responses Washingtons Blog 2015

(Washingtonsblog, 1-10-2015, "How to Beat Terrorism: Stop Making the Same 7 Mistakes," Washington's Blog, http://www.washingtonsblog.com/2015/01/paris-terror-attack-isis-result-911-cover.html)//PG

III. Stop Imperial Conquests for Arab Oil The U.S. has undertaken regime change against Arab leaders we don't like for six decades. We overthrew the leader of Syria in 1949, Iran in 1953, Iraq twice, Afghanistan twice, Turkey, Libya … and other oil-rich countries. Neoconservatives planned regime change throughout the Middle East and North Africa yet again in 1991. Top American politicians admit that the Iraq war was about oil, not stopping terrorism (documents from Britain show the same thing). Much of the war on terror is really a fight for natural gas. Or to force the last few hold-outs into dollars and private central banking. And the U.S. military described terror attacks on the U.S. as a "small price to pay for being a superpower": A senior officer on the Joint Staff told State Department counter-terrorism director Sheehan he had heard terrorist strikes characterized more than once by colleagues as a "small price to pay for being a superpower". Security experts – including both conservatives and liberals – agree that waging war in the Middle East weakens national security and increases terrorism. See this, this, this, this, this, this, this and this. For example, James K. Feldman – former professor of decision analysis and economics at the Air Force Institute of Technology and the School of Advanced Airpower Studies – and other experts say that foreign occupation is the main cause of terrorism. University of Chicago professor Robert A. Pape – who specializes in international security affairs – agrees. We've fought the longest and most expensive wars in American history … but we're less secure than before, and there are more terror attacks than ever. Remember, Al Qaeda wasn't even in Iraq until the U.S. invaded that country. If we want to stop terrorism, we have to stop overthrowing Arab leaders and invading Arab countries to grab their oil.

Stop drone attacks- radicalizing Yemen citizens and creating a safe haven for terrorist group
Mothana 2012

(Ibrahim Mothana- activist and cofounder of Watan Party, 6-13-2012, "How Drones Help Al Qaeda," New York Times, http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html?_r=1)//PG

"DEAR OBAMA, when a U.S. drone missile kills a child in Yemen, the father will go to war with you, guaranteed. Nothing to do with Al Qaeda," a Yemeni lawyer warned on Twitter last month. President Obama should keep this message in mind before ordering more drone strikes like Wednesday's, which local officials say killed 27 people, or the May 15 strike that killed at least eight Yemeni civilians. Drone strikes are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair. Robert Grenier, the former head of the C.I.A.'s counterterrorism center, has warned that the American drone program in Yemen risks turning the country into a safe haven for Al Qaeda like the tribal areas of Pakistan — "the Arabian equivalent of Waziristan." Continue reading the main story RELATED COVERAGE Times Topic: Al Qaeda in the Arabian Peninsula Anti-Americanism is far less prevalent in Yemen than in Pakistan. But rather than winning the hearts and minds of Yemeni civilians, America is alienating them by killing their relatives and friends. Indeed, the drone program is leading to the Talibanization of vast tribal areas and the radicalization of people who could otherwise be America's allies in the fight against terrorism in Yemen. The first known drone strike in Yemen to be authorized by Mr. Obama, in late 2009, left 14 women and 21 children dead in the southern town of al-Majala, according to a parliamentary report. Only one of the dozens killed was identified as having strong Qaeda connections. Misleading intelligence has also led to disastrous strikes with major political and economic consequences. An American drone strike in May 2010 killed Jabir al-Shabwani, a prominent sheik and the deputy governor of Marib Province. The strike had dire repercussions for Yemen's economy. The slain sheik's tribe attacked the country's main pipeline in revenge. With 70 percent of the country's budget dependent on oil exports, Yemen lost over $1 billion. This strike also erased years of progress and trust-building with tribes who considered it a betrayal given their role in fighting Al Qaeda in their areas. Yemeni tribes are generally quite pragmatic and are by no means a default option for radical religious groups seeking a safe haven. However, the increasing civilian toll of drone strikes is turning the apathy of tribal factions into anger. The strikes have created an opportunity for terrorist groups like Al Qaeda in the Arabian Peninsula and Ansar al-Sharia to recruit fighters from tribes who have suffered casualties, especially in Yemen's south, where mounting grievances since the 1994 civil war have driven a strong secessionist movement.

Drone Attacks are making A.Q.A.P stronger in Yemen

Mothana 2012

(Ibrahim Mothana- activist and cofounder of Watan Party, 6-13-2012, "How Drones Help Al Qaeda," New York Times, http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html?_r=1)//PG

Unlike Al Qaeda in Iraq, A.Q.A.P. has worked on gaining the support of local communities by compromising on some of their strict religious laws and offering basic services, electricity and gas to villagers in the areas they control. Furthermore, Iran has seized this chance to gain more influence among the disgruntled population in Yemen's south. And the situation is quite likely to get worse now that Washington has broadened its rules of engagement to allow so-called signature strikes, when surveillance data suggest a terrorist leader may be nearby but the identities of all others targeted is not known. Such loose rules risk redefining "militants" as any military-age males seen in a strike zone. Certainly, there may be short-term military gains from killing militant leaders in these strikes, but they are minuscule compared with the long-term damage the drone program is causing. A new generation of leaders is spontaneously emerging in furious retaliation to attacks on their territories and tribes. This is why A.Q.A.P. is much stronger in Yemen today than it was a few years ago. In 2009, A.Q.A.P. had only a few hundred members and controlled no territory; today it has, along with Ansar al-Sharia, at least 1,000 members and controls substantial amounts of territory. Yemenis are the ones who suffer the most from the presence of Al Qaeda, and getting rid of this plague is a priority for the majority of Yemen's population. But there is no shortcut in dealing with it. Overlooking the real drivers of extremism and focusing solely on tackling their security symptoms with brutal force will make the situation worse. Only a long-term approach based on building relations with local communities, dealing with the economic and social drivers of extremism, and cooperating with tribes and Yemen's army will

eradicate the threat of Islamic radicalism. Unfortunately, liberal voices in the United States are largely ignoring, if not condoning, civilian deaths and extrajudicial killings in Yemen — including the assassination of three American citizens in September 2011, including a 16-year-old. During George W. Bush's presidency, the rage would have been tremendous. But today there is little outcry, even though what is happening is in many ways an escalation of Mr. Bush's policies. Defenders of human rights must speak out. America's counterterrorism policy here is not only making Yemen less safe by strengthening support for A.Q.A.P., but it could also ultimately endanger the United States and the entire world.

A.Q.A.P- Al Qaeda in the Arabian Peninsula

Ending Relations with Saudi Arabia decreases terrorism- US support is top motivator for terrorists

Washingtons Blog 2015

(Washingtonsblog, 1-10-2015, "How to Beat Terrorism: Stop Making the Same 7 Mistakes," Washington's Blog, http://www.washingtonsblog.com/2015/01/paris-terror-attack-isis-result-911-cover.html)//PG

II. Stop Supporting the Dictators Who Fund Terrorists. Saudi Arabia is the world's largest sponsor of radical Islamic terrorists. The Saudis have backed ISIS and many other brutal terrorist groups. According to sworn declarations from a 9/11 Commissioner and the Co-Chair of the Congressional Inquiry Into 9/11, the Saudi government backed the 9/11 hijackers (see section VII for details). Saudi Arabia is the hotbed of the most radical Muslim terrorists in the world: the Salafis (both ISIS and Al Qaeda are Salafis). And the Saudis – with U.S. support – back the radical "madrassas" in which Islamic radicalism was spread. And yet the U.S. has been supporting the Saudis militarily, with NSA intelligence and in every other way possible for 70 years. In addition, top American terrorism experts say that U.S. support for brutal and tyrannical countries in the Middle east – like Saudi Arabia – is one of the top motivators for Arab terrorists. So if we stop supporting the House of Saud and other Arab tyrannies, we'll get a two-fold reduction in terror: (1) We'll undermine the main terrorism supporters And … (2) We'll take away one of the main motivations driving terrorists: our support for the most repressive, brutal Arab tyrannies

NSA surveillance doesn't stop terrorism- not prioritizing all the data- Boston Bombing proves

Washingtons Blog 2013

(Washingtonsblog, 11-1-2013, "NSA Whistleblower: Government Failed to Stop Boston Bombing Because It Was Overwhelmed with Data from Mass Surveillance On Americans," Washington's Blog, http://www.washingtonsblog.com/2013/11/nsa-whistleblower-government-failed-to-stop-boston-bombing-because-it-was-overwhelmed-with-data-from-mass-surveillance-on-americans.html)//PG

We've extensively documented that mass surveillance does NOT help prevent terror attacks. Top experts have said that treating everyone like a potential terrorist WEAKENS our ability to protect America. The former head of the NSA's global intelligence gathering operations – William Binney – says that the current spying program not only violates Americans' privacy, but sucks up so much data that it INTERFERES with the government's ability to catch bad guys. Binney told Washington's Blog: The zone of suspects was for us limited to two degrees (hops). Beyond that increases the problem exponentially. So, three hops is going

much too far. (Explanation of degrees and hops). In the following brief excerpt from an interview by PBS NewsHour, Binney explains that over-the-top spying actually interfered with the government's ability to stop the Boston bombing: Judy Woodruff: You know the government says that it is only doing this to keep us safe. This is the only way we can have that information at our fingertips when we then have a reason to believe that someone would do this country or its people harm. Binney: That in my mind has been nonsense from the beginning. Because we had zero problem tracking all of these terrorists all along. We had no difficulty doing that. And I left those principles in place at the NSA when I retired there. One was to use the 2 degree principle for zones of suspicion. That is, if a terrorist called someone in the U.S., that was the first degree from the terrorist. And the second degree was who that terrorist called inside the United States. So far, all of the testimony I've been listening to by people down in D.C. about this program – and they refer to different cases they've been talking about, in terms of terrorists – everyone one fit into that zone of suspicion. None of them were outside it. The rest of it means they're collecting more data, making the haystack so much bigger so that's making it more difficult to find the needles. That's why they're missing people, like the bombers in Boston. Similarly, Israeli-American terrorism expert Barry Rubins points out: What is most important to understand about the revelations of massive message interception by the U.S. government is this: In counterterrorist terms, it is a farce. Basically the NSA, as one of my readers suggested, is the digital equivalent of the TSA strip-searching an 80 year-old Minnesota grandmothers rather than profiling and focusing on the likely terrorists. There is a fallacy behind the current intelligence strategy of the United States, the collection of massive amounts of phone calls, emails, and even credit card expenditures, up to 3 billion phone calls a day alone, not to mention the government spying on the mass media. It is this: The more quantity of intelligence, the better it is for preventing terrorism. In the real, practical world this is—though it might seem counterintuitive—untrue. *** And isn't it absurd that the United States can't finish a simple border fence to keep out potential terrorists, can't stop a would-be terrorist in the U.S. army who gives a power point presentation on why he is about to shoot people (Major Nadal Hassan), can't follow up on Russian intelligence warnings about Chechen terrorist contacts (the Boston bombing), or a dozen similar incidents must now collect every telephone call in the country? *** It is not the quantity of material that counts but the need to locate and correctly understand the most vital material. *** If one looks at the great intelligence failures of the past, these two points quickly become obvious. Take for example the Japanese surprise attack on Pearl Harbor on December 7, 1941. U.S. naval intelligence had broken Japanese codes. They had the information needed to conclude the attack would take place. Yet a focus on the key to the problem was not achieved. The important messages were not read and interpreted; the strategic mindset of the leadership was not in place. *** So what needs to be in place, again, is to focus on the highest priority material, to analyze correctly what is available, to have leaders accept it, and to act. *** If, however, the material is almost limitless, that actually weakens a focus on the most needed intelligence regarding the most likely terrorist threats. Imagine, for example, going through billions of telephone calls even with high-speed computers rather than, say, following up a tip from Russian intelligence on a young Chechen man in Boston who is in contact with terrorists or, for instance, the communications between a Yemeni al-Qaida leader and a U.S. army major who is assigned as a psychiatrist to Fort Hood.

Drone Strikes are not precise- kills innocent civilians which angers citizens

Ackerman 2014

(Spencer Ackerman-national security editor for Guardian US, 11-24-2014, "41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground," Guardian, http://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147)//PG

The drones came for Ayman Zawahiri on 13 January 2006, hovering over a village in Pakistan called Damadola. Ten months later, they came again for the man who would become al-Qaida's leader, this time in Bajaur. Eight years later, Zawahiri is still alive. Seventy-six children and 29 adults, according to reports after the two strikes, are not. However many Americans know who Zawahiri is, far fewer are familiar with Qari Hussain. Hussain was a deputy commander of the Pakistani Taliban, a militant group aligned with al-Qaida that trained the would-be Times Square bomber, Faisal Shahzad, before his

unsuccessful 2010 attack. The drones first came for Hussain years before, on 29 January 2008. Then they came on 23 June 2009, 15 January 2010, 2 October 2010 and 7 October 2010. Finally, on 15 October 2010, Hellfire missiles fired from a Predator or Reaper drone killed Hussain, the Pakistani Taliban later confirmed. For the death of a man whom practically no American can name, the US killed 128 people, 13 of them children, none of whom it meant to harm. A new analysis of the data available to the public about drone strikes, conducted by the human-rights group Reprieve, indicates that even when operators target specific individuals – the most focused effort of what Barack Obama calls "targeted killing" – they kill vastly more people than their targets, often needing to strike multiple times. Attempts to kill 41 men resulted in the deaths of an estimated 1,147 people, as of 24 November. Reprieve, sifting through reports compiled by the Bureau of Investigative Journalism, examined cases in which specific people were targeted by drones multiple times. Their data, shared with the Guardian, raises questions about the accuracy of US intelligence guiding strikes that US officials describe using words like "clinical" and "precise." The analysis is a partial estimate of the damage wrought by Obama's favored weapon of war, a tool he and his administration describe as far more precise than more familiar instruments of land or air power. "Drone strikes have been sold to the American public on the claim that they're 'precise'. But they are only as precise as the intelligence that feeds them. There is nothing precise about intelligence that results in the deaths of 28 unknown people, including women and children, for every 'bad guy' the US goes after," said Reprieve's Jennifer Gibson, who spearheaded the group's study. Some 24 men specifically targeted in Pakistan resulted in the death of 874 people. All were reported in the press as "killed" on multiple occasions, meaning that numerous strikes were aimed at each of them. The vast majority of those strikes were unsuccessful. An estimated 142 children were killed in the course of pursuing those 24 men, only six of whom died in the course of drone strikes that killed their intended targets. In Yemen, 17 named men were targeted multiple times. Strikes on them killed 273 people, at least seven of them children. At least four of the targets are still alive. Available data for the 41 men targeted for drone strikes across both countries indicate that each of them was reported killed multiple times. Seven of them are believed to still be alive. The status of another, Haji Omar, is unknown. Abu Ubaidah al-Masri, whom drones targeted three times, later died from natural causes, believed to be hepatitis. The data cohort is only a fraction of those killed by US drones overall. Reprieve did not focus on named targets struck only once. Neither Reprieve nor the Guardian examined the subset of drone strikes that do not target specific people: the so-called "signature strikes" that attack people based on a pattern of behavior considered suspicious, rather than intelligence tying their targets to terrorist activity. An analytically conservative Council on Foreign Relations tally assesses that 500 drone strikes outside of Iraq and Afghanistan have killed 3,674 people. As well, the data is agnostic on the validity of the named targets struck on multiple occasions being marked for death in the first place. Like all weapons, drones will inevitably miss their targets given enough chances. But the secrecy surrounding them obscures how often misses occur and the reasons for them. Even for the 33 named targets whom the drones eventually killed – successes, by the logic of the drone strikes – another 947 people died in the process.

Food Answers

AT: Resource Wars – 1nc Takeout

Lack of resources doesn't trigger wars.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

RISING ENERGY prices and mounting concerns about environmental depletion have animated fears that the world may be headed for a spate of "resource wars"-hot conflicts triggered by a struggle to grab valuable resources. Such fears come in many stripes, but the threat industry has sounded the alarm bells especially loudly in three areas. First is the rise of China, which is poorly endowed with many of the resources it needs-such as oil, gas, timber and most minerals-and has already "gone out" to the world with the goal of securing what it wants. Violent conflicts may follow as the country shunts others aside. A second potential path down the road to resource wars starts with all the money now flowing into poorly governed but resource-rich countries. Money can fund civil wars and other hostilities, even leaking into the hands of terrorists. And third is global climate change, which could multiply stresses on natural resources and trigger water wars, catalyze the spread of disease or bring about mass migrations.¶ Most of this is bunk, and nearly all of it has focused on the wrong lessons for policy. Classic resource wars are good material for Hollywood screenwriters. They rarely occur in the real world. To be sure, resource money can magnify and prolong some conflicts, but the root causes of those hostilities usually lie elsewhere. Fixing them requires focusing on the underlying institutions that govern how resources are used and largely determine whether stress explodes into violence. When conflicts do arise, the weak link isn't a dearth in resources but a dearth in governance.

AT: Resource Wars – General

Resources are fungible – no economic incentive to start a war.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

The sweep of history points against classic resource wars. Whereas colonialism created long, oppressive and often war-prone supply chains for resources such as oil and rubber, most resources today are fungible commodities. That means it is almost always cheaper and more reliable to buy them in markets.

AT: Resource Wars – China

No resource wars with China – doesn't make economic sense.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

Feeding the dragon Resource wars are largely back in vogue within the US threat industry because of China's spectacular rise. Brazil, India, Malaysia and many others that used to sit on the periphery of the world economy are also arcing upward. This growth is fueling a surge in world demand for raw materials. Inevitably, these countries have looked overseas for what they need, which has animated fears of a coming clash with China and other growing powers over access to natural resources. ¶Within the next three years, China will be the world's largest consumer of energy. Yet, it's not just oil wells that are working harder to fuel China, so too are chainsaws. Chinese net imports of timber nearly doubled from 2000 to 2005. The country also uses about one-third of the world's steel (around 360 million tons), or three times its 2000 consumption. ¶ Even in coal resources, in which China is famously well-endowed, China became a net importer in 2007. Across the board, the combination of low efficiency, rapid growth and an emphasis on heavy industry - typical in the early stages of industrial growth - have combined to make the country a voracious consumer and polluter of natural resources. America, England and nearly every other industrialized country went through a similar pattern, though with a human population that was much smaller than today's resource-hungry developing world. ¶Among the needed resources, oil has been most visible. Indeed, Chinese state-owned oil companies are dotting Africa, Central Asia and the Persian Gulf with projects aimed to export oil back home. The overseas arm of India's state oil company has followed a similar strategy - unable to compete head-to-head with the major Western companies, it focuses instead on areas where human-rights abuses and bad governance keep the major oil companies at bay and where India's foreign policy can open doors. To a lesser extent, Malaysia engages in the same behavior. The American threat industry rarely sounds the alarm over Indian and Malaysian efforts, though, in part because those firms have less capital to splash around and mainly because their stories just don't compare with fear of the rising dragon. ¶These efforts to lock up resources by going out fit well with the standard narrative for resource wars - a zero-sum struggle for vital supplies. But will a struggle over resources actually lead to war and conflict? ¶To be sure, the struggle over resources has yielded a wide array of commercial conflicts as companies duel for contracts and ownership. State-owned China National Offshore Oil Corporation's (CNOOC) failed bid to acquire US-based Unocal - and with it Unocal's valuable oil and gas supplies in Asia - is a recent example. But that is hardly unique to resources - similar conflicts with tinges of national security arise in the control over ports, aircraft engines, databases laden with private information and a growing array of advanced technologies for which civilian and military functions are hard to distinguish. These disputes win and lose some friendships and contracts, but they do not unleash violence. ¶Most importantly, China's going-out strategy is unlikely to spur resource wars because it simply does not work, a lesson the Chinese are learning. Oil is a fungible commodity, and when it is sourced

far from China it is better to sell (and buy) the oil on the world market. The best estimates suggest that only about one-tenth of the oil produced overseas by Chinese investments (so-called "equity oil") actually makes it back to the country. So, thus far, the largest beneficiaries of China's strategy are the rest of the world's oil consumers - first and foremost the United States - who gain because China subsidizes production.

AT: Resource Wars – Resources Don't Determine

Money from resources doesn't drive war – other structural factors trigger.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

But resource-related conflicts are multi-causal. In no case would simply cutting the resources avoid or halt conflict, even if the presence of natural resources can shift the odds. Certainly, oil revenues have advanced Iran's nuclear program, which is a potential source of hot conflict and could make future conflicts a lot more dangerous. But a steep decline in oil probably wouldn't strangle the program on its own. Indeed, while Iran still struggles to make a bomb, resource-poor North Korea has already arrived at that goal by starving itself and getting help from friends. Venezuela's checkbook allows Chavez to be a bigger thorn in the sides of those he dislikes, but there are other thorns that poke without oil money. ¶ As we see, what matters is not just money but how it is used. While al-Qaeda conjures images of an oil-funded network - because it hails from the resource-rich Middle East and its seed capital has oily origins - other lethal terror networks, such as Sri Lanka's Tamil Tigers and Ireland's Republican Army, arose with funding from diasporas rather than oil or other natural resources. Unlike modern state armies that require huge infusions of capital, terror networks are usually organized to make the most of scant funds. ¶ During the run-up in oil and gas prices, analysts have often claimed that these revenues will go to fund terror networks; yet it is sobering to remember that al-Qaeda came out in the late 1990s, when oil earnings were at their lowest in recent history. Most of the tiny sums of money needed for the September 11 attacks came from that period. Al-Qaeda's daring attacks against the US embassies in Kenya and Tanzania occurred when oil-rich patrons were fretting about the inability to make ends meet at home because revenues were so low. Ideology and organization trump money as driving forces for terrorism. ¶ Most thinking about resource-lubed conflict has concentrated on the ways that windfalls from resources cause violence by empowering belligerent states or sub-state actors. But the chains of cause and effect are more varied. For states with weak governance and resources that are easy to grab, resources tend to make weak states even weaker and raise the odds of hot conflict. This was true for Angola's diamonds and Nigeria's oil, which in both cases have helped finance civil war. For states with stable authoritarian governments - such as Kuwait, Saudi Arabia, most of the rest in the western Gulf, and perhaps also Russia and Venezuela - the problem may be the opposite. A sharp decline in resource revenues can create dangerous vacuums where expectations are high and paltry distributions discredit the established authorities. ¶ On balance, the windfall in oil revenues over recent years is probably breeding more

conflict than would a crash in prices. However, while a few conflicts partly trace themselves to resources, it is the other pernicious effects of resource windfalls, such as the undermining of democratic transitions and the failure of most resource-reliant societies to organize their economies around investment and productivity, that matter much, much more. At best, resources have indirect and mixed effects on conflict.

AT: Resource Wars – Warming

Warming doesn't trigger war – proximate causes do.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

While there are many reasons to fear global warming, the risk that such dangers could cause violent conflict ranks extremely low on the list because it is highly unlikely to materialize. Despite decades of warnings about water wars, what is striking is that water wars don't happen - usually because countries that share water resources have a lot more at stake and armed conflict rarely fixes the problem. Some analysts have pointed to conflicts over resources, including water and valuable land, as a cause in the Rwandan genocide, for example. Recently, the UN secretary-general suggested that climate change was already exacerbating the conflicts in Sudan. ¶But none of these supposed causal chains stay linked under close scrutiny - the conflicts over resources are usually symptomatic of deeper failures in governance and other primal forces for conflicts, such as ethnic tensions, income inequalities and other unsettled grievances. Climate is just one of many factors that contribute to tension. The same is true for scenarios of climate refugees, where the moniker "climate" conveniently obscures the deeper causal forces.

Threats are overblown.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

Finally, serious thinking about climate change must recognize that the "hard" security threats that are supposedly lurking are mostly a ruse. They are good for the threat industry - which needs danger for survival - and they are good for the greens who find it easier to build a coalition for policy when hawks are supportive. Building a policy on this house of cards is no way to muster support for a problem that requires several decades of sustained effort. One of the greatest hurdles in the climate debate - one that is just now being cleared, but will reappear if policy advocates seize on false dangers - has been to contain the entrepreneurial skeptics who have sown public doubt about the integrity of the science on causes and effects of climate change. ¶The false logic

now runs in both directions. Not only will climate change multiply threats by putting stress on societies, but a flood of articles warns of new territorial conflicts as warming opens the formerly ice-bound Arctic for exploration. Russia recently planted a flag on the seabed at the North Pole. In fact, the underlying causes of this exploration rush are ambiguous property rights and advances in undersea drilling that are unrelated to climate change. A similar pattern unfolded in the 1950s in Antarctica, which led to a standoff of territorial claims and no real harm to the region, no production of usable minerals and no resource wars.

AT: Resource Wars – Nations Fund Wars

These wars are inevitable.

Victor, Stanford law school professor, 2007

[David, CFR senior fellow on the task force on energy security, "What Resource Wars?" http://www.atimes.com/atimes/Global_Economy/IK14Dj04.html, accessed 9-28-12, TAP]

These problems will just get worse unless the United States and other big consumers temper their demand. The goal should not be "independence" from international markets but a sustainable path of consumption. When the left-leaning wings in American politics and the industry-centered National Petroleum Council both issue this same warning about energy supplies - as they have over the last year - then there is an urgent need for the United States to change course. Yet Congress and the administration have done little to alter the fundamental policy incentives for efficiency. At this writing, the House and Senate are attempting to reconcile two versions of energy bills, neither of which, strikingly, will cause much fundamental change to the situation. ¶ Cutting the flow of revenues to resource-rich governments and societies can be a good policy goal, but success will require American policymakers to pursue strategies that they will find politically toxic at home. One is to get serious about taxation. The only durable way to rigorously cut the flow of resources is to keep prices high (and thus encourage efficiency as well as changes in behavior that reduce dependence on oil) while channeling the revenues into the US government treasury rather than overseas. ¶ In short, that means a tax on imported oil and a complementary tax on all fuels sold in the United States so that a fuel import tax doesn't simply hand a windfall to domestic producers. And if the United States (and other resource consumers) made a serious effort to contain financial windfalls to natural-resources exporters, it would need - at the same time - to confront a more politically poisonous task: propping up regimes or easing the transition to new systems of governance in places where vacuums are worse than incumbents. ¶ Given all the practical troubles for the midwives of regime change, serious policy in this area would need to deal with many voids.

Judicial Independence Answers

AT: JI – Not key to Democracy

Authoritarian regimes can have Judicial Independence

Alexander, 10 (Seth Alexander, Graduate Student in Political Science at the University of California, Irvine, 4/18/10 "Judicial Empowerment in Authoritarian Regimes" pg26-28, http://www.democracy.uci.edu/files/docs/conferences/grad/Alexander_Judicial%20Empowerment%20in%20Authoritarian%20Regimes.pdf, accessed digitally 7/13/15, SAM)

This study tested existing theories of judicial empowerment in authoritarian regimes against a data set of 71 countries between 1996 and 2007. The results of this analysis found little support for existing theories. Instead it found strong support for a new theory of judicial empowerment based on regime type. This finding suggests judicial empowerment is a factor of a regime's interests, center of power, time-horizon, and need for legitimacy. Single party regimes and monarchies have the highest levels of empowerment because of their large power bases, interests in stability and longevity, long time horizons, and needs for legitimacy. Conversely, Alexander 26 military regimes have low levels of judicial empowerment because of their short time horizons, small power bases, conflicting interests, and reduced need for legitimacy to maintain control. Likewise, personalist regimes have low levels of empowerment due to a power base of one, an interest in wealth accumulation, reduced need for legitimacy, and shorter time horizons. This theory provides a new understanding of the reasons for judicial empowerment focusing only on the characteristics of regimes. These finding are important because they shed new light on the process of judicial empowerment in authoritarian regimes. This matters in a fundamental sense because it suggests, contrary to conventional wisdom, **independent courts can exist in authoritarian regimes.** More specifically these findings suggest a need for scholars to disaggregate authoritarian regimes and take the unique characteristics of each regime type into consideration when dealing with judicial empowerment. These results also suggest judicial empowerment is contingent on the development of other institutions. This has broad consequences for the study of other institutions in authoritarian regimes. The study is not without limits. The database only covers ten years and thus excludes most of modern history. Its possible the relationships found here will be different when a larger time period is considered. In particular, existing theories, which find little support here, may prove significant when more observations are added. Additionally, the dependent variable is an imperfect proxy for judicial empowerment. Future scholars should seek out better ways to measure concepts like independence and compliance more directly. On a related note, this study fails to explore questions about the importance of concepts like formal independence and compliance in the authoritarian regime setting. There has been little research into whether one matters more than the other for authoritarian regimes. Future Alexander 27 work needs to focus on this understudied area. Whether formal independence is enough to garner regimes increases in legitimacy or whether regimes must comply with court rulings in order to gain a benefit are questions not yet answered. Research into this understudied area could yield important insights for the fields of public law, democratization, and political economy.

AT: JI – Independence Not Key

Multiple issues with judge credibility

BIIS, 10 (Brandeis Institute for International Judges, 2010, "Challenges to Judicial Independence", pg 2-4, https://www.brandeis.edu/ethics/pdfs/internationaljustice/biij/Challenges_BIIJ2010.pdf, Accessed digitally 7/13/15, SAM)

As in past Institutes, BIIJ 2010 participants had the opportunity to re!ect on ethical issues confronting judges who serve on international courts and tribunals. Discussions about judicial ethics in the international sphere are a hallmark of the BIIJ; earlier institutes have focused on topics as wide-ranging as "the international judiciary as a new moral authority," "the shaping of the judicial persona," and "the development of ethics guidelines for international courts and tribunals."1 In 2010, participants addressed the recurring topic of judicial independence,

with particular emphasis on its critical relation to the rule of law.2 More speci"cally, they discussed the challenges of working under the gaze of a public that holds judges to the highest standards of behavior and practice and criticizes any deviation – real or perceived – from the ideal. #e "rst topic participants grappled with was the election and reelection of judges in the international context.3 #e manner in which international judges reach their posts has often been criticized, and a recently published monograph on the topic does little to reassure the public that the process is transparent or politically neutral.4 Given the importance of public con"dence in international courts and tribunals – to encourage compliance with their judgments as well as to ensure their "nancial and moral support – it is crucial that the members of their benches be seen as independent beyond a doubt. Current practices surrounding the election and reelection of international judges may serve, however, to cast public doubt upon their independence. Participants had many comments to o$er about the election and reelection procedures in their respective courts and tribunals. Elections that take place within the UN system were particularly criticized, both for the lack of transparency in how judicial candidates are nominated, and for "horse trading" at election time. #is term refers to the promises and counterpromises made among states to support one another's candidates for high-pro"le posts, including judicial positions at the ICJ, ITLOS, ICTY, and ICTR. It was noted that the quali"cations of a candidate are just one of the factors that come into play. When the ICC was established, the Assembly of States Parties valiantly tried to keep its judicial elections from following the model of the UN courts, but it was not successful. "It simply turned out to be impossible," reported a participant who attended the Rome Conference, "to achieve a prohibition on these kinds of agreements among states."5 One participant also remarked on the inappropriate "judicial campaigning" that, he said, inevitably accompanies elections at the UN: "Judges depend on the General Assembly for their election and reelection and it is standard practice for them to visit various diplomatic delegations to lobby for their votes." Several judges pointed to institutional practices that seek to emphasize the merits of judicial candidates, thereby mitigating the in!uence of national interests in election procedures. Some members of the WTO now put forward several candidates for a position on the Appellate Body, allowing the organization to select the one they consider the most quali"ed. #e protocol of the ACHPR also allows states to put forward multiple candidates for the coveted spots on 2 BRANDEIS INSTITUTE FOR INTERNATIONAL JUDGES – 2010 • CHALLENGES TO JUDICIAL INDEPENDENCE its 11-member bench. But only one can be their own national – any additional nominees must be nationals of another African state. If inappropriate in!uence sometimes intrudes into the election of judges, this occurs to an even greater extent, it was agreed, when they stand for reelection. One participant noted that at his court, judges have four-year initial terms with the possibility of reelection: "Even the most honest and honorable of my colleagues feel pressure to tone down their decisions; even hardworking, ethical people feel that they need to be careful when elections are coming." Another participant observed, "At my court, judges are no doubt aware that taking a controversial position in an unpopular decision could have an e$ect on their reelection." However, he was not convinced that they would act on this knowledge: "I am con"dent that the judges' sense of professionalism would prevail." It was pointed out, however, that reelection is one of the ways to achieve continuity, which is particularly important in courts with a temporary jurisdiction. At the ICTY and ICTR, where terms are short and the work intense, it may be bene"cial for the institutions to have reelected judges on the bench for this reason. "Otherwise, there would be a sacri"ce in judicial experience and e%ciency." As part of the ad hoc tribunals' "completion strategy," ICTY and ICTR judges recently had their terms extended, by a Security Council resolution,6 until the completion of the trials to which they are assigned. #is obviates the need for any future elections, which would further slow down the tribunals' work, while also contributing to the stability of the institutions and the accumulation of judicial expertise. #e international judges serving on the ECCC bene"t from a similarly open-ended situation – they have no "xed term at all, but rather were appointed by the UN to serve on the bench "for the duration of the proceedings."7 #e judges of the STL, in contrast, were appointed for an initial term of three years in 2009 and may be reappointed "for a further period to be determined by the Secretary-General in consultation with the [Lebanese] Government."8 However, for permanent courts with longer judicial terms – ICJ and ITLOS judges, for instance, sit for nine years – a prohibition on reelection would not have the same potential e$ect on institutional performance. In arguing for term limits, a participant also observed that "it is not only good judges who get reelected." Many international judges try for second terms, and since they have an advantage in the election process, they may prevail over other candidates. One participant pointed out another possible negative impact of having judges serve for years and years on the same bench: if judges make judging a "lifetime career," he suggested, "it may not be helpful to the international system or the development of international law." Notably, the ICC chose to avoid the suspicions and problems that accompany reelection by instituting nine-year non-renewable terms,9 a seemingly wise decision for a closely observed court that deals with sensitive matters and is engaged in the development of a still emerging "eld, international criminal law. In fact, all BIIJ participants essentially agreed that instituting a single and relatively long term for judgeships in international courts and tribunals would do much to remove the threats to judicial independence as well as other drawbacks of reelection.10 Even judges who had bene"ted from reelection expressed this point of view. "I am on record," said a judge who has served consecutive terms, "as preferring single, non-renewable terms for judges at international tribunals." Said another judge in the same situation, "#e reelection of judges is not a desirable practice to be used in international courts, including my own." One participant even suggested that BIIJ participants make a collective and public statement recommending that international judicial reelections be abolished. But such a prohibition would still leave some problems unresolved. If an unquali"ed individual is sitting on the bench, a single term can still be too long, declared one participant. "When the initial election is not a good one, you have to wait for years before changing the judge!" Single terms may also increase the number of former international 3 BRANDEIS INSTITUTE FOR INTERNATIONAL JUDGES – 2010 • CHALLENGES TO JUDICIAL INDEPENDENCE judges looking for a professional niche where they can apply their expertise. Some may take on the role of counsel or agents before international courts, including the one in which they recently served. #is tendency necessitates the establishment of "coolingo$ periods," during which time former judges may not be involved in proceedings before their old court. #is phenomenon may lead to a certain "recirculation" of legal experts in international justice circles, which could ultimately sti!e the development of international law, as mentioned above. It could also, however, produce the opposite e$ect by leading to a richer and fuller development of international law by those with great experience and expertise. #e issue of post-judicial professional life may be most acute at the ECHR. Not only has it recently instituted a single, non-renewable judicial term,11 but its judges are becoming younger and younger; some are even elected to the court while in their thirties. Furthermore, most ECHR judges are drawn from national legal professions, not from the ranks of international lawyers. #is means that they will naturally look to return home after leaving the ECHR, and will seek to work for the state in some capacity. #is creates a new dilemma in terms of judicial independence: will judges nearing the end of their terms at the ECHR issue judgments more favorable to their states, as insurance for a future position at home? Clearly, threats to independence do not necessarily disappear with the prohibition of judicial reelection. One participant suggested that international judges should be nominated for single terms toward the ends of their careers to minimize such risks. Participants then turned their attention from judicial elections and reelections to other matters that may create public doubt about the independence of international judges. "Judges do not come to the bench as virgins of public life," declared one participant. #ey may have a%liations with political organizations and NGOs, a long list of publications if they are scholars, and an easily accessible record of non-judicial activities, speeches, and commercial interests. All of these may be raised as possible reasons that international judges are unable to perform their work with independence and impartiality. #e question of when interest in or connection to a case by a judge necessitates recusal was immediately raised. One criminal court has had high-pro"le cases where its judges were on the record expressing opinions about the behavior of accused persons. One participant asked whether it would be preferable for a body outside the court to determine recusal in such situations, instead of judicial colleagues. Are fellow judges not likely to support the judge in question, or alternatively to join against him, he wondered? And does an internal decision not create a perception of bias in the public eye? A di$erent issue related to bias was brought up with reference to the ECCC. Normally a judge should not sit on a case with which he has a personal connection. But it was virtually impossible to "nd Cambodian judges who had not been touched by the Khmer Rouge events under investigation by the court. #e recusal provisions in the ECCC rules were debated and ultimately made more !exible so as not to systematically preclude the participation of local judges in the trials. Participants also discussed when experience on one international court should prevent participation in a related matter before another. For example, should a criminal judge who has deliberated on questions of genocide refrain from sitting on an

interstate dispute resolution body that is looking at the crimes from a di$erent standpoint? One judge o$ered this opinion: "I don't see much of a problem if it is only a legal question of genocide. I think this is a situation that domestic judges deal with every day, sitting on cases that deal with the same legal issues." Another judge added this comment: "Disqualifying someone just because they have expressed certain views on crimes against humanity or war crimes is not a good enough reason." Human rights institutions may also see situations where their judges have dealt with an issue before the court while previously serving in their capacity as judges in their home country. While some believed that this would not necessarily pose a legal problem, others felt that this might well create a perception of bias. 4 BRANDEIS INSTITUTE FOR INTERNATIONAL JUDGES – 2010 • CHALLENGES TO JUDICIAL INDEPENDENCE How judges interact with the media, and when these interactions overstep an appropriate boundary, also came up as a topic of discussion. How should a judge deal with requests for interviews, or answer questions that the press may have about the judge himself or his institution? "One the one hand," said a participant, "a judge should not seem aloof from society, but on the other hand, he should avoid seeking the limelight." He recounted an incident in which a fellow judge gave a lengthy interview to a newspaper where he made critical comments about the political situation of the country hosting the court. "Our president felt obliged to disavow the interview and publicly reprimand the judge," he continued, a response justi"ed by the court's code of ethics. Another participant reported that he had recently been asked by the media in his home country to speak about his court and explain its function to the local population. "I think this is useful and important for the public; we need to explain what our courts do and do not do, but not to speak on speci"c cases. My inclination is that this is a good exercise of discretion from the viewpoint of educating the public." Another participant went on to suggest that speaking to the press about cases, once a judgment has been delivered, should not be out of the question. "I would cautiously encourage it because I think the court should enlighten and educate, and this is better done by a judge than a press secretary. #at is, if he is capable of going out and facing a microphone and camera." Participants noted a number of other questions about judicial ethics, and its perception, that cannot be answered by referring to their courts' rules or codes of conduct.12 In what situations can a judge carry out arbitrations, particularly of a commercial nature? What kinds of secondary employment are compatible with a part-time judicial position? How much can and should an international judge speak in public about legal issues of contemporary importance? Since such questions do not generally involve potentially serious violations of judicial ethics, they are often left up to the discretion of individual judges, with advice from the court president or colleagues when requested. It was suggested that international courts might do well to look for guidance in detailed codes of judicial conduct, like the Code of Conduct for United States Judges.13 However, some courts have resisted the elaboration of such codes, believing that broad notions of appropriate judicial conduct su%ce.14 It is clear that trust in the international justice system relies to an important degree on public con"dence in those who serve as its judges. It is thus up to judges themselves, one judge exhorted, "to exercise continuous discretion in order to preserve a sense of judicial independence and impartiality." He went on to add an important point, undoubtedly already acknowledged by those in attendance at the BIIJ: "In becoming a judge, you must sacri"ce some of the private space that others take for granted." Having judges who accept these limitations without question is another foundational element for the international rule of law.

J/I won't happen

U.S. no longer looked to for a judicial model

Liptak 08 (Adam Liptak is the Supreme Court correspondent of The New York Times. Mr. Liptak, a lawyer, joined The Times's news staff in 2002 and began covering the Supreme Court in the fall of 2008. He has written a column, "Sidebar," on developments in the law, since 2007. 9/17/08, The New York Times, U.S. Court Is Now Guiding Fewer Nations, http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all, 7/9/15, HDA)

Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War. But now **American legal influence is waning**. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices. "One of our great exports used to be constitutional law," said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. "We are losing one of the greatest bully pulpits we have ever had." From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72. The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, "they tend not to look to the rulings of the U.S. Supreme Court." **The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court's fading influence, legal experts said.** The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another. **Another reason is the diminished reputation of the United States in some parts of the world, which experts here**

and abroad said is in part a consequence of the Bush administration's unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience. "It's not surprising, given our foreign policy in the last decade or so, that American influence should be declining," said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago. Aversion to Foreign Law The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role, some foreign judges say. "Most justices of the United States Supreme Court do not cite foreign case law in their judgments," Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. "They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems." Partly as a consequence, Chief Justice Barak wrote, the United States Supreme Court "is losing the central role it once had among courts in modern democracies." **Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. "Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa**," he said in an interview published in 2001 in The Green Bag, a legal journal. **"America" he added, "is in danger of becoming something of a legal backwater." The signature innovations of the American legal system — a written Constitution, a Bill of Rights protecting individual freedoms and an independent judiciary with the power to strike down legislation — have been consciously emulated in much of the world.** And American constitutional law has been cited and discussed in countless decisions of courts in Australia, Canada, Germany, India, Israel, Japan, New Zealand, South Africa and elsewhere. In a 1996 decision striking down a law that made it a crime to possess pornography, for instance, the Constitutional Court of South Africa conducted a broad survey of American First Amendment jurisprudence, citing some 40 decisions of the United States Supreme Court. That same year, the High Court of Australia followed a 1989 decision of the Supreme Court in a separation-of-powers case, ruling that a judge was permitted to prepare a report for a government minister about threats to aboriginal areas because the assignment did not undermine the integrity of the judicial branch. Sending American ideas about the rule of law abroad has long been a source of pride. "The United States Supreme Court is the oldest constitutional court in the world — the most respected, the most legitimate," said Charles Fried, a law professor at Harvard who served as solicitor general in the Reagan administration. But there is an intense and growing debate about whether that influence should be a one-way street. Justice Sandra Day O'Connor, in a speech before her retirement from the Supreme Court, advocated taking as well as giving. "I suspect that with time we will rely increasingly on international and foreign law in resolving what now appear to be domestic issues," Justice O'Connor said. "Doing so may not only enrich our own country's decisions; it will create that all-important good impression. When U.S. courts are seen to be cognizant of other judicial systems, our ability to act as a rule-of-law model for other nations will be enhanced." **But many judges and legal scholars in this country say that consideration of foreign legal precedents in American judicial decisions is illegitimate, and that there can be no transnational dialogue about the meaning of the United States Constitution**. The Constitution should be interpreted according to its original meaning, said John O. McGinnis, a law professor at Northwestern, and recent rulings, whether foreign or domestic, cannot aid in that enterprise. Moreover, Professor McGinnis said, decisions applying foreign law to foreign circumstances are not instructive here. "It may be good in their nation," he said. "There is no reason to believe necessarily that it's good in our nation." In any event, said Eric Posner, a law

professor at the University of Chicago, many Americans are deeply suspicious of foreign law. “We are used to encouraging other countries to adopt American constitutional norms,” he wrote in an essay last month, “but we have never accepted the idea that we should adopt theirs.” “It’s American exceptionalism,” Professor Posner added in an interview. “The view going back 200 years is that we’ve figured it out and people should follow our lead.”

AT: JI – China – No Modeling

China won’t model U.S. courts

China Daily Mail 15 (China Daily Mail is a collection of interesting stories about China, as well as a chance for writers to promote their own sites. Some of our most prominent stories that have been picked up by major media publications around the world include, 2/27/15, China Daily Mail, China’s Xi Jinping comes up with a new political doctrine, the ‘Four Comprehensives’ – a strategic blueprint for China’s future, http://chinadailymail.com/2015/02/27/chinas-xi-jinping-comes-up-with-a-new-political-doctrine-the-four-comprehensives-a-strategic-blueprint-for-chinas-future/, 7/9/15, HDA)

China's top court has urged officials from the ruling Communist Party to shun Western-style judicial independence and reject "erroneous Western thought", state media said on Thursday, as controls over the media, dissent and the Internet are tightened. The comments by China's Supreme Court, Beijing's latest attack on Western ideology, are also another sign of President Xi Jinping's conservative political agenda. The party has signaled that it will not embark on political reform, despite hopes that Xi, the son of a former liberal-minded vice premier, might relax tight central controls. A meeting of the Supreme Court's party committee on Wednesday said China would draw boundaries with the West's notion of "judicial independence" and "separation of powers", the state-run China News Service said. "Resolutely resist the influence of the West's erroneous thought and mistaken viewpoints," it said on its website, citing the meeting. China's top judge, Zhou Qiang, "stressed the need to unswervingly take the road of socialism with Chinese characteristics", it said, reiterating Beijing's stance that it is the best way to govern the world's most populous nation. The party has long railed against Western values, including concepts like multi-party democracy and universal human rights. The tenor has become more shrill under Xi, who has urged more "ideological guidance" at universities as well as the study of Marxism. The Minister of Education said last month China must keep educational materials that promote "Western values" out of its classrooms. Last year, the party pledged to speed up legislation to fight corruption and make it tougher for officials to exert control over the judiciary, even as it stressed full control over the courts. Xi has espoused old school Maoism as he seeks to court powerful conservative elements in the party. Like many officials before him, Xi is steeped in the party's long-held belief that loosening control too quickly, or even at all, could lead to chaos and the break-up of the country.

AT: JI – Not Possible

Judicial independence is a myth- executive and legislative branches always have influence over decisions

McNollgast 06 (McNollgast earned undergraduate degrees from Caltech, UC Irvine, and UC Santa Cruz, and ph.d.s from Caltech and Harvard. McNollgast has held professorial appointments at Caltech, Duke, Stanford, Texas, UC San Diego, USC, and Washington University, St. Louis, as well as Senior Fellow appointments at Brookings and Hoover, 2006, Chancellors Chair of Political Science, Conditions for Judicial Independence, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5975&context=faculty_scholarship, 7/10/15, HDA

What does it mean for a judiciary to be "independent"? What are the conditions required for judicial independence to exist? Many scholars have addressed these questions, but there remains much disagreement as to the answers.2 For some, judicial independence requires little more than life tenure for judges,3 while for others, judicial independence * Chancellor's Associates Chair of Political Science, University of California, San Diego and Professor of Law, University of San Diego; Morris M. Doyle Professor of Public Policy, Department of Economics, Stanford University; and Senior Fellow, Hoover Institution, and Ward C. Krebs Family Professor of Political Science, Stanford University. expect one chamber of the legislature or the executive branch to protect judicial independence by vetoing (or threatening to veto) legislative actions that would overturn Supreme Court decisions. On the flip side, we expect unified control of government to weaken judicial independence, as the legislature and executive can coordinate on governmental changes that may undermine the judiciary's independence. These are just two of the many predictions that we generate about the "waxing" and "waning" of judicial independence, and in order to explore these predictions and several others, we draw upon positive political theory to model formally the game that is played among our three branches of government. The foundation of our model stems from Alexander Hamilton's observation in The Federalist No. 78 that courts, by themselves, cannot implement their own orders or opinions. Indeed, for judicial orders and opinions to have force, courts (most notably, the Supreme Court) must get the executive and perhaps even the legislative branch behind them. **Although it is difficult for Congress and the president to overturn a court decision with which they disagree,8 it is much more difficult to get them to implement a policy that they oppose. However, for judicial orders and opinions to have an effect the Supreme Court must obtain compliance from those to whom the orders and opinions are directed: lower courts, executive agencies, commissions, state and local governments and their agencies, corporations, and individuals**. These actors are the agents of judicial impact, who, of course, have their own ideas about what they should and should not be doing, and who will spend their resources optimally between compliance and dodging oversight. **Thus, in the principal-agent relationship that characterizes the judiciary and its many agents, the judiciary has neither the capacity to enforce its will nor the ability to oversee compliance with its instructions. In this way, the limits on judicial independence are the direct result of the relative impoverishment of judicial power and of the legislature and executive's ability to take advantage of the judiciary's relative weakness.** For example, the judiciary does not have a General Accounting Office (GAO) and its nearly 50,000 oversight agents, as the legislature does. Nor does it have a far-flung fire-alarm network from which it can cull reliable signals about compliance and non-compliance and from which it can distinguish shirking from bad luck.9 As an illustration of the

many enforcement difficulties that the judiciary faces, note how overseeing compliance with school desegregation decrees, especially in the face of hostile school boards, is a lifetime ambition for the Court, one which necessarily precludes addressing other matters and one for which compliance notoriously fades into the shadows once the spotlight no longer shines on the issue. The purpose of this article is to explore the ideas central to Hamilton's argument in The Federalist No. 78. **To do this we model the Supreme Court's choice of doctrine within a policymaking game, where doctrine defines the rules by which policy is to be chosen, but does not itself define the policy choices.**' 0 **The core of the model involves a game wherein the Court sets doctrine and monitors compliance with its doctrine. We then examine the tradeoffs that arise as a result of scarcity and uncertainty in attaining compliance from the Court's agents**. Our key conclusions are threefold. First, **the Court, due to imperfect information and limited resources for hearing appeals, cannot induce perfect adherence to its doctrine by its agents. Indeed, we show how doctrine results from the Court's attempts to maximize compliance from its various agents. Doctrine on this account is not what the Court believes is the best policy to pursue for its own sake, but rather is an instrument used to gain compliance**. In areas where potential case numbers are huge relative to the Court's ability to review cases, the Court must set a lax standard-as in Brown's ambiguous message to school districts to desegregate with "all deliberate speed." In areas where the cases are relatively few and the Court highly values the outcome, such as abortion, the Court can set a tight standard. 9. A fire-alarm network differs from a police-patrol network in that fire alarms are a decentralized way to acquire information about one's agents and their behavior whereas police patrols involve active oversight and monitoring of agents. A fire-alarm network allows principals to respond only to violations of procedure or policy that generate complaints, rather than having to observe all actors comply with the appropriate process. See Mathew D. McCubbins & Thomas Schwartz, Congressional Oversight Overlooked: Police Patrols versus Fire Alarms, 28 AM. J. POL. SCt. 165 (1984). 10. For example the Supreme Court created the Chevron Doctrine which directs courts to take a two-stage process during review of agency decisions. First, determine if there is Congressional intent and if so it governs the decision at hand, regardless of the agency's decision. If the court finds that legislative intent cannot be determined, then it is to defer to the agency's decision as long as it is reasonable. See McNollgast, Politics and the Courts: A Positive Theory of Judicial Doctrine and the Rule of Law, 68 S. CAL. L. Second, stare decisis emerges in this model from strategic interaction by the Supreme Court in its supervisory role of the lower courts, not from any norm or preference on the part of judges to follow precedent. In our model, a lower court that must decide whether to comply with the Court's doctrine will either choose its ideal point or the closest point in the set of acceptable decisions. Non-complying lower courts risk review by the Court and, if found to be non-complying, having their decision overturned and moved to the Court's ideal point. This threat induces many lower courts to comply. Of course, per our first point, the Court must adjust its doctrine to fit the circumstances of compliance: the greater the potential number of non-complying courts and the lower the value of the issue area to the Court, the laxer the doctrine and the wider the range of acceptable decisions. Our approach implies that stare decisis emerges as an equilibrium outcome in a game between the Court and its agents. Third, **political actors can take advantage of this situation by exacerbating the Supreme Court's scarcity; that is, they can influence judicial doctrine by expanding the number and reach of executive agencies, commissions, lower courts and so on**. By forcing the Court to face more cases or by restricting its ability to review cases, legislators and the executive indirectly affect doctrine by forcing the Court to widen or narrow the range of acceptable decisions. In this way, elected officials use structure and process to influence judicial policy in

much the same way that they use administrative structure and process to influence agency policymaking." For example, our previous work demonstrated how a unified set of political branches opposing a Supreme Court could force it to alter its doctrine in their favor by expanding the lower judiciary and forcing the Court to face many more potentially non-complying lower courts." Lower court expansion exacerbates the Court's compliance problem, forcing them to expand the range of acceptable decisions in the direction favored by legislators and the executive. Indirectly they affect the agenda for the judiciary's choice of doctrine, causing the Court to shift its focus in policymaking, leaving some areas unattended, while forcing the Court to use its scarce resources to affect doctrine in other areas. Our main result is that the more closely aligned and coordinated are the political branches, the more likely they are to agree on policy outcomes, which enables them to reduce the number of issues on which the Court can exercise meaningful independent discretion. This Article proceeds as follows. In Part II, we discuss various theories of judicial decisionmaking and present our model. In Part III we discuss the implications of our model. In Part IV, we derive the key comparative statics of our model. In Parts V & VI, we conclude with a discussion of how our model sheds light on the waxing and waning of judicial independence in the United States, and we also discuss the application of our model to the comparative context.

AT: JI – US – Fails

Judicial independence leads to unchecked judicial behavior

Ragsdale '15 (Bruce Ragsdale, served as director of the Federal Judicial History Office at the Federal Judicial Center and as associate historian of the U.S. House of Representatives, "Judicial Independence and the Federal Courts", fjc.gov, http://www.fjc.gov/public/pdf.nsf/lookup/JudicialIndependence.pdf/$file/JudicialIndependence.pdf, Published in 2006, Accessed on July 13 2015, CMT)

A prominent Anti-Federalist critic of the Constitution acknowledged the importance of judicial independence as secured by service during good behavior, but "Brutus" also recognized that the judicial independence envisioned by the Constitution was unprecedented. Judges would be removable only by impeachment and conviction of "high crimes and misdemeanors" rather than by a vote of the legislature, as was the case in most other governments with judicial tenure during good behavior. "Brutus" warned that regardless of errors of judgment or inability to carry out their duties, federal judges would be "independent of the people, of the legislature, and of every power under heaven." He also worried that these largely unaccountable judges would have the final say on the meaning of the Con- Judicial Independence and the Federal Judiciary ~ Federal Judicial Center 3 stitution, but Hamilton and other framers of the proposed government thought that the courts' responsibility to determine the constitutionality of laws, and thus to protect individual rights, was precisely the reason for the extraordinary protections of judicial independence. Hamilton dismissed concerns about unchecked judicial power, since the courts had "no influence over either the sword or the purse."

No War Answers

Yes War

International flashpoints make global war realistic

Cohen 14 (Roger. Roger Cohen is a columnist for *The New York Times* and an author. 8-2014. "Yes It Could Happen Again". The Atlantic. http://www.theatlantic.com/magazine/archive/2014/08/yes-it-could-happen-again/373465/. Accessed 7-8-2015. KC)

The unimaginable can occur. That is a notion at once banal and perennially useful to recall. Indeed, it has just happened in Crimea, where a major power has forcefully changed a European border for the first time since 1945. Russia's act of annexation and its evident designs on eastern Ukraine constitute a reminder that NATO was created to protect Europe after its pair of 20th-century self-immolations. NATO's core precept, as the Poles and other former vassals of the Soviet empire like to remind blithe western Europeans, is Article 5, by which the Allies agreed that "an armed attack against one or more of them in Europe or North America shall be considered an attack against them all," triggering a joint military response. This has proved a powerful deterrent against potential adversaries. Vladimir Putin, the Russian president, has been most aggressive in the no-man's-lands of Georgia and Ukraine, nations suspended between East and West, neither one a member of NATO. Had Ukraine been a member of NATO, the annexation of Crimea would have come only at the (presumably unacceptable) price of war. Article 5, until demonstrated otherwise, is an ironclad commitment. When a 19-year-old Bosnian Serb nationalist, Gavrilo Princip, assassinated the heir to the Austro-Hungarian throne in Sarajevo, on June 28, 1914, he acted to secure Serbia's liberty from imperial dominion. He could not have known that within weeks, Austria-Hungary would declare war on Serbia, goading Russia (humiliated in war a decade earlier by Japan) to mobilize in defense of its Slavic ally, which caused the kaiser's ascendant Germany to launch a preemptive attack on Russia's ally France, in turn prompting Britain to declare war on Germany. Events cascade. It is already clear that the nationalist fervor unleashed by Putin after a quarter century of Russia's perceived post–Cold War decline is far from exhausted. Russians are sure that the dignity of their nation has been trampled by an American and European strategic advance to their border dressed up in talk of democracy, the rule of law, and human rights. Whether this is true is irrelevant; they believe it. National humiliation, real or not, is a tremendous catalyst for war. That was the case in Germany after the Treaty of Versailles imposed reparations and territorial concessions; so, too, in Serbia more than 70 years later, after the breakup of Yugoslavia, a country Serbia had always viewed as an extension of itself. Russia, convinced of its lost greatness, is gripped by a Weimar neurosis resembling Germany's post–World War I longing for its past stature and power. The Moscow-backed separatists taking over government buildings in eastern Ukraine and proclaiming an independent "Donetsk People's Republic" demonstrate the virulence of Russian irredentism. Nobody can know where it will stop. Appetite, as the French say, grows with eating. Let us indulge in dark imaginings, then, in the cause of prudence. Here is one possible scenario: Clashes intensify between Ukrainian government forces and paramilitary formations organized by Russian fifth columnists. The death toll rises. The ongoing NATO dispatch of troops and F- 16s

to Poland and the Baltic states, designed as a deterrence, redoubles anger in Russia—"a great and humble nation besieged," a Russian general might declare. The American president, saying his war-weary country will not seek conflict, imposes sanctions on the entire Russian oil-and-gas sector. European states dependent on Russian energy grumble; a former German chancellor working in natural gas says his country's interests lie with Moscow. Then, say, an independence movement of the Russian minority gains momentum in Estonia, backed with plausible deniability by Moscow's agents, and announces support for the Donetsk People's Republic. A wave of cyberattacks disables Estonian government facilities, and an Estonian big shot calls the Russian leader an "imperialist troglodyte trapped in a zero-sum game." After an assassination attempt on the Estonian foreign minister at a rally in the capital, calls grow louder for the American president to invoke Article 5. He insists that "drawing red lines in the 21st century is not a useful exercise." The unimaginable can occur. Indeed, it has just happened in Crimea. Let us further imagine that shortly after the president delivers his speech, in a mysterious coincidence, a Chinese ship runs aground on one of the uninhabited Senkaku Islands, administered by Japan, in the East China Sea. China dispatches a small force to what it calls the Diaoyu Islands "as a protective measure." Japan sends four destroyers to evict the Chinese and reminds the American president that he has said the islands, located near undersea oil reserves, "fall within the scope" of the U.S.-Japan Treaty of Mutual Cooperation and Security. A Republican senator, echoing the bellicose mood in Washington, declares that "Estonia is more than a couple of rocks in the East China Sea" and demands to know whether "the United States has torn up the treaty alliances in Europe and Asia that have been the foundation of global security since 1945." The president gives China an ultimatum to leave the Japanese islands or face a military response. He also tells Russia that another act of secessionist violence in Estonia will trigger NATO force against Russian troops massed on the Estonian border. Both warnings are ignored. Chinese and Russian leaders accuse the United States of "prolonging Cold War hostilities and alliances in pursuit of global domination." World War III begins. It could not happen; of course it couldn't. Peace, if not outright pacifism, is now bred in the bones of Europeans, who contemplate war with revulsion. Europe is politically and economically integrated. America, after two wars without victory, is in a period of retrenchment that may last a generation. Wars no longer happen between big land armies; they are the stuff of pinpoint strikes by unpiloted drones against jihadist extremists. Putin's Russia is opportunistic—it will change the balance of power in Ukraine or Georgia if it considers the price acceptable—but it is not reckless in countries under NATO protection. China, with its watchword of "Harmony," is focused on its own rising success and understands the usefulness of the United States as an offsetting Pacific power able to reassure anxious neighbors like Japan and Vietnam. For the time being, Beijing will not seek to impose its own version of the Monroe Doctrine. It will hold nationalism in check even as the Asian naval arms race accelerates. Unlike in 1914 or 1939, the presence of large American garrisons in Europe and Asia sustains a tenacious Pax Americana. The United Nations, for all its cumbersome failings, serves as the guarantor of last resort against another descent into horror. The specter of nuclear holocaust is the ultimate deterrent for a hyperconnected world. Citizens everywhere now have the tools to raise a cacophony in real time against the sort of folly that, in World War I, produced the deaths of so many unidentifiable young men "known unto God," in Kipling's immortal phrasing. Convincing? It would certainly be nice to believe that, as President Clinton suggested in 1997, great-power territorial politics are a thing of the past. A new era had dawned, he said, in which "enlightened self-interest, as well as shared values, will compel countries to define their greatness in more-constructive ways." In fact, the realization that the Russian bear can bite as well as growl is timely. It is a reminder that a multipolar world in a time of transition, when popular resentments

are rising over joblessness and inequality, is a dangerous place indeed. The international system does not look particularly stable. The Cold War's bipolar confrontation, despite its crises, was predictable. Today's world is not. It features a United States whose power is dominant but no longer determinant; a one-party China that is a rising hegemon; an authoritarian Russia giddy on nationalism and the idea of a restored imperium; and a weak, navel-gazing, blasé Europe whose pursuit of an ever closer union is on hold and perhaps on the brink of reversal.

No war predictions parallel those before World War I and World War II

Cohen 14 (Roger. Roger Cohen is a columnist for *The New York Times* and an author. 8-2014. "Yes It Could Happen Again". The Atlantic. http://www.theatlantic.com/magazine/archive/2014/08/yes-it-could-happen-again/373465/. Accessed 7-8-2015. KC)

Pessimism is a useful prism through which to view the affairs of states. Their ambition to gain, retain, and project power is never sated. Optimism, toward which Americans are generally inclined, leads to rash predictions of history's ending in global consensus and the banishment of war. Such rosy views accompanied the end of the Cold War. They were also much in evidence a century ago, on the eve of World War I. Then, as now, Europe had lived through a long period of relative peace, after the end of the Napoleonic Wars. Then, too, rapid progress in science, technology, and communications had given humanity a sense of shared interests that precluded war, despite the ominous naval competition between Britain and Germany. Then, too, wealthy individuals devoted their fortunes to conciliation and greater human understanding. Rival powers fumed over provocative annexations, like Austria-Hungary's of Bosnia-Herzegovina in 1908, but world leaders scarcely believed a global conflagration was possible, let alone that one would begin just six years later. The very monarchs who would consign tens of millions to a murderous morass from 1914 to 1918 and bury four empires believed they were clever enough to finesse the worst. The unimaginable can occur. That is a notion at once banal and perennially useful to recall. Indeed, it has just happened in Crimea, where a major power has forcefully changed a European border for the first time since 1945. Russia's act of annexation and its evident designs on eastern Ukraine constitute a reminder that NATO was created to protect Europe after its pair of 20th-century self-immolations. NATO's core precept, as the Poles and other former vassals of the Soviet empire like to remind blithe western Europeans, is Article 5, by which the Allies agreed that "an armed attack against one or more of them in Europe or North America shall be considered an attack against them all," triggering a joint military response. This has proved a powerful deterrent against potential adversaries. Vladimir Putin, the Russian president, has been most aggressive in the no-man's-lands of Georgia and Ukraine, nations suspended between East and West, neither one a member of NATO. Had Ukraine been a member of NATO, the annexation of Crimea would have come only at the (presumably unacceptable) price of war. Article 5, until demonstrated otherwise, is an ironclad commitment. When a 19-year-old Bosnian Serb nationalist, Gavrilo Princip, assassinated the heir to the Austro-Hungarian throne in Sarajevo, on June 28, 1914, he acted to secure Serbia's liberty from imperial dominion. He could not have known that within weeks, Austria-Hungary would declare war on Serbia, goading Russia (humiliated in war a decade earlier by Japan) to mobilize in defense of its Slavic ally, which caused the kaiser's ascendant Germany to launch a preemptive attack on Russia's ally

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considers the price acceptable—but it is not reckless in countries under NATO protection. China, with its watchword of "Harmony," is focused on its own rising success and understands the usefulness of the United States as an offsetting Pacific power able to reassure anxious neighbors like Japan and Vietnam. For the time being, Beijing will not seek to impose its own version of the Monroe Doctrine. It will hold nationalism in check even as the Asian naval arms race accelerates. Unlike in 1914 or 1939, the presence of large American garrisons in Europe and Asia sustains a tenacious Pax Americana. The United Nations, for all its cumbersome failings, serves as the guarantor of last resort against another descent into horror. The specter of nuclear holocaust is the ultimate deterrent for a hyperconnected world. Citizens everywhere now have the tools to raise a cacophony in real time against the sort of folly that, in World War I, produced the deaths of so many unidentifiable young men "known unto God," in Kipling's immortal phrasing. Convincing? It would certainly be nice to believe that, as President Clinton suggested in 1997, great-power territorial politics are a thing of the past. A new era had dawned, he said, in which "enlightened self-interest, as well as shared values, will compel countries to define their greatness in more-constructive ways." In fact, the realization that the Russian bear can bite as well as growl is timely. It is a reminder that a multipolar world in a time of transition, when popular resentments are rising over joblessness and inequality, is a dangerous place indeed. The international system does not look particularly stable. The Cold War's bipolar confrontation, despite its crises, was predictable. Today's world is not. It features a United States whose power is dominant but no longer determinant; a one-party China that is a rising hegemon; an authoritarian Russia giddy on nationalism and the idea of a restored imperium; and a weak, navel-gazing, blasé Europe whose pursuit of an ever closer union is on hold and perhaps on the brink of reversal. Pacifist tendencies in western Europe coexist with views of power held in Moscow and Beijing that Bismarck or Clausewitz would recognize instantly. After the genocides in Rwanda and Bosnia, the UN General Assembly ratified the concept that governments have a "responsibility to protect" their citizens from atrocities. But in the face of Syria's bloody dismemberment and Ukraine's cynical dismantlement, idealism of that kind looks fluffy or simply irrelevant. The Baltic countries are front-line states once again. The fleeting post–Cold War dream of a zone of unity and peace stretching from Lisbon to Vladivostok has died. As John Mearsheimer observes in his seminal The Tragedy of Great Power Politics, "Unbalanced multipolar systems feature the most dangerous distribution of power, mainly because potential hegemons are likely to get into wars with all of the other great powers in the system." In this context, nothing is more dangerous than American weakness. It is understandable that the United States is looking inward after more than a decade of post-9/11 war. But it is also worrying, because the credibility of American power remains the anchor of global security. The nation's mood is not merely a reflection of economic hardship or the costs of war; it is also determined by the president's decisions and rhetoric. There was no American majority for involvement in World War I or World War II—until the president set out to forge one (helped decisively in Franklin D. Roosevelt's case by Pearl Harbor). As Jonathan Eyal of Britain's Royal United Services Institute says, "If a president stands up and says something, he can shift the debate." President Obama has made clear he does not believe in military force. His words spell that out; so does his body language. He asks, after Iraq and Afghanistan, what force accomplishes. These are fair questions; the bar must be very high for unleashing military power. But when an American president marches allies up the hill to defend his "red line"—as Obama did regarding Syria's use of chemical weapons—and then marches them back down again, he does something damaging that the world does not forget. And when Obama, in response to a recent question about whether declaring that the United States would protect the Senkaku Islands risked drawing another "red line," gives an evasive answer, he does

something so dangerous that his words are worth repeating: The implication of the question, I think, … is that each and every time a country violates one of these norms, the United States should go to war or stand prepared to engage militarily, and if it doesn't, then somehow we're not serious about these norms. Well, that's not the case. If these treaty obligations do not constitute a red line triggering a U.S. military response—the only way to prove the seriousness of "these norms"—all bets are off in a world already filled with uncertainties. A century ago, in the absence of clear lines or rules, it was just this kind of feel-good hope and baseless trust in the judgment of rival powers that precipitated catastrophe. But that, it may be said, was then. The world has supposedly been transformed. But has it? Consider this article in my father's 1938 high-school yearbook: The machine has brought men face to face as never before in history. Paris and Berlin are closer today than neighboring villages were in the Middle Ages. In one sense distance has been annihilated. We speed on the wings of the wind and carry in our hands weapons more dreadful than the lightning … The challenge of the machine is the greatest opportunity mankind has yet enjoyed. Out of the rush and swirl of the confusions of our times may yet arise a majestic order of world peace and prosperity. Optimism is irrepressible in the human heart—and best mistrusted. Our world of hyperconnectivity, and the strains and aspirations that accompany it, is not so novel after all. The ghosts of repetition reside alongside the prophets of progress. From the "rush and swirl" of 1938 where "distance has been annihilated" would follow in short order the slaughter of Stalingrad, the mass murder of European Jewry, the indiscriminate deaths in Hiroshima and Nagasaki, and the anguish of all humanity. We should not lightly discard a well-grounded pessimism or the treaties it has produced.

Nuclear escalation is probable in an international war, the other option is alliance collapse

Fisher 15 (Max. Max Fisher is a freelance journalist and a former writer and editor at The Atlantic. 6-29-2015. "How World War III became possible: A Nuclear conflict with Russia is likelier than you think". Vox. http://www.vox.com/2015/6/29/8845913/russia-war. Accessed 7/8/2015. KC)

The view among many Western analysts is that the nuclear-capable missiles are meant as a gun against the heads of the Americans and the Europeans: You better not mess with us Russians, or who knows what we'll do. Putin himself endorsed this view in a 2014 speech in Sochi, where he approvingly cited Soviet leader Nikita Khrushchev's 1960 address to the United Nations, when he hammered his shoe on the podium. "The United States and NATO thought, 'This Nikita is best left alone, he might just go and fire a missile. We better show some respect for them,'" Putin said. This sort of a nuclear threat could be a perfect way for Putin to attempt the sort of NATO-splitting scenario described by analysts like Piontkovsky. What if, Lucas asked as an example in his report, Putin found some excuse to declare a Russian "military exclusion zone" in the Baltic Sea, thus physically cutting off the Baltic states from the rest of NATO? "Would America really risk a nuclear standoff with Russia over a gas pipeline?" Lucas asked. "If it would not, NATO is over. The nuclear bluff that sustained the Western alliance through all the decades of the Cold War would have been called at last." Putin's love of brinksmanship, while perhaps born of Russia's weakness, is also deeply worrying for what it says about the leader's willingness and even eagerness to take on huge geopolitical risk. "Either he has a very weird theory of nuclear weapons, or he just doesn't take the West seriously and is trying to cow us with whatever threat he can make," Saideman, the political scientist, said, going on to draw yet another of the many

parallels analysts have drawn to the onset of World War I. "There are two visions of international relations: One is that threats work, and one is that threats don't, where they cause counter-balancing," Saideman continued. "This was the theory of the [German] Kaiser before World War I: the more threatening you are, the more people will submit to your will. That might be Putin's logic, that he's just going to threaten and threaten and hope that NATO bends. But the long run of international relations suggests that it goes the other way, where the more threatening you are the more you produce balancing." In other words, Putin is hoping to compensate for his weakness by expressing his willingness to go further, and to raise the stakes higher, than the more powerful Western nations. But his actions are premised on a flawed understanding of how the world works. In fact, he is virtually forcing the West to respond in kind, raising not just the risk of a possible war, but the ease with which such a war would go nuclear.

Postmodern hybrid war causes small conflicts to escalate into power war

Fisher 15 (Max. Max Fisher is a freelance journalist and a former writer and editor at The Atlantic. 6-29-2015. "How World War III became possible: A Nuclear conflict with Russia is likelier than you think". Vox. http://www.vox.com/2015/6/29/8845913/russia-war. Accessed 7/8/2015. KC) Note: "Hybrid war" is used in this article as unclear aggressive action that can escalate before it becomes apparent that it crosses in line into "war".

This poll is even worse than it looks. It assumes that Russia would launch an overt military invasion of the Baltics. What would actually happen is something far murkier, and far more likely to leverage European hesitation: the playbook from Ukraine, where Russia deployed its newly developed concepts of postmodern "hybrid war," designed to blur the distinction between war and not-war, to make it as difficult as possible to differentiate grassroots unrest or vigilante cyberattacks from Russian military aggression. Putin may already be laying the groundwork. In March of 2014, shortly after Russia had annexed Crimea, Putin gave a speech there pledging to protect Russians even outside of Russia, which many took as a gesture to the substantial Russian minorities in the Baltics. "That kind of misperception situation is definitely possible, and that's how wars start" Then, in October, Putin warned that "open manifestations of neo-Nazism" had "become commonplace in Latvia and other Baltic states" — repeating the language that he and Russian state media had earlier used to frighten Russian speakers in Ukraine into taking up arms. This April, several Russian outlets issued spurious reports that Latvia was planning to forcibly relocate ethnic Russians into Nazi-style ghettos — an echo of similar scaremongering Russian propaganda broadcast in the runup in Ukraine. Martin Hurt, a former senior official of the country's defense ministry, warned that his country's ethnic Russian minority could be "receptive to Kremlin disinformation." Moscow, he said, could generate unrest "as a pretext to use military force against the Baltic states." In early 2007, Estonia's parliament voted to relocate a Soviet-era military statue, the Bronze Soldier, that had become a cultural symbol and annual rallying point for the country's ethnic Russians. In response, Russian politicians and state media accused the Estonian government of fascism and Nazi-style discrimination against ethnic Russians; they issued false reports claiming ethnic Russians were being tortured and murdered. Protests broke out and escalated into riots and mass looting. One person was killed in the violence, and the next day hackers took many of the country's major institutions offline. Russia could do it again, only this time gradually escalating further toward a Ukraine-style conflict. NATO is just not built to

deal with such a crisis. Its mutual defense pledge, after all, rests on the assumption that war is a black-and-white concept, that a country is either at war or not at war. Its charter is from a time when war was very different than it is today, with its many shades of gray. Russia can exploit this flaw by introducing low-level violence that more hawkish NATO members would consider grounds for war but that war-averse Western European states might not see that way. Disagreement among NATO's member states would be guaranteed as they hesitated over where to declare a moment when Russia had crossed the line into war. Meanwhile, Russian state media, which has shown real influence in Western Europe, would unleash a flurry of propaganda to confuse the issue, make it harder to pin blame on Moscow for the violence, and gin up skepticism of any American calls for war. Germany, which is widely considered the deciding vote on whether Europe would go to war, would be particularly resistant to going to war. The legacy of World War II and the ideology of pacifism and compromise make even the idea of declaring war on Russia unthinkable. German leaders would come under intense political pressure to, if not reject the call to arms, then at least delay and negotiate — a de facto rejection of NATO's collective self-defense. In such a scenario, it is disturbingly easy to imagine how NATO's European member states could split over whether Russia had even crossed their red line for war, much less whether to respond. Under a fog of confusion and doubt, Russia could gradually escalate until a Ukraine-style conflict in the Baltics was foregone, until it had marched far across NATO's red line, exposing that red line as meaningless. But the greatest danger of all is if Putin's plan were to stumble: By overreaching, by underestimating Western resolve to defend the Baltics, or by starting something that escalates beyond his control, it could all too easily lead to full-blown war. "That kind of misperception situation is definitely possible, and that's how wars start," Saideman said, going on to compare Europe today with 1914, just before World War I. **"The thing that makes war most thinkable is when other people don't think it's thinkable."** In 1963, a few months after the Cuban missile crisis had almost brought the US and Soviet Union to blows, President John F. Kennedy gave a speech drawing on the lessons of the world's brush with nuclear war: "Above all, while defending our vital interests, nuclear powers must avert those confrontations which bring an adversary to a choice of either a humiliating retreat or a nuclear war." That is the choice that Putin may well force upon NATO.

National leaders think they can "win" a nuclear war – this makes it far more likely

Fisher 15 (Max. Max Fisher is a freelance journalist and a former writer and editor at The Atlantic. 6-29-2015. "How World War III became possible: A Nuclear conflict with Russia is likelier than you think". Vox. http://www.vox.com/2015/6/29/8845913/russia-war. Accessed 7/8/2015. KC)

There is a corollary in Russia's nuclear doctrine, a way in which the Russians believe they have solved the problem of Western military superiority, that is so foolhardy, so dangerous, that it is difficult to believe they really mean it. And yet, there is every indication that they do. That corollary is Russia's embrace of what it calls a "de-escalation" nuclear strike. Go back to the scenario spelled out in Russia's military doctrine: a conventional military conflict that poses an existential threat to the country. The doctrine calls for Russia to respond with a nuclear strike. But imagine you're a Russian leader: How do you drop a nuclear bomb on NATO's troops without forcing the US to respond with a nuclear strike in kind, setting off a tit-for-tat cycle of escalation that would end in total nuclear war and global devastation? Russia's answer, in the case of such a

conflict, is to drop a single nuclear weapon — one from the family of smaller, battlefield-use nukes known as "tactical" weapons, rather than from the larger, city-destroying "strategic" nuclear weapons. The idea is that such a strike would signal Russia's willingness to use nuclear weapons, and would force the enemy to immediately end the fight rather than risk further nuclear destruction. Nikolai Sokov, a nuclear weapons expert and former official in the Russian Foreign Affairs Ministry, explained in the Bulletin of Atomic Scientists that this is not a far-fetched option of last resort; it has become central to Russian war planning. "Such a threat is envisioned as deterring the United States and its allies from involvement in conflicts in which Russia has an important stake, and in this sense is essentially defensive," Sokov wrote. "Yet, to be effective, such a threat also must be credible. To that end, all large-scale military exercises that Russia conducted beginning in 2000 featured simulations of limited nuclear strikes." Buzhinsky, the recently retired member of Russia's General Staff, confirmed in our meeting that this is something the military sees as a viable option. "If Russia is heavily attacked conventionally, yes, of course, as it's written in the doctrine, there may be limited use of nonstrategic nuclear weapons," he said. "To show intention, as a de-escalating factor." **It is difficult to imagine a more dangerous idea** in the world of military planning today than of a "limited" nuclear war. Scholars have debated for decades, and still debate today, whether the concept of limited nuclear war is realistic, or whether such a conflict would inevitably spiral into total nuclear war. Put another way, no one knows for sure whether Russia's military planners have sown the seeds for global nuclear destruction. Seen from the Russian side, it is at least possible to imagine how this doctrine might make sense: The threat of NATO's conventional forces is widely seen as both overwhelming and imminent, making such an extreme step worth considering. Ever since the fall of the Soviet Union, Russia's strategic culture has increasingly emphasized its nuclear arsenal, the one remaining legacy of its fearsome great-power status. It is a sort of Russian cult of the nuclear weapon, or even a certain strategic fetish. With nukes so central to Russian strategic thinking, it is little wonder Moscow sees them as the solution to its greatest strategic problem. But when you consider this doctrine from the American side, you begin to see what makes it dangerous, even insane. Imagine that you are an American leader and your forces in Eastern Europe have somehow been drawn into conflict with the Russians. Perhaps, as artillery and planes from within Russia hammer your forces, you counterattack on Russian soil to take them out. The Kremlin, fearing the start of an invasion to take Moscow, drops a tactical nuclear warhead on your forces in Estonia or Latvia. You have no idea whether more Russian nuclear strikes are coming, either on the battlefield, more widely on Europe, or even against Washington or New York. Do you respond with an in-kind tactical nuclear strike, opening the risk of gradual escalation to total nuclear war? Do you, fearing the worst, move to take out the Russian leadership before they can order more attacks? Or do you announce a unilateral ceasefire, drawing your forces back in humiliation, rewarding Russia with a victory? It is difficult to imagine a more dangerous idea than "limited" nuclear war Russia's nuclear doctrine is betting that any American leader — not to mention the leaders of nuclear-armed France and the UK — would choose the last of those three options. If that prediction turned out to be wrong, it would mean nuclear war, perhaps global nuclear war and thus annihilation. This doctrine, in other words, is **gambling with the fate of the world**. Such a scenario, to be clear, is remote, as are all of the nuclear scenarios. It would require a cascading series of events, and for neither side to pull back in time as those events built. The odds of this happening are quite low. But they are greater than zero, and growing. Such a scenario is within the realm of possibility — if it were not, then Russia would not regularly conduct military exercises that imagine exactly this outcome. And recall that Alexander Vershbow, the deputy secretary general of NATO, told a conference in late April that NATO is gaming out exactly such

a crisis. There are yet more worrying implications to this Russian doctrine. Its logical conclusion is that Russia sees itself as able to fight a war with the conventionally superior United States without losing, and that it can do this by using battlefield nuclear weapons. Under this doctrine, Moscow is deeming not only full-blown war against the US as imaginable, but a full-blown war with at least one nuclear detonation. That, perhaps, can help explain why Putin has seemed so willing to ratchet up the possibility of a real war with the United States, even one involving nuclear threats — he may believe that through his superior will and brinksmanship, he can avoid defeat. Adding a nuclear element to any conflict would also seem to increase the odds of NATO's Western European members splitting over how to respond, particularly if Russian propaganda can make the circumstances leading up to the detonation unclear. But this also shows the degree to which his entire strategy may rest in part on a shoddy premise — that "limited" nuclear war can be winnable — and one that puts the entire world at risk.

The threat of great power war even if unlikely must factor into policy decision making

Gosnell and Orzetti 12 (Rachael and Orzetti. Rachel Gosnell is a Lieutenant Commander in the US Navy and Michael Orzetti is a Second Lieutenant in the US Marine Corps. 4-2012. "Now Hear This – Is Great-Power War Still Possible?". Proceedings Magazine – United States Naval Institute. http://www.usni.org/magazines/proceedings/2012-04/now-hear-great-power-war-still-possible. Accessed 7-8-2015. KC)

The Center for Naval Analyses recently published Grand Strategy: Contemporary Contending Analyst Views and Implications for the U.S. Navy , a survey of potential U.S. strategies being debated in the academic and defense communities. The study identifies four competing lines of strategic thought: maintaining American hegemony, selective engagement, offshore balancing, and integrating collective international efforts. Two additional options—isolationism and world government—are noted and disregarded as not viable. Under this list of strategic options a sharp division is apparent, dictated by the question, "Is great-power war obsolete?" This fundamental question must be answered before any logical strategic decisions can be made. If great-power war is possible, then the de facto existential threat to U.S. interests, latent in the international system, must be addressed before all others. There are enormous implications for weapon procurement, operational doctrine, and force levels driven by this single issue. Global strategists point to economic globalization and the proliferation of nuclear weapons as modern guarantors of peace among major powers. However, we contend that these very rational hedges against violence can still be shattered by decidedly irrational and reactionary forces. Thus, the possibility of great-power war between China and the United States cannot be ruled out. Economic interdependence offers benefits beyond the sheer transfer of capital and goods—there can be no doubt of that. However, history renders globalization's deterrent effects at least somewhat questionable. Substantial economic interdependence existed throughout Europe prior to World War I, and Japan was hugely dependent on American oil imports in the years leading up to World War II. It was this dependence that made the U.S oil embargo intolerable, ultimately motivating the Japanese to attack Pearl Harbor. On the other hand, the existential threat of nuclear weapons has certainly resulted in a universal desire keep Pandora's Box firmly shut. While we concede the remarkable ability of weapons of mass destruction to dampen the oscillations of great-power relations, it is unclear that the nuclear restraint against total war ever takes limited war off the table as a strategic option. More fundamentally, though, the arguments for a nuclear-based "state of peace" are constrained by the limits of rationality. Rational bounds do not apply to the

ephemeral—yet extremely powerful—waves of bellicose nationalism that can sweep up an entire nation. National pride is embedded in the Chinese DNA—and rightly so. In certain segments of society, however, the sentiment manifests itself with a particular fervor, and some elements of the People's Liberation Army (PLA) epitomize this zeal. Alarmingly, the Communist Party leadership appears increasingly unable to act as a check on the military. Both Mao Zedong and Deng Xiaoping had ironclad control over the PLA, having earned unquestionable credibility during the Long March. Neither General Secretary of the Communist Party Hu Jintao nor First Secretary Xi Jinping can claim a similar rapport with the PLA. Neither possesses a comparable level of control. Any surge of aggressive nationalism, either in the PLA or among the greater masses, could conceivably compel contemporary party leadership toward a bellicosity it does not desire. How might this happen? The two most likely scenarios deal with Chinese "core interests" in the Pacific: sovereignty in the South China Sea and Taiwan. The South China Sea is no stranger to conflict. Its location and material promise have led to a host of conflicting territorial claims and brought the Chinese and Vietnamese to armed conflict over the Spratly Islands in the late 1980s. After a period of relative calm, tensions have once again begun to flare. American commitment to freedom of the seas in the region, exemplified by Secretary of State Hillary Clinton's July 2010 speech in Hanoi, Vietnam, provides ample opportunity for a Sino-American butting of heads. Similarly, the Republic of China remains a perennially sore issue for the Chinese; the furor over the sale of American F-16s provides an ample platform for future, more-polarizing interactions over Taiwan. War between China and the United States is unlikely. Economic interdependence and nuclear weapons are powerful, persuasive deterrents against it. However, Sino-American dealings, particularly in Taiwan or the South China Sea, provide instances in which the powder keg of Chinese nationalism could explode, effectively forcing party leadership into a series of irrational but irreversible actions. As such, the possibility of great-power war, unlimited or otherwise, cannot be ruled out. **U.S. policymakers must plan accordingly.**

Yes war & Surveillance Inevitable – States will perform surveillance and declare war to maintain their image – States care more about their ontological self-image than physical threats

Ralston '14 (Robert Ralston is a second-year Master's student in the Department of Political Science at Virginia Tech. His research interests broadly include international relations, critical security studies, cyberpolitics, and surveillance. Robert is writing a thesis that examines state ontological insecurity with respect to cyberspace, and how state surveillance practices are justified through narratives of liberty and security, MILTON WOLF SEMINAR, "CYBERSPACE AND SURVEILLANCE: CHALLENGES TO STATE IDENTITY AND ONTOLOGICAL SECURITY IN THE DIGITAL AGE" http://www.global.asc.upenn.edu/app/uploads/2015/04/Milton-Wolf-2014-Compendium.pdf#page=41 DA:7/8/15 CB)

Increasing state surveillance of the internet and a seeming lack of global accountability and best practices regarding foreign and domestic internet policies **demands the attention of students, scholars, and practitioners of** media and **communication**, political science, sociology, computer science, and the like. With these concerns in mind, the 2014 Milton Wolf Seminar highlighted themes of surveillance, visibility, disclosure, and espionage in the digital age. This essay seeks to touch upon some of these themes, and to present a case for the study of ontological security in international relations as a way to explain, in part, U.S. practices of surveillance following the leaks by former National Security Administration (NSA) contractor Edward Snowden. Politically, the stakes are high as cyberpolitics becomes an issue of "high politics" in the study of international relations; states and the agents who produce narratives about the state frame cyber discourse in ways that attempt to justify practices of surveillance, espionage, and censorship. States justify intrusion into cyberspace in the name of stability and an idealized self-image. This, can prove violent and costly,

with parallels to justifying war on the basis of empire in offline venues. In cyber venues, the United States in particular has had to justify state intrusion into cyber venues. Void of routinized responses to "traditional" threats, the state must reshape or reconfigure its self-image in order to combat the contradictions inherent in state intrusions into cyberspace. Taking in consideration such concerns and dynamics, this essay first sets out to explain ontological security in the study of international relations and the discursive practices of U.S. state agents in justifying state surveillance practices. It then concludes by drawing parallels between these discursive practices and various presentations at the 2014 Milton Wolf Seminar. Ontological Security in International Relations Theory Physical security concerns dominate realist accounts of security in world politics (Mitzen 2006: 342). Ontological security in international relations goes beyond the premise that states are solely concerned with physical security. The assumption that states only seek physical security, Mitzen (2006: 364) argues, constrains international relations theory by failing to explain why states may seek or continue conflict at the expense of physical security. Inherent in the conception of a state's ontological security is the notion of the state as person, or at the very least, that states are concerned with their own self-image. 20 Ontological security is about constructing and maintaining the stability of a state's self-image. Power, in this regard, can be understood in terms 20 See Wendt (2004) for a discussion of the validity and appropriateness of understanding the state as person in international relations theory. 40 of "a centralized body's internal capacity to perceive its ability to operate upon its own selfimage, as well as influence others and determine outcomes" (Steele 2010: 15). Thus, power is not solely based upon a state's ability to make other actors do what they would otherwise not do, to pose material threats to other states, or assert global influence; power is about the state's recognition that it can use and recreate its own self-image. States put forward narratives about themselves through state agents, such as government officials. State actions must be justified, even if they go against the grain of international norms or expectations (Steele 2008: 10). What is particularly interesting about the U.S response to the Snowden disclosures is the manner in which the disclosures were framed, the contradictions that arose as a result of this framing, and how the narratives that the state produced regarding NSA practices harken back to the self-image-making of the U.S. state. Why the United States? When examining speeches made by U.S. state agents, publications regarding U.S. citizenship, and the ways the United States is presented in popular culture, common trends emerge: The United States is presented as exceptional, as a land of shared values-- liberty, freedom, and prosperity—which were created by the nation's founding fathers. David Campbell (1998: 131) suggests that America is an imagined community "par excellence." America, like all other states, is dependent upon practices that make up its ontological being. However, as Campbell (1998) argues: Defined, therefore, more by absence than presence, America is peculiarly dependent on representational practices for its being. Arguably more than any other state, the imprecise process of imagination is what constitutes American identity (p. 91). Space and time in reference to U.S. identity is crucial to this analysis because successful fulfillment of ontological state security is predicated upon that state's ability to maintain a consistent self-identity and self-image. Void of a people as a foundational element, the United States' self-identity is quite fleeting, and, thus, hinges on representational, symbolic, and iconic imagery in order to ascribe to itself some form of identity (Campbell 1998: 132). The U.S. State Narrative In a speech made prior to Snowden's disclosures, President Obama spoke of the necessity to secure cyber infrastructure while maintaining the internet as a free and open space: Our pursuit of cybersecurity will not—I repeat, will not include—monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans. Indeed, I remain firmly committed to net neutrality so we can keep the Internet as it should be—open and free. In light of the Snowden disclosures, a contradiction arises between the actual behavior of the state through its national security agency and the self-image of the state. President Obama sends two distinct and seemingly irreconcilable messages regarding cyberspace: First, the United States, as a centralized power, recognizes the tensions that it must mediate between security and 41 liberty; Second, the United States has a vision for cyberspace, one focused on being "open and free." But free for whom? U.S. security policy is decentralized insofar as it attempts to do too much while still trying to keep a constant self-image (See Campbell 1998 and Gould and Steele 2014). Cyberspace is not an "American thing," but from cyberspace comes a multitude of images that only exacerbate the imagined nature of American identity. Thus, what cyberspace is and what cyberspace means, from an American perspective, is inherently American. Addressing the "noise" surrounding the practices of the National Security Administration, President Obama first noted the history of intelligence gathering by the United States: At the dawn of our Republic, a small, secret surveillance committee, born out of the Sons of Liberty, was established in Boston. And the group's members included Paul Revere. At night, they would patrol the streets, reporting back any signs that the British were preparing raids against America's early patriots. In order to find footing and precedent in the face of ontological insecurity in cyberspace two rhetorical moves are deployed. First, history is resurfaced and reworked to create a seemingly appropriate

metaphor for the present. This history is doused in a patriotic whitewash, whereby particular events are chosen but not others that are perhaps more indicative and relevant to the current situation. Further, the parallels put forward by Obama are not parallels at all; the nature of surveillance, global politics, globalization, and technology are not the same as they were 200 or so years ago. This history serves to maintain the state's self-image over time. Campbell (1998: 130) notes that the American quasi-war with France "demonstrated how previously established discursive strategies of otherness could be invoked in novel circumstances to provide powerful modes of understanding." Much in the same way, President Obama's return to history serves not only to ground justifications for NSA activities in seemingly consistent practices of state surveillance, but also in actions against threats from an "other," in this case, the British during the Revolutionary War. Threats in cyberspace come from a plethora of sources, including: other states, non-state actors, rogue Americans, or even cyberspace itself. Obama's second rhetorical move is to argue for American exceptionalism. He goes on to note, But America's capabilities are unique, and the power of new technologies means that there are fewer and fewer technical constraints on what we can do. That places a special obligation on us to ask tough questions about what we should do. The justification for (at least toned down) policies of NSA surveillance centers on the notion that "someone has to do it," and "we can do it better than anyone else." America's status as "the world's only superpower," as President Obama declares, opens itself up for interrogation. At the end of his speech on NSA reforms, President Obama demonstrates, perhaps unintentionally, that ontological insecurity is a powerful motivator for the United States in cyberspace: When you cut through the noise, **what's really at stake is how we remain true to who we are in a world that is remaking itself at dizzying speed. Whether it's the ability of 42 individuals to communicate ideas, to access information that would have once filled every great library in every country in the world, or to forge bonds with people on the other side of the globe, technology is remaking what is possible for individuals and for institutions and for the international order**. This is not to say that the United States consciously and reflexively recognizes its ontological insecurity in its relationship to cyberspace. However, the examples that are raised concerning the dangers of cyberspace—from cyberspace as a mechanism for terrorist mobilization to cyber wars of the future—do not paint an entirely clear picture of what makes cyberspace something truly different in global politics. This shift is not universal, or at least to the same degree, for every state. Cyberspace may provide a vehicle for dissent, organization, etc. for every state, but it burdens states that are fixed in terms of physical security and depend on an idealized self-image. States are pressured into explaining the contradictions that arise as a result of their self-image (freedom, openness, transparence, for example) and state-led intrusions into cyberspace. Foreign Policies of the Internet: Surveillance and Disclosure Revisited The 2014 Milton Wolf Seminar brought to bear, and framed well, this theoretical construction of state ontological security in international relations. In particular, many of the presentations dealt with the critical problematic of the balance that must be struck between state self-interest by way of national security and internet diplomacy, global governance, and transparency. Panelists discussed this problematic in various contexts ranging from state censorship of information, international law, and state sovereignty. The internet, and cyberspace more generally, has very real physical characteristics that are often forgotten in discourses of a "borderless digital world" or the metaphor of the internet as a "cloud." Indeed, the internet is built upon a physical framework, logical building blocks, and interaction (Choucri 2012); and each of these "layers" carries very real political ramifications. State ontological security in cyberspace, as described above, assumes the structural realities of power in international relations regarding the internet, and seeks to elaborate upon how states, beyond concern for their physical security, come to justify surveillance practices on the internet. In this sense, the Milton Wolf Seminar proved invaluable as practitioners and scholars sought to elaborate upon the role of the internet, censorship, privacy, and surveillance in diverse contexts including the national policies and practices of Russia, South Africa, the United States, China, and Britain. Further, the seminar participants elaborated upon shifting or different physical as well as content-layer considerations that need to be taken into account, such as changing modes of internet use, types of surveillance practices, and statecraft in the digital age. The discussion held over the course of the two-day seminar invoked more questions than answers; analysis of such issues has thus far moved, as one seminar participant described, "glacially" alongside the need for internet governance. Thus, the seminar was both timely and a necessary given the salience of internet security, privacy, and surveillance in international politics, along with the perhaps shifting role of the state, and traditional concepts of international politics: state power, sovereignty, and global governance

Speaking for Others Turn

Speaking for others bad

Speaking for others is impossible our interpretation of the other is hopelessly mired in our own subjectivities

Adams '05 (Tony E. Adams, Associate Professor and Chair of the Department of Communications Media and Theater Northeastern Illinois University Graduate, "SPEAKING FOR OTHERS: Finding the Whos of Discourse" Soundings: An Interdisciplinary Journal Vol. 88, No. 3/4 (Fall/Winter 2005), pp. 331-345, http://www.jstor.org/stable/41179130, Published in the Fall/Winter of 2015, Accessed July 9th 2015, CMT)

However, Husserl ontologically positions us as "constitutively interrelated monads" (*Cartesian* 128), internally closed off from each other, impenetrable Beings who come together and establish communities. This positions us first as individuals and second as they-constituted entities. Following this logic, we can only know others — their thoughts, actions, and possibilities — by how they appear for us: I can only know about you based on how you appear for me. Even if we try to know each other via dialogue, our subjectivities will still color our interpretation of one another. Perception is "simply a mental act of mine" (Husserl, *Idea* 16), and "one's own subjective meaning can never be laid side by side with another's and compared" (Schutz 165). Husserl argues that, "[b]y means of the alien [foreign] constitutings constituted in my own self, there becomes constituted for me… the common world for ''all of u'" (*Cartesian* 87) It is here that intersubjectivity surfaces: We become socialized into "there-ness-for-everyone" (*Cartesian* 92) structures in the world, shared systems of meaning that make possible our interactions with and understandings of each other (such as identity categories). However, our inner realms remain inaccessible to others (and, some would say, to ourselves [see Peters]); we are physically separate Beings who meet by way of the thereness-for-everyone qualities of a community.

Speaking for others makes white people feel good while producing no change since they don't have to give up any privilege

Tuck & Yang '12 (Eve Tuck & K. Wayne Wang, earned her Ph.D.in Urban Education at The Graduate Center, The City University of New York in 2008 & Ph.D. 2004 Social and Cultural Studies University of California Berkeley, "Decolonization is not a metaphor" Vol. 1, No. 1, 2012, pp. 1-40. http://risingtide604.ca/wp-content/uploads/2012/12/Decolonization-is-not-a-metaphor.pdf, Published in 2012. Accessed July 9th 2015, CMT)

We observe that another component of a desire to play Indian is a settler desire to be made innocent, to find some mercy or relief in face of the relentlessness of settler guilt and haunting (see Tuck and Ree, forthcoming, on mercy and haunting). Directly and indirectly benefitting from the erasure and assimilation of Indigenous peoples is a difficult reality for settlers to accept. The

weight of this reality is uncomfortable; the misery of guilt makes one hurry toward any reprieve. In her 1998 Master's thesis, Janet Mawhinney analyzed the ways in which white people maintained and (re)produced white privilege in self-defined anti-racist settings and organizations.8 She examined the role of storytelling and self-confession - which serves to equate stories of personal exclusion with stories of structural racism and exclusion - and what she terms 'moves to innocence,' or "strategies to remove involvement in and culpability for systems of domination" (p. 17). Mawhinney builds upon Mary Louise Fellows and Sherene Razack's (1998) conceptualization of, 'the race to innocence', "the process through which a woman comes to believe her own claim of subordination is the most urgent, and that she is unimplicated in the subordination of other women" (p. 335). Mawhinney's thesis theorizes the self-positioning of white people as simultaneously the oppressed and never an oppressor, and as having an absence of experience of oppressive power 8 Thank you to Neoma Mullens for introducing Eve to Mawhinney's concept of moves to innocence. 10 E. Tuck & K.W. Yang relations (p. 100). This simultaneous self-positioning afforded white people in various purportedly anti-racist settings to say to people of color, "I don't experience the problems you do, so I don't think about it," and "tell me what to do, you're the experts here" (p. 103). "The commonsense appeal of such statements," Malwhinney observes, enables white speakers to "utter them sanguine in [their] appearance of equanimity, is rooted in the normalization of a liberal analysis of power relations" (ibid.). In the discussion that follows, we will do some work to identify and argue against a series of what we call 'settler moves to innocence'. Settler moves to innocence are those strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all.

(NOTE: "settler moves to innocence effect")

Their claim of the "one drop rule" simulates the Indian Grandmother Complex producing ressentiment in the other

Tuck & Yang '12 (Eve Tuck & K. Wayne Wang, earned her Ph.D.in Urban Education at The Graduate Center, The City University of New York in 2008 & Ph.D. 2004 Social and Cultural Studies University of California Berkeley, "Decolonization is not a metaphor" Vol. 1, No. 1, 2012, pp. 1-40. http://risingtide604.ca/wp-content/uploads/2012/12/Decolonization-is-not-a-metaphor.pdf, Published in 2012. Accessed July 9th 2015, CMT)

In this move to innocence, settlers locate or invent a long-lost ancestor who is rumored to have had "Indian blood," and they use this claim to mark themselves as blameless in the attempted eradications of Indigenous peoples. There are numerous examples of public figures in the United States who "remember" a distant Native ancestor, including Nancy Reagan (who is said to be a descendant of Pocahontas) and, more recently, Elizabeth Warren9 and many others, illustrating how commonplace settler nativism is. Vine Deloria Jr. discusses what he calls the Indiangrandmother complex in the following account from Custer Died for Your Sins: 9 See

Francie Latour's interview (June 1 2012) with Kim Tallbear for more information on the Elizabeth Warren example. In the interview, Tallbear asserts that Warren's romanticized claims and the accusations of fraud are evidence of ways in which people in the U.S. misunderstand Native American identity. Tallbear insists that to understand Native American identity, "you need to get outside of that binary, one-drop framework." Decolonization is not a metaphor 11 During my three years as Executive Director of the National Congress of American Indians it was a rare day when some white [person] didn't visit my office and proudly proclaim that he or she was of Indian descent... At times I became quite defensive about being a Sioux when these white people had a pedigree that was so much more respectable than mine. But eventually I came to understand their need to identify as partially Indian and did not resent them. I would confirm their wildest stories about their Indian ancestry and would add a few tales of my own hoping that they would be able to accept themselves someday and leave us alone. Whites claiming Indian blood generally tend to reinforce mythical beliefs about Indians. All but one person I met who claimed Indian blood claimed it on their grandmother's side. I once did a projection backward and discovered that evidently most tribes were entirely female for the first three hundred years of white occupation. No one, it seemed, wanted to claim a male Indian as a forebear. It doesn't take much insight into racial attitudes to understand the real meaning of the Indian-grandmother complex that plagues certain white [people]. A male ancestor has too much of the aura of the savage warrior, the unknown primitive, the instinctive animal, to make him a respectable member of the family tree. But a young Indian princess? Ah, there was royalty for the taking. Somehow the white was linked with a noble house of gentility and culture if his grandmother was an Indian princess who ran away with an intrepid pioneer... While a real Indian grandmother is probably the nicest thing that could happen to a child, why is a remote Indian princess grandmother so necessary for many white [people]? Is it because they are afraid of being classed as foreigners? Do they need some blood tie with the frontier and its dangers in order to experience what it means to be an American? Or is it an attempt to avoid facing the guilt they bear for the treatment of the Indians? (1988, p. 2-4)

True change never occurs when talking about the issue, public action must happen first

Tuck & Yang '12 (Eve Tuck & K. Wayne Wang, earned her Ph.D.in Urban Education at The Graduate Center, The City University of New York in 2008 & Ph.D. 2004 Social and Cultural Studies University of California Berkeley, "Decolonization is not a metaphor" Vol. 1, No. 1, 2012, pp. 1-40. http://risingtide604.ca/wp-content/uploads/2012/12/Decolonization-is-not-a-metaphor.pdf, Published in 2012. Accessed July 9th 2015, CMT)

Fanon told us in 1963 that decolonizing the mind is the first step, not the only step toward overthrowing colonial regimes. Yet we wonder whether another settler move to innocence is to focus on decolonizing the mind, or the cultivation of critical consciousness, as if it were the sole activity of decolonization; to allow conscientization to stand in for the more uncomfortable task of relinquishing stolen land. We agree that curricula, literature, and pedagogy can be crafted to aid people in learning to see settler colonialism, to articulate critiques of **settler epistemology**,

and set aside settler histories and values in search of ethics that reject domination and exploitation; this is not unimportant work. However, the front-loading of critical consciousness building can waylay decolonization, even though the experience of teaching and learning to be critical of settler colonialism can be so powerful it can feel like it is indeed making change. Until stolen land is relinquished, critical consciousness does not translate into action that disrupts settler colonialism. So, we respectfully disagree with George Clinton and Funkadelic (1970) and En Vogue (1992) when they assert that if you "free your mind, the rest (your ass) will follow."

Other Cards

Turns Case – War Increases Surveillance

War turns the Aff – causes adoption of ever-more totalitarian surveillance- Cold war proves.

Kullenberg '09 (Kullenberg, Christopher, PhD, University Gothenburg, His dissertation concerns the statistical social sciences, their epistemic problems and their role in modern societies, and contains a case-study of the SOM-institute, a Gothenburg research center that has been very successful in providing large surveys, "The social impact of IT: Surveillance and resistance in present-day conflicts." How can activists and engineers work together pg. 37-40. http://fiff.de/publikationen/fiff-kommunikation/fk-2009/fiff-ko-1-2009/fiko_1_2009_kullenberg.pdf DA: 7/8/15 CB)

Since the 9/11 attacks the world has been challenged with intrusive legislation upon civil liberties and increased use of surveillance technologies. As this development is proceeding rapidly, both from a legal point of view and the technological side, it takes more than parliamentary politics to pursue a democratic and open discussion about these matters. This is where the civil society, or rather the civil societies, need to collaborate. Thus, I will propose that engineers, software-programmers and people in the private sector of Information Technology could co-operate with activists, human-rights organizations and citizen-journalists in a very productive manner. I will also give tangible examples on how such activities have been pursued in Sweden during a controversy on the role of signals intelligence. Surveillance and war. Issues that keep arising in the backwaters of the "wars" on terrorists, drugs, and trafficking are often complex and require technical and legal expertise, not only to be understood, but more importantly, to be taken seriously in the public debate by the media. In order to avoid laws are passed without a proper debate or that technologies are implemented as merely technical solutions, I will propose that criticism could have a positive task in building a collaborative informational infrastructure, an effective media strategy, and other innovations. Let me give an example from Sweden. During 2008, a law was passed which allowed the government to pursue extensive signals intelligence on the Internet. It was termed the FRA-law in the press, since the authority responsible for signals intelligence is called Forsvarets Radioanstalt [1], which is the equivalent to the NSA in the United States, or the BND in Germany. The FRA was previously only allowed to search and intercept radio traffic, but this new law would allow the authority to intercept all internet traffic, by monitoring so-called "co-operation points" at the Internet Service Providers. By copying all the information passing through the cables, the FRA will be able to extract traffic-data from, the multitude of data, both domestic and international. Consequently, a mode of operation which was developed in the context of the post-war arms race will be transferred to the Internet as this law is effectuated during 2009. However, the Internet is largely used by private and corporate communication, rather than military information, a fact that raises questions concerning privacy, integrity and the rights to private communication. I will argue that if it were not for the active formation of a public, this law would have been passed without resistance or criticism. In order to understand how this works, the notion of a "public" is borrowed from the philosopher John Dewey, who explicitly stresses the importance of communication: "But participation in activities and sharing in results are additive concerns. They demand communication as a prerequisite. /…/ Communication of the results of social inquiry is the same thing as the formation of public

opinion." [2] Crucial to the formation of a participatory public issue, and to allow it to build political pressure, is there free flow of information in the sense that it operates without restrictions, something which is very different compared to traditional theories of mass-communication. This is where the Internet has a very interesting potential since its architecture, at least ideally, promotes participation, sharing and communication, which is precisely what Dewey is asking for. However, it seems that this free flow cannot be guaranteed by the internet alone, since the same abilities can be used for intrusive surveillance. Panspectric Surveillance. How are we then to conceive of contemporary technologies of surveillance? One way is to ask how technologies are used throughout society, by analyzing their performances and abilities in socio-technical assemblages. Digital technologies, besides sharing certain properties in hardware such as microprocessors, electricity-based operations and abilities to process instructions and algorithms, usually share many networked, or social effects. The internet as an assemblage of computers, routers, switches and all kinds of IP-based technologies, such as mobile devices and satellites, shapes emergent forms of effectuation. For example file-sharing, voice-transmission, e-mails etc. are all dependent on interconnectivity. Also, they operate on the potentiality of decentralization and read-write capacities, and on the ability to transfer the analogue world to a digital realm, which we see in the digitalization of images, sounds, and even in the keystrokes of keyboard. There is however a critical paradox built into our mundane technologies. We may use digital cameras on our mundane technologies. We may use digital cameras on our holiday trips and post the images on a blog, but we may also use the same capacities for an IP-based surveillance camera. The present any technologies are this at the same time what may liberate sounds, texts, images and videos from their "material imprisonment" and geographical spatiality, while they simultaneously make possible for what is called panspectric surveillance [3] The concept of panspectrocism comes from philosopher Manuel DeLanda, who situates the origin of these technologies in war. It is worthwhile to quote from his work War in the Age of Intelligent Machines (1991) in length: "There are many differences between the Panopticon and the Panspectron /…/ Instead of positiong some human bodies around a central sensor, a multiplicity of sensors is deployed around all bodies: its antenna farms, spy satellites and cable-traffic intercepts feed into its computers all the information that can be gathered. Thus is then processed through a series of "filters" or key-word watch lists. The Panspectron does not merely select certain bodies and certain (visual) data about them. Rather, it compiles information about all at the same time, using computers to select the segments of data relevant to its surveillance tasks [4]." DeLanada thus argues that the technologies we face in contemporary debates on Internet surveillance, originate in post-war setting which culminated during the cold war. Signals intelligence which culminated during the cold war. Signals intelligence was born in a combination of radio interception, transferring analogue signals to digital information, and computers which calculated patterns, attached meta-data, and filtered out only the relevant pieces of information in a multiplicity of signals. The birth of the panspectric technological framework, at least an abstract sense, this came from warfare. However, it was developed and refined during times when consumer technologies were not yet digital, and usually not even made for two-way communication (TV. Press, radio). What we see today is a complete change of orders. Signals intelligence performed by governments, such as the NSA, the FRA or the BND have entered a territory populated by ordinary citizens, rather than tanks, spy satellites and nuclear weapons. Contemporary panspectric surveillance depends on the interconnectedness of sensors and computational methods such as data mining, sociograms and databases. Sensors include RFID-chips, digital CCTV-cameras, credit cards, mobile phones, internet surveillance etc., and they all have the ability to record an ever increasing part of our everyday lives. This is where we get close

to the etymology of the words pan-, which means everything, and spectrum which is the entire range of detectable traces. The radical digitalisation of our societal functions and everyday lives, reconfigures and prolongs the range of surveillance. However, to make sense of this enormous abundance of data, methods of reducing complexity and finding relevant traces are needed. This is where the other pole of panspectrocism emerges; the need for supercomputers and advanced software and statistics. The FRA has bought one of the fastest supercomputers in the world, and it is plugged directly into the central fibre-cables of the Swedish Internet Service Providers. They will consequently receive a copy of all traffic-data, and then process it in several steps in order to find patterns. The problem is, however, that traffic-data (which contains information about with whom, at what time, how frequently etc. we communicate) can say a great deal about you and your life. If we make social network analyses of the meta-data you give off during a normal day, the surveyor can probably find out who most of your friends are, and where you are most likely to be located. With more and more data, the surveyor is able to tell your religion, sexuality, political affiliation and consumer behaviour. Citizen Journalism, Pirate Parties and Activists We can make a tripartite division of activities that may challenge the increasing use of legal and technological means of mass surveillance; citizen journalism, pirate parties and activism. They may sometimes resonate in the same direction, towards a clear goal, but their basic properties and relations are essentially heterogeneous. Issues, such as the FRA-law, can only stir up reactions and become "issues proper" if, following Dewey, there is communication between actors allowing them to react to what is imposed on them. It has been said that the case of the FRA-law was the first time in Swedish history that traditional newspapers lagged the blogosphere, and for the centre-conservative government the force of citizen journalism came as quite a surprise. The blogosphere displayed a few interesting abilities by cooperating and sharing knowledge. One important aspect of raising issues, needed to be accounted for in this case, is speed. Paul Virilio argues in his book Speed and Politics, that: "If speed thus appears as the essential fall out of styles of conflicts and cataclysms, the current arms race is in fact only the arming of the race toward the end of the world as a distance, in other words as a field of action." [5] Speed turns distance into action, and citizen journalism has a higher velocity than the traditional media, being dependent on printing presses, paid and professional journalists, or hierarchical organisations. During the passing of the FRA-law, the only ones being able to read legal documents, do proper research, and have a constructive discussion, were bloggers. In this case (and I do not want to generalise this observation to be valid for „the media" in general) we may say that the allocation of resources was much more efficient than that of large media corporations. The critical task for the blogosphere in making a successful attempt at stopping this law is knowledge production. Surveillance technologies and intrusive legislations are complex matters which are often secretive in character. Signals intelligence is maybe an extreme case, since details about methods and search criteria is necessarily kept away from the public. The first step in the case of the FRA was ontopolitical, in the sense that there was (and still is) a struggle to define whether signals intelligence is mass-surveillance, which would be a disaster for integrity, or simply a means to target very few „enemies of society" (terrorists). Bloggers analysed legal documents and government white papers, as a kind of swarm intelligence, and could argue convincingly that they entailed many legal exceptions for the FRA in registering political opinions, sexual orientation or religious background. The counter-argument from advocates of the law did not convince the bloggers, and the traditional media started covering the issue extensively. During the summer of 2008, there were articles in the newspaper almost every day for months, and many bloggers wrote extensively in both arenas

Terror DA – Turns Case

Perception alone turns the case.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, "NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep" Lexis, accessed 7-6-15, TAP]

It is suspected that Abdulmutallab received his Islamic radicalization while living in London with his family, and later disappearing to Yemen, where al-Qaeda trained him. 48Link to the text of the note He, unfortunately, was not on the government's watch list. 49Link to the text of the note This was, perhaps, the most daunting aspect of the botched terror mission for the national government. 50Link to the text of the note An investigation revealed that the government had, in fact, received information on Abdulmutallab, but intelligence agencies failed to utilize all resources in order to connect the appropriate dots. 51Link to the text of the note As a result of this inadequacy, President Obama demanded a watch list overhaul. 52Link to the text of the note One of the most debated changes is the National Counterterrorism Center's (NCTC) ability to query different databases for individuals' personal information and retain the information for up to five years, even when the query results in no indication of criminal or terrorist activity. 53Link to the text of the note This change in procedure was primarily due to counterterrorism officials' belief that some information [443] could possibly prove helpful later. 54Link to the text of the note The Abdulmutallab attack marked the beginning of more intense counterterrorism measures, in which personal information is made subject to government surveillance without prior suspicion of criminal activity. 55Link to the text of the note Over time, as the threat of a terrorist attack on the United States has become increasingly hostile, the pressure placed on the federal government to ensure domestic safety has led to a broadening of surveillance authority. II. TREND TOWARD INVASIVE SURVEILLLANCE MEASURES After the 9/11 attacks, domestic fear of future terrorist attacks grew, spurring the national government's focus of more intrusive levels of surveillance. 56Link to the text of the note The government's focus on national security surveillance was indicative of the ballooning of the post-9/11 national security budget, the expansion of technological abilities, and the almost complete unaccountability and secrecy of national security covert operations. 57Link to the text of the note Former Vice President Dick Cheney, a well-known advocate of the government's surveillance programs, has argued that the surveillance programs are necessary if terrorist attacks are to be stopped. 58Link to the text of the note Other major political figures, like Robert Mueller, the current director of the FBI, assert that the loss of privacy for everyday Americans is justified because the eavesdropping has thwarted terrorist plots. 59Link to the text of the note In an address to Congress in 2013, Mueller stated that the "challenge in a position such as I have held in the last 11 years is to [444] balance on the one hand the security of the nation and on the other hand the civil liberties that we enjoy in this country." 60Link to the text of the note

Religious Surveillance Michigan 7

Religious Surveillance Aff Updates

Religious Freedom Adv

Aff Key to Global Religious Pluralism

American religious pluralism spreads globally due to electronic globalization and international migration

Carroll, 12- Ph.D., Cornell University

(Bret E Carroll, "Worlds in Space: American Religious Pluralism in Geographic Perspective", 5/11/12, JSTOR)//Yak + Jmoney

Geographic perspectives on American religious pluralism are by no means confined to the local, regional, and national levels. We have become increasingly aware in recent years of several new approaches and developments that challenge us to stretch our thinking in new directions. We shall close with a brief survey of some of these emerging avenues for exploration.

One particularly important new approach, apparent throughout American studies, calls our attention to the nation's place in wider transnational and global communities and networks. American religious pluralism has always pointed beyond the nation, for its sources have been from the outset as much international as domestic. Such internal factors as the First Amendment and the identity movements of the 1960s have powerfully shaped its contours, of course, but religious life, Peggy Levitt has recently reminded us, regularly crosses borders and is not limited by geographic distances and boundaries (Levitt 2007b). Developments since 1965 have underscored her point, greatly amplifying the degree to which American religious space is part of, and participant in, global space. Contemporary American immigrants integrate into the United States just as their forebears did, yet the dynamic of immigration has also changed dramatically. Transnationalism, increasingly convenient global travel, an emergent global media, and new telecommunications technologies have made possible to an unprecedented extent immigrants' continuing attachment to sacred places and religious communities outside the country; their ongoing interaction with fellow emigrants who settle in other parts of the United States; their maintenance of distinctive beliefs, practices, and values; and the solidification of global religious communities—Muslim, Hindu, Pentecostal and evangelical Christian, and others—in which they and other Americans can and do take part. It is with these developments in mind that scholars have increasingly spoken of "diasporic" religion, an increasingly common phenomenon in which the dispersal of peoples and their religions across the globe from a particular geographic point of origin transforms and generates new forms of religious community, ideology, and practice (Tweed 1997; Warner and Wittner 1998; see also Tweed 2006). Transnationalism and diaspora have made "American religious pluralism and the globalization of religious life . . . part and parcel of the same dynamic" (Levitt 2007b: 107). National frameworks are becoming increasingly inadequate for fully understanding American religious lives. More than ever before, American religious worlds and American religious pluralism reach outside the nation's geographic boundaries and into transnational spaces (Stump 2001, 2008: 379–383; Chidester and Linenthal 1995: 29–30; Eck 2001: 5; Machacek 2002: 8; McAlister 2005; Levitt 2007a).

Nowhere is this reality more evident than in the nation's cities. Urban anthropologists speak of "world cities," places closely connected to other urban centers by the constant movement of people, ideas, and artifacts into and out of them made possible by rapid transportation, instantaneous communication, and global media. The result is what Ulf Hannerz has called an "intercontinental traffic in meaning" (Hannerz 1993: 68–69), a system in which religious worlds, less bound than previously to geographically specific locales considered definitive "homes," can achieve transnational scope and interact at once in local, national, and global arenas (Hannerz 1987; Orsi 1999a,1999b: 36).

Further complicating spatial considerations of American religious pluralism is the advent of virtual space. We have barely begun to examine, let alone comprehend, the implications of cyberspace and the Internet for the formation and encounter of religious worlds, though it is already clear that those implications are profound. In religion, as in other areas of human endeavor, interpersonal interactions become disembodied as they become electronic, raising the question not only of how to conceptualize this space in geographic terms but also of what electronic technology means for current notions of and actions in space (Kong 2001: 221–222). Whatever the implications of this new spatial frontier for the way we think about conventional geographic space, recent events in Winter, Wisconsin, where the school board in 1998 blocked access to electronic information about Buddhism and Wicca (Eck 2001: 304), suggest that struggles over space—religious worlds making spaces, seeking legitimation of their presence, facing attempted exclusion—have carried over into it. American religious pluralism in all its complexity has entered cyberspace (Williams 2002b: 250; see also Cowan 2005).

Globalization, international travel, and electronic communications have all had the effect of erasing determinate, particular space and contributed to a new pattern of community formation recently identified by geographers: heterolocalism (Zelinsky and Barrett 1998). The term refers to the possibility that ethnic or religious communities can maintain close ties without spatial propinquity, scattered instead over large urban, national, or international domains. Surely this emerging sociospatial phenomenon, by changing the way that religious worlds locate themselves in and relate themselves to space, will affect the geographic dynamics of religious pluralism. Indeed, Barbara Metcalf, surveying changes in Islam as its adherents have become globally dispersed, has proposed the term "postmodern pluralism" to describe these developing heterolocal realities (Metcalf 1996: 22). At least one study suggests that these new patterns have amplified the importance of buildings among groups seeking to establish religious communities in America (Bhardwaj and Rao 1998). But because they also challenge the notions of determinate and particular space on which our models of pluralistic engagement have so far been grounded, the precise contours of this new pluralism remain unclear (Zelinsky and Lee 1998; Zelinsky 2001: 132–151).

Solving religious persecution domestically and fundamentally changing our religious mindset is key to achieving our foreign policy objectives

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But the world today is, as the sociologist Peter Berger puts it, "as furiously religious as it ever was, and in some places more so than ever." Berger was one of the first scholars to challenge "secularization theory," which holds that religion will wither as modernity advances. In fact, over the past several decades, the opposite has happened. Faith, far from exiting the world's stage, has played a growing role in human affairs, even as modernization has proceeded apace. Iran's Shiite revolution in 1979, the Catholic Church's role in the "third wave" of democratization, the 9/11 attacks--all illustrated just how important a global force religion has become. For the most part, however, analysts and policymakers have remained either ignorant or baffled. Scholars are now scrambling to reexamine the question of faith in international affairs--its "return from exile," as one study puts it. Unfortunately, policymakers are lagging even further behind, and the implications for U.S. national interests are troubling.

To the extent that U.S. analysts and policymakers have registered the resurgence of religiosity at all, they have it viewed as a problem for U.S. foreign policy. Such concern is misguided. The United States should not see global desecularization in strictly defensive terms; it is as much an opportunity as it is a threat. Rather than being inimical to the advance of freedom, as many secularists assume, religious ideas and actors can buttress and expand ordered liberty. For much of the world, the religious quest lies at the heart of human dignity. History, moreover, suggests that protecting religious freedom and harnessing it for the common good are vital if democracy is to endure. Social science data show strong correlations between religious freedom and social, economic, and political goods.

Accordingly, U.S. diplomacy should move resolutely to make the defense and expansion of religious freedom a core component of U.S. foreign policy. Doing so would give the United States a powerful new tool for advancing ordered liberty and for undermining religion-based extremism at a time when other strategies have proved inadequate. One week before the presidential election in November, the landmark International Religious Freedom Act will have its tenth anniversary. That law mandated that the promotion of religious liberty be a central element of U.S. foreign policy. But neither Democratic nor Republican administrations, nor the U.S. State Department, have seen the IRF

Act as a broad policy tool--indeed, as anything more than a narrow humanitarian measure unrelated to broader U.S. interests. A new policy on religious freedom can begin by tapping the law's considerable potential. But long-term success will require a significant broadening of the current emphasis on opposing religious persecution and getting religious prisoners out of jail. An effective IRF policy must also address the balance between the overlapping authorities of religion and state, in particular the critical question of how religiously grounded norms might legitimately influence public policy.

DESECULARIZATION AND ITS DISCONTENTS

THE REAPPEARANCE of public religion on the world stage has complex implications. Religion has both bolstered and under-mined stable self-government. It has advanced political reform and human rightsbut also induced irrationality, persecution, extremism, and terrorism. Radical Islam may dominate the headlines, but the importance of religion is hardly confined to Muslim-majority countries or the Muslim diaspora. An explosion of religious devotion among Chinese citizens increasingly worries communist officials. Religious ideas and actors affect the fate of democracy in Russia, relations between the nuclear powers India and Pakistan, and the consolidation of democracy in Latin America. Even in western Europe--which has seen itself as a laboratory for secularization--religion, in the form of Islam and pockets of Christian revival, simply will not go away.

The world is overflowing with religious communities, theologies, and movements--with very public consequences. And there is little reason to believe that this state of affairs will change anytime soon. Polls from across the globe show a growth in religious affiliation and in the desire for religious leaders to be more involved in politics. Two leading demographers of religion, Todd Johnson and David Barrett, have concluded, "Demographic trends coupled with conservative estimates of conversions and defections envision over 80 percent of the world's population will continue to be affiliated to religions200 years into the future."

The central U.S. national security issue is Islamist terrorism, fed by radical interpretations of Islam. Wahhabism, which has provided much of the theological oxygen for al Qaeda, is still dominant in Saudi Arabia and has been exported to Sunni communities internationally. But Osama bin Laden and Wahhabism are hardly the only examples of "political Islam" that have major implications for U.S. security. In Iraq, Shiite doctrines and leaders are a major factor in determining whether Iraqi democracy will survive. In Iran, a central question is whether religious actors can reform the revolutionary Shiism bequeathed by Ayatollah Ruhollah Khomeini. Across the Middle East, the Sunni-Shiite divide is of growing importance.

Elsewhere in the Muslim world, religion drives powerful political forces in countries central to U.S. interests. In Egypt, the Muslim Brotherhood represents a strain of Islamism that has spawned or nourished radicals from Sayyid Qutb to Ayman al-Zawahiri and bin Laden, although it now operates as a democratic political party. An offshoot of the Brotherhood, Hamas, gained power in Palestinian elections and has put Islamist extremism at the center of the Israeli-Palestinian conflict. Hezbollah has emerged as a major player in Lebanese politics, even as it is funded from Tehran and continues to threaten Israel.

There are also encouraging developments in the Muslim world. In Turkey, the Islamist Justice and Development Party (AKP) won a decisive victory in parliamentary elections last year despite deep-seated fears of political Islam among wide swaths of a Turkish society weaned on Kemalist imposed secularism. The AKP is demonstrating that religious parties need not veer into fanaticism; it has succeeded with good governance, good economic policies, and the development of an Islamic governing philosophy that contains significant liberal elements. Polls show that Turks are becoming more religious and, at the same time, more opposed to extremist sharia laws. In Indonesia, Islamic communities are resisting extremism and making significant contributions to civil society and democratic governance. While Freedom House ranks Turkey and Indonesia high on political freedom and civil liberties, both remain weak on religious freedom. The consolidation of democracy in each will require progress on that front. Interestingly, that prospect seems to be increasing, not decreasing, with the democratic involvement of Islamic communities.

The response of U.S. diplomacy to the religious scaffolding that bestrides the international order has been at best inconsistent and often incoherent. A recent study by the Center for Strategic and International Studies concludes, "U.S. government officials are often reluctant to address the issue of religion, whether in response to a secular U.S. legal and political tradition ... or simply because religion is perceived as too complicated or sensitive. Current U.S. government frameworks for approaching religion are narrow, often approaching religions as problematic or monolithic forces, overemphasizing a terrorism-focused analysis of Islam and sometimes marginalizing religion as a peripheral humanitarian or cultural issue."

Ambivalence toward religion in general and Islam in particular has been a profound weakness in the U.S. strategy to counter Islamist extremism. In regard to public and private diplomacy and foreign-aid and democracy programs, U.S. policy has been plagued by confusion about what role, if any, should be played by Islamic communities. In deciding how to "drain the swamps" of the social, political, and economic pathologies that feed Islamist extremism, U.S. officials have never arrived at an overarching policy toward Islam--or even decided what, exactly, a "moderate Muslim" is. U.S. dollars for democracy promotion have flooded the Middle East since 9/11, but the resulting programs as a rule have not addressed the main drivers of culture, politics, and civil society there--Muslim religious communities and Islamist political parties.

Various strategies for engaging Muslims have been floated and withdrawn, from the ill-fated Shared Values Initiative to the Muslim World Outreach program. Some reflected the United States' own moral confusion and poll-driven culture. Attempts to "reach out" to Muslim youth have often centered on American pop music; a chair of the U.S. Broadcasting Board of Governors once solemnly declared that the pop star Britney Spears "represents the sounds of freedom." Assessing the performance of the departing public diplomacy czar, Karen Hughes, the political scientist Robert Satloff observed that she saw her job as increasing U.S. poll numbers, not engaging in Islam's war of ideas.

THE SECULARIST BLIND SPOT

THE PROBLEM is rooted in the secularist habits of thought pervasive within the U.S. foreign policy community. Most analysts lack the vocabulary and the imagination to fashion remedies that draw on religion, a shortcoming common to all the majors schools of foreign policy. Modern realists see authoritarian regimes as partners in keeping the lid on radical Islam and have nothing to say about religion except to describe it as an instrument of power. Liberal internationalists are generally suspicious of religion's role in public life, viewing religion as antithetical to human rights and too divisive to contribute to democratic stability. Neoconservatives emphasize

American exceptionalism and the value of democracy, but most have paid little serious attention to religious actors or their beliefs. The U.S. "freedom agenda" has been seriously weakened as a result.

There is widespread confusion over the proper role of religion in public policy. The persistent belief that religion is inherently emotive and irrational, and thus opposed to modernity, precludes clear thinking about the relationship between religion and democracy. Insufficient policy attention is paid to the work of social scientists, such as Brian Grim and Roger Finke, that suggests religious freedom is linked to the well-being of societies. Most U.S. officials were weaned on a strict separation-of-church-and-state philosophy and simply resist thinking about religion as a policy matter. (In the late 1990s, a memorandum to the secretary of state on the subject of religion was returned by a senior official with a stern note saying that this was not an appropriate subject for analysis.) Although some U.S. actions in the realm of religion may raise constitutional issues, the U.S. Constitution neither mandates ignorance about religion nor proscribes its public practice. What it unambiguously requires is the defense of religious freedom.

Such disarray cuts across the conventional left-right divide. The left's strict separationist instincts dictate that religion should be a private matter, but liberal multiculturalism pushes in a different direction. Some on the right want their religion in the public square, but not Islam, which they view as theologically flawed and a launching pad for extremism. In this sense, conservatives' views on political Islam coincide with those of liberal secularists.

Unduly influenced by such thinking, U.S. foreign policy does not seek to advance religious freedom in any systematic way. The State Department has made modest efforts to fight persecution, but U.S. denunciations seldom have much impact. And even if they did reduce persecution, that alone would not constitute religious freedom. In a press conference to announce the governments that are considered, under the IRF Act, to be the worst religious persecutors, a State Department spokesperson said that U.S. policy goals were "to oppose religious persecution, to free religious prisoners, and to promote religious freedom." That summary exemplifies what has gone wrong. The first two goals have been so dominant that the third has been all but lost.

[ILLUSTRATION OMITTED]

Religious persecution is generally associated with egregious abuse--torture, rape, unjust imprisonment--on the basis of religion. A political order centered on religious liberty is free of such abuses, to be sure, but it also protects the rights of individuals and groups to act publicly in ways consistent with their beliefs. Those rights include, most importantly, the freedom to influence public policy within the bounds of liberal norms. Addressing this aspect of religious liberty is a critical step in creating stable self-government in societies with powerful religious groups--a step that current U.S. policy ignores.

After the United States deposed the Taliban in 2001, the Afghans elected a democratic government and ratified a democratic constitution, and the terrible religious persecution of Afghan women and minority Shiites slowed dramatically. But these developments did not bring about religious freedom. The Afghan government no longer tortures people on the basis of religion, but it continues to bring charges against apostates and blasphemers, including officials and journalists seeking to debate the teachings of Islam. Instead of seeing such cases as serious obstacles to the consolidation of Afghan democracy, the State Department has treated them as humanitarian problems. It declared victory when U.S. pressure sprang the Christian convert Abdul Rahman from an apostasy trial (and from certain execution), permitting him to flee the country in fear of his life.

But the Rahman case was actually a defeat for U.S. IRF policy, because it ignored the real problem: Afghanistan's democracy is unlikely to endure unless it defends the right of all Afghan citizens to full religious liberty, especially the right of Muslims to debate freedom and the public good, the role of sharia, and the religion-state nexus. This kind of sustained discourse is vital to the success of any Islamic democracy and to overcoming Islamist radicalism. U.S. IRF policy should be confronting this problem in Afghanistan and elsewhere, but it lacks the resources, the bureaucratic clout, and the policy mandate to do so.

The IRF Act created an office in the State Department, headed by an ambassador at large, to monitor religious persecution around the world, to issue an annual report on religious freedom, and to produce an annual list of the worst persecutors. When a country appears on the list, the secretary of state must consider taking some punitive action, such as imposing economic sanctions, against it. This framework has had some modest successes. IRF ambassadors have headed off the passage of some bad laws and achieved the release of some religious prisoners. The current ambassador has negotiated with governments on the fist, most notably Vietnam and Saudi Arabia, over what they must do to be taken off.

Unfortunately, the effort against religious persecution is generally considered little more than an isolated humanitarian gambit. Most foreign governments view it as a matter of "America management." In the State Department, IRF policy is functionally and bureaucratically quarantined. Both the Clinton and the Bush administrations nested the IRF ambassador and his office in the human rights bureau, itself outside the mainstream of foreign policy. This means, among other things, that the ambassador is subordinate to a lower-ranking official and, unlike other ambassadors at large, does not attend senior staff meetings. When senior meetings are held on U.S. policy in China or Saudi Arabia--or even on engaging Islam--the IRF function is not considered relevant. This may seem trivial to those outside the State Department. Inside, it communicates a deadly message: IRE is not a mainstream foreign policy issue and can safely be ignored.

Some of these problems are slowly being addressed. U.S.-funded programs, especially those administered by the Asia Foundation, are paying dividends in Indonesia, where a moderate understanding of sharia appears to be developing. The U.S. embassy in Nigeria has gotten Muslims and Christians thinking together about the religious benefits of democracy. But such programs are underresourced and are operating without any clear policy mandate.

The situation will truly improve only if Washington more fully integrates religious considerations into its foreign policy. The message cannot be carried by one ambassador in one small office in the State Department who is unfortunately perceived as the representative of a special interest. This must be addressed within the department by, among other things, elevating the ambassador's authority. But much more will be required than bureaucratic reshuffling. Major policy changes will be necessary if religious freedom is to contribute to U.S. national security.

DESECULARIZING DIPLOMACY

HOW CAN a new strategy on religion and religious freedom lend consistency to U.S. foreign policy while advancing U.S. security interests in the Muslim world and elsewhere? First, by adopting an overarching principle: religion is normative, not epiphenomenal, in human affairs.

Policymakers should approach religion much as they do economics and politics--that is, as something that drives the behavior of people and governments in important ways. Like political and economic motives, religious motives can act as a multiplier of both destructive and constructive behaviors, often with more intense results. When faith is associated with social identity, ethnicity, or nationality, it becomes all the more important as a focus of foreign policy.

The problem is most urgent in the greater Middle East. At least five states in that region--Iraq, Iran, Saudi Arabia, Pakistan, and Egypt--are of critical importance to U.S. national security, because each is a major source of Islamist extremism. The consolidation of democracy in any one of them would provide a boost to reform in nearby countries, but each presents distinct, formidable obstacles. The United States' current IRV policy is seen by reformers in these countries as U.S. unilateralism and cultural imperialism. A refurbished policy could help overcome such fears, encourage religious actors to embrace democratic institutions, and lead over the long term to religious freedom and durable democracy.

Iraq's quasi-liberal constitution and elections have both demonstrated how Iraqi political culture is driven by religion. It is now clear that the United States did not pay sufficient attention to this factor, along with many others, in its planning for Iraq. A lasting solution in Iraq will require the involvement of religious actors who can speak from the heart of their respective communities. U.S. diplomacy, accordingly, should work to empower religious leaders such as the influential Shiite cleric Grand Ayatollah Ali al-Sistani and his Sunni counterparts. The Iraq Study Group's recommendation for an American Shiite envoy to Sistani should be adopted, but he should not be treated as simply one among other sectarian leaders in Iraq. Sistani's brand of Shiism, which is open to democratic and, to some extent, liberal norms, could be instrumental in consolidating Iraqi democracy. It could provide a theological warrant for tolerance and, over time, religious freedom. It could also play a positive role in Iran, where Sistani was born and educated and where he now has many followers.

Iran has substantial democratic potential, and not simply among the 30-something secular modernists who are the hope of Western analysts. A little-studied path to democratic reform in Iran lies with Iranian jurists who might be diverted from the Khomeini model of clerical despotism, some of whom are interested in the Sistani experiment. For the time being, Supreme Leader Ali Khamenei and President Mahmoud Ahmadinejad, despite popular dissatisfaction with the current government, have succeeded in connecting dissent with treason. But U.S. policymakers should still find ways to work with Iranian religious scholars in Qom and elsewhere. Among other things, this means dearly communicating that the United States is interested in, and open to, Shiite reformers. For example, the Catholic University of America's Interdisciplinary Program in Law and Religion has yielded substantive exchanges with Iranian jurists on topics such as family law and weapons of mass destruction. By judiciously supporting such efforts, the United States can encourage internal reform that rejects both theocracy and terrorism as inimical to Shiism.

Saudi Arabia is the most difficult of the Muslim states to envision as a democracy, notwithstanding mild reformist tendencies shown by King Abdullah. The Wahhabi establishment and its pernicious political theology remain deeply rooted, and no political or social institution has been effective in countering its influence. Wahhabi-blessed candidates would very likely dominate national elections. U.S. diplomacy should be working to change this dynamic--for example, by pressing Abdullah to permit the development of national Islamic political parties, both Sunni and Shiite, that are open to democracy. Washington should urge the disbandment of the mutawiyin (religion and morals police), which is currently under unusual scrutiny for its usual extremist activities, and support the emergence of a non-Wahhabi Islamic polity that is capable of developing liberal norms. This could take several forms, including a constitutional monarchy.

Pakistan's nuclear weapons capability, its status as a safe haven for Islamist extremists, and its instability in the wake of the assassination of former Prime Minister Benazir Bhutto make the country an exceptionally important case. Pakistan's military, like that of Turkey, has played a critical role in the development of the state's political culture. Unlike the secular Turkish military, however, Pakistan's military (including former General Pervez Musharraf) has supported extremist Islamist parties as a means of retaining power. But radical Islamists have not achieved electoral success on their own in Pakistan. Historically, their popularity has increased with authoritarianism and decreased with free and fair elections. The United States should adopt a broader antiradical agenda in Pakistan. It should certainly encourage a return to democracy, the development of a moderate political center, and more effective action against Islamist extremists. It should also support religious actors who are capable of undermining extremism by developing a more liberal political theology, sustaining madrasah reform, and conducting a public debate over Islam and democracy.

Egypt arguably has the greatest potential for lasting democratic reform. It is the largest of the Arab states and the traditional center of Sunni jurisprudence. Despite half a century of authoritarian regimes, it has some experience with constitutional rule, the beginnings of a civil society, professional and entrepreneurial classes, a fairly independent judiciary, and a Christian Coptic community that accounts for 10-15 percent of the population. Over the years, the United States has paid Cairo more than $50 billion to buy stability and predictability and keep the lid on radical Islam. According to Hosni Mubarak's government, if the Muslim Brotherhood, the Islamist opposition movement, were to gain power, it would revoke the Camp David accords, precipitate war with Israel, and work to restore a caliphate.

U.S. aid has helped, but it has prevented neither the growing appeal of radical Islam in Egypt nor its continued export, both of which are increased by Mubarak's policies. If free elections were held, the Muslim Brotherhood would very likely win. Unfortunately, the United States has little idea what this would mean. Despite indications that some Brothers are adopting liberal norms, Washington refuses to talk to them officially and rejects opportunities to influence their political evolution. Its policy is to support the Mubarak regime and hope for the best.

This is the logic that led to 9/11. The United States cannot eradicate Islamist radicalism through unconditional support for authoritarian regimes. Even in Iraq, assuming the continued success of U.S. military strategy, extremism and terrorism can in the final analysis only be defeated by Muslims speaking from the heart of Islam. And the only means of affording them the opportunity is durable democracy grounded in religious freedom for all--especially Muslims.

In Egypt, the United States should adopt a policy of engaging all religious and political communities, including the Muslim Brotherhood. But it should not assume that the Brothers are liberals aborning. To the contrary, it must find out precisely what they are and whether they are capable of political and theological evolution. The United States must not repeat the mistakes it made in Iran during the late 1970s, which led to its waking up one morning to face an Islamist group in power without any secure understanding of its vocabulary, let alone its goals.

The objective should be to encourage the Brotherhood to explain publicly what Islamic democracy would mean in Egypt. Handled correctly, this would force the organization to clarify its understanding of religious freedom and, necessarily, of pluralist democracy. Does the understanding include, for example, the right to debate Islamic teachings in public, to demand full equality under the law for women and religious minorities, to change religions? It is by no means inevitable, but certainly possible, that nascent liberals would be empowered by such a discourse. At the very least, it would increase U.S. understanding of what the Brotherhood in power would mean.

This strategy of discovery could include several elements adaptable to a global IRF policy. What the Brotherhood says in private must be said publicly, in Arabic, in Egypt. U.S. diplomats must speak not only the Brothers' Arabic language but their religious language as well. Training at the Foreign Service Institute should be revamped. The self-defeating instruction to U.S. diplomats "Avoid using religious language," which was presented in the 2007 public diplomacy strategy paper, should be reversed. Washington should support the development of Islamic feminism, a potentially fruitful skirmish in the Muslim war of ideas. A privately funded Islamic Institute of American Studies on U.S. soil could bring the best jurists and religious leaders from across the Muslim world to study U.S. history, society, politics, and--most important--religion.

REDISCOVERING THE AMERICAN MODEL

DESPITE THE failure of U.S. foreign policy to understand and address religion, the U.S. system of religious freedom remains vigorous and adaptive. American history should itself be instructive as U.S. policymakers seek to adjust their bearings in an age of faith. In the 1660s, colonial Congregationalists tortured and hanged Quakers on Boston Common. A century later, Americans embraced a system of religious liberty that remains unsurpassed in history. This system was not the result of the Enlightenment alone or of separating religion from society or politics. It was the result of theology and politics developing in tandem. Surely that system has contributed to the fact that American Muslim communities, despite being subject to Wahhabi influences for decades, have not been radicalized in the way that many of Europe's Muslim communities have. The Economist noted the irony: "The strange thing is that when America has tried to tackle religious politics abroad--especially jihadist violence--it has drawn no lessons from its domestic success. Why has a country so rooted in pluralism made so little of religious freedom?"

As the United States commemorates the tenth anniversary of the IRF Act, its foreign affairs scholars and foreign-policy makers must retrieve one of the nation's founding beliefs: religious freedom means much more than the right not to be persecuted for one's religion or the right to worship as one pleases in private; religious liberty protects human dignity and bolsters civil society. It means the durable and mutual accommodation of religion and the state within the boundaries of liberal democracy. And this accommodation matters not only for humanitarian reasons. It will also give the United States a new and powerful tool for addressing national security threats and foreign policy challenges that have so far proved confounding to a foreign policy establishment blinded by secularism.

Judicial Independence Adv

1ac Judicial Independence Adv --- Africa Scenario

Global democracy is on the brink – strong commitment from the US key to prevent backsliding

Diamond 15 [Larry, founding coeditor of the Journal of Democracy, senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University, and director of Stanford's Center on Democracy, Development, and the Rule of Law; January, 2015; Facing Up to the Democratic Recession; Project Muse; 7/12/15; jac]

The Democratic Recession: Breakdowns and Erosions The world has been in a mild but protracted democratic recession since about 2006. Beyond the lack of improvement or modest erosion of global levels of democracy and freedom, there have been several other causes for concern. First, **there has been a significant and, in fact, accelerating rate of democratic breakdown**. Second, the quality or stability of democracy has been declining in a number of large and strategically important

emerging-market countries, which I call "swing states." Third, authoritarianism has been deepening, including in big and strategically important countries. And fourth, **the established democracies, beginning with the United States, increasingly seem to be performing poorly and to lack the will and self-confidence to promote democracy effectively abroad.** I explore each of these in turn. First, let us look at rates of democratic breakdown. Between 1974 and the end of 2014, 29 percent of all the democracies in the world broke down (among non-Western democracies, the rate was 35 percent). In the first decade and a half of this new century, the failure rate (17.6 percent) has been substantially higher than in the preceding fifteen-year period (12.7 percent). Alternatively, if we break the third wave up into its four component decades, we see a rising incidence of democratic failure per decade since the mid-1980s. The rate of democratic failure, which had been 16 percent in the first decade of the third wave (1974–83), fell to 8 percent in the second decade (1984–93), but then climbed to 11 percent in the third decade (1994–2003), and most recently to 14 percent (2004–13). (If we include the three failures of 2014, the rate rises to over 16 percent.) Since 2000, I count 25 breakdowns of democracy in the world—not only through blatant military or executive coups, but also through subtle and incremental degradations of democratic rights and procedures that finally push a democratic system over the threshold into competitive authoritarianism (see Table). Some of these breakdowns occurred in quite low-quality democracies; yet in each case, a system of reasonably free and fair multiparty electoral competition was either displaced or degraded to a point well below the minimal standards of democracy. One methodological challenge in tracking democratic breakdowns is to determine a precise date or year for a democratic failure that results from a long secular process of systemic deterioration and executive strangulation of political rights, civil liberties, and the rule of law. No serious scholar would consider Russia today a democracy. But many believe that it was an electoral democracy (however rough and illiberal) under Boris Yeltsin. If we score 1993 as the year when democracy [End Page 144] emerged in Russia (as Freedom House does), then what year do we identify as marking the end of democracy? In this case (and many others), there is no single obvious event—like Peruvian president Alberto Fujimori's 1992 autogolpe, dissolving Congress and seizing unconstitutional powers—to guide the scoring decision. I postulate that Russia's political system fell below the minimum conditions of electoral democracy during the year 2000, as signaled by the electoral fraud that gave Vladimir Putin a dubious first-ballot victory and the executive degradation of political and civic pluralism that quickly followed. (Freedom House dates the failure to 2005.) The problem has continuing and quite contemporary relevance. For a number of years now, Turkey's ruling Justice and Development Party (AKP) has been gradually eroding democratic pluralism and freedom in the country. The overall political trends have been hard to characterize, because some of the AKP's changes have made Turkey more democratic by removing the military as an autonomous veto player in politics, extending [End Page 145] civilian control over the military, and making it harder to ban political parties that offend the "deep state" structures associated with the intensely secularist legacy of Kemal Atatürk. But the AKP has gradually entrenched its own political hegemony, extending partisan control over the judiciary and the bureaucracy, arresting journalists and intimidating dissenters in the press and academia, threatening businesses with retaliation if they fund opposition parties, and using arrests and prosecutions in cases connected to alleged coup plots to jail and remove from public life an implausibly large number of accused plotters. This has coincided with a stunning and increasingly audacious concentration of personal power by Turkey's longtime prime minister Recep Tayyip Erdoğan, who was elected president in August 2014. The abuse and personalization of power and the constriction of competitive space and freedom in Turkey have been subtle and incremental, moving with nothing like the speed of Putin in the early 2000s. But by now, these trends appear to have crossed a threshold, pushing the country below the minimum standards of democracy. If this has happened, when did it happen? Was it in 2014, when the AKP further consolidated its hegemonic grip on power in the March local-government elections and the August presidential election? Or was it, as some liberal Turks insist, several years before, as media freedoms were visibly diminishing and an ever-wider circle of alleged coup plotters was being targeted in the highly politicized Ergenekon trials? A similar problem exists for Botswana, where a president (Ian Khama) with a career military background evinces an intolerance of opposition and distaste for civil society beyond anything seen previously from the long-ruling Botswana Democratic Party (BDP). Increasing political violence and intimidation—including assaults on opposition politicians, the possible murder of a leading opposition candidate three months before the October 2014 parliamentary elections, and the apparent involvement of the intelligence apparatus in the bullying and coercion of the political opposition—have been moving the political system in a more authoritarian direction. Escalating pressure on the independent media, the brazen misuse of state television by the BDP, and the growing personalization and centralization of power by President Khama (as he advances his own narrow circle of family and friends while splitting the ruling party) are further signs of the deterioration, if not crisis, of democracy in Botswana.7 Again, Levitsky and Way had argued a number of years ago that Botswana was not a genuine democracy in the first place.8 Nevertheless, whatever kind of system it has been in recent decades, "respect for the rule of law and for established institutions and processes" began to diminish in 1998, when Khama ascended to the vice-presidency, and it has continued to decline since 2008, when the former military commander "automatically succeeded to the presidency."9 There are no easy and obvious answers to the conundrum of how to [End Page 146] classify regimes in the gray zone. One can argue about whether these ambiguous regimes are still democracies—or even if they ever really were. Those who accept that a democratic breakdown has occurred can argue about when it took place. But what is beyond argument is that there is a class of regimes that in the last decade or so have experienced significant erosion in electoral fairness, political pluralism, and civic space for opposition and dissent, typically as a result of abusive executives intent upon concentrating their personal power and entrenching ruling-party hegemony. The best-known cases of this since 1999 have been Russia and Venezuela, where populist former military officer Hugo Chávez (1999–2013) gradually suffocated democratic pluralism during the first decade of this century. After Daniel Ortega returned to the presidency in Nicaragua in 2007, he borrowed many pages from Chávez's authoritarian playbook, and left-populist authoritarian presidents Evo Morales of Bolivia and Rafael Correa of Ecuador have been moving in a similar direction. In their contribution to this issue, Scott Mainwaring and Aníbal Pérez-Liñán assert that democratic erosion has occurred since 2000 in all four of these Latin American countries (Venezuela, Nicaragua, Bolivia, and Ecuador) as well as in Honduras, with Bolivia, Ecuador, and Honduras now limping along as "semidemocracies." Of the 25 breakdowns since 2000 listed in the Table, eighteen have occurred after 2005. Only eight of these 25 breakdowns came as a result of military intervention (and of those eight, only four took the form of a conventional, blatant military coup, as happened twice in Thailand). Two other cases (Nepal and Madagascar) saw democratically elected rulers pushed out of power by other nondemocratic forces (the monarch and the political opposition, respectively). The majority of the breakdowns—thirteen—resulted from the abuse of power and the desecration of democratic institutions and practices by democratically elected rulers. Four of these took the form of widespread electoral fraud or, in the recent case of Bangladesh, a unilateral change in the rules of electoral administration (the elimination of the practice of a caretaker government before the election) that tilted the electoral playing field and triggered an opposition boycott. The other nine failures by executive abuse involved the more gradual suffocation of democracy by democratically elected executives (though that too was occurring in several of

the instances of electoral fraud, such as Ukraine under President Viktor Yanukovych [2010–14]). Overall, nearly one in every five democracies since the turn of this century has failed. The Decline of Freedom and the Rule of Law Separate and apart from democratic failure, there has also been a trend of declining freedom in a number of countries and regions since 2005. The most often cited statistic in this regard is the Freedom House [End Page 147] finding that in each of the eight consecutive years from 2006 through 2013 more countries declined in freedom than improved. In fact, after a post–Cold War period in which the balance was almost always highly favorable—with improvers outstripping the decliners by a ratio of two to one (or greater)—the balance simply inverted beginning in 2006. But this does not tell the whole story. Two important elements are noteworthy, and they are both especially visible in Africa. First, the declines have tended to crystallize over time. Thus, if we compare freedom scores at the end of 2005 and the end of 2013, we see that 29 of the 49 sub-Saharan African states (almost 60 percent) declined in freedom, while only fifteen (30 percent) improved and five remained unchanged. Moreover, twenty states in the region saw a decline in political rights, civil liberties, or both that was substantial enough to register a change on the seven-point scales (while only eleven states saw such a visible improvement). The larger states in sub-Saharan Africa (those with a population of more than ten million) did a bit better, but not much: Freedom deteriorated in thirteen of the 25 of them, and improved in only eight. Another problem is that the pace of decay in democratic institutions is not always evident to outside observers. In a number of countries where we take democracy for granted, such as South Africa, we should not. In fact, there is not a single country on the African continent where democracy is firmly consolidated and secure—the way it is, for example, in such third-wave democracies as South Korea, Poland, and Chile. In the global democracy-promotion community, few actors are paying attention to the growing signs of fragility in the more liberal developing democracies, not to mention the more illiberal ones. Why have freedom and democracy been regressing in many countries? The most important and pervasive answer is, in brief, bad governance. The Freedom House measures of political rights and civil liberties both include subcategories that directly relate to the rule of law and transparency (including corruption). If we remove these subcategories from the Freedom House political-rights and civil-liberties scores and create a third distinct scale with the rule-of-law and transparency scores, the problems become more apparent. African states (like most others in the world) perform considerably worse on the rule of law and transparency than on political rights and civil liberties.10 Moreover, rule of law and political rights have both declined perceptibly across sub-Saharan Africa since 2005, while civil liberties have oscillated somewhat more. These empirical trends are shown in Figure 2, which presents the Freedom House data for these three reconfigured scales as standardized scores, ranging from 0 to 1.11 The biggest problem for democracy in Africa is controlling corruption and abuse of power. The decay in governance has been visible even in the best-governed African countries, such as South Africa, which suffered [End Page 148] a steady decline in its score on rule of law and transparency (from .79 to .63) between 2005 and 2013. And as more and more African states become resource-rich with the onset of a second African oil boom, the quality of governance will deteriorate further. This has already begun to happen in one of Africa's most liberal and important democracies, Ghana. The problem is not unique to Africa. Every region of the world scores worse on the standardized scale of transparency and the rule of law than it does on either political rights or civil liberties. In fact, transparency and the rule of law trail the other two scales even more dramatically in Latin America, postcommunist Europe, and Asia than they do in Africa (Figure 3). Many democracies in lower-income and even middle- or upper-middle-income countries (notably, Argentina) struggle with the resurgence of what Francis Fukuyama calls "neo-patrimonial" tendencies.12 Leaders who think that they can get away with it are eroding democratic checks and balances, hollowing out institutions of accountability, overriding term limits and normative restraints, and accumulating power and wealth for themselves and their families, cronies, clients, and parties. In the process, they demonize, intimidate, and victimize (and occasionally even jail or murder) opponents who get in their way. Space for opposition parties, civil society, and the media is shrinking, and international support for them is drying up. Ethnic, religious, and other identity cleavages polarize many societies that lack well-designed democratic institutions to manage those cleavages. State structures are too often weak and porous—unable to secure order, protect rights, meet the most basic social needs, or rise above corrupt, clientelistic, and predatory impulses. [End Page 149] Democratic institutions such as parties and parliaments are often poorly developed, and the bureaucracy lacks the policy expertise and, even more so, the independence, neutrality, and authority to effectively manage the economy. Weak economic performance and rising inequality exacerbate the problems of abuse of power, rigging of elections, and violation of the democratic rules of the game. Political Rights, Civil Liberties, and Transparency/Rule of Law, 2013 Source: Freedom House raw data for Freedom in the World, 2013. The Strategic Swing States A different perspective on the global state of democracy can be gleaned from a focus not on regional or global trends, but on the weightiest emerging-market countries. These are the ones with large populations (say, more than fifty million) or large economies (more than US$200 billion). I count 27 of these (including Ukraine, which does not quite reach either measure, but is of immense strategic importance). Twelve of these 27 swing states had worse average freedom scores at the end of 2013 than they did at the end of 2005. These declines took place across the board: in fairly liberal democracies (South Korea, Taiwan, and South Africa); in less liberal democracies (Colombia, Ukraine, Indonesia, Turkey, Mexico, and Thailand before the 2014 military coup); and in authoritarian regimes (Ethiopia, Venezuela, and Saudi Arabia). In addition, I think three other countries are also less free today than they were in 2005: Russia, where the noose of repressive authoritarianism has clearly been tightening since Vladimir Putin returned to the presidency in early 2012; Egypt, where the new military-dominated government [End Page 150]

under former general Abdel Fattah al-Sisi is more murderous, controlling, and intolerant than even the Mubarak regime (1981–2011); and Bangladesh, where (as noted above) democracy broke down early in 2014. Only two countries (Singapore and Pakistan) are freer today (and only modestly so) than in 2005. Some other countries have at least remained stable. Chile continues to be a liberal-democratic success story; the Philippines has returned to robust democracy after an authoritarian interlude under President Gloria Macapagal-Arroyo (2001–10); and Brazil and India have preserved robust democracy, albeit with continuing challenges. But overall, among the 27 (which also include China, Malaysia, Nigeria, and the United Arab Emirates) there has been scant evidence of democratic progress. In terms of democracy, the most important countries outside the stable democratic West have been either stagnating or slipping backward. The Authoritarian Resurgence An important part of the story of global democratic recession has been the deepening of authoritarianism. This has taken a number of forms. In Russia, space for political opposition, principled dissent, and civil society activity outside the control of the ruling authorities has been shrinking.13 In China, human-rights defenders and civil society activists have faced increasing harassment and victimization. The (mainly) postcommunist autocracies of the Shanghai Cooperation Organization, centered on the axis of cynical cooperation between Russia and China, have become much more coordinated and assertive. Both countries have both been aggressively flexing their muscles in dealing with their neighbors on territorial questions. And increasingly they are pushing back against democratic norms by also using instruments of soft power—international media (such as RT, Russia's slick 24/7 global television "news" channel), China'ss Confucius Institutes, lavish conferences, and exchange programs—to try to discredit Western democracies and democracy in general, while promoting their own models and norms.14 This is part of a broader trend of renewed authoritarian skill and energy in using state-run media (both traditional and digital) to air an eclectic mix of proregime narratives, demonized images of dissenters, and illiberal, nationalist, and anti-American diatribes.15 African autocrats have increasingly used China's booming aid and investment (and the new regional war on Islamist terrorism) as a counterweight to Western pressure for democracy and good governance. And they have been only too happy to point to China's formula of rapid state-led development without democracy to justify their own deepening authoritarianism. In Venezuela, the vise of authoritarian populism has tightened and the government's toleration (or even organization) of criminal violence to demobilize middle-class opposition has risen. The [End Page 151] "Arab Spring" has imploded in almost every country that it touched save Tunisia, leaving in most cases even more repressive states or, as in the case of Libya, hardly a state at all. The resurgence of authoritarianism over the past eight years has been quickened by the diffusion of common tools and approaches. Prominent among these have been laws to criminalize international flows of financial and technical assistance from democracies to democratic parties, movements, media, election monitors, and civil society organizations in authoritarian regimes, as well as broader restrictions on the ability of NGOs to form and operate and the creation of pseudo-NGOs to do the bidding (domestically and internationally) of autocrats.16 One recent study of 98 countries outside the West found that 51 of them either prohibit or restrict foreign funding of civil society, with a clear global trend toward tightening control; as a result, international democracy-assistance flows are dropping precipitously where they are needed most.17 In addition, authoritarian (and even some democratic) states are becoming more resourceful, sophisticated, and unapologetic in suppressing Internet freedom and using cyberspace to frustrate, subvert, and control civil society.18 Western Democracy in Retreat **Perhaps the most worrisome dimension of the democratic recession has been the decline of democratic efficacy, energy, and self-confidence in the West, including the United States.** There is a growing sense, both domestically and internationally, that democracy in the United States has not been functioning effectively enough to address the major challenges of governance. The diminished pace of legislation, the vanishing ability of Congress to pass a budget, and the 2013 shutdown of the federal government are only some of the indications of a political system (and a broader body politic) that appears increasingly polarized and deadlocked. As a result, both public approval of Congress and public trust in government are at historic lows. The ever-mounting cost of election campaigns, the surging role of nontransparent money in politics, and low rates of voter participation are additional signs of democratic ill health. Internationally, promoting democracy abroad scores close to the bottom of the public's foreign-policy priorities. And the international perception is that democracy promotion has already receded as an actual priority of U.S. foreign policy. **The world takes note of all this. Authoritarian state media gleefully publicize these travails of American democracy in order to discredit democracy in general and immunize authoritarian rule against U.S. pressure. Even in weak states, autocrats perceive that the pressure is now off: They can pretty much do whatever they want to censor the media, crush the opposition, and perpetuate their rule, and Europe and the United** [End Page 152] **States will swallow it.** Meek verbal protests may ensue, but the aid will still flow and the dictators will still be welcome at the White House and the Elysée Palace. **It is hard to overstate how important the vitality and self-confidence of U.S. democracy has been to the global expansion of democracy during the third wave.** While each democratizing country made its own transition, pressure and solidarity from the United State and Europe often **generated a significant and even crucial enabling environment that helped to tip finely balanced situations toward democratic change, and then in some cases gradually toward democratic consolidation**. If this

solidarity is now greatly diminished, so will be the near-term global prospects for reviving and sustaining democratic progress. A Brighter Horizon? Democracy has been in a global recession for most of the last decade, and there is a growing danger that the recession could deepen and tip over into something much worse. Many more democracies could fail, not only in poor countries of marginal strategic significance, but also in big swing states such as Indonesia and Ukraine (again). There is little external recognition yet of the grim state of democracy in Turkey, and there is no guarantee that democracy will return any time soon to Thailand or Bangladesh. Apathy and inertia in Europe and the United States could significantly lower the barriers to new democratic reversals and to authoritarian entrenchments in many more states. Yet the picture is not entirely bleak. We have not seen "a third reverse wave." Globally, average levels of freedom have ebbed a little bit, but not calamitously. Most important, there has not been significant erosion in public support for democracy. In fact, what the Afrobarometer has consistently shown is a gap—in some African countries, a chasm—between the popular demand for democracy and the supply of it provided by the regime. This is not based just on some shallow, vague notion that democracy is a good thing. Many Africans understand the importance of political accountability, transparency, the rule of law, and restraint of power, and they would like to see their governments manifest these virtues. While the performance of democracy is failing to inspire, authoritarianism faces its own steep challenges. There is hardly a dictatorship in the world that looks stable for the long run. The only truly reliable source of regime stability is legitimacy, and the number of people in the world who believe in the intrinsic legitimacy of any form of authoritarianism is rapidly diminishing. Economic development, globalization, and the information revolution are undermining all forms of authority and empowering individuals. Values are changing, and while we should not assume any teleological path toward a global "enlightenment," generally the movement is toward greater distrust of authority and more [End Page 153] desire for accountability, freedom, and political choice. In the coming two decades, these trends will challenge the nature of rule in China, Vietnam, Iran, and the Arab states much more than they will in India, not to mention Europe and the United States. Already, democratization is visible on the horizon of Malaysia's increasingly competitive electoral politics, and it will come in the next generation to Singapore as well. The key imperative in the near term is to work to reform and consolidate the democracies that have emerged during the third wave—the majority of which remain illiberal and unstable, if they remain democratic at all. With more focused, committed, and resourceful international engagement, it should be possible to help democracy sink deeper and more enduring roots in countries such as Indonesia, the Philippines, South Africa, and Ghana. It is possible and urgently important to help stabilize the new democracies in Ukraine and Tunisia (whose success could gradually generate significant diffusion effects throughout the Arab world). It might be possible to nudge Thailand and Bangladesh back toward electoral democracy, though ways must be found to temper the awful levels of party polarization in each country. With time, the electoral authoritarian project in Turkey will discredit itself in the face of mounting corruption and abuse of power, which are already growing quite serious. And the oil-based autocracies in Iran and Venezuela will face increasingly severe crises of economic performance and political legitimacy. It is vital that democrats in the established democracies not lose faith. Democrats have the better set of ideas. Democracy may be receding somewhat in practice, but it is still globally ascendant in peoples' values and aspirations. This creates significant new opportunities for democratic growth. If the current modest recession of democracy spirals into a depression, it will be because those of us in the established democracies were our own worst enemies.

Judicial independence is the cornerstone of democracy --- essential step in forming new democracies

Gardbaum 15 [Stephen, MacArthur Foundation Professor of International Justice and Human Rights, University of California, Los Angeles, School of Law; 01/20/15; "Are Strong Constitutional Courts Always a Good Thing for New Democracies?"; Social Science Research Network; 07/07/15; jac]

III. INDEPENDENCE OF THE JUDICIARY: THE MOST ESSENTIAL GOAL FOR COURTS IN NEW DEMOCRACIES The premise of my argument in this Article is that, as far as courts are concerned, the most important, basic, and essential goal for new democracies in their transition to becoming stable ones is not establishing the power of one or more courts to invalidate legislation, but establishing and maintaining the overall independence of the judiciary. Judicial review may or may not be (instrumentally or normatively) necessary for the rule of law and constitutional democracy,89 but the independence of the judiciary undoubtedly is, and securing the latter

must be the top priority if and to the extent there is any practical tension or conflict between them.90 While certainly among stable, established democracies there are several well-known examples of countries that long rejected judicial review, and a few that still do, there are none that do not adhere to the basics of an independent judiciary.91 Moreover, although there is a robust academic debate within constitutional/democratic theory between proponents and opponents of judicial review, **no one**, to the best of my knowledge, **argues against the central importance of judicial independence**.92 It is true that the classical notion of separation of powers between three of the major functions of government—making, executing, and adjudicating the law—has been under almost permanent siege ever since it was fully formulated by the end of the eighteenth century. The perceived necessity of the institutional separation between the executive and legislative branches (King and Parliament) was undermined first by the subsequent birth of parliamentary government in the nineteenth century that famously "fused" them93 and then by the growth of modern political parties as the central locus of political competition in both parliamentary and presidential systems.94 The later development of the administrative state and its increasing functional independence of the executive challenged the "holy trinity" of government branches.95 But what has not changed or come under siege is the perceived importance of the institutional separation of the judicial function from the others— usually referred to as the independence of the judiciary. This independence was first achieved in England by the 1701 Act of Settlement, granting life tenure to His Majesty's judges during good behavior (removable only on proof to the contrary by parliamentary impeachment) and ending royal assertions of a power to dismiss.96 To be sure, such separation does not require that courts be hermetically insulated from the other branches. Judicial independence does not—and has never been understood to—mean complete judicial autonomy or self-governance. For just under three hundred years, members of the independent judiciary in England were appointed in the monarch's name by the Lord Chancellor, who served simultaneously as head of the judiciary and as a senior cabinet minister.97 Among established democracies, judicial autonomy currently varies in degree from the near-total self-governance of Higher Judicial Councils in Italy and Spain and the collegium system in India, to independent judicial appointment commissions on which judges are usually in a minority, as in the United Kingdom, to the more traditional roles of ministers of justice in promotion decisions as mostly in Germany and France.98 Legislatures typically play a significant role in the appointment of constitutional court judges.99 As is well known, the independence of the judiciary has two key elements. First, judges should be free from government control, pressure, or influence in performing their adjudicatory functions.100 The situation in China, where the work of judges is closely supervised by both local governments and the Communist Party with direct power over salaries and promotions, may serve as a paradigm of non-independence in this regard.101 Second, judges should perform these functions impartially, without political, partisan, or personal bias, and according to the law and facts.102 Here, for example, the election and re-election of state court judges in the United States, especially where campaign contributions by potential litigants are involved, raise concerns about this second dimension of independence. Of course, the first element is one of the preconditions of the second: freedom from government control enables judges to adjudicate impartially—although it does not guarantee it. My claim is that both elements of the independence of the judiciary are more likely to be placed under stress when courts have and exercise strong-form judicial review powers than when they do not. That is, there may be a practical tension and conflict between the independence of the judiciary and judicial review resulting in additional—and, from a rule of law/constitutional democracy perspective, unnecessary—pressures and strains in an already difficult context. Unnecessary because just as judicial independence is not equivalent to and does not require full autonomy from the other branches of government,103 so too it is not equivalent to and does not require judicial supremacy over them. In other words, although there is no single model for ensuring judicial independence,104 there may be a single model for endangering it in the particular context of new and transitional democracies.

Privileging of national security interests in the U.S. is destroying democratic modeling in African countries

Schmitter 15 [Philippe, Emeritus Professor of the Department of Political and Social Sciences at the European University Institute; Crisis and Transition, But Not Decline; 01/15; Journal of Democracy Volume 26, Number 1, January 2015; Project Muse; 07/05/15; jac]

Finally, the illiberal acts of the United States and other Western democratic nations in the post-9/11 global "war on terror" have given Africa's elected autocrats easy justification for their own retreat from the principles and practices of democratic accountability. **African political elites opportunistically cite U.S. actions** such as the rendition or waterboarding **of suspected terrorists as examples to justify their own privileging of national-security interests over citizens' rights**. Similarly, Africa's elected autocrats are finding great comfort in the resurgence of authoritarian and illiberal role models provided by China, Iran, Russia, Venezuela, and others.

Nigeria models U.S. separation of powers

Mwalimu, 5 --- Senior Legal Specialist at Law Library of Congress (The Nigerian Legal System: Public Law, Pg. 6)

Nigeria is a country of special significance to the United States. The Nigerian constitutional system is patterned after that of the United States. From the point of view of influence of the American Constitution on Nigerian constitutional practices, this author has postulated that this impact is discernible and encompasses the whole regime of the political function in Nigeria during the period of civil rule. This feature of Nigerian constitutionalism, based on the United States model, finds particular expression in the constitutions of 1963 to 1999. These instruments are predicated on the presidential system of government guided by principles of separation of powers. More than any other factor, this consideration merits an in-depth exposition of the law of Nigeria as a testimony to this special affinity in constitutional formulation between the United States and Nigeria.

Nigerian democratic collapse spills over to overall African democratization

Diamond 8 [Larry, founding coeditor of the Journal of Democracy, senior fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University, and director of Stanford's Center on Democracy, Development, and the Rule of Law; April, 2008; "The Democratic Rollback"; Foreign Affairs; 07/13/15; jac]

Where democracy survives, it often labors under serious difficulties. In most regions, majorities support democracy as the best form of government in principle, but substantial minorities are willing to entertain an authoritarian option. Furthermore, in much of the democratic world, citizens lack any confidence that politicians, political parties, or government officials are serving anyone other than themselves. According to surveys by Latinobarómetro (a Santiago-based corporation conducting public opinion surveys throughout Latin America), only one-fifth of the Latin American population trusts political parties, one-quarter trusts legislatures, and merely one-third has faith in the judiciary. According to similar surveys conducted by the Scotland-based New Democracies Barometer, the figures are even worse in the new democracies of eastern Europe. Public confidence in many civilian constitutional regimes has been declining. The Asian Barometer (which conducts public opinion surveys throughout Asia) found that the percentage of Filipinos who believe democracy is always the best form of government dropped from 64 percent to 51 percent between 2001 and 2005. At the same time, satisfaction with democracy fell from 54 percent to 39 percent, and the share of the Filipino population willing to reject the option of an authoritarian "strong leader" declined from 70 percent to 59 percent. The Afrobarometer (which conducts similar surveys in African countries) uncovered even sharper decreases in Nigerians' public confidence in democracy between 2000 and 2005 and also found that the proportion of the Nigerian public that felt the government was working to control corruption dropped from 64 percent to 36 percent. This is no surprise: during this period, President Olusegun Obasanjo saw many of his laudable economic reforms overshadowed or undone by continuing massive corruption, by his obsessive bid to remove a constitutional term limit on his presidency, and by the gross rigging of the 2007 elections on behalf of his ruling party. Electoral fraud and endemic corruption have once again ravaged a promising democratic experiment. If Nigeria reverts to military rule, descends into political chaos, or collapses, it will deal a harsh blow to democratic hopes across Africa. Indeed, the many African countries that remain blatantly authoritarian will never liberalize if the continent's new and partial democracies cannot make democracy work.

Nigerian democracy is key to survival of Nigeria

Leadership 13, Nigeria's "Most Influential Newspaper", Oct 1, 2013, http://leadership.ng/news/011013/democracy-has-stabilised-nigeria-babatope

Former Transport Minister, Chief Ebenezer Babatope, on Tuesday, said democracy has stabilised Nigeria.

Babatope said in Yenagoa that the positive impact of democratic rule in governance had helped the country to stabilise the polity.

He made the remark at the 17th Anniversary Public Lecture organised by the Bayelsa government, in commemoration of the 17 years of the state's creation.

The News Agency of Nigeria (NAN) reports that the anniversary lecture has ``Good Governance as Panacea for Promoting Stable Democracy and Sustainable Development'' as its theme.

The ex-minister said that in spite of its challenges, Nigeria recorded great feats as a nation under democracy.

``Nigeria is a multi-tribal and multi-religious nation. Our delicate balancing of the operations of these essential features of our socio-political lives had helped tremendously in ensuring the triumph of democracy in our nation.

``Though we have conflicts, our nation has not gone under because no matter our faults, we have not allowed the basic tenets of democracy and democratic governance to be subverted in our country.

``Democracy, therefore, has gone a long way to stabilise our nation.''

Babatope noted that the current challenges facing the country centered on how to make democracy work and survive.

According to him, it is clear that **democracy is the only form of government that can guarantee the survival of Nigeria as a nation**.

That destabilizes Africa — refugee flows will be massive

Buhari 4 – Former Head of State of the Federal Republic of Nigeria (Muhammadu, "Alternative Perspectives on Nigeria's Political Evolution", http://www.dawodu.com/buhari1.htm, April 8th, 2004, KTOP)

You are perhaps not all aware of the current state of affairs in Nigeria, characterized as they are by a failure of political leadership and failed governance. Nigeria, the largest and potentially the wealthiest country in sub-Saharan Africa, is today a basket case, confronted by problems that threaten not only its nascent democracy, but its very existence. The country's sheer size and complexity, its rich human and vast material endowments, provide both an opportunity and a challenge, depending on the attitude of Nigerians and their friends and partners, especially the U.S. It is worth observing that ignoring Nigeria and Nigerians by the U.S. or the world will have far-reaching negative consequences for the region and beyond. An unstable Nigeria driven by internal wars, insurrections, or other manifestations of a failed state has the potential to destabilize the whole continent of Africa. The common symptomatic phenomena of internal disarray by way of civil wars and refugees and internally displaced persons have been dealt with by the world with varying successes in the past. The two world wars in the last century and developments in their wake, the collapse of the Soviet Empire in Eastern Europe, Central Asia, the Middle East and the Balkans, have produced millions of refugees - which were and still are unacceptable. But the break-up of Nigeria with a population of 130 million willproduce a refugee crisis of unimaginable proportions. African countries will be overwhelmed and both Europe and Asia will be under severe strain. The highest number of refugees the world has had to deal with has never exceeded 25 million, with another 30 million or so displaced persons. This is about one third of the refugee potential of a war torn Nigeria. The international community, especially the U.S. will see it in their interest to forestall this major tragedy for Africa and for the world. Since independence in 1960, Nigeria has gone through many crises including a bloody civil war that lasted from 1967 to 1970, and cost nearly a million lives, with attendant destruction, hunger, disease and massive population movements. The Nigerian military has, like its Turkish and Pakistani counterparts, deemed it prudent to intervene in the politics of Nigeria for reasons I will not want to delve into, in this submission. As a rule most of such interventions, even when adjudged necessary and or appropriate, have done permanent damage to the military's espirit de corps, professionalism and preparedness, and have more often than not, done permanent damage to political institution building and emergent consensus creation and articulation - so necessary to security, progress and prosperity, in a nation with such diverse and multifarious socio-economic and political constituencies. The Nigerian military have been compelled to surrender power and return to the barracks by the imperatives of political reality and the heavy, definitely unbearable toll on the institution. Nigeria is once again at a crossroad, at a defining moment in its history and the history of Africa.

That causes global war

Glick 7, Middle East fellow at the Center for Security Policy, Condi's African holiday,http://www.carolineglick.com/e/2007/12/condis-african-holiday.php?pf=yes

The Horn of Africa is a dangerous and strategically vital place. Small wars, which rage continuously, can easily escalate into big wars. Local conflicts have regional and global aspects. All of the conflicts in this tinderbox, which controls shipping lanes from the Indian Ocean into the Red Sea, can potentially give rise to regional, and indeed global conflagrations between competing regional actors and global powers

XT: US Signal Key

A strong US signal and internal checks and balances are key to a successful democracy

Diamond 14 [Larry, Senior fellow at the Hoover Institution and at the Freeman Spogli Institute at Stanford University;10/24/14; "Chasing Away the Democracy Blues"; Foreign Policy; 07/10/15; jac]

So what is to be done? We need to begin by disaggregating the problem. Let's start at the top of the hierarchy of democratic development and work down. I used to add at the end of this kind of lecture a reflective caveat, "Physician, heal thyself." In other words, **we can't be credible and effective in promoting democracy abroad if we don't reform and improve its functioning at home**.That was usually the last imperative I mentioned. Now it needs to be the first. Like many of you who travel widely, **I am increasingly alarmed by how pervasive and corrosive is the worldwide perception — in both autocracies and democracies — that American democracy has become dysfunctional and is no longer a model worth emulating**. Fortunately, there are many possible models, and most American political scientists never recommended that emerging democracies copy our own excessively veto-ridden institutions. Nevertheless **the prestige, the desirability, and the momentum of democracy globally are heavily influenced by perceptions of how it is performing in its leading examples**. If we do not mobilize institutional reforms and operational innovations to reduce partisan polarization, encourage moderation and compromise, energize executive functioning, and reduce the outsized influence of money and special interests in our own politics, how are we going to be effective in tackling these kinds of challenges abroad? Second, we need to be absolutely sure that we have harvested and preserved the low-hanging fruit. That is, we must truly help to consolidate incipient or assumed success stories. One of the biggest mistakes the global democracy promotion community has made over the last thirty years is to cross too many countries off the list of democracy assistance recipients, because once the transition is completed and the new democracy lifts off in a middle-income country, we assume it can take care of itself. Or we believe that ten or twenty years of democratic assistance and engagement should be enough. This is all summed up in the term, "graduation." In my profession, we prefer the term "commencement" to "graduation." Sometimes our graduates still need and deserve our help in certain areas. A strong and capable state; a genuine rule of law, buttressed by a neutral and capable judiciary; effective institutions of horizontal accountability; competent and honest local administration; a pluralistic and resourceful civil society; a culture of tolerance, vigilance, and civic responsibility — these and other foundations of a secure liberal democracy do not get constructed overnight. Many of them emerge gradually with economic development. In more mature economies, they can develop more quickly. But even many of the countries listed as "upper middle income" by the World Bank remain well within the danger zone of democratic decay — as were Russia and Venezuela a decade and a half ago. The list of upper middle income countries includes Argentina, which is going through a profound economic and political crisis; Turkey, where the AKP has become a hegemonic party, the press functions in a state of fear, and the opposition parties are in disarray; Romania, an EU country where endemic corruption continues to undermine the health of democracy and governance; South Africa, where a corrupt leadership exhibits visibly declining commitment to the rule of law and liberal values; Thailand, which is now in the grip of a nasty military dictatorship that is not at the moment behaving as if it is transitional; Libya, which had a

revolutionary uprising against Qaddafi, and then a state collapse; and Tunisia, which could become the one success story of the Arab Spring, but still faces serious political, economic, and security challenges. A long-term strategic approach to promoting democracy would make the following resolution: Once a country (and especially a middle-income country) achieves or renews democracy, we should do everything possible to help lock it into place for the long run, to consolidate it. Once a country (and especially a middle-income country) achieves or renews democracy, we should do everything possible to help lock it into place for the long run, to consolidate it. That means that when a new, fragile Libyan transitional government appeals to us for security assistance (assistance, not occupying troops) we don't say, "sorry pals, we helped you get there, now let somebody else help you stay there." It means that we need to go to the new democratically elected Tunisian government after these approaching elections and ask them what it needs. What can we do to help revive the economy and rejuvenate flows of tourism and investment? Beyond our existing programs of party training, election observation, and other assistance, what can we do to support new civil society monitoring and training initiatives, to strengthen independent journalism and policy think tanks, to advance democratic civic education in the schools and the media, to support women's groups, student groups, human rights groups, and many other initiatives to build a culture and civic infrastructure to sustain democracy? If we want to promote democracy in the Arab world for the long run, we should invest very heavily in Tunisia in every possible way, because what the Arab world most needs now is one example of a decent, functioning democracy that can serve as a lesson, an inspiration, and a point of diffusion for the region. The same goes for Ukraine, though it is not as economically advanced. Ukraine is at a pivotal point in its history. It cannot afford another democratic regression, or an authoritarian, xenophobic Russia may swallow up the rest of it. It is struggling mightily with entrenched patterns of corruption, bad governance, and weak institutions. But it has some remarkable actors in the party system, the mass media, and civil society organizations. We need to invest heavily in these people and institutions, and in economic reform, revival, and integration with the West. It should be one of the major priorities for democracy assistance for the next decade or two. And we need to sustain these investments over an extended period of time in all three critical sectors: The state, the party and representative institutions, and civil society.

Improving the U.S. democratic model key to reverse global decline in democracy

Diamond 14 [Larry, Senior fellow at the Hoover Institution and at the Freeman Spogli Institute at Stanford University; 11/24/14; "Is Democracy in Decline?"; http://nextgenerationdemocracy.org/624/; 07/10/14; jac]

The Decline of Freedom and the Rule of Law There has also been a trend of declining freedom since 2005. In each of the last eight years more countries have declined in freedom than have improved, usually by a factor of two to one or more. Since 2005, 29 of the 49 sub-Saharan African states (almost 60 percent) declined in freedom, while only fifteen countries (30 percent) improved. The trend of erosion in freedom and accountability is not always evident to outside observers. In a number of countries where we take democracy for granted, such as South Africa, we should not. In fact, there is not a single country on the African continent where democracy is firmly consolidated and secure today—the way it is, for example, in such third-wave democracies as South Korea, Poland, and Chile. In the global democracy-promotion community, few actors are paying attention to the growing signs of fragility in some more liberal developing democracies, not to mention the more illiberal ones. Why have freedom and democracy been regressing in many countries? The most important and pervasive answer is bad governance. If we reorganize the Freedom House data into three scales—political rights, civil liberties, and transparency and the rule of law—we find that every region performs worse on transparency than on political rights and civil liberties. The deterioration in transparency and rule of law since 2005 has been particularly visible, even in a supposedly liberal democracy such as South Africa. As more and more African states become resource-rich, with the onset of a second African oil boom, the quality of governance will deteriorate further. This has already begun to happen in one of Africa's most liberal and important democracies, Ghana. Around the world, democracies are struggling with the resurgence of what Francis Fukuyama calls "neo-patrimonial" tendencies. Leaders who think that they can get away with it are eroding democratic checks and balances, overriding term limits and normative restraints, violating opposition rights, and accumulating power and wealth for themselves and their families, cronies, clients, and parties. Space for opposition parties, civil society, and the media is shrinking, and international support for them is drying up. Ethnic, religious, and other identity cleavages polarize many societies that lack well-designed democratic institutions to manage those cleavages. State structures are too often unable to secure order, protect rights, meet the most basic social needs. Democratic institutions such as parties and

parliaments are often poorly developed, and the bureaucracy lacks the policy expertise, and even more so the independence and authority, to effectively manage the economy. Weak economic performance and rising inequality exacerbate popular disaffection. Another recent blow has been the crushing or implosion of Arab movements for democratic change. Levels of freedom are actually lower in most Arab countries today than they were at the end of 2010, and nowhere has the resurgence or reinvention of authoritarianism been more evident than in Egypt, where the military has given a thin electoral façade to a regime more repressive and intolerant than the worst days of Hosni Mubarak's rule. The Authoritarian Resurgence The resurgence of authoritarianism in the Arab world has been part of **a recent global trend**. In Russia, space for political opposition, principled dissent, and civil society activity outside the control of the ruling authorities has been shrinking. In China, human rights defenders and civil society activists have faced increasing harassment and victimization. The autocracies of the Shanghai Cooperation Organization have become much more coordinated and assertive. Russia and China have both been aggressively flexing their muscles on territorial questions. And increasingly they are pushing back against democratic norms by also using instruments of soft power to try to discredit democracies while promoting their own models and norms. This is part of a broader trend of renewed authoritarian skill and energy in using state-run media (both traditional and digital) to air an eclectic mix of proregime narratives, demonized images of dissenters, and illiberal, xenophobic diatribes. The resurgence of authoritarianism has been quickened by the diffusion of common tools, such as laws to criminalize international flows of financial and technical assistance from democracies to democratic parties, movements, media, election monitors, and civil society organizations in authoritarian regimes. There have also been broader restrictions on the ability of NGOs to form and operate and the creation of pseudo-NGOs to do the bidding of autocrats. In addition, authoritarian (and even some democratic) states are becoming more resourceful, sophisticated, and unapologetic in suppressing Internet freedom and using cyberspace to frustrate, subvert, and control civil society. Western Democracy in Retreat Perhaps the most worrisome dimension of the democratic recession has been the decline of democratic efficacy, energy, and self-confidence in the West, including the United States. We in the U.S. and in parts of the EU have some hard reform work ahead to reduce polarization, foster better policymaking and diminish the corrupting influence of money in electoral politics and lobbying. **The lackluster performance of democracy in the West, most of all the US, is hurting its cause globally.** As a global democratic community, we also need to recover our energy, and our confidence in our own values. If we do not undertake more rapid, resourceful, coordinated, and explicit actions to confront the resurgence of authoritarianism, the mild democratic recession of the past decade will mutate into something far worse. It is vital that the established democracies not lose faith. Democrats have the better set of ideas. Democracy may be receding somewhat in practice, but it is still globally ascendant in peoples' values and aspirations. This creates significant new opportunities for democratic growth if **we can restore the global normative climate of vigorous democratic solidarity and assistance**.

Democracy must be constantly reaffirmed to prevent global backsliding

Kagan 15 [Robert, Senior fellow with the Project on International Order and Strategy at the Brookings Institution in Washington; January 2015; "The Weight of Geopolitics"; Project Muse; 07/12/15; jac]

Democracy, Autocracy, and Power What about today? With the democratic superpower curtailing its global influence, regional powers are setting the tone in their respective regions. Not surprisingly, dictatorships are more common in the environs of Russia, along the borders of China (North Korea, Burma, and Thailand), and in the Middle East, where long dictatorial traditions have so far mostly withstood the challenge of popular uprisings. But even in regions where democracies remain strong, authoritarians have been able to make a determined stand while their democratic neighbors passively stand by. Thus Hungary's leaders, in the heart of an indifferent Europe, proclaim their love of illiberalism and crack down on press and political freedoms while the rest of the European Union, supposedly a club for democracies only, looks away. In South America, democracy is engaged in a contest with dictatorship, but an indifferent Brazil looks on, thinking only of trade and of North American imperialism. Meanwhile in Central America, next door to an indifferent Mexico, democracy collapses under the weight of drugs and crime and the resurgence of the caudillos. Yet it may be unfair to blame regional powers for not doing what they have never done. Insofar as the shift in the geopolitical equation has affected the fate of democracies worldwide, it is probably the change in the democratic superpower's behavior that bears most of the responsibility. If that superpower does not change its course, we are likely to see democracy around the world rolled back further. There is nothing inevitable about democracy. The liberal world order we have been living in these past decades was not bequeathed by "the Laws of Nature and of Nature's God." It

is not the endpoint of human progress. There are those who would prefer a world order different from the liberal one. Until now, however, they have not been able to have their way, but not because their ideas of governance are impossible to enact. [End Page 29] Who is to say that Putinism in Russia or China's particular brand of authoritarianism will not survive as far into the future as European democracy, which, after all, is less than a century old on most of the continent? Autocracy in Russia and China has certainly been around longer than any Western democracy. Indeed, it is autocracy, not democracy, that has been the norm in human history—only in recent decades have the democracies, led by the United States, had the power to shape the world. Skeptics of U.S. "democracy promotion" have long argued that many of the places where the democratic experiment has been tried over the past few decades are not a natural fit for that form of government, and that the United States has tried to plant democracy in some very infertile soils. Given that democratic governments have taken deep root in widely varying circumstances, from impoverished India to "Confucian" East Asia to Islamic Indonesia, we ought to have some modesty about asserting where the soil is right or not right for democracy. Yet it should be clear that the prospects for democracy have been much better under the protection of a liberal world order, supported and defended by a democratic superpower or by a collection of democratic great powers. Today, as always, democracy is a fragile flower. It requires constant support, constant tending, and the plucking of weeds and fencing-off of the jungle that threaten it both from within and without. In the absence of such efforts, the jungle and the weeds may sooner or later come back to reclaim the land.

XT: Judicial Influence Key to Democracy

Judicial Independence is key to separation of powers which prevents collapse of emerging democracies

Issacharoff 7 [Samuel, Reiss Professor of Constitutional Law at NYU; 04/2007; "FRAGILE DEMOCRACIES"; JSTOR; 07/07/15; jac]

Across the range of cases in which democratic regimes have sought to prevent antidemocratic elements from securing the advantages of the electoral arena, three forms of procedural concerns emerge. Although there is no judicial discussion (that I am aware of) setting out these considerations in comprehensive fashion, taken together they highlight some of the primary protections against the potential misuse of viewpoint-based suppression of political activity. The first and undoubtedly most significant procedural safeguard is the concentration of the power to suppress away from self-interested political actors. In all these cases, the judiciary acts based on the government's petition or the public prosecutor's charges,202 but it acts as an independent arbiter of the legitimacy of the government's professed need to suppress an antidemocratic threat. Independent judicial review takes on particular significance in parliamentary systems. There is an ever-present risk in democratic systems that the claimed exigencies necessitating the use of emergency powers, including the power to suppress antagonistic political speech, will become the rule that swallows the exception. Too many putative democracies, particularly in the immediate post-colonial world, have succumbed to one-party rule under the claimed necessity of domestic emergencies for any prescriptive account to ignore this threat. The common feature of fledgling democracies that collapse into strongman regimes is the concentration of unilateral power in the executive, an inherent risk whenever there is a claimed threat to national security. In the United States, the separation between presidential and legislative election allows the Congress to play a checking role on claims of unilateral presidential authority, even over the nation's response to military threats. Indeed, the role of the courts in American national security cases has largely been to ensure that the executive not act beyond the scope of congressional authorization.203 Because parliamentary systems vest executive power in representatives of the legislative majority, such separation of powers is not likely to have the same force as in presidential systems. But separation of powers remains a critical protection in preventing the use of extraordinary powers for quotidian political gain. Requiring that there be an independent source of legislative authority for the prohibition of a political party and that there be a source of review independent of the executive provides a check on the misuse of this dangerous power. Perhaps the clearest example is the use of international tribunals, such as the European Court of Justice, to review party prohibitions. Such crossnational bodies are removed from any immediate accountability to domestic political processes and are unlikely to respond narrowly to partisan or sectional interests. Even at the domestic level, the requirement of independent review of such charged decisions as a ban on a political party may be thought of

as a form of "constrained parliamentarianism" that protects democratic integrity by "insulating sensitive functions from political control."204 Germany provides the best example of the role of independent judicial review within a national setting, beginning with the seminal cases after World War II. The German Basic Law accepts both the importance of political parties in a democratic order and the need to ban those that seek to destroy democracy from within, a necessarily perilous line to draw. Under the German constitution, however, an important procedural protection for political parties is that only the Federal Constitutional Court can declare a political party unconstitutional.205 The court addressed this topic in the Socialist Reich Party Case, stating that the framers of the German constitution, in deciding to limit the freedom of parties "seeking to abolish democracy by using formal democratic means," had to consider "the danger that the government might be tempted to eliminate troublesome opposition parties."206 Therefore, the framers committed the decision on unconstitutionally to the Federal Constitutional Court. The court distinguished Article 9(2), which allows the executive to ban "associations whose purposes or activities ... are directed against the constitutional order."207 Precisely "[b]ecause of the special importance of parties in a democratic state," they could not be banned under the general executive powers of Article 9(2), and could be declared unconstitutional only bv the Federal Constitutional Court.208 Later cases confirmed the court's exclusive jurisdiction to determine the constitutionality of political activity. The reasoning of the German Constitutional Court in the Radical Groups Case, which struck down a decision of state radio and television stations denying airtime to radical left-wing parties, is instructive.209 The court held that so long as an advertisement was related to the election, and so long as the party had not been declared illegal by the court, contentbased interference with expression was beyond the power of the broadcast media or the government. An organization acquires rights of expression as a political party, and only the court has the authority to rule on the constitutionality of a party: "The jurisdictional monopoly of the Federal Constitutional Court categorically precludes administrative action against the existence of a political party, regardless of how anticonstitutional the party's program may be."210 A similar form of procedural protection emerged in France after World War II, in the Fifth Republic. By contrast to the concentration of power in the legislature under the Fourth Republic, the post- 195 French constitutional order hewed much more closely to a formal recognition of separation of powers in which judicial oversight emerged as an additional source of power211 - a surprisingly late development in the land of Montesquieu.212 Perhaps the most significant decision of the Conseil Constitutionnel in establishing the principle of independent judicial oversight came in 1971, precisely in the area of the banning of political parties.213 The Conseil declared unconstitutional a law that would have vested in the executive branch the authority to prohibit the formation of a political party, a power it had previously denied to the legislature acting on its own accord.214

Rule of law and the legitimacy of the government are key to long term democratic transitions

Fukuyama, 15 [Francis, Olivier Nomellini Senior Fellow at the Center on Democracy, Development and the Rule of Law at Stanford; January, 2015; "Why Is Democracy Performing So Poorly; Project Muse; 07/12/15; jac]

The Necessity of Enforcement The United States had one important advantage, however, that is lacking in many of today's new democracies. It always had strong police power and could enforce the laws that it passed. This capacity was rooted in the Common Law, which the colonies inherited from England and had become well-institutionalized before their independence. American governments at all levels always maintained relatively strong police power to indict, try, and convict criminals at various levels of government. This coercive power was backed by a strong belief in the legitimacy of law, and was therefore converted into genuine authority in most places. The capacity to enforce constitutes an area where state capacity overlaps with the rule of law, and it is critical in dealing with a problem like corruption. The behavior of public officials depends on incentives—not just getting adequate pay for doing their jobs, but the fear of punishment if they break the law. In very many countries, taxes are not paid and bribes are collected because there is very little likelihood of lawbreakers going to jail. Effective enforcement was central to the success of one of the most notable recent efforts to improve public-sector performance, that of Georgia. Following the 2003 Rose Revolution, the government of Mikheil Saakashvili cracked down on corruption on a number of fronts, tackling the traffic police, tax evasion, and the pervasive operations of criminal gangs known as the "thieves-in-law." While some of this was done through transparency initiatives and positive incentives (for example, by publishing government data online and by increasing police salaries by an order of magnitude), effective enforcement was dependent on the creation of new police units that did things like making highly publicized arrests of high-ranking former officials and businessmen. By the end of the Saakashvili administration, this enhanced police power had come to be abused in many ways, setting off a political reaction that led to the election of Bidzina Ivanishvili and the Georgian Dream party.11 Such abuses should not obscure the importance of the state's coercive power in achieving effective enforcement of the law. Controlling corruption requires the wholesale shifting of a population's normative expectations of behavior—if everyone around me is taking bribes, I will look like a fool if I do not participate as well. Under these circumstances, [End Page 18] fear is a much more effective motivator than good intentions or economic incentives. Prior to the Rose Revolution, Georgia had the reputation of being one of the most corrupt places in the former Soviet Union. Today, by a number of governance measures, it has become one of the least corrupt. It is hard to find examples of effectively governed polities that do not exert substantial coercive power. Contemporary efforts to promote good governance through increased transparency and accountability without simultaneously incorporating efforts to strengthen enforcement power are doomed to fail in the end. In Political Order in Changing Societies, Samuel Huntington argued that the political dimensions of development often fail to keep pace with social mobilization and thus lead to political disorder. There can be a corresponding failure of state institutions to keep up with the development of democratic ones. This conclusion has a number of important implications for the way in which the United States and other democracies pursue democracy promotion. In the past, there has been heavy emphasis on leveling the playing field in authoritarian countries through support for civil society organizations, and on supporting the initial transition away from dictatorship. Creating a viable democracy, however, requires two further stages during which the initial mobilization against tyranny gets institutionalized and converted into durable practices. The first is the organization of social movements into political parties that can contest elections.

Civil society organizations usually focus on narrow issues, and are not set up to mobilize voters—this is the unique domain of political parties. The failure to build political parties explains why more liberal forces have frequently failed at the ballot box in transitional countries from Russia to Ukraine to Egypt. The second required stage, however, concerns state-building and state capacity. Once a democratic government is in power, it must actually govern—that is, it must exercise legitimate authority and provide basic services to the population. The democracy-promotion community has paid much less attention to the problems of democratic governance than it has to the initial mobilization and the transition. Without the ability to govern well, however, new democracies will disappoint the expectations of their followers and delegitimate themselves. Indeed, as U.S. history shows, democratization without attention to state modernization can actually lead to a weakening of the quality of government.

XT: Democracy Brink

United States democracy efforts are in retrenchment-causes global democratic backsliding-pre-WWII Europe proves

Kagan 15 [Robert, Senior fellow with the Project on International Order and Strategy at the Brookings Institution in Washington; January 2015; "The Weight of Geopolitics"; Project Muse; 07/12/15; jac]

These are relevant questions again. We live in a time when democratic nations are in retreat in the realm of geopolitics, and when democracy itself is also in retreat. The latter phenomenon has been well documented by Freedom House, which has recorded declines in freedom in the world for nine straight years. At the level of geopolitics, the shifting tectonic plates have yet to produce a seismic rearrangement of power, but rumblings are audible. The United States has been in a state of retrenchment since President Barack Obama took office in 2009. The democratic nations of Europe, which some might have expected to pick up the slack, have instead turned inward and all but abandoned earlier dreams of reshaping the international system in their image. As for such rising democracies as Brazil, India, Turkey, and South Africa, they are neither rising as fast as once anticipated [End Page 21] nor yet behaving as democracies in world affairs. Their focus remains narrow and regional. Their national identities remain shaped by post-colonial and nonaligned sensibilities—by old but carefully nursed resentments—which lead them, for instance, to shield rather than condemn autocratic Russia's invasion of democratic Ukraine, or, in the case of Brazil, to prefer the company of Venezuelan dictators to that of North American democratic presidents. Meanwhile, insofar as there is energy in the international system, it comes from the great-power autocracies, China and Russia, and from would-be theocrats pursuing their dream of a new caliphate in the Middle East. For all their many problems and weaknesses, it is still these autocracies and these aspiring religious totalitarians that push forward while the democracies draw back, that act while the democracies react, and that seem increasingly unleashed while the democracies feel increasingly constrained. It should not be surprising that one of the side effects of these circumstances has been the weakening and in some cases collapse of democracy in those places where it was newest and weakest. Geopolitical shifts among the reigning great powers, often but not always the result of wars, can have significant effects on the domestic politics of the smaller and weaker nations of the world. Global democratizing trends have been stopped and reversed before. Consider the interwar years. In 1920, when the number of democracies in the world had doubled in the aftermath of the First World War, contemporaries such as the British historian James Bryce believed that they were witnessing "a natural trend, due to a general law of social progress."1 Yet almost immediately the new democracies in Estonia, Latvia, Lithuania, and Poland began to fall. Europe's democratic great powers, France and Britain, were suffering the effects of the recent devastating war, while the one rich and healthy democratic power, the United States, had retreated to the safety of its distant shores. In the vacuum came Mussolini's rise to power in Italy in 1922, the crumbling of Germany's Weimar Republic, and the broader triumph of European fascism. Greek democracy fell in 1936. Spanish democracy fell to Franco that same year. Military coups overthrew democratic governments in Portugal, Brazil, Uruguay, and Argentina. Japan's shaky democracy succumbed to military rule and then to a form of fascism. Across three continents, fragile democracies gave way to authoritarian forces exploiting the vulnerabilities of the democratic system, while other democracies fell prey to the worldwide economic depression. There was a ripple effect, too—the success of fascism in one country strengthened similar movements elsewhere, sometimes directly. Spanish fascists received military assistance from the fascist regimes in Germany and Italy. The result was that by 1939 the democratic gains of the previous forty years had been wiped out. [End Page 22] The period after the First World War showed not only that democratic gains could be

reversed, but that democracy need not always triumph even in the competition of ideas. For it was not just that democracies had been overthrown. The very idea of democracy had been "discredited," as John A. Hobson observed.2 Democracy's aura of inevitability vanished as great numbers of people rejected the idea that it was a better form of government. Human beings, after all, do not yearn only for freedom, autonomy, individuality, and recognition. Especially in times of difficulty, they yearn also for comfort, security, order, and, importantly, a sense of belonging to something larger than themselves, something that submerges autonomy and individuality—all of which autocracies can sometimes provide, or at least appear to provide, better than democracies. In the 1920s and 1930s, the fascist governments looked stronger, more energetic and efficient, and more capable of providing reassurance in troubled times. They appealed effectively to nationalist, ethnic, and tribal sentiments. The many weaknesses of Germany's Weimar democracy, inadequately supported by the democratic great powers, and of the fragile and short-lived democracies of Italy and Spain made their people susceptible to the appeals of the Nazis, Mussolini, and Franco, just as the weaknesses of Russian democracy in the 1990s made a more authoritarian government under Vladimir Putin attractive to many Russians. People tend to follow winners, and between the wars the democratic-capitalist countries looked weak and in retreat compared with the apparently vigorous fascist regimes and with Stalin's Soviet Union.

There is a significant risk of global democratic backsliding --- the window of opportunity is closing to reverse the trend in the short term

Diamond 14 [Larry, Senior fellow at the Hoover Institution and at the Freeman Spogli Institute at Stanford University;05/02/14; Democracy's Deepening Recession; http://www.theatlantic.com/international/archive/2014/05/the-deepening-recession-of-democracy/361591/; 07/10/15; jac]

While the world's attention has been riveted on Ukraine and what move an emboldened Vladimir Putin will make next, diverse threats to democracy have intensified on other fronts as well. The story is not new. According to Freedom House, 2013 was the eighth consecutive year in which more countries experienced declines in political rights or civil liberties than improvements. Since 2005, democracy has ceased its decades-long expansion, leveling off at about 60 percent of all independent states. And since the military coup in Pakistan in 1999, **the rate of democratic breakdowns has accelerated, with about one in every five democracies failing**. The downfall of several Arab autocracies in 2011 seemed to augur a new burst of democratic progress, but that progress has not materialized. While Tunisia has emerged as the first Arab democracy in 40 years, Egypt is more repressive now than at any time in the last decade of Hosni Mubarak's rule. Since the end of 2010, more Arab countries have regressed in freedom and political pluralism than have advanced. The democratic recession we're witnessing has been particularly visible in big "swing states"—the non-Western countries with the largest populations and economies. Since the late 1990s, democracy has broken down in Russia, Nigeria, Venezuela, the Philippines, Pakistan, Bangladesh, Thailand, and Kenya. The Philippines is the one relative bright spot in the group today, with a democratically elected president, Benigno Aquino, committed to serious governance reforms. Russia has become not just a venal and despotic state, but a neo-imperial menace to its neighbors as well. Nigeria has reverted back to tragic levels of political kleptocracy and fraud, feeding political polarization, ethnic resentment, citizen alienation, and an increasingly virulent Islamic terrorist movement in the north. The grip of "Bolivarian socialism" has weakened in Venezuela as governance has deteriorated, violence has exploded, and the opposition has unified behind a liberal challenger first to Hugo Chávez and then to his designated successor. But it will be a pyrrhic victory for democrats if the Chavista regime falls and social order collapses alongside it. In January, democracy in Bangladesh suffered a major setback when the principal opposition party boycotted parliamentary elections after the ruling party abandoned neutral arrangements for electoral administration, and trust between the two parties collapsed. While Freedom House judges that democracy has returned to Pakistan, Kenya, and Thailand, these governments are so illiberal and corrupt that it is difficult to say what exactly they are. In Thailand, enmity between the "yellow shirt" urban, middle-class backers of the monarchy and the "red shirt" partisans of populist former Prime Minister Thaksin Shinawatra

has paralyzed the government and increasingly veered toward violence. Instability has been a chronic issue since the military ousted Thaksin in 2006, suspending the country indefinitely between resilient majority support for Thaksin's party and the yellow-shirt camp's continuing control of key levers of the "deep state." Since November, more than 20 people have been killed and over 700 injured in fevered street confrontations between the two camps. And the worst may be yet to come. In January, one Red Shirt militant vowed, "I want there to be lots of violence to put an end to all this…. It's time to clean the country, to get rid of the elite, all of them." As in Nigeria, renewed military intervention won't solve the country's problems. Yet if things continue to degenerate, the military is waiting in the wings. During his 11 years in power, Turkey's domineering prime minister, Recep Tayyip Erdogan, has managed to politically neutralize the military and the independent press, along with many other countervailing forces in politics and society. Those who hoped his authoritarian drift might be slowed by local elections in late March were severely disappointed, as his Justice and Development Party (AKP) won a convincing victory across Turkey's municipalities. Erdogan's victory speech that night was anything but magnanimous. He threatened those who had exposed the mounting corruption of his government (and reportedly his own family), assured his supporters that "we are the owners of this country," and portrayed his victory as a "full Ottoman slap" to all his opponents. As Erdogan prepares to run either for prime minister or president (if he can amend the constitution to enhance the latter's powers), Turkey is in deepening trouble. Journalists fear to report the truth, and with good reason; more of them are jailed in Turkey than in any other country. Businesses fear to support opposition parties, judges fear to rule against the ruler, and the AKP—long hailed in the West for its success in reconciling Islam and democracy—is increasingly looking like an old-fashioned hegemon bent on securing its dominance. With every passing day, Turkey looks more like the fake democracy of Malaysia than any real democracy in Europe. Meanwhile, Malaysia failed to record the democratic breakthrough many expected in 2013. Even though the opposition, led by Anwar Ibrahim, won a clear majority of the vote in general elections, brazen gerrymandering and over-representation of ruling-party strongholds nullified the preference of most Malaysians. The Democracy Report Nor should we take India, the world's biggest democracy, for granted. In the parliamentary elections that are rolling across the sub-continent between early April and mid-May, a great pageant of democratic choice and accountability is once again unfolding on a scale never before seen in human history. It is happening largely free of violence, and with impressive administrative skill. And it will do what democracy should: Punish the corrupt, under-performing incumbents by evicting them from power. But the likely victory of the opposition BJP will bring to power a paradox. In his 12 years as chief minister of Gujarat, Narendra Modi has not only delivered vigorous economic development, but also a style of politics so intolerant of criticism, so demanding of fawning obedience, that many Indian liberals now shudder at the prospect of his becoming prime minister. The news is not all bad. 2014 is a year of critical elections in many places. In Indonesia, many democrats are pinning their hopes on the dynamic reformist mayor of Jakarta, Joko Widodo, who is the odds-on favorite to win the presidency. In South Africa, the spiraling corruption and lackluster performance of the ANC and its leader, President Jacob Zuma, is spawning more pluralistic politics and growing support for the liberal opposition, the Democratic Alliance. Even Afghanistan seems to be in the midst of a reasonably credible and popular electoral process that will produce a significantly more purposeful president than Hamid Karzai. In the long run, economic development, globalization, and the growth of civil society will induce democratic change in a number of autocracies, including China and Vietnam, and, well before them, Singapore and Malaysia. But if **democracy cannot be reformed and revived in the world's key swing states, the "long run" will be a lot further off than it need be—and the near term won't be hospitable to the advance of freedom**.

Democracy is in retreat-- increased involvement by successful democracies is key

Diamond 14 [Larry, Senior fellow at the Hoover Institution and at the Freeman Spogli Institute at Stanford University; 11/24/14; "Is Democracy in Decline?"; http://nextgenerationdemocracy.org/624/; 07/10/14; jac]

And then, around 2006, the expansion of freedom and democracy in the world came to a prolonged halt. Since 2006, there has been no net expansion in the number of electoral democracies, which has hovered around 60 percent of the world's states. And since 2006, the average level of political rights and civil liberties in the world has deteriorated slightly. One could see the past decade as a period of equilibrium. Given that democracy expanded to a number of countries with weak facilitating conditions (such as poverty or an authoritarian neighborhood), it is impressive that democracy survived (or revived) in so many places. It's hard to argue that the state of democracy globally is not so good, but also not so bad. Yet **the world has been in a mild but protracted democratic recession since 2006**. Beyond the stagnation or modest erosion of global levels of democracy and freedom, there have been several other causes for concern. One has been a significant and accelerating rate of democratic breakdown. Second, the quality or stability of democracy has been declining in some large and important emerging-market countries, like Turkey, Thailand, and Bangladesh. Third, authoritarianism has been deepening. And fourth, the established democracies have been performing rather poorly and seem to lack the will and self-confidence to promote democracy effectively abroad. Let me try briefly to touch on each of these. If we break the third wave up into its four component decades, we see a rising incidence of democratic breakdown per decade since the mid-1980s. The rate of democratic failure, which had been 16 percent in the first decade of the third wave (1974–83), fell to 8 percent in the second decade (1984–93), but then climbed to 11 percent in the third decade (1994–2003). In this most

recent decade, the rate has jumped back up to 16 percent. One in six of all the democracies that has existed since 2004 has failed. Since 2000, I count 25 breakdowns of democracy in the world—not only through blatant military or executive coups, but also through incremental degradations of democratic rights and procedures that finally push democracy over the threshold into authoritarianism. It is sometimes difficult to assign a particular date to the latter form of failure, since there is no sharply disruptive single act, like Alberto Fujimori's autogolpe. But just as Vladimir Putin and Hugo Chavez gradually strangled democracy in Russia and Venezuela, I think Prime Minister, now President, Recep Tayyip Erdoğan and his AK Party have by now done so in Turkey. Some of the AKP's changes have made Turkey more democratic by removing the military as an autonomous veto player in politics. But the AKP has gradually entrenched its political hegemony, extending partisan control over the judiciary and the bureaucracy, arresting journalists and intimidating dissenters in the press and academia, threatening businesses with retaliation if they fund opposition parties, and using prosecutions in cases connected to alleged coup plots to jail and remove from public life an implausibly large number of accused plotters. This has coincided with a stunning and increasingly audacious concentration of personal power by President Erdoğan. Following the Hugo Chavez playbook, Daniel Ortega has quashed democracy in Nicaragua, and many worry that the populist presidents in Bolivia and Ecuador are dragging their country in the same direction. In Botswana a president with a career military background evinces an undemocratic intolerance of opposition and distaste for civil society. There are growing warning signs of the demise of this, Africa's longest-standing democracy. These include increasing political violence and intimidation, escalating pressure on the independent media, the brazen misuse of state television by the ruling party, and the growing personalization and centralization of power by President Ian Khama. Only eight of the 25 democratic breakdowns since the year 2000 came as a result of military intervention. The majority resulted from the abuse of power and the desecration of democratic rules by democratically elected rulers. Any international actor that seeks to stem the decline of democracy must find ways to confront this challenge of executive abuse in timely fashion.

Democracy is in decline-autocrats are seizing power because of the perception that they can get away with it

Diamond 14 [Larry, Senior fellow at the Hoover Institution and at the Freeman Spogli Institute at Stanford University;10/24/14; "Chasing Away the Democracy Blues"; Foreign Policy; 07/10/15; jac]

This article is based on the keynote address from the conference "Does Democracy Matter?" co-sponsored by the Foreign Policy Research Institute and the Kennan Institute in Washington, D.C., on October 20. This is an important and volatile time for democracy in the world. Many people are questioning the viability of democracy and the wisdom of trying to promote it. The fashionable mood these days is skepticism, if not downright pessimism, about the near-term prospects for democracy. The fashionable mood these days is skepticism, if not downright pessimism, about the near-term prospects for democracy. We tried to do too much, one argument goes, and we should scale back our expectations. It's still popular to think that these people in Africa, the Arab world, or Russia, weren't ready for democracy, don't value it culturally, and don't have the social conditions to make it work. Some believe democracy promotion was always a fool's errand. Others contend that we did what we could and should now pull back. Or that after 30 years of intensive democracy promotion, we still don't know how to do it effectively, except in places where democratic progress would have happened anyway. And finally (for now) there is the view that we have more important issues to deal with, like ISIS, Ebola, a rising China, a marauding Putin, a nuclear-weapons chasing Iran, drug violence in Mexico, child mortality among the bottom billion, and so on.I wish I had an hour just to rebut all these currents of pessimism, determinism, and despair. But since I don't, let me begin by trying to set the record straight on where we are and where I think we have come in terms of global democracy. My analysis is not rosy, but I don't think anything close to despair is warranted either. Then I'll come to some of the challenges and opportunities for democracy promotion, especially by the United States, at this critical juncture for democracy globally. Yes, it's a difficult and messy time for democracy and freedom around the world. **We have been in a global democratic recession for something like a decade.** In each one of the last eight years, as Freedom House has documented, the number of countries declining in political rights or civil liberties has outpaced (by at least two to one) the number of countries gaining in freedom. And this has come after 15 post-Cold War years when precisely the reverse was true. There have been a lot of democratic breakdowns in this new century. In fact, the rate of democratic breakdown in these last thirteen years has been 50 percent higher than in the preceding period. Since the third wave of global democratic expansion began forty years ago, one-third of all the democratic regimes have failed. Since the third wave of global democratic expansion began forty years ago, one-third of all the democratic regimes have failed. And half of these failures have been just in the last thirteen years. **Many of these breakdowns have come in big and strategically important states, like Russia, Nigeria, Pakistan, and Venezuela.** In some cases, like the Philippines, democracy has been restored. In others, like Thailand, which recently

suffered its second military coup in a decade, democracy has broken down repeatedly. In others, like Pakistan and Kenya and Turkey, the regime seems to occupy a gray zone somewhere in between electoral democracy and electoral authoritarianism. But in countries like Turkey, the authoritarian drift has been so steady, so serious, and so prolonged that an authoritarian threshold appears to have been crossed. This has long since happened in Sri Lanka and Nicaragua, and it seems to be approaching in Bolivia and Ecuador as well. Moreover, instead of confronting or at least condemning the godfather regime of creeping authoritarianism in the Andes, Venezuela, most Latin American democracies have turned a blind eye toward its abuses, even supporting it to obtain a seat on the UN Security Council. Democracy has also eroded quite significantly in Africa, where many elected leaders think China's booming aid and investment gives them an alternative to Western conditionality, while the new war on terror gives them additional leverage as well. There is also the crushing implosion of the Arab Spring; the growing self-confidence, assertiveness, and cooperation of authoritarian states like China, Russia, and their club of fellow autocracies, the Shanghai Cooperation Organization; the mounting legal assaults and constraints on civil society; the sharing and development of tools of Internet censorship and suppression; and the poor performance of many of the most advanced democracies, beginning with the United States. **If you care about democracy in the world, we are in trouble.** But this is not the whole story. We are in a prolonged political recession, not a depression. **We have not yet seen the onset of "a third reverse wave."** The extraordinary expansion in the number of democracies essentially halted around 2005. Since then, it has not significantly increased, but neither has it substantially diminished. Globally, average levels of freedom have ebbed a little bit, but not calamitously. Most importantly, there has not been significant erosion in public support for democracy. In fact, what [the African opinion survey project] Afrobarometer has consistently showed is a gap — in some African countries, a chasm — between the popular demand for democracy and the regime supply of it. And this is not just some shallow, vague notion that democracy is a good thing. Many Africans understand political accountability, transparency, the rule of law, and restraint of power. And they would like to see their government manifest these virtues. One problem is that the pace of decay in democratic institutions is not always clearly visible. A number of countries we take for granted, such as South Africa, we should not. In fact, there is not a single country on the African continent where democracy is firmly consolidated and secure the way it is, for example, in some third-wave democracies such as Korea, or Poland, or Chile. Add new oil wealth to the mix, as in Ghana, and you have a major new challenge to the quality of governance. In the global democracy promotion community, few actors are paying attention to the growing signs of fragility in the more liberal developing democracies, not to mention the more illiberal ones. Broadly, we know why democracy and freedom are slipping back. What Francis Fukuyama calls "neo-patrimonial" tendencies are resurgent. Leaders who think they can get away with it are eroding democratic checks and balances, hollowing out accountability institutions, overriding term limits and normative restraints, and accumulating power and wealth for themselves and their families, cronies, clients, and parties. Space for opposition parties, civil society, and the media is shrinking, and international support for them is drying up. Space for opposition parties, civil society, and the media is shrinking, and international support for them is drying up. Ethnic, religious, and other identity cleavages polarize many societies that lack well-designed democratic institutions to manage those cleavages. State structures are too often weak and porous, unable to secure order, protect rights, meet the most basic social needs, or rise above corrupt, clientelistic, and predatory impulses. Democratic institutions — parties and parliaments — are often poorly developed, and the bureaucracy lacks the policy expertise, and even more so the independence, neutrality, and authority, to effectively manage the economy. So weak economic performance, and certainly rising inequality, is added to the mix. It isn't easy to develop democracy in poor countries and weak states. And there is a significant failure rate even in middle-income countries. But if we don't become more focused, more creative, more determined, more resourceful, and less apologetic in promoting democracy, the democratic recession is going to mutate into a wave of democratic regression, a bleak period for freedom, political stability, and the American national interest.

XT: African Democracy Declining Now

African Democracies are tenuous

Gyimah-Boadi 15 [E., Director of the Center for Democratic Development Ghana; 01/15; "Africa's Waning Democratic Commitment"; http://muse.jhu.edu.proxy.lib.umich.edu/journals/journal_of_democracy/v026/26.1.gyimah-boadi.html; Journal of Democracy Volume 26, Number 1, January 2015; 07/05/15/; jac]

In the early 1990s, a wave of democratization (and, in some cases, redemocratization) began to unfold in sub-Saharan Africa. In the years since, a majority of the continent's citizens have come to view democracy as the ideal political regime, and many African countries made considerable strides up through the mid-2000s in liberalizing their political systems and establishing democratic institutions. But for nearly a decade now, that progress has slowed and in some places reversed. Foremost among the obstacles to democracy on the continent is the waning commitment to the democratic project on the part of political elites. **Moreover,** the supply of democratic goods—in particular, government responsiveness and accountability—has become increasingly scarce. Even in Ghana, a country held up as one of Africa's star democratizers, there has been a recent spate of corruption scandals and, despite strong whistleblower protections, subsequent government reprisals against those who expose wrongdoing. **While popular aspirations for democratic governance have gone largely unmet, citizens' desire for democracy is deepening. What is causing democratic progress to falter on the continent, and what are the prospects for democratic development in the future? Over the past several decades, most African countries have seen the development of four major democratic trends: the embrace of elections; the acceptance of constitutional norms; the emergence of free media and an active civil society; and the establishment of regional prodemocratic conventions and protocols. To begin with, the ballot box has replaced the military coup as the chief instrument for changing governments and electing political leaders. The holding of regularly scheduled and increasingly competitive elections has become the norm in most of Africa. [End Page 101] The number of multiparty elections for the executive has risen significantly over the past two decades, from an average of slightly less than one a year (1960–89) to around seven per year (1990–2012), and just over a fifth of these contests have led to a change in leadership.1 Indeed, the number of "electoral democracies" in sub-Saharan Africa has risen from just a handful in the early 1990s to 19 of the region's 49 countries, according to the Freedom House rankings for 2013.2 Most African countries are now governed by constitutions that are—at least on paper—more or less democratic. Many of these charters mandate some degree of separation of powers and include a bill of rights that anchors independent judiciaries, ombudsmen, human-rights and anticorruption commissions, and election-management bodies. The imposition of presidential term limits in a number of countries (ranging from two four-year terms, as in Ghana, to two seven-year terms, as in Senegal) may be the most important indicator of how entrenched constitutionalism has become in the new era on a continent notorious for its de jure and de facto "presidents-for-life." Moreover, parliaments have been flourishing, making at least some legislative oversight of the executive increasingly common in sub-Saharan Africa today (at least in the minimalist terms of approving the annual budget and public accounts, presidential nominations to ministerial positions, and legislation initiated by the executive). Since the mid-1990s, an ever-expanding network of private FM radio, free-to-air and cable television, newspapers, and magazines has reduced states' monopoly over print and electronic media. Most African governments have relaxed official censorship, making possible the practice of real investigative journalism and the occasional discovery and exposure of government malfeasance by local media. Associational freedoms have been expanding as well. As a result, civil society organizations have multiplied and are now undertaking (often with financial, technical, and moral support from the international community) a vast array of activities—including the promotion of social, economic, and political inclusion as well as human rights, equity, clean elections, and governmental transparency and accountability—to countervail state power. Yet another measure of the embrace of democratic norms in the region, even if largely symbolic, may be found in the raft of prodemocracy agreements adopted by the African Union (AU) and the various subregional organizations.3 In the early postindependence period, military despots were common figures at African summit meetings. The AU, by contrast, denies official recognition to governments and leaders who ascend to power through "unconstitutional" means.4 In accordance with prodemocracy conventions and protocols, both the AU and the Economic Community of West African States (ECOWAS) denied official recognition and suspended the memberships of Togo in 2005, Mauritania in 2005–2007 and 2008–2009, Guinea in 2008–2009, Niger [End Page 102] in 2009–2011, Côte d'Ivoire in 2010–2011, and Mali in 2012. Beyond these symbolic gestures, the AU now routinely deploys teams to monitor elections in member states and, through the African Peer Review Mechanism (APRM), assesses members' progress and performance on democratic governance. Shortcomings and Deficiencies The progress of democracy chronicled above describes the general trend during the first decade and a half of the democratization process in the region.5 Hardcore authoritarian rule gave way to electoral democracy in many countries, and African citizens began to enjoy much greater voice than at any time in the postindependence era. While there have been instances of democratic backsliding, there has not yet been a case of permanent reversal to the status quo ante of robust authoritarianism. With the benefit of hindsight, however, these achievements can be seen to represent the harvest of African democratization's "low-hanging fruit." The march of democratic progress in Africa that received such fanfare seems to have been succeeded by a long phase of stagnation.** Democracy has substantively improved in only a minority of sub-Saharan countries so that barely one in five qualified as Free in Freedom House's 2014 rankings.**6 The growing acceptance of the ballot box as the sole means by which political power can legitimately be acquired is undermined by the intensity of the conflict and violence that so often accompany the electoral process. Candidates, parties, and their supporters often treat elections as do-or-die affairs, and** election campaigns tend to be as acrimonious and violent as they are colorful. It is not uncommon for parties and candidates to resort to all manner of vote-rigging schemes in their quest to keep or take power. **Ruling presidents and parties flagrantly exploit the advantages of incumbency, abuse resources, and unleash physical intimidation on voters in the pursuit of victory (as did Zimbabwe's ruling ZANU-PF in 2008, for example), while defeated candidates and parties have been known to deny the legitimacy of the vote (as when Malawi's President Joyce Banda unsuccessfully attempted to annul the 2014 election, citing irregularities, after coming in a distant third). Conflict over Côte d'Ivoire's 2010 presidential election degenerated into a bitter civil war that lasted more than a year. Violence also plagued polls in the Democratic Republic of the Congo (DRC) in 2011, Gabon in 2009, Kenya in 2007, Nigeria in 2003, 2007, and 2011, and Togo in 2005, among others. Once elections have been held, the next task is to improve democratic quality—in particular, to render Africa's elected governments and officials rule-bound, accountable, and responsive to citizens. This has proven extremely challenging. Citizens regularly voice outrage over the [End Page 103] scandalous deeds of their elected and appointed officials, and bemoan government incompetence and underperformance. Allegations of gross official corruption and abuse of power feature constantly in African and international news.7 But significant sanctions rarely are imposed on officials implicated in these scandals, nor are the governments in which they serve often punished at the polls as a result of their misdeeds. For example, most of the African National Congress (ANC) officials allegedly involved in a massive arms-procurement scandal in 1999 have gone unpunished. Similarly, the top government officials behind the multimillion-dollar Anglo Leasing scam in Kenya, which was exposed in 2004 and continues to vex the country to this day, have yet to** be held accountable. In sum, African citizens are experiencing "voice without accountability." Nepotism has also been widespread and corrosive. It is not just old-school autocrats like former presidents Omar Bongo (d. 2009) of Gabon and Francisco Macías Nguema (d. 1979) of Equatorial Guinea or Angola's current president José Eduardo dos Santos (in power since 1979) who have favored close family members with state appointments and patronage. Extensive and poorly regulated

presidential powers in supposedly democratic states have enabled Liberian president Ellen Johnson-Sirleaf's three sons, Fomba, Charles, and Robert, to secure top state positions (head of the national-security agency, deputy-governor of the central bank, and chairman of the national oil company, respectively), and the 25-year-old daughter of South African president Jacob Zuma to be appointed chief of staff of that country's department of telecommunications and postal services. **Democratic constitutions have done little to restrain African presidents and political elites from wanton displays of impunity. Nigerian president Goodluck Jonathan was able unilaterally to sack Lamido Sanusi, governor of the central bank. Jacob Zuma has gotten away with spending an astonishing US$24 million in unauthorized public funds on his Nkandla homestead. And Ghana's government airlifted more than $4 million in cash to the World Cup games in Brazil in order to pay Ghana's soccer team and Ghana Football Association officials. In addition, in many places the media and civil society still operate under constant threat of closure or severe constriction. In the last few years, a number of countries, including Ethiopia, Sierra Leone, Sudan, Uganda, Zambia, and Zimbabwe, have considered or enacted legislation, adopted policies, or otherwise taken measures to limit the space for media and civil society. Recent efforts to constrain domestic civil society have included criminalizing unregistered associational activity (as in Uganda and Zambia), imposing burdensome registration requirements on civil society organizations (as in Sierra Leone and Mozambique), subjecting NGOs to political litmus tests (as in Nigeria), and severely restricting their access to foreign funding (as in Ethiopia). [End Page 104]** Other pernicious government regulations involve invasive government supervision and monitoring of civil society organizations' activities, including the requirement to secure government authorization for operations and programs. **Under Zambia's Non-Governmental Organisations' Act (2009), for instance, an operator of an unregistered NGO can be fined or imprisoned up to three years; and Zimbabwe's Interception of Communications Act (2007) authorizes the issuance of a warrant to intercept mail, phone calls, and emails "to prevent a serious offence by an organized criminal group" or that concern a "potential threat to public safety or national security."8>> Although legal restrictions on the media have been relaxed in many places and the number of media outlets has increased, reporters still face serious risks. Journalists continue to suffer intimidation, harassment, violence, and even assassination.9 Media operators must tread cautiously even in African countries that normally win plaudits for allowing a free press. In Ghana in recent years, reporters have been detained for refusing to disclose their sources; members of the press have been jailed for making critical comments about televised judicial proceedings; and reporters have been accused by the government of seeking "regime change" for having doggedly investigated and reported on government corruption. In South Africa in 2013, despite vehement opposition from media and civil society activists, the ANC-dominated parliament passed the Protection of State Information Bill (the "Secrecy Bill"), regulating the classification of state information and allowing prison terms of up to 25 years for those who disclose such material. The bill's opponents fear that it will empower the government to crackdown on whistleblowers and impede anticorruption investigations. President Zuma refused to sign the bill in 2013 and it remains in limbo.**

African democratic progress is stalling now

Schmitter 15 [Philippe, Emeritus Professor of the Department of Political and Social Sciences at the European University Institute; Crisis and Transition, But Not Decline; 01/15; Journal of Democracy Volume 26, Number 1, January 2015; Project Muse; 07/05/15; jac]

What's Stopping Democracy in Africa? The obstacles to Africa's democratic progress are legion. Their origins are both domestic and international. To begin with, despite the restoration of formal constitutional rule, many African countries remain bereft of the spirit of constitutionalism.**10 Even in the few decent constitutional democracies, such as Botswana, Ghana, and South Africa,** political, economic, and symbolic power continues to be concentrated in the executive and, arguably, the ruling party (which often is the president's party). The broad discretion in the exercise of authority enjoyed by presidents and their appointees effectively negates the voice of the people**, as expressed via elections, print and electronic media, and even lawsuits. More than anything,** the unwillingness of political elites—particularly presidents—to relinquish authoritarian control has stymied democratic **[End Page 105] progress on the continent.** Leaders tend to be either uninterested in or hostile toward reforms that might rein in their power, strengthen institutional checks and balances, or mandate compliance with transparency and accountability obligations **(such as freedom of information laws or the mandatory disclosure of public office-holders' assets). It is not only presidents who have discarded their military uniforms and donned civilian clothes (such as Ghana's Flight Lieutenant Jerry Rawlings) or who practically inherited the presidency from their military-ruler fathers (such as the DRC's Joseph Kabila and Togo's Faure Gnassingbé) who refuse to submit fully to democratic control. And** it is not only crusty autocrats like Zimbabwe's Robert Mugabe and the Republic of Congo's Denis Sassou-Nguesso who have cunningly managed to regain the autocratic controls that they had been forced to cede early in the era of democratization. **Even presidents such as Zambia's Frederick Chiluba (1991–2002) and Malawi's Joyce Banda (2012–14), who rode the wave of democratization to power, have proven equally resistant to implementing reforms that would have compelled them to be responsive and accountable to the public. Moreover, aging authoritarians such as Cameroon's Paul Biya and Uganda's Yoweri Museveni have not been the only ones to launch brazen campaigns seeking to end or weaken constitutional limits on presidential tenure. Even presidents who were touted in the late 1990s and early 2000s as committed democrats—for example, South Africa's Thabo Mbeki, Nigeria's Olusegun Obasanjo, and Senegal's Abdoulaye Wade—later embarked on escapades of their own to extend presidential term limits.** Another hurdle obstructing democratization in Africa is the domestic political economy. **African economies have posted high growth rates in recent years. The regional average for the last ten years was 5.08 percent; in 2013, Côte d'Ivoire's GDP grew by 8.9 percent, Angola's and the DRC's by 8.2 percent, and Ghana's by 8 percent;** only nine of the region's 49 economies grew less than 4 percent.**11 Yet that growth has not been matched by more jobs, and** its benefits have

not been shared evenly among citizens.12 The masses of poor people who have been left behind economically are susceptible to vote-buying and cooptation through political patronage, and this presents a mortal danger to democracy on the continent. State dominance over the formal economy has remained **largely** intact **[End Page 106]** despite the economic liberalization of the 1980s and 1990s and the sway of globalization. The domestic private sector typically is weak and small **(though much larger today than it was in the first two decades of independence).13** This leaves the state as the key source of formal-sector employment, the chief dispenser of coveted land, mineral, forestry, and other natural resources, and the source of lucrative construction and supply contracts. **The extremely limited opportunities available outside the state sector for accumulating personal wealth and influence make the capture of the state and the economic, political, and social resources that it controls the main object of electoral competition. This dynamic is a key driver of the clientelization of democratic politics in Africa.** Unchecked state power is also a source of the pervasive fear among Africans of government reprisal, which leads to a great deal of self-censorship. Democratization's progress in Africa is also hampered by a lingering authoritarian political culture rooted in the status quo ante of precolonial, colonial, and postcolonial Africa. **Even where the formal processes of democracy have been put in place,** the internalization of liberal values is lagging. **Africa's traditional communitarian values continue to clash with liberalism's emphasis on individual rights.** Consequently, citizens and the press cheer as governments in Uganda and Zambia pass legislation criminalizing homosexuality because they believe that such laws protect religious and community values. Furthermore, in countries that gained independence through armed struggle **(especially where the national-liberation party is still in power, as in Angola, South Africa, and Mozambique)** or that have recently emerged from civil war **(such as South Sudan)** or genocide **(such as Rwanda),** reverence for the liberation movement and its heroes, as well as vigilance against enemies—internal or external, real or imagined—are emphasized over "critical citizenship."**14 Although not all the news has been bad—in 2012, for example, 55 percent of Afrobarometer survey15 respondents reported joining others to raise an issue in the previous year—there clearly remains room for improvement with regard to the development of democratic citizenship in Africa. That same year (Round 5 of the survey), about 4 in 7 respondents (or 57 percent) said that they found politics and government too complicated to understand, and fewer than 1 in 4 believed that citizens are responsible for monitoring the performance of elected officials. Furthermore, Round 4 (2008) of the survey found that three-fifths of Africans saw the relationship between citizen and government as one not between boss and employee but instead between child and parent.16 Moreover,** the embrace of democratic ideals by African regional bodies and some members of the political elite in the early 2000s was short-lived. The APRM, **which had been lauded as an example of a new prodemocratic model of African leadership,** seems to have lost steam. The promise of peer appraisals of countries' achievements and short-comings **[End Page 107]** according to shared benchmarks has degenerated into what is increasingly a meaningless charade. APRM assessment standards and protocols have been progressively diluted in order to accommodate the continent's aging autocrats and reluctant democrats. **Worse still,** there is a growing list of incumbent presidents who are currently trying to extend constitutional term limits, **including Pierre Nkurunziza of Burundi, Joseph Kabila of the DRC, Denis Sassou-Nguesso of the Republic of Congo, Omar al-Bashir of Sudan. Previously, there was Blaise Compaoré of Burkina Faso, whose late-October 2014 attempt to change the country's constitution via referendum provoked huge popular protests and ultimately led to his ouster.** The lack of commitment to democratic principles also is reflected in the recent AU vote to amend the AU Protocol on the Statute of the African Court of Justice and Human Rights. The amendment gives "serving heads of state" and "senior government officials," while they are in office, blanket immunity from prosecution for crimes against humanity and genocide in the AU's own court and allows them to evade other international courts.

Democracy Key to Peace

Perception of democratic stability key to peace, perception of stasis in a regime is the controlling factor in use of force

Poznansky 15 [Michael, re-doctoral research fellow at the Belfer Center for Science and International Affairs at the John F. Kennedy School of Government; 03/17/15; "Stasis or Decay? Reconciling Covert War and the Democratic Peace"; Wiley Online Library; 07/05/15; jac]

The Case for a Dynamic Democratic Peace This section outlines the basic contours of the stasis-decay framework. After unpacking the causal logic of the theory, I demonstrate how incorporating expectations about regime trajectory, such as a state's future status as a democracy, helps existing theories of the democratic peace account for covert intervention. Aside from some important work on the unique conflict dynamics of transitioning democracies (Mansfield and Snyder 2005), the existing literature on democratic peace operates under an implicit assumption that once a state achieves the status of a democracy—that is, a regime that allows for regular, competitive elections and protects basic civil and political liberties (Lipson 2003:18)—it will remain as such into the future. This assumption is particularly pronounced for consolidated democratic regimes. The main explanatory variable examined here, an expectation of stasis or decay, forms any time one democratic regime assesses the viability of democracy in another state. By expectations of stasis, I mean the belief that democracy is likely to persist; expectations of decay refer to the belief that democracy is likely to erode. While expectations of stasis allow the usual restraint found between democracies to flourish, expectations of decay work insidiously to erase the constraints that would otherwise obtain were these institutions expected to persist. Existing arguments overlook this variation by invoking snapshots of regime type, assessing whether a state is presently democratic or nondemocratic. By introducing a dynamic element, we can more accurately model how democratic decision makers act on the basis of expected regime trajectory. As with most perceptual variables, it is necessary to ensure that the beliefs of decision makers are not simply endogenous to strategic interests. Providing an objective basis for expectations of stasis and decay—the perceptual variable under consideration—is thus a critically important undertaking. To the extent that expectations reflect observable political developments within the target state in question, our confidence in their validity increases. Barbara Farnham's work on democratic peace and threat perception is instructive in this regard. According to Farnham (2003:402), Roosevelt took Hitler's blatant disregard for norms of political accommodation during the Munich crisis "to be a sign of unlimited aims which could never be satisfied by normal diplomatic means." The coupling of threat perception to observable developments increases our confidence that Roosevelt's assessments of Hitler had a firm basis in objective, exogenous events. For our purposes, expectations of decay can form in response to a wide range of political developments, including the assumption of power by leaders espousing an anti-democratic ideology, alterations to democratic institutions that could be exploited to consolidate a leader's hold on power, the presence of weak leaders who risk losing power to more radical alternatives, and so forth. The causal logic of the stasis-decay framework is predicated on the assumption that democratic regimes treat fellow democracies differently depending on whether they are expected to remain in their current form or backslide into authoritarianism. When regimes are expected to remain democratic into the future, they enjoy the benefits of mutual restraint in their relations with other democracies; the normal constraints of democratic peace hold. When expectations of democratic decay set in, however, these constraints atrophy. Although the decaying democracy is perceived as democratic at time t, the anticipation of dealing with an autocratic regime at time t + 1 changes the prospective intervener's decision-making calculus. Democracies expected to backslide into authoritarianism are treated as though they were functionally nondemocracies in the present. In short, the separate peace forged between democratic regimes functions only when both states are expected to remain democratic into the foreseeable future (Doyle 1983:324–325). On their own, expectations of stasis and decay do not provide a self-sufficient explanation for forcible intervention between democracies. Instead, expectations about regime trajectory mediate how democratic states pursue their political, economic, and military interests with respect to other democracies in the present. When democratic regimes have a strong interest in the policies another democracy has adopted (e.g., geopolitical, economic, ideological) and view their regime as relatively stable, the restraints of democratic peace should operate normally, thereby lowering the probability of covert forcible regime change to zero; the need for covert democracy promotion is nil. The decision-making calculus changes, however, when we introduce a moderate threat of democratic decay in a state of some strategic importance: H1: As expectations of stasis move from high to moderate, democratic interveners are more likely to engage in covert activity intended to strengthen the regime and to weaken perceived opponents of democracy. It is only when leaders believe that there is a strong probability that a target state will abandon democracy that the possibility of lethal action comes to the fore: H2: When expectations of stasis are low—i.e. expectations of decay are high—prospective interveners are more likely to sponsor coups and otherwise engage in covert forcible regime change against democratic targets. By highlighting the importance of regime trajectory, the logic of stasis and decay refines our understanding of how extant arguments for the democratic peace might account for covert intervention between democracies. In terms of the rationalist accounts, perceptions of democratic decay mean that leaders will expect institutional and informational mechanisms to cease in the future, thus removing the benefits associated with dealing with another democracy. At the very least, the effectiveness of such mechanisms in restraining the use of force, either covertly or overtly, will atrophy as decision makers anticipate their impending disappearance. The stasis-decay framework also helps to refine the sociocultural mechanisms. When expectations of decay obtain, sociocultural factors will not only reduce in salience—insofar as leaders

anticipate that the target country will no longer belong to the "we-group" and will feel less normatively restrained—but also start to provide a rationale for intervention. In other words, the restraint embedded in sociocultural mechanisms flips from recommending "no intervention" to recommending "intervention"; what was previously a presumption of amity becomes a presumption of enmity. However, some combination of uncertainty about regime trajectory and concerns about the reputational effects of overt intervention in another democracy creates incentives for covert intervention, particularly when existing circumstances facilitate this option. Before proceeding, an important caveat is in order. The reasons why a democratic intervener might choose to forcibly target another democracy covertly are most likely many and varied. Concerns about the reputational effects of intervening overtly in another democracy and legitimation problems, both at home and at abroad, are each plausible candidates. Rather than taking sides, the logic of stasis and decay is ultimately neutral as to why interventions are undertaken in secret rather than in public. Instead, the most relevant consideration is that an expectation of decay precedes the decision to use force. Contrary to the way in which the debate about covert action is currently framed, then, it is not the publicity of an intervention that is most relevant for the democratic peace but rather the distinction between lethal and nonlethal intervention against another democracy (Barkawi 2001:113; Barkawi and Laffey 2001:107).7 Expectations of decay put the option of force on the table; the rationale for using force covertly comes later.

Democracy key to international peace-liberal cooperation through global spread of judicial independence key

Kersch 6 [Ken, founding director of the Clough Center for the Study of Constitutional Democracy and associate professor of political science, history, and law at Boston College; 06/22/06; "The Supreme Court and international relations theory."; The Free Library; 07/10/15; jac]

B. Liberalism Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world's sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law. (52) Liberal "democratic peace" theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states. (53) When compared with nonliberal states, they are thus much better at cooperating with one another in the international arena. (54) Because they share a market-oriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically. (55) As they do so, they will come to share a common set of interests and ideas, which also enhances the likelihood of cooperation. (56) Many foreign policy liberals--sometimes referred to as "liberal internationalists"--emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order. (57) The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law. (58) Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path. (59) Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak. (60) Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments. (61) To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework. (62) "But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states." (63) Many foreign policy liberals have emphasized the importance of the judiciary in helping to bring about an increasingly liberal world order. To be sure, **the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory**. (64) Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world. (65) Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary. (66) In these emerging liberal democracies, judges are often subjected to intense political pressures. (67) International and transnational support can be a life-line for these judges. It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence. (68) In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power--a power essential to

the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community. (69) Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative. (70) When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state. (71) In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order. (72)

Democracy Reduces Terrorism

Democratic rule of law has a dampening effect on homegrown terrorism-judicial legitimacy key

Choi 10 [Seung-Whan, Department of Political Science University of Illinois; 11/25/10; Fighting Terrorism through the Rule of Law?; Sage Pub; 07/08/15; jac]

The Dampening Effect of the Democratic Rule of Law on Domestic and International Terrorist Incidents Before exploring the link between the rule of law and terrorism, these two concepts must be clarified, as their definitions remain controversial. Terrorism is a particularly difficult concept to define because of its value-laden nature: one country's terrorist may be another country's freedom fighter. For analytical clarity, I follow the definition of terrorism of LaFree and Ackerman (2009, 348) as ''the threatened or actual use of illegal force, directed against civilian targets, by non state actors, in order to attain a political goal, through fear, coercion or intimidation.''4 Domestic terrorism includes incidents such as the Oklahoma City bombing since they arise only against domestic targets of the terrorists' home country. International terrorism, then, is a situation in which a terrorist incident in country A involves perpetrators, victims, institutions, governments, or citizens of country B (Enders and Sandler 2006, 7; Dugan 2010). These subtle differences are important, as they provide clarity to a discussion of terrorism in general. Like the concept of terrorism, the rule of law is also ''subject to various definitional and normative disputes'' (O'Donnell 2004, 34). For analytical parsimony, I limit myself to two fundamental components that should be present in most democratic societies with a high-quality rule of law: (1) fair, impartial, and effective judicial systems and (2) a nonarbitrary basis according to which laws and the legal system as a whole can be viewed as legitimate.5 As legal scholar Joseph Raz (1977, 198-201) argues, fair and impartial judicial systems require at least an independent judiciary branch with fair-minded judges, prosecutors and lawyers, as well as strong and stable law enforcement or police (for a similar view, see Fuller 1969). Institutionalizing an independent judiciary system reflects a strong commitment by government to the basic principle that all people are equal before the law and those people deserve the opportunity to have their grievances and disputes heard and settled in court. **Only when fair and independent judicial bodies have been institutionalized are citizens able to have trust and confidence in legal norms, procedures, courts, and the police.** When this is the case, citizens are more likely to consult established laws and legal procedures to reconcile political and personal differences rather than turn to physical violence as a means of dispute resolution. Indeed, it is only when citizens believe in the likelihood of a fair and impartial legal ruling in court that citizens are willing to turn to domestic justice systems. Undoubtedly, such a high level of citizen trust in the legal institutions of the state brings a beneficial degree of order to the political and social relations of a society (Hardin 2001; O'Donnell 2004). The Linkage between the Rule of Law and Domestic Terrorism The above discussion leads to the inference that ordinary citizens have incentives to use political violence against other citizens, political figures, institutions, or the government under three conditions: (1) when they hold grievances, (2) when they find no peaceful means of resolving these grievances, exacerbating feelings of hopelessness, and desperation, and (3) when they view terrorist action as a legitimate and viable last resort to vent their anger and frustration. The lynchpin of this line of reasoning is that as long as ordinary citizens have access to a peaceful mechanism for conflict resolution, they are less likely to contemplate terrorist violence as a practical option to settle disputes. Along this line, I argue that **since liberal democracies promote a high-quality rule of law system, which serves as an effective conflict resolution mechanism, they are likely to experience fewer activities of domestic terrorism**. As a fundamental building block of democratic societies, a high-quality legal system ''serves to protect people against anarchy as well as from [the] arbitrary exercise of power by public officials and allows people to plan their daily affairs with confidence'' (Wilson 2006, 153). Since liberal democratic judicial systems ensure independent adjudication of legal rules, they create a fair chance for the interests at stake in each case to be properly heard in efficient but inexpensive legal outlets. Thus, in the presence of an effective, independent judicial system in liberal democratic societies, ordinary citizens do not need to resort to illegal terrorist measures to resolve their complaints

and grievances. Eyerman (1998, 154) makes a similar observation: since democracies ‘‘increase the expected return of legal activity and offer multiple channels of non-violent expression without the threat of government retaliation,’’ they assuage potentially growing bitterness and dissatisfaction that may turn ordinary people into terrorists (see also Frey and Luechinger 2003). In contrast, where sound judicial systems are lacking, dissatisfied people are likely to embrace the principle of retributive justice and become more likely to initiate terrorist attacks. Furthermore, since democratic citizens are socialized to trust in the fairness and impartiality of the legal system in times of disputes, they subscribe to established laws as a means to settle political grievances. From this perspective, engaging in violence would be self-defeating behavior ultimately undermining a legal institution seen as important and necessary. Furthermore, because democratic citizens see these institutions as both fair and legitimate, citizens will tend to subscribe to the established legal order, even if they disagree with individual legal statutes and rulings. Democratic citizens trust that legal adjudication produces a right and fair result, even if it is not the result they might have wanted.6 It is then not hard to imagine why ordinary people in democratic countries would be less likely to become perpetrators of domestic terrorism than those in nondemocratic countries, where the legal system is suited mainly for the rich and powerful: a nonarbitrary creation of law and a dispassionate legal system that metes out appropriate punishment make extralegal violence untenable and/or undesirable. Because citizens who live in countries without the rule of law view their own governments as illegitimate, public policy decisions as arbitrary, and peaceful participation futile, they are more likely to resort to attacks against domestic targets (or to support terrorist groups that do so). It is important to note that, in fighting domestic terrorism, law-abiding citizens in democratic societies are no less important than the actual presence of an independent judiciary with fair-minded judges and law enforcement officials. As we have seen, judicial institutions alone cannot produce a high-quality rule of law. Other factors within a society, especially the citizenry, must be actively involved. Exclusive reliance on legal authority is less likely to create and maintain safe and healthy communities if democratic citizens do not willingly cooperate with judicial institutions to resolve grievances and if democratic citizens do not serve as watchful eyes and ears against illegal activities of domestic terrorism (Hogg and Brown 1998; Hardin 2001). Alex P. Schmid (2005, 28), Senior Crime Prevention Officer of the United Nations, presents a compelling argument relating to this point: ‘‘where the rule of law is firmly in place, it ensures the responsiveness of government to the people as it enables enhanced critical civil participation. The more citizens are stakeholders in the political process, the less likely it is that some of them form a terrorist organization. In this sense, it can be argued that the rule of law has a preventive effect on the rise of terrorism’’ (emphasis added). In sum, ordinary people within democracies can resolve grievances through rule of law systems, which they have trust in, thereby mitigating the likelihood that they will commit terrorist acts, and resulting in less politically motivated violence.

Strong democracies check international terrorism

Choi 10 [Seung-Whan, Department of Political Science University of Illinois; 11/25/10; Fighting Terrorism through the Rule of Law?; Sage Pub; 07/08/15; jac]

The Linkage between the Rule of Law and International Terrorism It appears that existing studies of international terrorism suffer from two common misperceptions. First, many studies put forward religious and ideological motives as the main causes of international terrorism (e.g., Reich 1990).7 Typically, the terrorist activities of Al-Qaeda and the Taliban are seen as examples of organizations that advance their religious and ideological agenda. However, these studies overlook the fundamental question of what causes ordinary people to become terrorists in the first place. Religion and ideology, by themselves, do not necessarily drive ordinary citizens to resort to terrorist violence. **When ordinary citizens with grievances lack peaceful outlets of conflict resolution, they tend to join radicalized terrorist groups** that justify their violent actions through the selective use of religion and ideology. Second, some students of terrorism tend to misperceive the nature of international terrorist incidents. The international aspect of terrorism does not necessarily require the involvement of notorious international terrorist organizations such as Al-Qaeda. As noted earlier, as long as the origin of victims, targets, or perpetrators in political violence can be traced back to at least two different countries, this violence is regarded as international terrorism. I argue that ordinary people have incentives to terrorize foreigners and foreign facilities when two conditions are met: (1) when they hold grievances against foreigners who violate political and legal rights of local citizens and (2) when these local people, due to poor-quality rule of law in the home country, do not believe in the effectiveness of pursuing justice peacefully. Students of terrorism often fail to observe the fact that when local people have grievances against Western foreigners, they have little chance of resolving them through the legal authority due to an omnipotent presence of foreign power or an unequal

international treaty in which foreigners' crimes are immune from the domestic jurisdiction. This impotence of domestic justice systems makes local people feel helpless and desperate. Consequently, disgruntled local people turn to terrorist violence as a last resort. There are several examples that illustrate how disgruntlement among locals later transforms into violence at the hands of terrorists. In May 2006, several Iraqis abducted two U.S. soldiers at a checkpoint and they were subsequently murdered. The Iraqis learned that the two soldiers raped and killed fourteen-year-old Abeer al-Janabi and committed the murder of her mother, father, and six-year-old sister in their home south of Baghdad (Robertson and Kakan 2009, May 8). On January 12, 2009, several Pakistanis, who were displeased with America's political support for Israel, terrorized the U.S. consulate in Karachi rather than seek peaceful channels of conflict resolution (see http://chinaconfidential.blogspot.com/2009/01/pakistanistudents-storm-us-consulate.html). These two examples show how distressed local people are inclined to make use of terrorist violence against foreigners when they do not have an adequate rule of law system to hear their grievances. There are four main archetypal narratives that can better illustrate and explain the causal mechanisms underlying the relationship between the rule of law and international terrorism. The first causal mechanism involves situations where ordinary citizens within their own country feel hopeless and desperate against foreigners who abuse fellow citizens' legal rights at home or abroad and who exploit the home country's political and economic interests. When foreigners are not subject to domestic legal jurisdiction, or when they are unfairly protected by the home country's justice systems, residents of the home country are likely to take justice into their own hands through locally coordinated terrorist attacks against foreigners and foreign facilities. An example is the insurgency of Iraqi civilians against armed privately contracted soldiers who operate not only with virtual immunity from Iraqi law but also from the laws of their own countries (see Broder and Risen 2007, September 20). The second causal mechanism is an extension of the first, where **hopeless citizens become international terrorists** as a strategy to advance their domestic agendas. In this instance, discontented citizens who are frustrated with a low-quality rule of law at home, **go abroad to carry out their attacks against foreign targets of the host country**. These attacks represent an attempt to rectify foreign exploitation of their home country or to undermine Western support for brutal regimes (e.g., in the Middle East). This is done either because foreign targets are more vulnerable to attack or because there is some strategic advantage in putting the attack on an international stage rather than on a domestic one. In the former case, foreign targets may be more subject to attack due to easy access (Enders and Sandler 2006). In the latter case, the purpose of international terrorist attacks is to evoke domestic opposition in the host country, demanding the end of the foreign presence (Pape 2005; Wade and Reiter 2007). The suicide car bombing of the UN headquarters in Baghdad on August 19, 2003, is an illustrative example. The followers of the late Abu Musab alZarqawi, a Jordanian militant Islamist, intentionally targeted the United Nations and killed at least eight Iraqis and fourteen foreigners including Se´rgio Vieira de Mello, a Brazilian UN diplomat (Enders and Sandler 2006). The third causal mechanism of international terrorism is one in which discontented people are angry at politically influential foreign targets operating within their own country. However, in these situations, citizens possess no readily available means to retaliate against those foreigners or their well-guarded foreign facilities. In such cases, feelings of powerlessness among disgruntled citizens may lead them to elicit the support of international terrorists because they see it as the best strategy to redress their frustrations and grudges (Tessler and Robbins 2007). These circumstances provide ideal opportunities for international terrorist groups to build inroads with the disaffected locals, giving these groups easy access to material resources, safe havens, and better channels through which to execute militant operations against foreign targets in the host country (i.e., foreign terrorist attacks on some other foreign target). For example, many Iraqis welcome and support Al Qaeda operatives from other countries, like Pakistan, to fight against U.S. forces. The fourth causal mechanism involves situations where citizens have grievances against their own government but have no avenue for redress because corrupt domestic justice systems take the government's side. This breakdown of the basic perceptions necessary for the rule of law to materialize allows for the possibility of ''mob rule'' and lawlessness. However, the citizens themselves are often too weak to revolt, which makes them likely to turn to outside sources such as international terrorist groups to take action on their behalf (i.e., foreign terrorist attacks on a domestic target). Possessing global financial resources and disciplined members operating in autonomous terrorist cells, international terrorists are capable of luring local people who feel alienated and disadvantaged, using them to help push forward and carry out their own terrorist plots. For example, disgruntled Pakistani tribesmen joined together with foreign Al Qaeda members, Uzbek militants, and Taliban fighters to initiate terrorist attacks against the people and places attached to the Musharraf government (Masood 2008, January 18). To recap, the rule of law reinforces a political system's legitimacy by protecting the rights of citizens and foreigners and by providing the means for them to settle grievances in nonviolent ways. It thus acts as a cornerstone of liberal democracies, making it unnecessary for ordinary people to rely on terrorist violence as a last resort to resolve disputes. **An independent judiciary with fair-minded judges and police officers, who enforce the letter of the law, creates a nonviolent environment in which the public recognizes established laws as a legitimate channel to settle disputes peacefully.** Thus, the combined impact of impartial judicial systems and ordinary citizens' recognition of the law as legitimate is likely to **reduce all types of terrorism in democratic countries**.8 This leads to the following hypothesis: Hypothesis 1: The democratic rule of law has a dampening effect on domestic and international terrorism: fair and impartial judicial systems along with the public's recognition of the law as legitimate will discourage any type of terrorist acts.

Non-democracies are more likely targets for terrorists

Abrahms [Max, doctoral candidate in political science at the University of California, Los Angeles; 06/06/07; "Why Democracies Make Superior Counterterrorists"; Taylor and Francis Online; 07/08/15; jac]

WITS= Workshop on Issues in the Theory of Security

WITS, a newly released U.S. government dataset, is not limited to international or suicide terrorist attacks and is thus an unprecedented and superior resource for analyzing terrorist target selections. WITS contains events data of domestic and international terrorist incidents from 1 January 2004 to 1 June 2005. Terrorism scholars have appealed for the creation of such a dataset not only to expand the sample of terrorist events data, but also to blunt the distinction between domestic and international terrorist attacks, which has increasingly become regarded as a contrivance. Nearly all domestic terrorist campaigns have an international dimension, with terrorist leaders devoting significant effort to securing external sources of money, weapons, fighters, safe haven, and political support.37 According to Bruce Hoffman, the distinction between domestic and international terrorism has been "evaporating" since the late 1990s. The majority of Aum Shinrikio's members hailed from Russia, not Japan; the Oklahoma City bombers were allegedly linked with neo-Nazis in Britain and Europe; networks of Algerian Islamic extremists have operated in France, Great Britain, Sweden, and Belgium; and alQaeda-affiliated movements have joined forces with nationalist insurgencies in countries such as Iraq.38 Furthermore, according to a 2005 report by the State Department, twenty-seven of the fifty most active terrorist organizations are comprised of or are supported by segments of ethnonationalist diasporas, which highlights the increasing difficulty, even obsolescence of separating domestic and international terrorist attacks.39 Like other studies testing the relationship between democracy and terrorism, this study uses Freedom House's "Freedom in the World" rankings to determine the regime types of the target countries.40 Freedom House annually classifies countries as Not Free, Partially Free, or Free based on their commitment to political rights and civil liberties. I used Freedom House's 2004 rankings, rather than the 2005 rankings, to minimize the problem of endogeneity; the earlier rankings reduce any potential for the dependent variable (terrorism) to influence the independent variable (regime type). The KruskalWallis test was used to compare the distribution of the average number of incidents and fatalities among the three regime types. If the conventional wisdom is supported, we would expect to see a significantly greater number of terrorist incidents and fatalities directed against Free countries. The results did not, however, indicate a significant difference in the average number of terrorist incidents among the three regime types.41 The average (SD) number of incidents was 55.7 (254.8), 30.8 (105.8), and 26.6 (116.8) for the Not Free, Partially Free, and Free countries, respectively (P = 0.11). There was also no significant difference in the average number of fatalities among the three regime types. The average (SD) number of fatalities was 161 (822), 53 (149), and 26 (134) for the Not Free, Partially Free, and Free countries, respectively (P = 0.068). According to Cohen, small, medium, and large effect sizes for a one-way ANOVA are f = 0.1; f = 0.25; f = 0.4, respectively.42 The effect sizes for the average number of incidents (f = 0.08) and fatalities (0.13) were thus small. Therefore, contrary to prevailing popular and scholarly opinion, when the universe of terrorist attacks was included in the analysis, I did not find sufficient evidence that Free countries were targeted more or suffered a greater number of fatalities than either Not Free or Partially Free countries. In fact, the data suggest the exact opposite trend: Not Free countries had on average more than twice as many incidents and six times as many fatalities as Free countries. The relative absence of fatalities in Free countries was most evident among the most fatality-ridden countries, as only two of the ten most dangerous countries were Free. TABLE 1 Top Ten Target Countries by Fatalities Rank Country Regime type 1 Iraq Not Free 2 India Free 3 Nigeria Partially Free 4 Nepal Partially Free 5 Afghanistan Not Free 6 Russia Not Free 7 Pakistan Not Free 8 Colombia Partially Free 9 Uganda Partially Free 10 Philippines Free ∗NCTC, WITS dataset, 1 January 2004 to1 June 2005. As we have seen, democracies supposedly attract terrorism because of their liberal constraints. Spearman's rho correlation coefficient is used to test the association between the civil liberty scores of the target countries and both the number of terrorist incidents and fatalities. Freedom House's civil liberty index operates on a seven point scale: countries with a score of one come closest to the ideal of permitting freedom of expression, assembly, association, education, and religion, while countries with a score of seven permit "virtually no freedom."43 If the conventional wisdom is supported, we would expect to see a negative association between terrorist activity and the target countries' civil liberty scores. The results, however, indicate a statistically significant, positive association between the number of terrorist attacks and the civil liberty scores of the target countries rho = 0.18 (P = 0.015). There was also a statistically significant, positive association between the number of fatalities and the civil liberty scores of the target countries rho = 0.22 (P = 0.002). There was thus statistically significant evidence of greater terrorist activity in countries with poorer civil liberties— even when Iraq was treated as an outlier and excluded from the analysis. The moderate positive association between terrorist activity and illiberal countries found in this analysis understates the extent to which terrorism is aimed at illiberal countries. The NCTC warns of "difficulty in gathering data on Iraq and Afghanistan" because of high levels of crime and sectarian violence. Consequently, "the dataset does not provide a comprehensive account of all incidents in these two countries."44 Undercounting terrorist activity in illiberal countries is hardly restricted to these two illiberal countries. Political scientists have long noted that the events data in illiberal countries are undercounted for five main reasons. First, collectors of events data depend on open, publicly available sources. In practice, this means news sources, which are by definition less robust in illiberal countries. Second, the media in illiberal countries are often owned or controlled by the state, and authoritarian regimes tend to conceal challenges to their rule, including terrorist attacks. Third, the international media do not devote equal coverage to all geographical regions. Laqueur found that "while in Western societies even the smallest incidents are recorded, this is not so in other parts of the world ..."45 Fourth, the international media tend to report only spectacular events. This poses a problem for data collectors where political violence has become the norm. Because political unrest is symptomatic of illiberal

countries, attacks on civilians by substate actors often go unreported. Fifth, and perhaps most important, terrorist incidents in illiberal countries are undercounted for reasons of semantics. Terrorism typically refers to select incidences of violence. When the level of violence rises to a certain level, the campaign is generally reclassified as a civil war or genocide. In the course of these intense and sustained campaigns, politically motivated attacks by substate actors against civilians are generally excluded from the terrorism events data. Terrorist incidents in these countries are systematically undercounted because mass-based insurgencies are characteristic of illiberal countries. For all of these reasons, it is reasonable to assume that the positive association between terrorist attacks and illiberal countries is significantly stronger than even the WITS data indicate.46 Indeed, in the only study to quantifiably assess the presumed underreporting bias of terrorism events data in illiberal countries, the authors conclude: "Underreporting is indeed present . . . the databases used by applied researchers represent an understatement of true terrorist activity worldwide ... this understatement is not simply an overall scaling-down effect randomly distributed across countries . . . it is highly concentrated in countries whose press is not free, which typically correspond to countries that lie on low levels of the polity scale (nondemocracies) ... this has significant implications for issues such as constructing indices of terrorism risk on a country level ..."47

Democracy spread stops violent extremism from wrecking the world

Lagon '11 --- adjunct senior fellow for Human Rights (Mark P, "Promoting Democracy: The Whys and Hows for the United States and the International Community," Council on Foreign Relations, February 2011, http://www.cfr.org/democratization/promoting-democracy-whys-hows-united-states-international-community/p24090)//Mnush

Markets and Democracy Briefs are published by CFR's Civil Society, Markets, and Democracy initiative. They are designed to offer readers a concise snapshot of current thinking on critical issues surrounding democracy and economic development in the world today. Stakes in Democracy Furthering democracy is often dismissed as moralism distinct from U.S. interests or mere lip service to build support for strategic policies. Yet **there are tangible stakes for the United States and indeed the world in the spread of democracy—namely, greater peace, prosperity, and pluralism.** Controversial means for promoting democracy and frequent mismatches between deeds and words have clouded appreciation of this truth. Democracies often have conflicting priorities, and democracy promotion is not a panacea. Yet one of the few truly robust findings in international relations is that established democracies never go to war with one another. Foreign policy "realists" advocate working with other governments on the basis of interests, irrespective of character, and suggest that this approach best preserves stability in the world. However, durable stability flows from a domestic politics built on consensus and peaceful competition, which more often than not promotes similar international conduct for governments. There has long been controversy about whether democracy enhances economic development. The dramatic growth of China certainly challenges this notion. Still, history will likely show that democracy yields the most prosperity. Notwithstanding the global financial turbulence of the past three years, democracy's elements facilitate long-term economic growth. These elements include above all freedom of expression and learning to promote innovation, and rule of law to foster predictability for investors and stop corruption from stunting growth. It is for that reason that the UN Development Programme (UNDP) and the 2002 UN Financing for Development Conference in Monterey, Mexico, embraced good governance as the enabler of development. These elements have unleashed new emerging powers such as India and Brazil and raised the quality of life for impoverished peoples. Those who argue that economic development will eventually yield political freedoms may be reversing the order of influences—or at least discounting the reciprocal relationship between political and economic liberalization. Finally, democracy affords all groups equal access to justice—and equal opportunity to shine as assets in a country's economy. Democracy's support for pluralism prevents human assets—including religious and ethnic minorities, women, and migrants—from being squandered. Indeed, a shortage of economic opportunities and outlets for grievances has contributed significantly to the ongoing upheaval in the Middle East. Pluralism is also precisely what is needed to stop violent extremism from wreaking havoc on the world

Judicial Independence Key to Economic Growth

Judicial independence solves economic growth in developing countries

Wright et al 15 [Joseph, Associate Professor, Pennsylvania State University; Simone Dietrich, Assistant Professor, University of Missouri; Molly Ariotti, Ph.D. Student, Pennsylvania State University; 04/06/15; "Foreign Aid and Judicial Independence"; http://aiddata.org/sites/default/files/wright_et_al_2015_aid_judicial_independence.pdf; 07/07/15; jac]

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Many democracy scholars acknowledge the importance of the rule of law for democratic stability and consolidation (Elster and Slagstad, 1993; Linz and Stepan, 1996; Maravall and Przeworski, 2003; Baylies and Szeftel, 1997; O'Donnell, 1998). Some have explored the extent to which independent and impartial judiciaries influence the balance of power within governments,

finding, for example, that independent courts decrease the chances of democratic backsliding (Gibler and Randazzo, 2011) and reduce instability (Esarey and Sarkari, 2010).9 Judicial independence entails both autonomy from other political actors, particularly the executive, as well as the expectation that court ruling are enforced by other actors in the state. It can arise from the duration of the judicial appointment or executive control over judicial administration (Russell, 2001). The degree of independence may be associated with the size of the budget (Domingo, 2000), judges' discipline (Hanssen, 1999), and the power of judicial review (Ginsburg, 2003; Hammergreen, 2007).10 Beyond its influence on democratic consolidation, judicial independence shapes the prospects for economic growth.11 Many scholars in the institutionalist tradition concur that courts help secure property and contract enforcement. By increasing judicial independence, governments reduce the risk that governments expropriate private property, which in turn enhances the government's credibility vis-a-vis investors. This increase in credibility leads to greater investment and economic development (Williamson, 1985; North, 1990; Acemoglu, Johnson and James, 2001; La Porta, Lopez-de Silanes and Pop-Eleches, 2004). Alternatively, judicial independence influences economic growth through the mechanism of institutional checks. Henisz (2000) argues that independent courts serve as a veto player in the policy-making process, and finds that a higher number of veto players leads to higher levels of economic growth. Finally, judicial independence imposes checks on corruption insofar as it secures equal treatment and procedural fairness in interactions betweeen public and private actors (Haber et al. 2003). Checks on corruption also directly increase the capacity of state institutions to to ensure long-time economic growth (Haggard and Tiede, 2011). A growing number of scholars have found evidence that governments across different regime types, including democracies and autocracies have incentives to establish independent judiciaries (Tate, 1993; Whittington, 2003; Ginsburg, 2003; Hirschl, 2004; Wright, 2009; VonDoepp, 2009; Yadav and Mukherjee, 2014). These incentives are derived largely from **the economic prospects associated with judicial independence**. The literatures on judicial independence, democracy, and economic growth provide policymakers in both donor and recipient governments with an incentive to promote judicial reform. In the donor community, representatives recognize the importance of judicial independence, or the rule of law, more generally. As Lord Paddy Ashdown claimed in October of 2002 shortly after taking up the post of UN High Representative for Bosnia and Hercegovina: "In Bosnia, we thought that democracy was the highest priority and we measured it by the number of elections we could organize. In hindsight, we should have put the establishment of rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts. We should do well to reflect on this as we formulate our plans for Afghanistan, and, perhaps, Iraq."12 Inspite of this awareness, little systematic evidence exists about the conditions under which donor efforts are successful in promoting judicial independence. Drawing on case studies, some speculate that a need to satisfy external observers may influence the relationship between the judiciary and other branches towards greater levels of independence (Tate, 1993; VonDoepp, 2009), while others claim more explicitly that states receiving foreign aid are more likely to be responsive to external pressure to promote judicial independence (Hirschl, 2004; Bill Chavez, 2008). Skeptics, on the other hand, argue more generally that external democracy-promotion may only play a supporting role in the instances where domestic actors are already acquiescent (Bratton and van de Walle, 1997; Carothers, 2007), which is an argument that could apply to judicial reform. We contribute to this debate by presenting an argument that differentiates between the mechanisms of democracy promotion (conditionality via economic aid and direct investment via democracy and governance aid) and political institutions in the aid-receiving country, with a particular focus on the election cycle in aid-receiving countries. We specify when aid contributes to judicial independence and in doing so explain why donor efforts have fallen short of strengthening the judiciary abroad during election times. Donor tactics, recipient politics, and the promotion of judicial independence

Judicial independence is important for both democratic stability and improvement of the investment climate or corruption control – both necessary to strengthen and sustain economic growth. The respective literatures provide systematic evidence thereof, which serves as a basis for donor and recipient government policy preferences. We posit that both donor and recipient governments recognize the benefits of judicial independence and seek its promotion. Indeed, since the mid-1990s, the donor community has moved beyond its narrow focus on election day to champion the promotion of good goverance, which includes judicial reform. It has done so in two ways: First, donor governments have expanded their use of governance-related conditionalities attached to economic aid in scope and depth. In 2000, Kapur and Webb (2000, 4) present initial analyses on new trends in IMF conditionality, noting that the burden of governancerelated conditionality on borrowers, including judicial reform, "has grown significantly. The average number of criteria for a sample of 25 countries having a program with the IMF in 1999, with programs initiated between 1997 and 1999, is 26. This compares to about six in the 1970s and ten in the 1980s." Today IMF lending is infused with governance-related conditions, as are economic aid packages of other multilateral and bilateral donors. Through conditionality, donor governments aim to extract reform concession from incumbents. Of these conditions, many prescribe specific reforms in the rule of law sector but they do not spell out details as to how governments should go about pursuing these reforms. The conditionality mechanism is therefore diffuse as recipient governments can choose among various policy strategies that entail political reform.13 Even within the area of judicial reform, as Dallara (2014) notes, international donors do not necessarily share the same priorities. In her research on judicial reform in South-Eastern Europe, she shows that the United States has tended to push for judicial independence across time while the European Union focused on strengthening judicial capacity. At the same time, donor governments have increased their budgets for specific governance activities, in general, as captured through "democracy and governance aid," and for judicial reform activities, specifically. We claim that specific investment in governance represents a different strategy of democracy promotion, which differs from the conditionality-strategy in two ways: first democracy and governance aid represents only a fraction of the total aid budget, while conditionality is associated with economic assistance in general. Second, democracy and governance is earmarked for the promotion of specific judicial reform activities, while conditionality prescribes reforms but does not specify the implementation of the reforms. Across the

world international donors have spent hundreds of millions of dollars on direct investment in democracy and governance activities. Over time an increasing proportion of foreign aid has been directed at judicial reform. Donor governments' judicial reform activities in Jordan serve as a case in point: like in many other countries, Jordan's judiciary was not guaranteed independence through the Constitution. In 2001, the adoption of legislation referred to as the "Law on the Independence of the Judiciary" or "Indepdence Law" suggested some progress by declaring that judges were independent "except as specified by this law." However, the law was limiting insofar as it established a Judicial Council that had the power to appoint and dismiss judges, thus restricting the judiciary's independence (Burgis, 2007). Over the course of the next ten years, national efforts such as the "Royal Committee for Judicial Upgrade"14 aimed to further improve the judiciary branch by institutionalizing "independence of the legal system" and by enhancing "the efficiency of the judicial inspection methodology as well as develop the institutional capacity of the Judicdial Council."15 In 2013, this effort resulted in an amendment to the judicial independence law that now allows the judiciary to operate without political interference. Examples of donor investment in Jordan's judicial reforms include the European Union's 1.1 million Euro initiative, entitled "Technical Assistance for Institutional Strengthening of the Ministry of Justice," which trained judges, clerks and legal professionals, alongside efforts to build modern legal case management systems.16 USAID's "Rule of Law Programme (MASAQ)" in Jordan supports judicial indepdence through similar activities. The World Bank also contributed to donor efforts to foster judicial independence by conducting training programs to upgrade Jordanian judges' capabilites as well as the skills of prosecutors in Amman. The "Jordan Legal and Judicial Reform Learning Program" focused on analyzing and discussing strategies to secure private property and oversee administrative agencies.17 All three projects are examples of targeted investments in the strengthening of judicial independence. They are part of democracy and governance assistance. In addition, they were were supported by and conducted in collaboration with the Jordanian Ministry of Justice and the Ministry of Planning and International Cooperation. As such, these programs were incorporated into a multi-year government-led judical reform strategy. According to Burgis (2007) and independent news sources, the Jordanian government's motive for promoting an indepdent judiciary was economic. Indeed, King Hussein made this rationale explicit when he suggested that judical independence would "help translate the countrys reform plans into facts on the ground, including economic reform and efforts to increase the countrys economic competitiveness."18 When the 2013 amendment to the constitutional laws was passed, the King praised it, suggesting that the amendment would further "reduce investors' fears regarding the judiciary's independence." These anecdotes of donor involvement in Jordan indicate that recipient governments recognize the economic benefits of judicial reform. While anecdotal, the Jordanian case suggests that the recipient government recognizes the economic benefit of judicial independence, resulting in alignment of donor and government preferences in favor of implementing judicial reform projects. This discusion generates two related hypotheses. • Hypothesis 1: Economic economic aid and democracy and governance aid increases judicial independence. • Hypothesis 2: The positive effects should be stronger for targeted democracy and governance aid than for diffuse economic aid. We extend our argument by introducing an important contextual factor, elections, that we argue conditions the relationship between foreign aid and judicial independence. So far, our discussion has focused on the economic gains associated with judicial independence, which we expect the recipient government to recognize and pursue. Yet, this discussion masks concerns of recipient governments have about the potential political costs of judicial reform. Importantly, judicial indepdence not only promotes economic growth, but also helps secure freedom of expression for political opponents and strengthens checks on the abuse of power by incumbents. Progress in strengthening judicial independence may therefore be particularly threatening during times when an incumbent government's position of power is more uncertain, as it would be during times of election. Before and around election day, the judiciary can influence election outcomes in multiple ways. During election campaigns, pro-incumbent courts can punish opposition and political mobilization by, for example, subduing the press, upholding jail sentences for opposition leaders, or condoning unfair electoral rules. After election day, the judiciary can turn a blind-eye to election fraud or allegations of election-related political violence. In contrast, an independent judiciary can prevent incumbents from punishing electoral opponents during campaigns and promote democratic accountability after an election by settling vote-counting disputes or fraud allegations fairly. Courts can therefore directly influence the balance of political power in the aid-receiving country. While political economists have long recognized governments' motivations regarding the timing of economic-policy activity (e.g. Golden and Poterba 1980, Price 1998) we argue that electoral motivations influence the incumbents timing for promoting judicial reform, in general, but also for implementing externally funded governance projects, specifically. Because the lionshare of externally-funded governance projects are implemented in cooperation with the relevant Ministries in the recipient country, the incumbent government has direct influence in the implementation process and can exert control.

Democracy Key to Asian Stability

Democracy promotion is key in Asia

VOA 15 ("Promoting Democracy in Asia," Editorials – Asia, 6/30/15, http://editorials.voa.gov/content/promoting-democracy-asia/2842754.html)//Mnush

Promoting democracy and human rights in Asia is of crucial importance to the United States. In testimony before Congress regarding the state of democracy in Asia, U.S. Assistant Secretary of State Tom Malinowski and Principal Deputy Assistant Secretary of State Scot Marciel spoke of the crucial importance of promoting democracy and human rights. Promoting Democracy in Asia Helping to further democratic governance is not only the right thing to do, said Assistant Secretary of State Malinowski, it also advances our strategic interest by building more stable societies; and, most importantly, "it aligns the United States with the aspirations of everyday people across this region." Principal Deputy Assistant Secretary of State Marciel highlighted U.S. efforts to promote democracy in three very different places: Cambodia, Thailand and Hong Kong. After the 2013 parliamentary election in Cambodia, the United States –- particularly through its embassy in Phnom Penh -- worked to help bring the government and opposition together in direct dialogue to resolve a year-long standoff. Much work still remains, but now the two sides sit in parliament together, said Mr. Marciel. Regarding Cambodia's civil society, the United States is connecting directly with a new generation of leaders, and standing with Cambodians who are pushing for a voice as new

laws are drafted. "This," he said, "sends a reminder that democracy isn't only about free elections, it's also about citizens' ability to hold their governments accountable." Thailand has long been a friend and ally, and the United States has stood for democracy there through a decade of political turmoil. Our message to the government since the 2014 coup, said Mr. Marciel, is that our bilateral relationship can be restored to its fullest only when democracy is reestablished. It is critical for Thailand to have an inclusive political process and to fully restore civil liberties. Regarding Hong Kong, the United States has consistently voiced its core belief that an open society respecting the rights of its citizens is essential to Hong Kong's continued stability and prosperity. With respect to electoral reform, Mr. Marciel noted the United States continues to affirm its long-standing position that the legitimacy of the chief executive and of Hong Kong's overall governance can be enhanced through a competitive election that features a meaningful choice of candidates who represent the will of the voters. The work to promote good governance is never complete, but the United States will continue to support efforts to build and strengthen democracy in Asia.

Interdependence and historical trends indicate that future democratic transitions in Asia will remain stable

Lind 11 [Jennifer, Associate Professor of Government at Dartmouth College; 05/09/11; "Democratization and Stability in East Asia"; Wiley Online Library; 07/08/15; jac]

The Economist has wondered whether in Asia, "economic integration will in the end restrain political hot heads?"43 Based on IR theory and evidence from past democratization in the region, this article says yes: that China and Korea are unlikely to pursue nationalistic, belligerent foreign policies during their future political transitions. This article examined theories making competing claims about the stability of these upcoming transitions (theories within the "democratization and war" school and economic interdependence theory). In the cases of previous East Asian transitions, process-tracing evidence shows that the destabilizing processes expected by the broad version of democratization and war theory were not present. Politicians did not pursue prestige strategies overseas in order to curry favor with a jingoistic public, and logrolls for hawkish policies did not form. Rather, consistent with the more recent and narrower version of this theory within this school, domestic institutions were robust enough to manage the demands of transition without unleashing nationalistic, belligerent foreign policies. Furthermore, each case exhibits the pacifying role of economic interdependence. Economic actors served as restraining, moderating forces, and democratization only increased their influence in the policy-making process. Because of the disruption costs associated with international strife, foreign expansionism was not the preferred goal for which business leaders would be willing to trade favors with coalition partners; quite the contrary, they viewed international instability as a scenario to be avoided at all costs. As Solingen (1998:12) argues, the time at which these transitions took place, which allowed the option of a trading state strategy, "produces a different set of actors and different proclivities among them than might have been expected from existing coalitional frameworks, prominently that of Snyder." In other words, given the internationalist strategies pursued by these states, the business community sought to avoid war and instead "logrolled for peace." The Future East Asian Transitions Many scholars have speculated that political transitions in China and Korea could lead to the stoking of xenophobic, jingoistic nationalism and the adoption of hawkish foreign policies (Bachman 2000:209; Gilley 2004; Goldstein 2005:95; Mansfield and Snyder 2005; Bass 2006). To be sure, both countries have powerful grievances that could fuel nationalistic mobilization. China is aggrieved about its "century of humiliation" vis-à-vis the great powers (Gries 2004: chapter 3; Schell 2008). Disputes with the United States (the EP-3 incident, the US bombing of the Chinese embassy in Belgrade) previously triggered widespread protests across China. Furthermore, the Chinese resent Japan not only for its invasion and brutal occupation in the 1930s and 1940s, but also for Japan's failure to candidly remember this period in its textbooks or commemoration (Gries 2004; Shirk 2007; Wang 2008). Japan and China also have territorial disputes that could provide a causus belli for nationalistic sentiment.44 Koreans, for their part, hold strong animosity toward Japan for its past aggression (Cha 1999:20–23; Lind 2008). They also resent China because of Chinese claims that Korea's ancient kingdom of Koguryo was part of China (Gries 2005). Many Koreans—both North and South—deeply resent the American role in Korea's division (Harrison 2003:187). Korean resentment, or han, is characterized as the deep and accumulated resentment of people who feel their small nation is continually and helplessly pushed around by larger countries. In the future, Korean politicians may be tempted to exploit such resentment for their own political gain. As many scholars have argued, both these cases appear to be fertile ground for nationalistic mobilization. This article suggests greater optimism. The narrower version of democratization and war theory (supported in the previous East Asian cases) does not expect that Chinese or Korean transitions will trigger the onset of xenophobic nationalism and war. This theory holds that countries with relatively robust domestic institutions can democratize without unleashing praetorian politics that lead to violence. This model does not expect an elevated risk of war in the cases of either China or South Korea: using Gurr's method for calculating domestic concentration, both countries fall within the range of stronger domestic institutions, with China scoring a 5 and South Korea an 8. Therefore, the model expects governments in China and Korea to be able to "manage the rivalry of elite factions and minimize the adverse consequences of interest-group logrolling." Mansfield and Snyder conclude that "with the stronger institutional resources of a more centralized and better regulated state at its disposal, the regime is likely to have less reason to rely on reckless nationalist appeals to consolidate its authority" (2005:88). In sum, the narrow version of democratization and

war theory borne out in the previous East Asian cases does not expect political transitions in China and Korea to fuel more hawkish policies and interstate war. Second, economic interdependence theory also predicts stability for these transitions. Both countries lifted themselves from poverty to wealth through a strategy of global integration and export-led growth, and their continued prosperity depends on access to export markets and international capital. China's trade is 72% of its GDP; China receives more foreign direct investment than any other country in the world, totaling $111 billion in 2008 (World Bank 2009).45 Its ample foreign direct investment is often cited as a key engine of Chinese economic growth and prosperity. South Korea is also highly economically interdependent, with trade constituting 90 percent of its GDP (World Bank 2009). Furthermore, the countries with which friction might be expected (because of territorial or historical disputes) are major economic partners. The United States is China's No. 1 export destination and its No. 3 source of imported goods; Japan is China's No. 2 destination for exports and No. 1 source of imports (CIA 2009). Taiwan, the United States, Japan, and the ROK are also the largest sources of China's FDI (Kang and Lee 2007). As Cheng (2005:105) points out, Taiwanese firms operating in China not only provide China with its largest source of FDI, they export most of the goods they produce there, accounting for more than a fifth of China's total exports. Similarly, Seoul's sometimes tense relations with Tokyo exist in the context of deep economic interdependence. Japan is not only the ROK's top source for FDI, it is also the ROK's No. 3 destination for exports and ranks second as a source of imports (CIA 2009).46 In sum, China and South Korea are two countries pursuing strategies of deep economic integration; the countries with which they might be most likely to conflict due to various disputes are also those countries on which they depend for trade and capital. Economic interdependence theory thus would expect this to have a pacifying effect on their foreign relations. Business leaders in these countries are likely to pressure their governments for stable policies; they will be unwilling to "logroll" with other coalition members if doing so leads to involvement in a costly war.

AT: Transition Wars

No empirical evidence for transition wars-policy makers have no incentive not to promote democracy

Narang and Nelson 09 [Vipin, Associate Professor of Political Science at MIT; Rebecca, a Specialist in International Trade and Finance; April, 2009; "Who Are These Belligerent Democratizers? Reassessing the Impact of Democratization on War"; Cambridge Journals; 07/08/15; jac]

Based on Mansfield and Snyder's chosen measures for regime change and war, we therefore argue that there is no empirical basis for the claim that incomplete democratizations systematically unleash a wave of belligerent nationalism that results in external war+ Not only is there a severe dearth of observations involving incomplete democratization, weak institutions, and war, but we find that the main results hinge entirely on several unrepresentative observations clustered around the dismemberment of the Ottoman Empire+ Partly as a result, when we compare the full Mansfield and Snyder model to a parsimonious controls model, we find that the former adds no predictive power over the latter+ We note that it is entirely possible that the indicators that Mansfield and Snyder employ do not exactly operationalize the logic of the theory+ Certainly, changes in the various Polity measures may not capture what they consider to be incomplete democratization, and the Correlates of War data set may be a blunt measure for "belligerence," especially when the chosen measurement is simply war participation+ But given the best available measures for the phenomena of interest, we find no systematic empirical support for the theory that incomplete democratizers with weak institutions are more war-prone toward other states. Given the high-profile prominence and persistence of the Mansfield and Snyder claim, these results bear on both academic and policy debates+ Academically, our findings help provide some intellectual housekeeping in the debate between whether incomplete democratizers implode or explode+ In showing that there is a marked lack of empirical support for the relationship between these states and war participation, let alone initiation, our conclusions strengthen the findings of the state-failure project which argues that this class of states is particularly vulnerable to internal—not external—conflict+ Though there can certainly be spillover effects from internal conflicts, **there is no empirical evidence that incomplete democratizers pick fights with other states**+ Indeed, the Ottoman Empire observations that provide the entire statistical support for the Mansfield and Snyder results are more consistent with the state-failure hypothesis since the series of wars launched against the Ottoman Empire were primarily about dismembering it and parceling out its spoils, not about an incomplete democratizer with weak institutions engaging in diversionary external wars+ Furthermore, the most salient contemporary cases of incomplete democratization—such as post-Cold War Russia, Rwanda, and Yugoslavia—tended to invariably result in disintegration rather than external belligerence. Our findings are also relevant to policy debates concerning the consequences and

management of democracy promotion abroad+ Policymakers have invoked the finding that democratizing states are more likely to become war-prone members of the international system as a compelling argument against promoting democracy internationally+ In The National Interest, Mansfield and Snyder caution that a democratizing China, with its nationalist "demand to incorporate Taiwan in the People's Republic of China, @and# its animosity toward Japan" could pose serious threats to regional and international security. 55 They suggest that the international community should be extremely wary of a democratizing China and may need to take measures to contain potential Chinese belligerence during such a phase+ However, **the empirical evidence implies that concerns that democracy promotion will trigger international conflict are misplaced** since, historically, movements towards democracy have not unleashed belligerent foreign policies+ As such, adopting containment policies toward incomplete democratizers—whether it be China or others such as potentially Russia or Pakistan—in anticipation of aggression may be unnecessary and even possibly counterproductive since they risk triggering con-flict through the creation of security dilemmas or other pathways completely independent of democratization. We have thus shown that one concern about democracy promotion, that incomplete democratizers have a higher propensity to instigate external wars, is empirically unfounded+ This is not to say that democratization is at all a smooth process; we do not dispute that such transitions may be fraught with risks, and that the proper sequencing and pacing of the process is critical for full democratic consolidation+ But **there is simply no empirical basis to think, or adopt policies predicated on the fear, that incomplete democratizers will be more belligerent members of the international system**.

AT: Stealth Authoritarianism

Stealth authoritarianism is merely a stage in the development of democracies

Varol 15 [Ozan. O, Associate professor of law Lewis and Clark Law School ; 05/15; "Stealth Authoritarianism"; Lexis; 07/05/15; jac]

There remains, however, the possibility that the use of stealth authoritarianism can eventually usher in democratization. The use of stealth authoritarian practices may mark the beginning of the end of a repressive government. n435 Stealth authoritarianism, in other words, may represent a temporal snapshot in a regime's gradual transformation from a fully authoritarian government to a democracy. Although stealth authoritarian practices are anti-democratic in effect, they might, in some cases, produce the conditions by which democracy can mature, even if it does so in a manner that, on the surface, defies democracy. The rejection of openly repressive authoritarian tactics, and the adoption of legal mechanisms that exist in [*1741] democratic countries, can open up a democratic Pandora's box and foment further democratic reforms. It may be possible for subsequent generations to breathe democratic life into formal legal mechanisms that were initially adopted or used for stealth authoritarian purposes. As a result, even though formal legal mechanisms can provide the tools for stealth authoritarianism, they can also, in some cases, produce democracy-enhancing benefits.

State Secrets Privilege Bad

Courts Key to Address State Secrets Privilege / AT: Intel Leaks

The judiciary is the best actor to rein in abuse of the state secrets privilege --- there is minimal chance of intel disclosure

Windsor, 12

(J.D. candidate and Master of Security Studies candidate at Georgetown (Spring 2012, Lindsay, Georgetown Journal of International Law, "NOTE: IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT," 43 Geo. J. Int'l L. 897)

V. A CONSTITUTIONAL SAFEGUARD: REQUIRED JUDICIAL REVIEW OF STATE SECRETS INVOCATION

The state secrets privilege is within the scope of executive authority under the Constitution, but it has been extensively criticized for its potential for abuse by the executive branch. n162 In light of this criticism, the Department of Justice (DOJ) recently established safeguarding procedures for the formal invocation of the privilege which echo and [*921] extend the requirements under Reynolds. n163 The DOJ will only defend an assertion of state secrets in litigation when "necessary to protect against the risk of significant harm to national security." n164 The regulations prohibit the Department from defending an invocation of the privilege

in order to (i) conceal violations of the law, inefficiency, or administrative error; (ii) prevent embarrassment to a person, organization or agency of the United States government; (iii) restrain competition; or (iv) prevent or delay the release of information the release of which could not reasonably be expected to cause significant harm to the national security. n165

Though these regulations establish a degree of safety to prevent abusive invocation of the privilege, the oversight remains entirely within the executive branch, and **an external check is needed to ensure the privilege is properly used**. Based on the constitutional separation of powers, the Court is better suited than Congress to impose this check. Such a safeguard would limit the potential for abuse with minimal risk to national security.

A. Courts Should Standardize Review of Invocations of the State Secrets Privilege

Reynolds' only procedural requirement was that the privilege be invoked by the head of an agency after "actual personal consideration" of the privileged documents. n166 Even this requirement is not always enforced. n167 Further, judicial review of the evidence argued to be privileged is occasional, irregular, and non-standardized. n168

Courts must begin by enforcing the basic requirements of the [*922] privilege established in 1953 and affirmed through half a century of jurisprudence. When a judge receives an affidavit asserting the privilege, the judge could confirm the "actual personal consideration" requirement by inference, where the affidavit describes the material with specificity and justification sufficient to satisfy the assertion of the privilege. If that is not sufficient, accurate contact information for the head of the agency should be provided in the affidavit so an unsatisfactory affidavit could garner prompt verification in a timely manner.

Additionally, in camera, ex parte judicial review of the evidence should be standard where the plaintiff shows "necessity" for the documents, as with claims concerning alleged warrantless domestic surveillance, torture, extraordinary rendition, targeted killings, and similar cases where core constitutional rights are at stake. n169 Reynolds recognized that the level of scrutiny for the privileged documents would vary based on the plaintiff's alleged causes of action. The Court held the plaintiff's necessity for the privileged material "determine[s] how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate." n170 Since these cases implicate important constitutional rights, **they reasonably require a closer level of scrutiny. Even simply routine judicial inspection of the material would likely be sufficient to ensure the integrity of the privilege because it would verify proper invocation of the privilege and thereby place an external check on the executive branch.**

There are limitations on a court's ability to compel disclosure of the documents, however, **based on the separation of powers where national security matters are concerned**. The Court has repeatedly acknowledged that the authority to protect national security information is within the domain of the Executive and is not something the courts have the expertise or the ability to override. n171 Therefore, **a court could not require disclosure of the documents if it finds the procedures were not followed or if it disagrees with the Executive's decision that the material contains state secrets**, since this would exceed the Judiciary's conceded constitutional authority.

Nonetheless, another remedy is possible if the court nonetheless disagrees with the government's assertion. After a refusal to accommodate [*923] a legitimate request for in camera, ex parte review of the documents, or upon finding, after deferential review, that the documents did not meet the standard of "risk of significant harm to national security," n172 the court could take the facts in favor of the plaintiff and proceed to the case on the merits. Louis Fisher recommends this practice: "Disposing of a case in that manner may reward plaintiffs who have unproven cases, but it also puts the government on notice that asserting state secrets comes at a price." n173 For extreme cases where the privilege assertion was unresolved between judicial and executive branches, this would be an effective check on the Executive, would be within judicial discretion, and would provide plaintiffs a basis for relief in cases with core constitutional concerns.

B. The Judicial Branch is Best Suited to Impose a Safeguard on the Privilege

"[W]hen individual liberties are at stake," wrote the Court in 2004, "[the Constitution] most assuredly envisions a role for all three branches." n174 Judicial review in the manner described above satisfies this requirement, provides an effective check on the Executive, and nonetheless maintains the constitutional separation of powers required for **an effective state secrets privilege**.

The courts are best suited to exercise a safeguard over Executive invocation of the privilege. Though the courts do not have expertise in the field of foreign affairs, they do have expertise in matters of evidentiary procedures and thus can make these determinations. n175 **The risks of disclosing the privileged material to the court are minimal, because the disclosure would be only to one judge.** n176 In districts where national security cases routinely arise, some judges have become accustomed to handling issues of national security and classified information [*924] through extensive CIPA and FISA litigation. n177 Other courts frequently handle similar matters requiring government secrecy and protection of sources in criminal prosecutions, such as sting operations in drug cases. Limited judicial review through inspection of the privileged documents would verify the integrity of the privilege with minimal risk for public disclosure of the information. n178

Moreover, **the judiciary is better suited than Congress to establish the requirement of judicial review of the invocation of the privilege**. As noted above, Congress has acknowledged the presidential powers in this area by codifying them through legislation authorizing the President to establish regulations governing the classification procedures and access to classified material. n179 **The Supreme Court agrees that the authority to protect classified information is the Executive's; it does not fall within the responsibility of the legislative branch.** n180 In other words, the Executive's power is at its highest ebb because he is acting pursuant to express and implied authorization by Congress, so he can rely on all the inherent executive powers plus those Congress has delegated. n181

Thus, **Congress cannot constitutionally require the disclosure of classified information, even to a court**, so it has essentially no authority to change substantively the contours of the present privilege. n182 Since the privilege is constitutionally based in executive powers, Congress cannot rely solely on its Article III powers merely to change a rule of [*925] evidence. Congress might codify the existing law under Reynolds in combination with its Article III authority, but anything more would infringe upon clear executive authority.

For those scholars who recognize a constitutional basis for the privilege, most acknowledge the Executive's clear authority in the area of state secrets. n183 However, these scholars proceed to argue for an increased oversight role by Congress without adequately explaining the constitutional basis for Congress to exercise such a role. n184 The impetus appears to be based on the importance of the legal issues arising in post-9/11 state secrets cases, but this does not constitute legal cause to expand Congress' constitutional authority. Chesney and Frost asked what Congress can do to check the Executive and expand judicial oversight, but since Congress has limited authority where state secrets are concerned, the better question is what the courts can do more effectively to exercise the oversight the Constitution has already given them.

The Court has authority to establish this judicial review as enforcer of evidentiary procedures for federal cases and as arbiter of the constitutional separation of powers. n185 The Court created the requirements for invoking the state secrets privilege in Reynolds, so amending that process would certainly be within its purview. n186 Though Congress could codify the Reynolds privilege in statute, n187 **the court is better suited to establish further review procedures under its judicial review authority**. n188 Standardizing in camera, ex parte judicial review of the privileged material in this limited way would **prevent Executive abuses and add institutional legitimacy to the privilege.** n189

SSP Undermines War on Terror

State secret privilege enables Executive's abuses of power and prevent us from fighting terrorism effectively

Fichera '08 --- (Stephanie A, "Compromising Liberty for National Security: The Need to Rein in the Executive's Use of the State-Secrets Privilege in Post-September 11 Litigation," University of Miami Law Review, 1/1/08, http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1295&context=umlr)//Mnush

The level of secrecy the state-secrets privilege affords to the Executive enables the Executive to abuse its power and erode the values, rights, and protections that define the American system of government and way of life. Such abuse of power divides the nation and **hinders its ability to fight terrorism effectively** because notions of freedom, justice, and open, democratic government must be observed stringently at home in order for others to struggle to adopt them abroad.

SSP Not Key to National Security / Undermines Executive

SSP guts public trust in the executive --- it's not key to national security

Fisher, 14 --- scholar in residence at the Constitution Project, visiting professor at College of William and Mary Marshall-Wythe School of Law (3/10/2014, Louis, The National Law Journal, "Government Errors Are Shrouded in Secrecy; The last two administrations have unfairly used state-secrets privilege to cover for their mistakes," Factiva)

A reliance on the **state-secrets privilege** is enabling the government to draw a cover over its mistakes so that **no one can fully understand when it is at fault**. Like all human institutions, governments make errors and injure innocent individuals. Why not admit error and demonstrate integrity, honesty and fairness, and at the same time build public trust? The administration of President George W. Bush invoked the statesecrets privilege repeatedly to prevent private litigants from challenging executive actions that violated statutes, treaties and the Constitution. The lawsuits included warrantless surveillance by the **N**ational **S**ecurity **A**gency and the practice of "extraordinary rendition" that sent suspects to other countries for interrogation and torture. In case after case, **federal judges deferred to executive branch warnings that allowing a case to proceed would do grave danger to the nation**. As presidential candidate in 2008, Barack Obama criticized this emphasis on secrecy and promised to promote a more transparent administration if elected. In a major speech in May 2009, he said the state-secrets privilege "has been overused" and remarked: "We must not protect information merely because it reveals the violation of a law or embarrassment to the government." In September of that year, U.S. Attorney General Eric Holder said the administration wound not invoke the statesecrets privilege to "conceal violations of the law, inefficiency, or administrative error." Still, the record of the Obama administration over the past five years on state secrets mirrors that of the Bush administration. Consider the case of Rahinah Ibrahim, a Malaysian Muslim pursuing graduate studies at Stanford University in construction, engineering and management. On Jan. 2, 2005, when she presented her ticket at the San Francisco airport to fly to Malaysia, she discovered that her name was on the federal government's no-fly list. An agency that is a part of the FBI compiles the names placed on the list. Although she was in a wheelchair recovering from a hysterectomy and recent complications, she was handcuffed and taken to the police station. Two hours later, the FBI told the police to release her. It was an apparent mistake by the federal government—and a good time for an apology. Obviously, the FBI did not regard her as a security risk because she was allowed to board a plane the next day to return to Malaysia. But there would be no apology from the federal government, and the situation would grow worse. Ibrahim was scheduled to return to Stanford in March 2005 to complete her doctorate. When she went to Kuala Lumpur International Airport to fly back, she was not allowed to board. She did not realize the government had revoked her student visa. Ibrahim filed a complaint in federal court in January 2006 to challenge the government's action and seek damages. At trial, the government conceded that she had no criminal record or links to terrorist activity. In a decision in December 2012, U.S. District Judge William Alsup was still unable to determine whether she was, or was not, on the no-fly list. The government wanted the case dismissed on the basis of secret evidence to be shared with the judge ex parte, with the records taken back to Washington after the court's review. He found that procedure unacceptable.¶ On April 23, 2013, Holder signed a declaration that claimed the state-secrets privilege over certain documents, warning that their disclosure "could reasonably be expected to cause significant harm to the national security." Alsup examined classified documents and allowed Ibrahim's attorneys to take three depositions, including of FBI Agent Kevin Michael Kelley. Only then did the government concede plain error. WHEN DID THE ERROR OCCUR? Alsup explained that Kelley in November 2004 recommended that Ibrahim be placed on a number of federal watch lists. But because he did not understand the form he filled out, her name ended up on the no-fly list. At trial, Kelley admitted he had checked the wrong box, filling out the form "exactly the opposite way" from the instructions given him. He said he did not know of his mistake until deposed in September 2013. This part of the trial record does not make sense. The "truth" wasn't discovered in 2013. When the FBI in January 2005 ordered Ibrahim released from police custody at San Francisco, it knew it had erred. Ibrahim faced other problems. When she reapplied for a visa in 2009, it was denied under the section of the Immigration and Nationality Act that can refer to terrorism. In September 2013, she applied for a visa to attend her trial in California. That, too, was denied. On January 14, 2014, Alsup ordered the government to remove all references to Kelley's mistaken designations, making clear they "were erroneous and should not be relied upon for any purpose." Also, he ordered the government to inform her of the specific subsection of the act that rendered her ineligible for a visa in 2009 and 2013.¶ Following the pattern of the Bush administration, Obama and the Justice Department have been willing at every step to invoke the state-secrets privilege to prevent any type of judicial relief for individuals wronged by the executive branch. It should not be difficult for the administration to admit error, issue an apology and reparations, and stop hiding behind

the state-secrets privilege. **Nothing** in the government's conduct in the Ibrahim trial **adds to national security.** Instead, it merely builds greater distrust toward executive officials.

AT: Detention Good Impact

Detention and GTMO are ineffective – they undermine counterterror strategies and generate more terror than they prevent^

Douglas 14

(Roger Douglas is a Professor of Law at La Trobe University, "law, liberty, and the pursuit of terrorism", Published September 2014, pg. 100, TMP)

The counterterrorist's dream is that of a government with the capacity to track down prospective terrorists and lock them away before they are able to execute their plans. The criminal law permits various forms of de facto preventive detention, but posttrial detention is usually possible only after a court is satisfied that the detainee has committed a crime; that the evidence proves the defendant's guilt; and that on the facts before the court, a custodial sentence¶ is warranted. Otherwise defendants must go free, regardless of whether they¶ pose a high actuarial risk. Further, in cases where proof of the relevant crime would require the disclosure of state secrets, **proof of guilt might be difficult if the government wishes to protect secrets from disclosure**. For reasons set out in the previous chapter, the seriousness of these problems can be exaggerated, especially given the recently created precursor offences and the courts' willingness to impose long sentences on people who did little to give effect to their plans. Moreover, if there is insufficient evidence to support a conviction for a precursor offence, this may be because there is little evidence that the suspect is indeed a potential terrorist. In addition, there are **costs** involved in detaining the innocent. These include costs to the detainees, but even if one is indifferent to these, there are others. **Detention is expensive.** Detention of the innocent is wasteful and involves the use of resources that could be used more profitably elsewhere: in January 2012, detention at Guantánamo Bay cost **$800,000** per detainee, and guarding each detainee required an average of 17 soldiers. 3 **Ill-tailored preventive detention can sometimes have the effect of generating more terrorism than it prevents**, by delegitimating governments and their counterterror policies. 2RPP Detention without Conviction • 171 Yet the craving for certainty means that the authoritarian's dream is capable of weaving its seductive web. There are precedents for the detention of people based on nothing more than attributes that mean that they are slightly less unlikely to constitute a threat than those without the attribute. An obvious example is provided by the wartime detention of enemy aliens, some of whom no doubt hoped their homeland would win, but few of whom ever seem to have done anything to further this end, either before or on release from detention. These precedents rightly stand as a warning as to the dangers of barely regulated detention. It is probably a warning heeded by modern governments and their judiciaries, but more by judiciaries than by governments

Religious Surveillance Neg Updates

Solvency

Circumvention

Government will circumvent the plan --- cite privileges to avoid accountability

Windsor, 12

(J.D. candidate and Master of Security Studies candidate at Georgetown (Spring 2012, Lindsay, Georgetown Journal of International Law, "NOTE: IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT," 43 Geo. J. Int'l L. 897)

B. The State Secrets Privilege in Context of Other Government Privileges

The Reynolds privilege is closely related to two other government privileges invoked by the executive branch. n41 The bar to litigation of espionage contracts and the executive privilege protecting presidential deliberations form the two ends of a spectrum of executive privileges based on the inherent constitutional authorities of the President.

1. The Bar to Litigation of Espionage Contracts

In Totten v. United States, the Supreme Court established an absolute bar to litigation of contracts for espionage based on rules of evidence and the inherent powers of the Executive. n42 When the estate of an individual who spied for the Union during the Civil War sued the government for failure to pay for his contracted services, the Supreme **Court upheld dismissal of the suit on grounds that the contract itself was secret and not subject to judicial review**. n43 The Court found affirmative authority for the President to enter into such a contract based on the Commander-in-Chief power under the Constitution. n44 However, **comparing the confidentiality of this espionage contract to the protected confidences of spousal or attorney-client communications, the Court reasoned that "public policy" forbids disclosure in trial of "matters which the law itself regards as confidential."** n45 The Court then held that contracts for espionage cannot be litigated and barred [*905] further consideration of the claim. n46 Totten's reasoning was thus founded both in the constitutional powers of the President and in evidentiary law.

Totten and Reynolds differ in three ways: whether the government is necessarily a party to the suit, the effect of the government's invocation of the privilege on the case, and the degree of judicial review over the invocation. First, the Totten bar to suing the government for espionage contracts is implicitly based on the common law doctrine of sovereign immunity: the government is immune from suit unless it waives this immunity. The Tucker Act, for example, waives sovereign immunity with respect to claims over contracts with the government. n47 The statute, though, requires that courts **"give due regard to the interests of national defense and national security"** when exercising jurisdiction over these claims. n48 Therefore the Totten bar still applies to contracts for espionage based on the inherent sovereignty of the government in matters of contracts for national security. n49 Unlike claims against the government based on an espionage contract, the state secrets privilege can arise when the government intervenes in a civil suit between two non-governmental parties in order to limit discovery of privileged evidence. n50

Second, though Totten bars all further litigation of the issue, Reynolds allows cases to proceed when supported by other evidence. Totten held that a claim over an espionage contract should be "dismissed on the pleadings without ever reaching the question of evidence" because "the very subject matter of the action . . . [is] a matter of state secret." n51 In contrast, a case may proceed to the merits after the government's invocation of the state secrets privilege where other evidence substantiates the plaintiffs case. n52 However, courts frequently **dismiss certain types of cases on the pleadings when the government invokes state secrets**, such as suits over domestic warrantless surveillance and extraordinary renditions when it is clear no non-privileged evidence

could substantiate the plaintiff's claim. n53 Reynolds has become, essentially, a [*906] Totten ban for these types of cases where the very subject matter of the case is a state secret. n54

Third, Totten's bar to judicial inspection of the evidence n55 differs from Reynolds because Reynolds was ambiguous regarding when, if ever, the court could insist on reviewing the evidence when the government invokes the state secrets privilege. Reynolds required a balancing of plaintiffs' necessity for the evidence with the government's privilege. n56 "Where there is a strong showing of necessity, the claim of privilege should not be lightly accepted." n57 On the other hand, "even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake." n58 Reynolds thereby left open the possibility of a court requiring disclosure of evidence the government claims privileged where a plaintiff shows compelling necessity and the court does not believe state secrets are involved. n59

They'll use the "executive privilege" instead to circumvent the plan

Windsor, 12

(J.D. candidate and Master of Security Studies candidate at Georgetown (Spring 2012, Lindsay, Georgetown Journal of International Law, "NOTE: IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT," 43 Geo. J. Int'l L. 897)

2. The Executive Privilege

The executive privilege protects from disclosure another class of government information: confidential communications with the President. n60 The reasoning is that presidential advisors must be free to explore alternatives--"even blunt or harsh opinions"--in the process of decisionmaking, **and that advisors are likely to be inhibited if they anticipate their remarks will be later disclosed to others**. n61 The executive privilege is invoked by the President both in criminal n62 and civil [*907] court proceedings, n63 as well as vis-à-vis Congress. n64 In contrast, **the state secrets privilege is invoked primarily in civil cases**. n65

The Supreme Court has held that executive privilege is based in the powers of the President under separation of powers doctrine, but this privilege is not absolute. n66 In Nixon v. United States, the Court ordered Nixon to produce Oval Office tapes and records, rejecting his invocation of the executive privilege. n67 The Court held that where the President asserts only a generalized need for confidentiality and national security secrets are **not** at stake, the privilege must yield to the demonstrated specific need of a criminal prosecutor. n68 Where the President relies only on his Article II powers, the privilege is outweighed by "the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions." n69

Like the state secrets privilege, the executive privilege can arise in the national security context. n70 But the executive privilege is not coextensive with the President's national security powers because it **simply protects presidential deliberations**. n71 The Court noted that Nixon did not invoke "a claim of need to protect military, diplomatic, or sensitive national security secrets," implying that such a claim would be given greater weight under the separation of powers. n72

The executive privilege is the privilege with the least inherent [*908] government **authority on the spectrum of executive, state secrets, and Totten privileges**. It is based on the confidentiality of executive deliberations under the President's Article II powers, but this authority clearly yields to other government interests, such as criminal justice, when state secrets are not at stake. The bar to litigation of espionage contracts in Totten is the strongest exercise of government authority of the three privileges because it is based in inherent powers of government under the doctrine of sovereign immunity, it halts all further litigation of the matter, and the very subject matter prohibits analysis of the evidence and requires dismissal of the case. In the middle, the state secrets privilege balances plaintiff's necessity for the privileged material with the government interests, but it is stronger than the executive privilege because it is based, as described below, in the President's national security powers and its invocation can effectively halt further litigation.

Judicial Independence Answers

No Modeling

There is a negative correlation between the US government model and the implementation of judicial independence

Voigt and Hayo 14 [Stefan, Institute of Law & Economics, University of Hamburg; Bernd, professor of Macroeconomics, University of Marburg; 01/17/14; Mapping Constitutionally Safeguarded Judicial Independence—A Global Survey; Wiley Online Library; 07/07/15; jac]

Organizational Structure of the Judiciary An aspect related to legal origin is the underlying court model. There are various ways of designing constitutional review. (1) Review power can be allocated to each and every court of the country, as in the United States, which does not have a specialized court. This system implies that constitutional review is a posteriori, and uniformity is secured by the highest court of the country (in the United States, the Supreme Court). (2) The Austrian model, as proposed by Hans Kelsen and implemented into the Austrian Constitution in 1920, is characterized by a specialized constitutional court dealing with constitutional matters. This design can entail both abstract and concrete review, as well as ex ante and ex post review. (3) In the French model, constitutional matters are relegated to a special body (e.g., the Conseil Constitutionnel in France) traditionally constrained to ex ante review (Harutyunyan & Mavcic 1999). Most, but not all, constitutional systems can be grouped into one of these three designs. Additionally, Harutyunyan and Mavcic (1999) define a "New (British) Commonwealth Model" implemented by Mauritius, and a "Mixed (American Continental) Model," which can be found in a number of states, including Portugal, Columbia, Ecuador, Guatemala, and Peru. 10 The cross-tabulation between implementation of JI in the original constitution and court model in Table 14 shows that all mixed-type and French-type models include a relevant passage, and so do a majority of countries adhering to the Austrian/Continental-European and U.S. types of court model. There is a positive correlation between the Austrian/Continental-European type of court model and the implementation of judicial independence (0.29), which is significant at a 5 percent level. The negative correlation between the U.S. court model and judicial independence (–0.39) is significant at all plausible levels of significance.

Circumvention

US democracy promotion fails --- serves as a cover for the rise of stealth authoritarianism

Varol 15 [Ozan. O, Associate professor of law Lewis and Clark Law School ; 05/15; "Stealth Authoritarianism"; Lexis; 07/05/15; jac]

In that sense, democracy-promotion programs in the United States and elsewhere have achieved success by persuading authoritarians to adopt less morally questionable practices. As discussed above, however, existing democracy-promotion mechanisms have also facilitated a certain level of authoritarian learning and created the very conditions in which stealth authoritarian practices thrive. Because these mechanisms narrowly focus on detecting obvious democratic deficiencies, they are substantially less effective in detecting the subtle erosion of political competition that stealth authoritarianism effectuates. That, in turn, has provided significant incentives to authoritarians to replace transparently authoritarian mechanisms of control with stealth authoritarian practices. In addition, a state that satisfies the applicable democracy-promotion criteria is often bestowed with the label of "democracy," which can provide legal and political cover to stealth authoritarian practices. What does the prevalence of stealth authoritarianism in an authoritarian or hybrid regime portend for the regime's future? There are three primary paths: The regime can persist in its present form, decay into a more authoritarian regime, or mature into a democracy. Although less insidious than traditional forms of authoritarianism, stealth authoritarianism may also generate a more durable form of authoritarianism that allows the regime to persist in its present form or become more authoritarian. In the post-Cold War era, the use of transparently authoritarian mechanisms can reduce the lifetime of a repressive regime, whereas stealth authoritarianism can prolong it. As discussed above, the use of stealth authoritarian mechanisms can allow the incumbents to retain power by appeasing both global and domestic audiences, providing a limited space for the expression of discontent, and disabling political opponents through seemingly legitimate means. Because it relies on formal legal mechanisms that exist in regimes with favorable democratic credentials, stealth authoritarianism is more difficult to detect and eliminate than its more [*1740] transparent counterpart, which can bolster its durability. Stealth authoritarianism can also permit incumbents to retain their political monopoly even with the arrival of democratic reforms. Even where it is possible to dethrone the incumbent regime, the replacement regime can rely on the same legal mechanisms and structures set up by the incumbent to perpetuate its rule. n431 Newly elected political leaders often have little incentive to change a legal system that provides systematic advantages to the incumbents. As Steven Levitsky and Lucan Way observe, numerous electoral turnovers after the Cold War brought little institutional change, and

successor parties did not govern democratically. n432 In Russia, for example, the constitutional order constructed by President Boris Yeltsin, with a strong executive and weak checking institutions, has allowed the persistence of a competitive authoritarian regime long after Yeltsin's resignation. n433 Electoral turnover in hybrid regimes can therefore permit the perpetuation of stealth authoritarian practices. Stealth authoritarianism can also be pernicious because it can facilitate authoritarian learning and spread to other regimes. n434 Stealth authoritarian practices that generate durability in one regime can be emulated in others for anti-democratic purposes. Information that teaches incumbent officials how to retain political power while appeasing domestic and global audiences can effectively spread across different legal regimes via emulation or inter-regime dialogue, generating a stealth authoritarianism playbook.

Stealth authoritarianism uses the mechanisms of a democratic regime to prevent political change --- the signal of the plan is effectively circumvented

Varol 15 [Ozan. O, Associate professor of law Lewis and Clark Law School ; 05/15; "Stealth Authoritarianism"; Lexis; 07/05/15; jac]

B. Stealth Authoritarianism I describe the mechanisms of stealth authoritarianism in the next Part, but the concept can be articulated here briefly: Stealth authoritarianism refers to the use of legal mechanisms that exist in regimes with favorable democratic credentials for anti-democratic ends. Although the various ends that incumbent officeholders pursue are not always clear, anti-democratic ends, as used here, refer to the erosion of "partisan alternation," defined as the cycling of political power among more than one party. n40 Turnover in government control is a core component of democracy and evinces an electoral system that responds to change in electoral preferences and confirms that "the incumbents ... can be dethroned." n41 The erosion of partisan alternation can, in turn, enable the creation of a political monopoly. Stealth authoritarianism undermines partisan alternation by significantly increasing the costs of unseating the incumbent. Through the practices described below, stealth authoritarianism erodes mechanisms of accountability, weakens horizontal and vertical checks and balances, allows the incumbents to consolidate power, exacerbates the principal-agent problem n42 by curtailing the public's ability to monitor and sanction government policies, and paves the way for the creation of a dominant or one-party state where the electoral field is uneven and the incumbent enjoys systematic advantages. These practices make it significantly more difficult to dethrone the incumbents and undermine a core component of democracy: free, fair, and contested elections and the resulting turnover in government control. In other words, as a result of stealth authoritarian practices, partisan alternation might not occur even in the face of changing political preferences by the electorate. [*1685] Stealth authoritarianism creates a significant discordance between appearance and reality by concealing anti-democratic practices under the mask of law. In so doing, stealth authoritarian practices avoid, to a great extent, the costs associated with transparently authoritarian practices that are much more likely to draw the opprobrium of both the domestic and the international community. Practices that appear clearly repressive in a transparently authoritarian regime appear more ambiguous in a regime that employs stealth authoritarian practices. This is not to suggest that stealth authoritarian practices go completely unnoticed. As discussed in Part III, some cases of stealth authoritarianism are not so stealthy in that they draw the attention and opprobrium of the relevant domestic and global actors. The mechanisms of stealth authoritarianism are, however, relatively more difficult to detect than transparently repressive authoritarian strategies. Because stealth authoritarianism relies on the exercise of legal mechanisms that exist in regimes with favorable democratic credentials, it becomes more difficult to differentiate between their abuse and legitimate application. Although stealth authoritarianism utilizes legal mechanisms that exist in regimes with favorable democratic credentials, these mechanisms are not always verbatim replicas of their democratic counterparts. In some cases, the relevant laws may be subject to subtle reconfigurations that deviate in meaningful ways from those laws typically found in democracies. I examine these differences below in discussing the mechanisms of stealth authoritarianism. In some cases, however, the deviations from the typical democratic laws also exist in one or more established democracies, so that the deviation does not appear transparently anti-democratic. For example, as discussed below, Russia has criminalized defamation, which represents a deviation from the non-criminal nature of defamation in most democracies. But criminal defamation laws also exist in a number of regimes with favorable democratic

credentials, such as Canada, Italy, and the United States. The criminalization of defamation by established democracies allows Russian officials to rebut any criticism directed at their criminal libel laws by citing prominent democracies that also deviate from the norm. Although underexamined in the literature, formal rules are not entirely foreign to authoritarian governance. Historically, authoritarian leaders used formal rules to constrain rogue bureaucratic agents who operated the government. n43 They also used the legal system to maintain control over the populace. n44 In other words, laws were deployed, not to regulate and constrain the government, but to enable it to constrain others and ensure their [*1686] compliance with government authority. n45 Commentators have referred to this as the "rule by law" tradition, in contrast to the "rule of law" tradition in modern democracies. n46 The formal rules in rule-by-law regimes typically reflect their authoritarian nature with "brutal candor." n47 For example, the Saudi Arabian Constitution requires the media to "employ civil and polite language" and conform their publications to state regulation. n48 Likewise, the first constitution of the Soviet Union committed the state to "deprive[] individuals and sections of the community of any privileges which may be used by them to the detriment of the Socialist Revolution." n49 Pre-modern China and, to a lesser extent, pre-modern Korea are also good illustrations of a rule-by-law regime. n50 This Article's focus is different. Formal rules in rule-by-law regimes transparently express their authoritarian nature. In contrast, the mechanisms described in this Article obscure anti-democratic practices under the appearance of legal mechanisms that exist in regimes with favorable democratic credentials. Through the more complex, and more interesting, phenomenon of stealth authoritarianism, modern-day authoritarian practices are becoming increasingly more difficult to detect and eliminate for both domestic and global actors. The full story, however, is more nuanced. Modern authoritarian governments have not completely abandoned traditional, more transparent mechanisms of authoritarian control. Even in the case studies I discuss in the next Part, stealth authoritarian mechanisms are sometimes complemented by more transparently authoritarian strategies of control. Later in the Article, I analyze, drawing on rational-choice theory, why political leaders may adopt stealth authoritarian practices, how they are able to do so, and which types of regimes are more likely to benefit from the adoption of stealth authoritarian practices. But first, I discuss the mechanisms of stealth authoritarianism.

Judicial Independence Fails

Judicial independence gets undermined by judicial review and partisan appointments --- shatters the brittle democracies they are supposed to sustain

Gardbaum 15 [Stephen, MacArthur Foundation Professor of International Justice and Human Rights, University of California, Los Angeles, School of Law; 01/20/15; "Are Strong Constitutional Courts Always a Good Thing for New Democracies?"; Social Science Research Network; 07/07/15; jac]

The basic reason is that judicial review has a tendency to result in the politicization of the courts in two ways that correspond to, and jeopardize, the two key elements of judicial independence. On the first element, where a court has final authority on the validity of legislation—whether in the context of abstract review or concrete litigation—it inevitably becomes a powerful political actor as a veto player (Kelsen's "negative lawmaker"105), and so may come to be viewed as an opponent or potential rival of the government. It may serve as an effective check on politics, but, in so doing, it may also trigger political attacks that threaten to reduce the judiciary's independence. If, in one sense, judicial review exhibits the independence of the judiciary to its greatest extent, for that very reason it also poses the greatest practical threat to such independence—and in service of a function that is not an essential part of it. Just as the fusion of executive and legislative power in nineteenth century Britain initially seemed to manifest parliamentary strength by confirming its primacy over the monarch, but eventually undermined the independence of Parliament, so too in the context of new and transitional democracies the partial fusion of judicial and legislative power that is judicial review may end up undermining the independence of the courts. The pragmatic response to the fragility of judicial independence in new democracies is to protect and nourish it by reducing the potential pressures it faces, not maximizing them. Courts should not be cast in the role of the first or only line of defense. Exercises of judicial review can place great strain on a fledgling or brittle democracy, as the examples of the Egyptian court closing the then-recently elected parliament and the Turkish court's insistence on its brand of secularism illustrate.106 From this perspective, strong-form judicial review may be a luxury rather than a necessity for newer democracies, which must be able to walk with the ordinary judicial independence of a trial court before they can run with the Bundesverfassungsgericht. On the second, more internal, element of judicial independence, the risk of resulting politicization occurs in the following way. Because of the power they wield under judicial supremacy, the claim that constitutional court judges should be given whatever partial or indirect democratic accountability they can be given is generally viewed as an irresistible one.108 As a result, judicial appointments to these courts become political appointments, and, while there are several well-known variations in the precise mode of legislative/executive selection, in almost all

forms political affiliation is known and taken into account. As a result, appointments are not only made by politicians but are also made (at least in part) for political reasons.109 However, this often leads to constitutional court judges deciding important and close cases along predictable party or ideological lines, which threatens to undermine the second requirement of judicial independence: impartiality. Not in the sense of inputs or pressure—as life tenure or a long, fixed, non-renewable term insulates appointees once in office110—but in terms of outputs, of how courts make their decisions. As John Stuart Mill put it in his Considerations on Representative Government (1861): "While there are no functionaries whose special and professional qualifications the popular judgment is less fitted to estimate [than judges], there are none in whose case absolute impartiality, and freedom from connection with politicians or sections of politicians, are of anything like equal importance."111 This political or output "connection," in turn, may undermine their perceived legitimacy and lead frustrated governments to accuse constitutional courts (particularly those with a majority of their predecessors' appointees, as in Romania or Morsi-led Egypt) of being political bodies rather than independent ones and of abandoning the mantle—and so the protection—of independence, and tempt them to attack the courts. It also points to the limitations of insurance theory from an ex post, rather than an ex ante, perspective. The judges appointed by the first government may provide political insurance to its members once they are voted out of office by vetoing policies of the second, but they may also be viewed by the second government as political opponents in robes lacking a democratic mandate to obstruct. Of course, in addition to this perception problem, there may also be a more straightforward "reality" problem in that political appointment processes more easily permit governments to fill court vacancies with their supporters and thereby undermine judicial independence directly. To be sure, these same pressures exist wherever there is strong-form judicial review. It is almost always the controversial constitutional issues, rather than the non-constitutional ones, that trigger calls for proactive measures against the courts. In the United States, it was the striking down of the New Deal legislation that triggered President Franklin D. Roosevelt's "court-packing plan." Newspapers routinely print the names of federal judges followed by that of the President who nominated them as an assumed default predictor of political position; "independent" judges are those who vote against the party line. But these pressures are far more dangerous in fragile new democracies where the rule of law and the independence of the judiciary have far shallower roots, and the political costs of direct attack are likely to be lower.112 Here, compliance with court orders cannot ordinarily simply be taken for granted. With respect to impartiality, many (mostly civil law) countries attempt to contain the damage by either or both having (1) a centralized constitutional court, which leaves ordinary judges "untainted" by judicial review, and (2) supermajority requirements for political appointment of its judges, which may reduce their partisanship.113 But containment is not necessarily a solution: Hungary had both but was not spared.

A strong judiciary just as likely to be coopted by the regime-modeling can't solve for any countries that weren't democratic in the first place

Varol 15 [Ozan. O, Associate professor of law Lewis and Clark Law School ; 05/15; "Stealth Authoritarianism"; Lexis; 07/05/15; jac]

A. Judicial Review Judicial review is ordinarily assumed to be a check on the political branches of government. In this Subpart, I discuss three ways in which judicial review may function as a tool of stealth authoritarianism. Specifically, I analyze how judicial review may serve as a mechanism for consolidating power, bolstering the democratic credentials of the incumbent regime, and allowing the incumbents to avoid political accountability for controversial policies. 1. Consolidating Power Tom Ginsburg and Ran Hirschl have set forth separate theories on why political elites may choose to create and empower autonomous courts. According to Professor Ginsburg's "insurance model" of judicial review, if politicians drafting a new constitution "foresee themselves losing [power] in postconstitutional elections, they may ... entrench judicial review [in the constitution] as a form of political insurance." n51 Even if the constitutional drafters lose the elections, another avenue - judicial review - remains available to challenge legislation passed by their opponents. n52 Likewise, Professor Hirschl has argued that threatened political elites transfer power from political institutions to the judiciary to preserve their political hegemony and entrust their policy preferences to unelected judges who share the elites' ideology and shield the elites' policies from the vagaries of domestic politics. n53 **Even if the political elites lose power, unelected judges continue to enforce the elites' policy preferences via judicial fiat**. n54 Unlike the elites in Ginsburg's and Hirschl's models who empower a judiciary because they may lose power, my focus is on elites who desire to retain power indefinitely. At first blush, the creation of an autonomous judiciary may appear inconsistent with that quest. After all, the judiciary, [*1688] empowered with judicial review, can strike down anti-democratic legislation and expand individual rights and liberties related to the democratic process, thereby leveling, at least to some extent, the unlevel electoral playing field that may be crafted by the incumbents. That account, however, underestimates the extent to which judicial institutions can be structured to generate substantive outcomes that favor regime interests. The structure of the courts, the appointments process, and the rules of access to judicial review can all be adjusted to further the interests of the incumbents. The creation of the Turkish Constitutional Court is illustrative. The 15-member court was created following a military coup in 1960. n55 The military leaders structured the appointments process to the Court to ensure, to the extent possible, the

appointment of justices favorable to their interests. n56 According to the Constitution, which was drafted under military tutelage: Eight of the fifteen permanent members would be selected by other appellate courts (Council of State, High Court, and Court of Accounts), three by the Parliament, two by the Senate, and two by the President of the Republic. The power to select a majority of the members on the Constitutional Court was thus given to the unelected judiciary, whose members were more likely to be aligned with the military's policy preferences than were elected political actors. n57 To be sure, judicial autonomy can be a double-edged sword for the incumbent regime. Judiciaries may disappoint the leaders that established them or appointed their members. Judicial institutions can turn the relative autonomy provided to them against the political elites and challenge their policies and shed light on stealth authoritarian practices. In addition, any regime attempts to penalize the judiciary for unfavorable rulings may backfire by damaging regime credibility. For example, in Pakistan, Chief Justice Muhammad Chaudhry publicly resisted General Musharraf's attempts to remove him from office in 2007, damaging Musharraf's credibility and legitimacy. n58 Likewise, the impeachment of Peruvian Constitutional Court judges for attempting to limit President Fujimori's third term in office sparked major protests and drew the opprobrium of the international community. n59 [*1689] Although occasional judicial resistance remains a real possibility, consistent counter-establishment jurisprudence is unlikely. n60 Judges are strategic actors. They do not operate in a vacuum. The judiciary is influenced by the political environment in which it operates, and judges are unlikely to engage in a sustained resistance effort against powerful incumbents. As Professor Hirschl explains, "When contemplating highly charged political questions, constitutional courts - as a result of a combination of their members' ideological preferences and their own astute strategic behavior - tend to adhere closely to prevalent worldviews, national meta-narratives, and the interests of influential elites when dealing with political mega-questions." n61 The judiciary, whose structure may have been established or shaped by the incumbents or many of whose members may have been appointed by them, may thus turn out to be a reliable partner on questions of particular importance in protecting the political status quo. n62 For example, Vladimir Putin deployed judicial review to help consolidate his power in Russia. For the purported purpose of creating a unified political space, he authorized federal courts to nullify regional laws inconsistent with the federal constitution. n63 That authorization appears, at least on its surface, to be nothing more than a neutral, straightforward assertion of vertical federal supremacy and is consistent with the models in other federal states, including the United States. According to Putin, the new federal judicial authority to strike down regional laws would thus merely reemphasize "Russia's commitment to "legality and the state.'" n64 The Russian federal courts deployed their newfound power with zeal and struck down thousands of regional laws. n65 The elimination of those regional laws allowed Putin to centralize and consolidate his power and reduce the vertical checks on his power by regional governments. n66 Putin also enlisted support from the Russian Constitutional Court and its chairman, Valery Zorkin. n67 Once "described as "Russia's answer to Chief Justice John Marshall,'" Zorkin had unsuccessfully strived to preserve [*1690] constitutional legality during the strife between Boris Yeltsin and the Russian Parliament. n68 The Zorkin court struck down as unconstitutional Yeltsin's 1993 decree disbanding the Parliament, and Zorkin himself openly criticized Yeltsin for his disregard of the rule of law. n69 After assuming the presidency, Putin commended the Zorkin court's decision against Yeltsin, stating that the court had legitimately fought back against "politicians who appeal to political expediency rather than the standards of law." n70 The current Russian Constitutional Court, chaired by Zorkin, paid back Putin's commendation in spades. Recent Constitutional Court opinions upheld pro-government legislation, such as a law that gives the President the authority to appoint regional governors, on the basis that Russia needs a strong executive amidst a fragile transition process to democracy. n71 To gain their acquiescence, incumbents may also strategically reward judges with increased authorities, especially in areas of little importance to political control. For example, Zorkin's support for the Putin government has regained the court many of its former authorities. n72 The same errant executive power against which Zorkin rallied in the 1990s became more palatable once the same power was exercised to bolster the authorities of Zorkin and his court. n73 Judicial review may also be established to maintain control over the state's often unwieldy administrative hierarchy and mitigate principal-agent problems that arise when the lower-level administrative agents fail to act in the best interests of the principal, the incumbent officeholders. n74 Avenues for judicial relief may permit challenges to the actions of bureaucratic subordinates, n75 which serve two purposes. First, judicial review of administrative actions provides a legitimizing function, especially in states where corruption or abuse of state resources may be commonplace. Judicial review provides the appearance, if not the reality, of some level of relatively neutral checks on errant administrative practices. Second, it also allows regime elites to monitor the actions of subordinate administrative agents and discipline them where necessary, n76 thereby mitigating the principal-agent problem. [*1691] A relatively autonomous judiciary may thus be helpful in consolidating authority and retaining political power. A judiciary so empowered can safeguard the interests of the authoritarian elites even where the elites are deposed. For example, the Mubarak appointees in Egypt's courts have rendered a number of decisions in the

post-Mubarak era - such as a recent decision that bans the Muslim Brotherhood - that appear to promote political configurations that existed during the Mubarak autocracy. n77 2. Bolstering Democratic Credentials In addition to enlisting the courts in order to consolidate control, judicial review can also be used to bolster democratic credentials at home and abroad. Judicial review portrays the constitutional framework to the world as one imbued with checks and balances on arbitrary rule, n78 especially where the judiciary enjoys a better reputation than the political branches as a relatively neutral, impartial body. That, in turn, serves to promote the regime's image before domestic and global audiences and allows the regime to cite independent judicial review to rebut any criticism regarding anti-democratic practices. n79 For the judiciary to serve that legitimizing function, it must enjoy relative autonomy from the political branches and must, at least occasionally, act against the wishes of the incumbent regime. n80 Incumbents might thus tolerate, or perhaps even welcome, adverse decisions by the judiciary **to maintain the veneer of checks and balances**, so long as the judiciary does not pose a real threat to central areas of political control. For example, under Mubarak, the Egyptian judiciary enjoyed a large measure of judicial independence until the early 2000s. n81 The court enjoyed structural autonomy from the political branches and also selectively wielded the power of judicial review to expand and protect individual liberties. n82 The court also found electoral fraud in hundreds of elections and required judicial supervision of [*1692] the 2000 elections. n83 Remarkably, the Mubarak government complied with these decisions. n84 At the same time, however, it largely refrained from accepting any challenges to emergency laws or the trial of civilians in military tribunals, which were the primary tools of authoritarian control in Egypt. n85 Likewise, the same Zorkin court that upheld Putin's reform agenda, as discussed above, also accepted a number of constitutional challenges to criminal laws and surveillance laws that target members of the opposition. n86 The legitimacy provided by autonomous courts may also be helpful in attracting foreign investment and trade. n87 Judicial review can provide legal assurances to foreign investors by protecting property rights and ensuring stability in the economic sphere, especially in regimes with some level of government corruption. n88 For that reason, the World Trade Organization ("WTO") requires judicial supervision in trade-related areas, the establishment of which can convince a skeptical international community to invest in a state, despite any anti-democratic practices. n89 For example, the Egyptian Constitutional Court was provided interpretative power over the constitution in part to attract foreign investment and assure international investors that the court would deter any changes to a free market economy. n90 3. Avoiding Accountability Judicial review can also be established to avoid accountability by delegating controversial questions to the judiciary. n91 By entrenching its policy preferences in a relatively autonomous judiciary, the regime can allow the judiciary to protect its interests, authorize judges to issue controversial decisions that political elites approve but cannot publicly champion, and insulate themselves from political accountability in the process. n92 For [*1693] example, in a series of controversial decisions, the Egyptian Constitutional Court overturned socialist policies to the alacrity of the ruling elite, who avoided the political backlash that would have resulted from the enactment of the contentious reforms through the political process. n93

No Africa Democracy

No African Democratization-2008 global recession and growing influence of China as a regional power

Schmitter 15 [Philippe, Emeritus Professor of the Department of Political and Social Sciences at the European University Institute; Crisis and Transition, But Not Decline; 01/15; Journal of Democracy Volume 26, Number 1, January 2015; Project Muse; 07/05/15; jac]

Global Influences As the prodemocracy impetus that emerged from post–Cold War international developments has receded **in recent years,** so too has the external aid that it generated for African prodemocracy movements and process**es (local Transparency International chapters, domestic election-watchdog organizations, and other public-accountability advocacy groups).** This unfavorable trend is being aggravated by a number of recent global developments. Key among them is the 2008 global financial crisis. The resulting squeeze on donor-country budgets has induced radical cuts in aid that is considered

"nonessential" (that is, not directly related to a donor country's security or geostrategic interests). **Likewise,** most Western aid agencies have been moving to cut personnel, management, and other costs. In practice, this has accelerated a transfer of the grant-management load from donor-country aid agencies such as USAID and the United Kingdom's Department for International Development (DFID) to private firms and international NGOs with large grant-management bureaucracies. The global financial crisis has also spurred the trend of multidonor "basket funding" for African civil society groups and think tanks. Such arrangements typically require grantee organizations to work together on specific sets of donor-determined development priorities, ranging from transparency and accountability to poverty reduction, social protection, and gender. **Such arrangements can be a mixed blessing. On the one hand, they provide sustained funding to qualifying NGOs. On the other hand,** they consume considerable administrative resources since stand-alone domestic agencies must often be created to set national program **[End Page 108]** priorities and manage (under the supervision of an international accounting firm) the funds. In addition, they foster "forced marriages" among NGOs and tend to lead to collective-action and free-loading challenges. **The mammoth Strengthening Transparency, Accountability and Responsiveness in Ghana (STAR-Ghana) program is one example of such an arrangement. STAR-Ghana is funded by DFID, DANIDA (Denmark's development agency), the EU, and USAID, and is now the leading actor in external support for Ghanaian think tanks and civic-advocacy groups. Another example is Uganda's Democratic Governance Facility, funded by Austria, Denmark, Ireland, the Netherlands, Norway, the United Kingdom, and the EU.17** Another consequence of the 2008 financial crisis has been the return of the World Bank and IMF as the principal institutions through which the G-7 states channel resources for African development. This has unfortunate consequences for the African democracy and governance agenda, since such multilateral development bodies tend to deal exclusively with governments, thereby foreclosing the involvement of national legislatures and domestic nonstate actors. **The emergence of China and other nontraditional partners as key players on the global stage and as competitors for African commodities, markets, and loyalty is also undermining Africa's democratic prospects, as countering the growing influence of China, India, Brazil, and others has become a central goal of Western policy.** The toxic mix of the new "scramble for Africa" among the world's big powers with Western security imperatives and antiterrorism efforts has, in turn, begun to erode the liberal political values that have guided Western foreign policy since the end of the Cold War. **Faced with the prospect of losing the clout and influence they have traditionally enjoyed in Africa and with the need to counter terrorism,** Western powers are readjusting their established governance benchmarks in order to stay competitive in the contest for African energy, markets, and other geostrategic advantages, even where incumbent African governments are autocratic and nonreforming. **Western donors demonstrate an increasing reluctance to press democratic governance reforms in misgoverned but oil-rich states such as Angola, Chad, Equatorial Guinea, Nigeria, Sudan, and South Sudan. Unlike in the 2000s, when the Highly Indebted Poor Countries Initiative and U.S. Millennium Challenge Account were rolled out and direct budget support for selected African governments was the norm, democratic reforms now count for less in the deployment of Western bilateral and multilateral assistance and other soft-power instruments. Worse still,** countries benefiting from new U.S. programs such as Power Africa and the Young Africans Leadership Initiative include those with records of poor governance and abysmal management of their economies (Ethiopia, for example, is one of Power Africa's six focus countries). The global extractive-commodity boom has also had a negative impact [End Page 109] on democratization in Africa. First of all, it has increased the continent's appeal to China and other fast-growing non-Western economies that care little about accountable governance in their client states. The vigorous courtship by these new patrons is providing African governments with alternative non-Western markets, trade partners, and sources of military and development aid. With their national treasuries now flush with revenue from oil, gas, and other extractive commodities, resource-rich African countries now depend less on foreign **(especially Western)** aid, with all its conditions and demands for accountability. The governments of these resource-rich African countries are also less reliant on taxation of their citizens, which typically generates bottom-up demands for accountable governance.

Alt Cause

Can't solve democracy --- concentrated wealth and power

Ringen 14 [Stein, emeritus professor at Oxford University; 03/28/14; "Is American Democracy headed to extinction?"; http://www.washingtonpost.com/opinions/is-american-democracy-headed-to-extinction/2014/03/28/f8084fbe-aa34-11e3-b61e-8051b8b52d06_story.html; 07/06/15; jac]

Behind dysfunctional government, is democracy itself in decay? It took only 250 years for democracy to disintegrate in ancient Athens. A wholly new form of government was invented there in which the people ruled themselves. That constitution proved marvelously effective. Athens grew in wealth and capacity, fought off the Persian challenge, established itself as the leading power in the known world and produced treasures of architecture, philosophy and art that bedazzle to this day. But when privilege, corruption and mismanagement took hold, the lights went out. It would be 2,000 years before democracy was reinvented in the U.S. Constitution, now as representative democracy. Again, government by popular consent proved ingenious. The United States grew into the world's leading power — economically, culturally and militarily. In Europe, democracies overtook authoritarian monarchies and fascist and communist dictatorships. In recent decades, democracy's spread has made the remaining autocracies a minority. The second democratic experiment is approaching 250 years. It has been as successful as the first. But the lesson from Athens is that success does not breed success. Democracy is not the default. It is a form of government that must be created with determination and that will disintegrate unless nurtured. In the United States and Britain, democracy is disintegrating when it should be nurtured by leadership. If the lights go out in the model democracies, they will not stay on elsewhere. It's not enough for governments to simply be democratic; they must deliver or decay. In Britain, government is increasingly ineffectual. The constitutional scholar Anthony King has described it as declining from "order" to "mess" in less than 30 years. During 10 years of New Labor rule, that proposition was tested and confirmed. In 1997 a new government was voted in with a mandate and determination to turn the tide on Thatcherite inequality. It was given all the parliamentary power a democratic government could dream of and benefited from 10 years of steady economic growth. But a strong government was defeated by a weak system of governance. It delivered nothing of what it intended and left Britain more unequal than where the previous regime had left off. The next government, a center-right coalition, has proved itself equally unable. It was supposed to repair damage from the economic crisis but has responded with inaction on the causes of crisis, in a monopolistic -financial-services sector, and with a brand of austerity that protects the privileged at the expense of the poor. Again, what has transpired is inability rather than ill will. Both these governments came up against concentrations of economic power that have become politically unmanageable. Meanwhile, the health of the U.S. system is even worse than it looks. The three branches of government are designed to deliver through checks and balances. But balance has become gridlock, and the United States is not getting the governance it needs. Here, the link between inequality and inability is on sharp display. **Power has been sucked out of the constitutional system and usurped by actors such as PACs, think tanks, media and lobbying organizations.** In the age of mega-expensive politics, candidates depend on sponsors to fund permanent campaigns. When money is allowed to transgress from markets, where it belongs, to politics, where it has no business, those who control it gain power to decide who the successful candidates will be — those they wish to fund — and what they can decide once they are in office. Rich supporters get two swings at influencing politics, one as voters and one as donors. Others have only the vote, a power that diminishes as political inflation deflates its value. It is a misunderstanding to think that candidates chase money. It is money that chases candidates. In Athens, democracy disintegrated when the rich grew super-rich, refused to play by the rules and undermined the established system of government. That is the point that the United States and Britain have reached. Nearly a century ago, when capitalist democracy was in a crisis not unlike the present one, Supreme Court Justice Louis Brandeis warned: "We may have democracy, or we may have wealth concentrated in the hands of a few, but we can't have both." Democracy weathered that storm for two reasons: It is not inequality as such that destroys democracy but the more recent combination of inequality and transgression. Furthermore, democracy was then able to learn from crisis. The New Deal tempered economic free-for-all, primarily through the 1933 Banking Act, and gave the smallfolk new social securities. The lesson from Athens is that success breeds complacency. People, notably those in privilege, stopped caring, and democracy was neglected. Six years after the global economic crisis, the signs from the model democracies are that those in privilege are unable to care and that our systems are unable to learn. The crisis started in out-of-control financial services industries in the United States and Britain, but control has not been reasserted. Economic inequality has followed through to political inequality, and democratic government is bereft of power and capacity. Brandeis was not wrong; he was ahead of his time.

USAID cuts prevent US from effectively promoting democracy

Carothers 14 [Thomas, vice president for studies at the Carnegie Endowment for International Peace; 12/22/14; "Why is the United States shortchanging its commitment to democracy"; http://www.washingtonpost.com/opinions/falling-usaid-spending-shows-a-lack-of-commitment-to-fostering-democracy/2014/12/22/86b72d58-89f4-11e4-a085-34e9b9f09a58_story.html; 07/06/15; jac]

U.S. assistance to advance democracy worldwide is in decline. Such spending has shrunk by 28 percent **during Barack Obama's presidency and is now less than $2 billion per year.** The decline has been especially severe at the U.S. A**gency for I**nternational D**evelopment,** which traditionally funds the bulk of U.S. democracy assistance and established itself in the 1990s as the largest source of such aid worldwide. According to data provided by the agency, USAID spending to foster democracy, human rights and accountable governance abroad has fallen by 38 percent since 2009. **The drop-off affects almost every region to which such aid is directed.** It has been largest in the Middle East — a startling 72 percent cut that came just as much of the Arab world attempted a historic shift toward democracy. In Africa, a 43 percent decline has left a paltry $80 million for democracy work for the entire continent **outside of Liberia and South Sudan. Overall,** the number of countries where USAID operates dedicated democracy programs has fallen from 91 to 63. **To grasp just how unimpressive the U.S. commitment to aiding democracy abroad has become**, consider this: Leaving aside Iraq, Afghanistan and Pakistan, USAID spending on democracy, rights and governance in fiscal 2014 — $860 million — totaled less than what just one U.S. citizen, George Soros, spends annually to foster open society globally **(full disclosure: I chair an advisory board of one program of the Soros foundations). The main aid agency of the country that prides itself on being an unmatched force for democracy cannot even match the financial commitment of one of its citizens? Of course aid is not the only means by which the United States seeks to foster democracy in the world. Skillful diplomacy — resolving electoral standoffs, bolstering promising pro-democratic leaders and punishing toxic undemocratic ones — can accomplish much. But democracy aid plays a distinctive role**. It can be the glue that helps cement into place the foundational elements — such as effective legal institutions, representative parliaments, pluralistic political parties, civil society organizations and independent media — necessary to sustain democratic breakthroughs. Shortchanging the aid side of democracy support ensures longer-term failures. **Why this striking reduction in democracy aid?** It is not a product of a broader contraction of U.S. foreign aid spending, **which remains robust overall. Rather,** it is a policy choice, reflecting both skepticism about the relative importance of democracy work by senior U.S. aid officials and, more generally, the muted emphasis on democracy-building by the Obama foreign policy team. **Some might see the decline in U.S. democracy aid as an understandable response to the more unstable and conflict-prone world confronting policymakers. U.S. foreign policy in such a convulsive climate, the thinking goes, should emphasize stability above all — democracy will have to wait. A tempting idea, perhaps, but a dangerously wrong one. With the Middle East wracked by multiple civil wars,** falling back on the old habit of relying on authoritarian friends there to help manage security challenges to the United States may look like an appealing option. But it was precisely the festering sociopolitical and governance decay under stagnant dictatorial Arab governments that produced the conditions underlying today's civil conflicts and extremism. In Ukraine, the persistent failure over more than two decades to establish the rule of law and consolidate an accountable democratic system has led to the country's periodic political meltdowns, endemic corruption and vulnerability to Russian meddling. **The key to resolving the security sinkhole that Ukraine has become for the West is finally taking seriously those institution-building goals. In West Africa, dec**ades of mercurial dictators scornful of basic institution-building produced a legacy of crippling state weakness that left the region poorly prepared to deal with the Ebola crisis. **No emergency health delivery measures,** no matter how heroic in the short term, will solve the deeper governance problem. **Supporting democracy, human rights and better governance more substantially and effectively will not produce instant solutions to these and other crises. But** patiently and seriously pursued, such aid can be a crucial part of the longer-term solutions we seek. Troubled though our democracy can seem at home, our society still enjoys its unique stability and security thanks to its pluralistic, open political system rooted

in democratic accountability and the rule of law. **That formula remains the right one for our pursuit of stability and security abroad.**

Democracy Stable

No net democratic backsliding --- democracy is overall resilient

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

The Empirical Record A look at **the empirical record suggests little or no evidence of a democratic recession**. We compared the scores of four prominent global democracy indices: **Freedom House, Polity, the Economist Intelligence Unit, and the Bertelsmann democracy index.11 Table 1 shows each index's mean level of democracy (on a normalized scale from 0 to 1)** from 2000 to 2013. All four indices' mean democracy scores remained the same or increased during this period. According to leading democracy indices such as Freedom House and Polity, then, the world is more democratic today than it was in 2000 (and considerably more democratic than it was in 1990 or any year prior to that). **Even if we take the mid-2000s—often cited as the beginning of the democratic recession—as our starting point, three of the four indices show either no change or a slight improvement.12 Only Freedom House shows a decline between 2005 and 2013, and that decline (from .63 to .62) is extremely modest. If we examine the overall number of democracies in the world, the data similarly suggest stability rather than decline. Table 2 shows the four indices' scores for the absolute number of democracies as well as the percentage of the world's regimes that were fully democratic between 2000 and 2013. Again, Freedom House and Polity show an increase in the number of democracies since 2000. Only if we look at the 2005–13 period do we see any decline, and that decline is very modest. Freedom House shows a drop-off of one democracy between 2005 and 2013. The pattern is similar with respect to the percentage of democracies in the world: Both Freedom House and Polity show a decline of one percentage point between 2005 and 2013. As an additional measure, we examined all cases of significant regime change—defined as countries whose Freedom House scores increased or decreased by three points or more—between 1999 and 2013. [End Page 46] Whereas 23 countries experienced a significant improvement in their Freedom House score between 1999 and 2013, only eight experienced a significant decline. Even between 2005 and 2013, the number of significantly improved cases (10) exceeded the number of significant decliners (8). Moreover,** most of the significant declines occurred not in democracies but in regimes that were already authoritarian, such as the Central African Republic, the Gambia, Guinea-Bissau, and Jordan. **Percentage and Absolute Number of Democracies According to Four Surveys Click for larger view Table 2. Percentage and Absolute Number of Democracies According to Four Surveys Indeed,** what is most striking about the 2000–13 period is **how few democracies actually broke down**. **Seven countries that Freedom House classified as Free in the late 1990s are no longer classified as Free today: Bolivia, Ecuador, Honduras, Mali, the Philippines, Thailand, and Venezuela.13 Of these seven cases, the scores for Ecuador, Bolivia, and the Philippines declined only marginally, and all three regimes remained borderline democracies in 2014 (indeed, the Philippines has redemocratized; Freedom House's decision to designate it as Partly Free appears to reflect problems of corruption, not violations of democratic rules of the game). Honduras and Mali suffered military coups in 2009 and 2012, respectively, but both authoritarian turns were subsequently reversed.14 That leaves Thailand and Venezuela as the only unambiguously democratic regimes that collapsed and remained authoritarian in 2014. The list of breakdowns could be expanded to include Nicaragua and Sri Lanka, two near-democracies (classified as Partly Free by Freedom House in the late 1990s) that deteriorated into authoritarianism in the 2000s. One might also add Hungary (still classified as Free by Freedom House in 2013), although it remains, at worst, a borderline case. Turkey, which is sometimes labeled a case of democratic breakdown, underwent a transition from one hybrid regime to another. Although the AKP government has shown clear authoritarian tendencies, the regime that preceded it—marked by vast military influence, restrictions on Kurdish and Islamist parties, and substantial media repression—was never democratic (in fact, Turkey's Freedom House score in 2013 was better than it was prior to the AKP's first election victory in 2002). [End Page 47]** Even if we categorized all these cases as democratic breakdowns, despite the fact that most of them are borderline cases **(Bolivia, Ecuador, Hungary, the Philippines)** or cases in which authoritarian turns were subsequently reversed **(Honduras, Mali, the Philippines),** **the number of breakdowns is matched by cases of democratic advance**. Eight countries—including some very important ones—entered Freedom House's Free category in the 2000s and remain there today: Brazil, Croatia, Ghana, Indonesia, Mexico, Peru, Senegal, and Serbia.1**5 This list does not include countries, such as Chile, that were already classified as Free but experienced major democratic advances (in the Chilean case, the establishment of full civilian control over the military). Nor does it include countries such as Nepal, Pakistan, and Tunisia, which became considerably more democratic after the mid-2000s but remained in Freedom House's Partly Free category. The big picture over the last decade, then, is one of net stability. Although it is certainly possible to identify cases of democratic backsliding, the existence of an equal or greater number of democratic advances belies any notion of a global democratic "meltdown." As Tables 1 and 2 make clear, the net change since the mid-2000s is essentially zero. Thailand, Venezuela, and perhaps Hungary are suffering democratic recessions. But** claims of a worldwide democratic downturn lack empirical foundation.

No democratic recession-their claims are based on false understandings of geopolitics

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

A near consensus has emerged that the world has fallen into a "democratic recession." Leading observers and democracy advocates characterize the last decade as a period of democratic "rollback," "erosion," or "decline,"1 in which new democracies have fallen victim to a "powerful authoritarian undertow."2 In an article entitled "The Great Democracy Meltdown," for example, Joshua Kurlantzick claims that global freedom has "plummeted."3 Another observer suggests that "we might in fact be seeing the beginning of the end for democracy."4 The gloomy mood is made manifest in Freedom House's yearly reports in the Journal of Democracy. Summarizing Freedom House's annual survey of freedom, Arch Puddington warned in 2006 of a growing "pushback against democracy,"5 characterized 2007 and 2008 as years of democratic "decline,"6 claimed that the democratic erosion had "accelerated" in 2009,7 and described global democracy as "under duress" in 2010.8 Following a brief moment of optimism during the Arab Spring, Freedom House warned of a democratic "retreat" in 2012 and an "authoritarian resurgence" in 2013.9 This is a gloomy picture **indeed.** It is not, however, an accurate one. There is little evidence that the democratic sky is falling or (depending on your choice of fable) that the wolf of authoritarian resurgence has arrived.**10** The state of global democracy has remained stable over the last decade, and it has improved markedly relative to the 1990s. Perceptions of a democratic recession**, we argue,** are rooted in a flawed understanding of the events of the early 1990s. The excessive optimism and voluntarism that pervaded analyses of early post–Cold War transitions generated unrealistic expectations that**, when not realized,** gave **[End Page 45]** rise to exaggerated pessimism and gloom. In fact, despite increasingly unfavorable global conditions in recent years, new democracies remain strikingly robust.

No backsliding-they conflate autocratic decline with democratic transition

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

The Illusion of Backsliding Why do many observers perceive there to be a democratic recession when the evidence for such a recession is so thin? The global regime landscape looks darkened today because observers viewed the events of the initial post–Cold War period through rose-tinted glasses. During the early 1990s, many observers slipped into an excessively optimistic—even teleological—mindset in which virtually all forms of authoritarian crisis or regime instability were conflated with democratization.16 The excessive optimism of the early 1990s was shaped, in part, by the extraordinarily successful democratizations of the early "third wave" period (1974–89). In Southern Europe (Greece, Spain, Portugal), South America (Argentina, Brazil, Chile, Uruguay), and Central Europe (Bulgaria, Czechoslovakia, Hungary, Poland), authoritarian crises consistently led to democratization. Initial authoritarian openings almost invariably escaped the control of regime elites and evolved into full-scale transitions. And when authoritarian regimes fell, they were almost invariably replaced by democracies. In retrospect, it is clear that these early third-wave transitions differed markedly from later transitions in Africa and the former Soviet Union. Transitions in Southern Europe, South America, and Central Europe occurred under conditions that favored successful democratization, including [End Page 48] relatively high levels of development, robust civic and opposition movements, functioning states, and extensive ties to the West. Yet observers generalized from these cases, drawing at least two false lessons that powerfully shaped the way that they interpreted the transitions of the 1990s.17 First, observers began to conflate authoritarian breakdown with democratization. The collapse of a dictatorship may yield diverse outcomes, ranging from democracy (post-1989 Poland) to the establishment of a new authoritarian regime (post-1979 Iran) to state collapse and anarchy (post-2011 Libya). Historically, in fact, most authoritarian breakdowns have not brought democratization.18 Thus, although the collapse of a dictatorship creates opportunities for democratization, there are no theoretical or empirical bases for assuming such an outcome. Yet that is exactly what many observers did in the 1990s. Wherever dictatorships fell and opposition groups ascended to power, transitions were described as democratization and subsequent regimes were labeled "new democracies." Second, all authoritarian openings were assumed to mark the onset of a transition that would eventually lead to democracy. Thus even limited openings aimed at deflecting international pressure were expected to escape the control of autocrats and take on a life of their own, as had occurred in countries such as Brazil, Chile, Hungary, Poland, and Spain. Such expectations ignored the fact that autocrats may (and often do) undertake "window-dressing" reforms aimed at defusing short-term crises, and then use their continued control of the army, police, and major revenue sources to reconsolidate power once the crisis has passed. The tendency to conflate authoritarian crisis and democratic transition was powerfully reinforced by the demise of communism. The fall of the Berlin Wall and the collapse of the Soviet Union generated a widespread perception that liberal democracy was the "only

game in town." Because all roads seemed to lead to democracy, observers began to interpret all regime crises as incipient democratic transitions. This excessively optimistic mindset led observers to mischaracterize many post–Cold War regime crises. Although the 1990s are widely viewed as a decade of unprecedented democratization, they are more accurately described as a period of unprecedented authoritarian crisis. The end of the Cold War posed an enormous challenge to autocrats. Both Soviet client states and Western-backed anticommunist dictatorships lost external support. Western democracies emerged as the dominant center of military and economic power, and the United States and the European Union began to promote democracy to an unprecedented degree. At the same time, deep economic crises deprived autocrats of the resources needed to sustain themselves in power. States were effectively bankrupted throughout much of Africa and the former Soviet Union, leaving governments unable to pay their soldiers, police, and bureaucrats. In many cases (Albania, Benin, Cambodia, Georgia, Haiti, Liberia, Madagascar, Tajikistan, Zaire), states either collapsed or were brought to the brink of collapse. [End Page 49] Conditions in the early 1990s thus amounted to a virtual "perfect storm" for dictatorships. Throughout Africa, the former Soviet Union, and elsewhere, autocrats confronted severe fiscal crises, weak or collapsing states, and intense international pressure for multiparty elections. Lacking resources, external allies, or reliable coercive institutions, many of these autocracies fell into severe crisis. The result was widespread "pluralism by default,"19 in which competition—and even turnover—occurred because governments lacked even rudimentary means to suppress opposition challenges. Autocrats fell from power in Albania, Belarus, Benin, the Central African Republic, Congo-Brazzaville, Georgia, Madagascar, Malawi, Mali, Moldova, Niger, Ukraine, and Zaire not because they faced robust democracy movements, but because they were bankrupt, their states were in disarray, and in many cases they had lost control of the coercive apparatus. Likewise, governments in Cambodia, Cameroon, Gabon, Kyrgyzstan, Mozambique, Russia, and elsewhere tolerated competitive multiparty elections because they lacked even minimal capacity to resist them. These moments of authoritarian weakness and instability were widely equated with democratization. Thus the ascent of noncommunists to power in Russia and other post-Soviet states, as well as the fall of autocrats in Madagascar, Malawi, Niger, Zambia, and other African states, were frequently characterized as democratic transitions. Similarly, the holding of multiparty elections in Angola, Cambodia, Cameroon, Gabon, Guinea-Bissau, Kenya, Mozambique, and Tanzania was said to mark the onset of democratic transitions, however "flawed" or "prolonged." Nearly all these regimes were characterized as "new democracies" or, at minimum, some diminished subtype of democracy (e.g., electoral, illiberal, unconsolidated).20 This optimism was shared by Freedom House, which upgraded autocracies in Gabon, Jordan, Kazakhstan, Uzbekistan, and even totalitarian Turkmenistan to Partly Free status in the early 1990s. Such evaluations were largely misguided. Many of the authoritarian crises of the early and mid-1990s did not constitute meaningful movement toward democracy. Numerous autocracies broke down because states either collapsed (e.g., Azerbaijan, Georgia, Sierra Leone, Tajikistan, Zaire) or weakened dramatically (e.g., Belarus, Madagascar, Malawi, Ukraine). State failure brings violence and instability; it almost never brings democratization. Many other regime "openings" were, in reality, moments of extraordinary incumbent weakness, driven not by [End Page 50] societal pressure for democracy but rather by severe fiscal crisis, state weakness, or external vulnerability. For example, Russian politics were competitive in the early 1990s not because Boris Yeltsin presided over a democratic transition but rather because he presided over a state in disarray, which left him unable to control his own security forces, bureaucracy, and regional governments. Likewise, Cambodia's competitive 1993 elections were a product of the virtual state collapse that followed Vietnamese and Soviet withdrawal. Bankruptcy and international isolation compelled the Hun Sen government to cede control of the electoral process to the UN. Similarly, autocrats in Cameroon and Gabon, facing severe fiscal crises, riots, and the specter of international isolation, were compelled to hold unusually competitive elections in the early 1990s.

True democracy is stable --- their examples of vulnerable democracies are really just weak authoritarian regimes

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

For observers who viewed these and other cases of pluralism by default as democratic transitions, the developments of the 2000s were bound to be disappointing. The "perfect storm" conditions of the initial post–Cold War period eventually passed. For one, the economies of most developing countries improved during the 1990s and, thanks to soaring commodity prices, many of them boomed in the 2000s. Consequently, governments that a decade earlier had lacked funds to maintain patronage networks or even pay soldiers and bureaucrats were now flush with resources—helping to restore a minimum of state capacity. Second, autocrats adapted to the post–Cold War environment. Rulers whose ignorance of how to survive in a context of multiparty elections nearly cost them power in the early 1990s eventually learned how to manage competitive elections, coopt rivals and independent media, control the private sector, and starve civic and opposition groups of resources without resorting to the kind of naked repression or fraud that

could trigger a domestic legitimacy crisis and international isolation.21 Third, the geopolitical environment changed. The extraordinary influence of the United States and the EU, which had peaked in the immediate post–Cold War period, declined in the 2000s. At the same time, the emerging influence of China, Russia, and other regional powers, together with soaring oil prices, created more space for autocrats in Asia, the former Soviet Union, and Africa. By the 2000s, economic recovery, state-rebuilding, and a more permissive international environment had reduced the level of authoritarian weakness and instability that had characterized much of Africa, the former Soviet Union, and Asia during the initial post–Cold War period. Less vulnerable to international pressure, and with greater revenue and more effective states at their disposal, autocracies that had been highly vulnerable in the 1990s were, in many cases, able to reconsolidate power. In Cambodia, for example, improved finances and fading international pressure enabled the Hun Sen government to reestablish authoritarian dominance. Without the extreme fiscal and external constraints of the early 1990s, the ruling Cambodian People's Party was able to repress rivals and rig elections [End Page 51] with greater impunity. Likewise, Presidents Paul Biya in Cameroon and Omar Bongo in Gabon reconsolidated power in the late 1990s and early 2000s, reversing earlier concessions—such as constitutional term limits—that many observers had interpreted as democratic "openings." Similar processes of authoritarian reconsolidation occurred in Algeria, Angola, Burma, Congo-Brazzaville, Mozambique, and elsewhere. Much the same pattern could be observed in the former Soviet Union, where regimes that had been marked by weakness and instability during the initial postcommunist period consolidated during the 2000s. In Russia, for example, state-rebuilding and soaring oil prices allowed the Putin government to coopt the private sector and media, repress opponents, and manipulate elections to a degree that had been unthinkable a decade earlier.22 In Belarus, the government of Alyaksandr Lukashenka established vast control over the economy during the second half of the 1990s, which allowed him to effectively starve his opponents of resources. Authoritarian regimes also consolidated in Armenia, Azerbaijan, and Tajikistan. In sum, improved finances, state reconstruction, and a less hostile international environment enabled many authoritarian regimes that had been weak and unstable in the initial post–Cold War period to stabilize and even consolidate in the late 1990s and early 2000s. Unsurprisingly, countries such as Azerbaijan, Belarus, Cambodia, the Central African Republic, Congo-Brazzaville, Gabon, Guinea-Bissau, Jordan, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, and Uzbekistan, all of which Freedom House had optimistically upgraded to Partly Free status in the early 1990s, were downgraded to Not Free. These transitions from weak or unstable authoritarianism to more stable authoritarian rule are often viewed as cases of democratic failure and taken as evidence of a democratic recession. Such characterizations are misleading. **Many of these regimes were never remotely democratic**, and in some of them (e.g., Azerbaijan, Cambodia, Jordan, Kazakhstan, Tajikistan, Uzbekistan), democracy was never even seriously on the agenda. Just as authoritarian crisis should not be equated with democratic transition, authoritarian (re)consolidation should not be equated with democratic rollback. In other cases, regime instability—often rooted in state failure—generated brief democratic "moments" in which intense international pressure or the extreme weakness of all major political actors permitted competitive elections and turnover (e.g., Bangladesh 1991; Haiti 1991; Congo-Brazzaville 1992; Belarus 1994; Niger 1999; Guinea-Bissau 2000; Madagascar 2002; Burundi 2005). Although these cases may have been minimally "democratic" on election day, they did not remain so after new governments took office—and thus could not be described as democratic regimes. Indeed, turnover occurred under conditions that overwhelmingly favored nondemocratic outcomes: Democratic institutions existed only on parchment (in many cases, they had never been tested); states were weak or collapsing, resulting in pervasive neopatrimonialism and the absence [End Page 52] of rule of law; private sectors were small and state-dependent; and civil societies and opposition parties were weak and disorganized. The combination of neopatrimonial states and impoverished societies gave incumbents vast resource advantages from day one, and in the absence of functioning democratic institutions, civil society, or an organized opposition, constraints on authoritarian abuse were minimal. Under such conditions, new governments almost inevitably abuse power, triggering either regime instability or another round of authoritarianism. "Democratic moments" thus proved ephemeral, if not illusory, in each of the cases listed above. For example, Congo-Brazzaville experienced electoral turnover in 1992, but new president Pascal Lissouba immediately dissolved parliament and held flawed elections that triggered an opposition boycott and an eventual descent into civil war and dictatorship. Similarly, Burundi's competitive elections in 2005 led Freedom House to label it an "electoral democracy," but President Domitien Ndayizeye immediately began to arrest opposition leaders and journalists, and subsequent elections were marred by fraud and repression. In Guinea-Bissau, the 1999 overthrow of João Bernardo Vieira led to internationally sponsored elections won by opposition leader Kumba Yala (which led Freedom House to label the country an electoral democracy). But Yala was as authoritarian as his predecessor, closing newspapers and arresting opposition leaders and the president of the Supreme Court before his overthrow in a 2003 coup. Newly elected presidents also immediately abused power in Bangladesh, Belarus, the Central African Republic, Haiti, Madagascar, Niger, and elsewhere. These regimes were never democracies in any meaningful sense, for any meaningful period of time. To label them as cases of subsequent "democratic breakdown" is, therefore, quite misleading. And yet most of the breakdowns cited by proponents of the democratic-recession thesis are precisely of this type—take the list of 25 post-2000 breakdowns in Larry Diamond's article in this issue (Table 1 on page 144). Nearly two-thirds of these breakdowns were of regimes that (at best) were no more than

ephemeral "democratic moments." If we limit our analysis to actual democratic regimes—**defined, say, as those in which at least one democratically elected government held free elections and peacefully ceded power to an elected successor**—16 of Diamond's 25 "democratic breakdowns" disappear. **Of the nine cases of breakdown that remain, 23 only five still had authoritarian regimes in 2014, and one of those was a microstate.**

Backsliding is false-they misread lack of progress as rollback

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

Non-Democratization in the 2000s Contemporary pessimism about the fate of global democracy is also rooted in excessive voluntarism. Many of those who argue that democracy is in retreat focus less on democratic backsliding than on the absence of democratic progress. **In effect, nondemocratization [End Page 53] in China, the Middle East, or Central Asia is treated as a setback. For example, Puddington's 2009 report in the Journal of Democracy claimed that "perhaps the most disappointing development" in Asia in 2008 was "the failure of China to enact significant democratic reforms . . . during its year as host of the Olympic Games."24 The following year, he cited the Kazakh government's failure to undertake political reform as evidence of a "downward spiral" in Central Asia and pointed to the absence of political liberalization in Cuba as evidence of "continued erosion of freedom worldwide."25** Puddington's most recent Journal of Democracy report openly cites unmet expectations—as opposed to actual rollback—as a source of democratic gloom, writing that although observers had "predicted that China would rather quickly evolve toward a more liberal and perhaps democratic system," the government instead developed new strategies "designed to maintain rigid one-party rule."26 The failure of authoritarian regimes in China, the Middle East, or Central Asia to democratize should not be taken as evidence of democratic retreat (**doing so would be akin to taking a glass that is half full and declaring it not to be half empty but to be emptying out). Nor should it surprise us. By the mid-2000s, nearly every country with minimally favorable conditions for democracy had already democratized. With a handful of exceptions (e.g., Malaysia, Singapore, Thailand, Turkey, and now Venezuela), the low-hanging fruit had been picked.** Today, most of the world's remaining nondemocracies exist in countries that existing theory suggests are unlikely to democratize.27 **According to a substantial body of research, stable democratization is unlikely in very poor countries with weak states (e.g., much of sub-Saharan Africa), dynastic monarchies with oil and Western support (e.g., the Persian Gulf states), and single-party regimes with strong states and high growth rates (China, Vietnam, Malaysia, Singapore). Our own research suggests that democratization is less likely in countries with very low linkage to the West (e.g., Central Asia, much of Africa) and in regimes born of violent revolution (China, Ethiopia, Eritrea, Vietnam, Cuba, Iran, Laos, North Korea). If we take seriously these lessons generated by several decades of research, relatively few countries today could be considered true democratic underperformers. While the recent stagnation in the overall number of democracies in the world may be normatively displeasing, it is entirely consistent with existing theory. Why, then, has the lack of democratic expansion since the mid-2000s triggered so much pessimism and gloom? One reason is the unfounded expectations raised by the collapse of communism. After the extraordinary events of 1989–91, many observers simply assumed that the wave of democratic advances of the 1980s and 1990s would continue. Another reason for contemporary disappointment is excessive voluntarism. The early third-wave democratizations dealt a powerful blow to [End Page 54] the classic structuralist theories that had predominated in the 1960s and 1970s. These theories emphasized the social, economic, and cultural obstacles to democratization in the developing and communist worlds. Democratization in countries like Bolivia, El Salvador, Ghana, and Mongolia made it clear that democratization was possible anywhere. Yet this healthy skepticism regarding overly structuralist analysis evolved into exaggerated voluntarism. Evidence that structural factors such as wealth, low inequality, or a robust civil society are not necessary for democratization led many observers to conclude that they are causally unimportant. In other words, the important lesson that democratization can happen anywhere was taken by some observers to mean that it should happen**

everywhere. **There are simply no theoretical or empirical bases for such expectations**. **A wealth of research has shown that structural factors such as level of development, inequality, economic performance, natural-resource wealth, state capacity, strength of civil society, and ties to the West continue to powerfully affect the likelihood of achieving and sustaining democracy.** **It is no coincidence that most of the world's remaining non-democracies are clustered in the Middle East, sub-Saharan Africa, and the former Soviet Union. Many countries in these regions are characterized by multiple factors that scholars have associated with authoritarianism. One may hope (and work) for democratization in countries like Cambodia, Ethiopia, Kazakhstan, Libya, or Iraq, but expectations that democratization will occur in such cases lack theoretical or empirical foundation**. **And the dashing of unfounded expectations should not be confused with democratic recession.**

Democracy is resilient- it has remained stable through immense difficulty and no risk of backsliding

Levitsky and Way 15 [Steven, Professor of Government at Harvard University; Lucan, Associate Professor of Political Science at the University of Toronto; January, 15; "The Myth of Democratic Recession"; Project Muse; 07/05/15; jac]

Democracy's Surprising Resilience Disappointment over the lack of democratization in countries where it is unlikely to emerge should not obscure the extraordinary democratic achievements of the last quarter-century. When the Journal of Democracy was launched in 1990, there were 38 developing and postcommunist countries classified as Free by Freedom House. In 2014, that number stood at 60. **As impressive as the breadth of the third wave has been its robustness. At the time of the Journal of Democracy's inaugural issue, newly democratic regimes in Latin America and Central Europe were widely viewed as precarious. Scholars of democratization were skeptical that many of them would endure. In their classic book on transitions from authoritarian rule, for example, Guillermo O'Donnell and Philippe Schmitter characterized Latin American cases as "uncertain democracies."28 Likewise, few scholars expected that the 1989 transitions in Central Europe would produce almost uniformly stable democratic regimes. Yet with a few short-lived exceptions (e.g., Peru 1992–2000), the [End Page 55] democracies that emerged in South America and Central Europe have now survived for a quarter-century or more. Moreover, they survived despite severe economic crises and radical economic reforms that many scholars believed were incompatible with democracy. Between 1990 and 2000, several other important countries democratized, including Croatia, Ghana, Indonesia, Mexico, Serbia, Slovakia, South Africa, and Taiwan.** Although some of these new democracies were marked by deep racial or ethnic cleavages, they too proved strikingly robust. **These patterns did not change substantially after 2000.** Democratic breakdowns remained rare, often short-lived, and generally unrepresentative of broader trends. Although democracy retreated in Sri Lanka, Thailand, and Venezuela, it survived in a range of important middle-income countries, including Argentina, Brazil, Chile, Colombia, Croatia, India, Indonesia, Mexico, Poland, Serbia, South Africa, South Korea, and Taiwan. Democracy also survived in several countries with strikingly unfavorable conditions, including Benin, the Dominican Republic, El Salvador, Ghana, Guyana, Mongolia, and Romania. These were countries with little or no democratic tradition, weak states, high levels of poverty and inequality, and in some cases deeply divided societies. Yet their democracies endured, and some of them are now more than two decades old. **In several important countries,** democracy not only survived but strengthened during the 2000s. **In Brazil, which suffered severe governability problems in the 1980s and early 1990s, the stability and quality of democracy improved markedly in the 2000s; in India, expanding rates of participation, particularly among poorer and lower-caste citizens, have created an increasingly inclusionary democracy; in Chile, a 2005 constitutional reform eliminated remaining authoritarian enclaves and established full civilian control over the military; in Croatia, Ghana, Mexico, and Taiwan, former authoritarian ruling parties returned to power and governed democratically—a critical step toward consolidation. And in Colombia and Poland,** democratic institutions effectively checked the ambitions of autocratic-leaning presidents **(Alvaro Uribe in Colombia, Lech Kaczyński in Poland).** These were major democratic successes, many of which occurred in large and influential countries. Yet they received far less attention than democratic backsliding **in Thailand and Venezuela and nondemocratization in China. These successes suggest an alternative way of viewing the events of the 2000s. Over the last decade, several global developments posed a serious threat to new democracies. These included the severe post-2008 [End Page 56] economic crisis in Western democracies, the declining influence of the United States and the European Union, the growing power and self-confidence of China and Russia, and soaring oil prices. Yet** the number of actual democratic breakdowns has

been strikingly low. **Arguably, then,** the real story of the last decade is not democracy's "meltdown," but rather its resilience in the face of a darkening geopolitical landscape. **This resilience merits further study. Understanding its sources may help democracy advocates to prepare for the day when the wolf of authoritarian resurgence does, in fact, arrive.**

State Secrets Privilege Good Updates

SSP Maintains Detention / Rendition

The State Secrets Privilege used to maintain extraordinary renditions, and preventive detention programs

Goldstein '11 --- writer and commentator whose work has appeared in the Guardian, the Washington Post, Salon, the Nation and National Public Radio (Nancy, "The US national security smokescreen," The Guardian, 12/8/15, http://www.theguardian.com/commentisfree/cifamerica/2011/dec/08/us-national-security-smokescreen

Ben Wizner, the litigation director for the ACLU's national security project, cheerfully admits that its April 2011 Freedom of Information Act (FOIA) request for 23 of the very same US State Department diplomatic cables we all read this time last year, when WikiLeaks released them to five newspapers including the Guardian, was "cheeky" – a way to foreground the "absurdity of the US secrecy regime". And so it has. Nearly eight months after the original FOIA request, the State Department has finally released … 11 cables. Federal censors have helpfully redacted them, making it easy to see, by a simple act of comparison (which the ACLU performs for us, here), precisely which sections the State Department wants hidden. Missing are a dirty dozen cables the government refused to release – despite those cables having already been leaked, published and analysed in virtually every major national and international media venue – again, because they were classified as secret or deemed to contain sensitive information. Administration officials unleashed plenty of hyperbole and hysteria when the cables were first published. But it turned out that none of the information in them actually endangered American citizens, allies or informants. They did, however, prove embarrassing for the US and many foreign leaders. Because it turned out that claims about national security were often an excuse to prevent us from seeing our government engaged in unethical, unconstitutional and, sometimes, illegal practices. These ran the gamut from extraordinary renditions, detentions and torture to shaking down other governments in an attempt to influence their political processes and tamper with their criminal justice systems. We learned that the same Obama administration that had refused to pursue the perpetrators of the Bush torture regime at home had also tried to put its thumbs on the scales of justice in Spain – aggressively attempting to prevent a counter-terrorism judge from trying the senior legal minds of the Bush administration for their part in the torture of detainees at Guantánamo Bay. We learned about the US attempt to scuttle the case of German citizen Khaled el-Masri, the greengrocer mistaken for a senior al-Qaida official. He was kidnapped, tortured, drugged, beaten and thrown into Afghanistan's CIA-run Salt Pit prison, until – oops – they realised they had the wrong guy and dumped him in the Albanian outback. In public, Munich prosecutors issued arrest warrants for 13 suspected CIA operatives involved in his abduction and torture, and Angela Merkel's office called for an investigation. In private, the German justice ministry and foreign ministry both made it clear to the US that they were not interested in pursuing the case, emboldening the US to refuse to arrest or hand over the agents. If the first part of the ACLU's agenda in asking for the 23 already-leaked cables is to highlight what it calls a "penchant for excessive secrecy in defiance of all reason", the second is to spotlight the way in which the Bush and Obama administrations abuse the state secrets privilege to keep illegal programs from being judicially reviewed. When the ACLU challenged the CIA on behalf of el-Masri in 2005, a judge dismissed the case. The US government did not deny that he was wrongfully kidnapped. Instead, it successfully argued that his case be dismissed because litigation of his claims would expose state secrets and jeopardise American security. This despite the fact that, as el-Masri pointed out, "President Bush has told the world about the CIA's detention program, and even though my allegations have been corroborated by eyewitnesses and other evidence." First the Bush administration and then the Obama administration successfully evoked the state secrets privilege to prevent the ACLU from filing a federal lawsuit against Jeppesen DataPlan, Inc, the folks who helped the CIA fly extraordinary rendition victims to secret sites where they were detained, tortured and interrogated. Again, the government claimed that further litigation would undermine national security interests, even though much of the evidence needed to try the case was already available to the public. And again, it appears to have won. In the hall of mirrors that the US security regime has become, information that is not officially acknowledged cannot be used to hold government officials responsible in the courts. And an administration that can evade charges of misconduct, including torture, by hiding behind state secrets claims, even when all the details are publicly known, becomes the guardian of its own liability. That's bad news. Transparency and accountability are the oxygen of democracy. But don't hold your breath waiting for this administration to respond to requests for either one.

Detention Good

Guantanamo is necessary – key to effective war on terror

Spencer et al, 5

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Before his promotion to Vice President in January 2015, Spencer served as Director of the Roe Institute, where he spearheaded research initiatives on federal spending, taxes, regulation, energy and environment. Previously, he specialized in nuclear energy issues in both the domestic and global arenas as Heritage's senior research fellow in nuclear energy policy. Spencer was Heritage's go-to expert on nuclear waste management, technological advances, industry subsidies and international approaches to nuclear energy, Ariel Cohen PhD, The Davis Institute for National Security and Foreign Policy at The Heritage Foundation, James Phillips is the Senior Research Fellow for Middle Eastern Affairs at the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. He has written extensively on Middle Eastern issues and international terrorism since 1978.

Although his prime research interests are Iran, Iraq, Afghanistan, Persian Gulf security issues, and Middle Eastern terrorism, Phillips also has written numerous articles on the Arab-Israeli conflict, Islamic radicalism, Algeria, Egypt, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Pakistan, Saudi Arabia, Somalia, Syria, Sudan, and Turkey. He has testified numerous times before congressional committees on these issues.

Phillips wrote papers that predicted the Soviet intervention in Afghanistan, the Soviet defeat there, and the dangers arising from U.S. withdrawal from engagement in that country, which contributed to the rise of the Taliban and the export of terrorism and Islamic radicalism. In 2000, he called for a comprehensive U.S. policy to support the Afghan opposition and overthrow the ultra-radical Taliban regime, rather than narrowly focusing on Osama bin Laden, who was then based in Afghanistan . Since the Sept. 11 attacks, he has written extensively on the global war against terrorism and its implications for U.S. policy in the Middle East .

Phillips has frequently been interviewed on a broad range of subjects by U.S. and foreign media, including ABC News, CBS News, NBC News, FOX News, CNN, C-SPAN, MSNBC, Sky News, Al Arabiya, Al Hurra, BBC Television, BBC World Service Radio, National Public Radio, and the Voice of America. He also has published numerous articles in American newspapers, including The New York Times, Washington Times, Newsday , New York Post, Atlanta Journal-Constitution, Baltimore Sun, Chicago Tribune, and USA Today .

Phillips is a member of the Committee on the Present Danger, a prestigious bipartisan group dedicated to winning the war on terrorism. He also is a member of the Board of Editors of Middle East Quarterly , the leading conservative journal of Middle Eastern policy studies.

Before joining Heritage in 1979, Phillips was a Research Fellow at the Congressional Research Service of the Library of Congress and a former Joint Doctoral Research Fellow at the East-West Center . He received a Bachelor's Degree in International Relations from Brown University as well as a Master's Degree and a M.A.L.D. in International Security Studies from the Fletcher School of Law and Diplomacy at Tufts University, No Good Reason To Close Gitmo, Heritage Foundation, http://www.heritage.org/research/reports/2005/06/no-good-reason-to-close-gitmo, TMP)

While billions are victim to the regular abuse and tyranny of governments such as those of Sudan and China, much of the world's media and non-profit "human rights" resources focus on the U.S. Naval base at Guantanamo Bay, Cuba. **Not a single person has been killed at the facility since it opened**, and yet the drumbeat of criticism grows by the day. Criticism and even calls to close the base have come not just from President Bush's critics, but also from members of his own party. But a rhetorical barrage is no reason to shut a base. **Those who would close the detainment center have failed to articulate a reasonable rationale for doing so**. They also overlook a major challenge: there are few options, right now, to replace the detainment center. There are, however, many reasons to keep it open.

1. The function of Guantanamo Bay will be served somewhere. Closing Guantanamo will not relieve the United States from needing a facility to house and interrogate suspected terrorists. Should Guantanamo close, the government would have to relocate these functions. If there are problems with the detainment center, those problems should be transparently addressed. The Pentagon has taken great pains to ensure that all appropriate domestic and international agencies have adequate access to the facilities and has been responsive to credible allegations of abuse. Unlike in the tyrannical or regimes of North Korea or China, for example, alleged abuses of prisoners are investigated and those found guilty are held responsible. Moreover, there are established avenues by which Congress, the International Committee of the Red Cross, Red Crescent, and the media exercise differing degrees of oversight in Guantanamo. Changing locations now would lead to a transition period during which these organizations would have less access than they do today.

2. Closing Guantanamo Bay to placate critics is unjustified. It would be naive for the United States to assume that the same unsubstantiated criticisms that now surround the Guantanamo Bay facility would not be transported to the next one. The facility itself and what happens at it do not drive its critics, exactly; rather, their activism is motivated by how the United States and its allies are conducting the war on terrorism in general. Critics of the war do not distinguish between the two. To appease the critics would require changing how the United States fights the war on terrorism, which is unacceptable.

American policymakers should be aware that conceding on Guantanamo, given the broad context of critics' complaints, would be **tantamount to conceding the war on terrorism itself.**

For instance, on a recent television interview a representative of a "human rights" organization manipulated statistics and rhetoric taken from the broader campaign against terrorism to describe the actions and facility at Guantanamo Bay.[1] **At one point in the interview, he argued that at least 28 individuals have died in U.S. custody as a result of criminal homicide**. **None** of these deaths, however, occurred at Guantanamo. The implication was that whether these actions took place at Guantanamo was irrelevant and that actions and events occurring at any point or place in the war on terrorism may be generalized to any specific place or event.

But the details do matter. According to the **D**epartment **o**f **D**efense, "The department works closely with the International Committee of the Red Cross (ICRC) and representatives visit detainees in our charge at their discretion. There have been 187 members of Congress and congressional staff who have visited Guantanamo to include (sic) 11 Senators, 77 Representatives and 99 Congressional staff members. There have also been some 400 media visits consisting of more than 1,000 national and international journalists."[2] Even skeptics must admit that it would be hard to carry out any systematic abuse of detainees under such intense and constant scrutiny.

3. Releasing the detainees now is not a realistic option. While holding detainees indefinitely is not likely, releasing them now is not a realistic option. Many **detainees released from Guantanamo Bay returned to their home countries only to resume terrorist attacks against civilians**. According to The Washington Post, at least 10 of the 202 detainees released from Guantanamo were later captured or killed while fighting U.S. and coalition forces in Afghanistan and Pakistan.[3] Mark Jacobson, a former special assistant for detainee policy at the Department of Defense, estimated that as many as 25 of the 202 had taken up arms again.

For example, Mullah Shahzada, a former Taliban field commander who apparently convinced officials at Guantanamo that he had sworn off violence, was freed in 2003, and immediately rejoined the Taliban. He was subsequently **killed in battle** in the summer of 2004 in Afghanistan. Maulvi Ghafar, a Taliban commander captured in 2001, was released in February 2004. He was subsequently killed in a shootout with Afghan government forces in September 2004. Abdullah Mesud, a Pakistani who was captured fighting alongside the Taliban in Afghanistan, bragged that he was able to hide his true identity for two years at Guantanamo before being released in March 2004. He was considered a low-risk security threat because of his artificial leg. After returning to Pakistan, Mesud led a group of Islamic militants-part of a campaign against the Pakistani government-that kidnapped two Chinese engineers working on a dam. One of the engineers and several militants were subsequently killed in a government raid.[4] Mesud is still at large.

Clearly, the **detainees kept at Guantanamo pose a significant threat to Americans, U.S. allies, and civilians in their home countries**. This threat must be weighed long and hard before any decision is made to release an individual detainee or to change the system under which detainees are held.

4. Changing the physical location of the detainees is not legally significant. Neither the detainees nor the United States stand to gain significantly in the legal arena if the detention center at Guantanamo Bay is closed. The "illegal enemy combatants" held at the facility have access to U.S. courts (as held by the Supreme Court in Rasul v. Bush[5]). Detainees have been making much use of their access to legal counsel, as evidenced, for example, by a November 2004 District Court opinion holding that the Bush Administration had overstepped its authority in several areas.

Moving the detainees within the continental United States **will not give them additional rights** because Guantanamo Bay is already considered sufficiently under U.S. control to provide rights to them.[6] After the Rasul opinion, the detainees and the U.S. government will have the same legal advantages and disadvantages within the U.S. as they do at Guantanamo Bay. There are no compelling legal reasons to move the detainees and close Guantanamo Bay.

5. Guantanamo Bay is no Gulag. Blinded by hatred of America and U.S. policies and seeking to shift the blame away from terrorist crimes, Amnesty International's Secretary-General Irene Zubeida Khan recently called Guantanamo Bay detention camp the "Gulag of our times." She added, according to some reports, "Ironic that this should happen as we mark the 60th anniversary of the liberation of Auschwitz."It is not clear whether this was a statement of deep ignorance or deliberate deception. Ms. Khan, though, is not alone in her criticism. Amnesty's Washington director, William Schulz, has said that Guantanamo's terrorist detention facility is "similar at least in character, if not in size, to what happened in the Gulag."

Comparing Guantanamo's tropical Caribbean detention facility with Soviet dictator Joseph Stalin's frozen concentration camp empire makes about as much sense as calling the London police "Nazis." Amnesty's gall in abusing the dead and trivializing their suffering for its own political purposes is appalling. Gulag (from "Main Directorate of Camps" in Russian) began as an extermination machine for political opponents. It quickly became a meat-grinder in which tens of millions of innocent Soviets and citizens of other countries perished. Islamists may manipulate some anti-American elements in

the human rights community whom they consider, to borrow Lenin's phrase, "useful idiots." This strategy has been surprisingly successful, perhaps due to the political inclinations of those who lead the major human rights groups in the U.S. today. For whatever reason, Amnesty and Ms. Khan are ignoring real threats to human rights, especially those of women in the Islamic world, and are playing into the hands of terrorists who are hell-bent on destroying the West. The human rights community's bizarre priorities are no reason, however, to close the detention facility at Guantanamo Bay.

Conclusion

The debate over whether or not to close the detention facility at Guantanamo Bay is about much more then that facility itself. **It is a debate over how the United States and its allies are conducting the war on terrorism.** If the United States concedes that its actions in Guantanamo Bay are such that they warrant closing the facility, how can the U.S. defend keeping other facilities open? And if the United States cannot house and interrogate suspected terrorists, how can it prosecute the Global War on Terrorism? The issue of whether the Gitmo detention facility should be closed should not be used as a proxy referendum for the Bush Administration's war on terrorism.

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Guantanamo is good – treatment is humane and new facility would ignite more extremism

Rogan, 12

(Tom Rogan is writer currently living in London, England. He recently completed a law course and holds a BA in War Studies from King's College London and an MSc in Middle East Politics from SOAS, London, "Why Guantanamo Bay should remain open", The Daily Caller, http://dailycaller.com/2012/09/24/why-guantanamo-bay-should-remain-open/ TMP)

The recent death (a suspected suicide) of a prisoner at the U.S. detention facility at Guantanamo Bay has helped reignite the debate over whether the facility should be closed. It's a complex issue. However, I think Guantanamo should remain open.

As I see it, there are two major considerations that should drive the debate about Guantanamo's future. The first is whether keeping the facility open is the best way for the U.S. government to protect the American people.

I think it is. **It offers several compelling advantages over the alternatives**. For one, the detainees are guarded by well-trained MPs, isolated from support and held in a place from which escape would be nearly impossible. Remember, many Guantanamo detainees are resourceful, ideologically committed enemies of the **U**nited **S**tates who have stated that they want to maim and kill Americans, so it's important that they're kept in a facility that's as secure as possible.

Closing the Guantanamo facility and opening a new detention facility in the U.S. would pose **profound security** risks. **The new facility would become a beacon for extremists and an expensive, highly complex challenge to secure**. Just look at what happened when the Obama administration attempted to try Khalid Sheik Mohammed in New York City (an effort which it has since abandoned). And while many politicians love the idea of a domestic detention facility, few want one in their backyard.

Moreover, over the years the government has invested an enormous amount of money in expanding the Guantanamo facility's support base. Inmates now have access to a well-stocked library, gym and soccer field. These outlets don't simply provide humane incarceration conditions and encourage rehabilitation; **they also directly serve our national security interests.** If the detainees were transferred out of Guantanamo, the benefit of these outlets would be lost.

The second consideration that should drive the Guantanamo debate is whether keeping the facility open is the best way to ensure justice for the detainees as well as the victims of terrorism

At the core here is a critical legal question: Are the Guantanamo detainees suspected illegal combatants subject to military authority, or are they suspected criminals and thus subject to the civilian criminal court system? I support the prior understanding. The **Guantanamo detainees were captured while engaged in armed hostilities against the United States**. Their objectives in fighting the United States were **manifestly political** — and their chosen mechanisms of action were undoubtedly military. Indeed, as criminal-approach advocates often neglect to mention, a substantial number of former

Guantanamo detainees have returned to the battlefield. Put simply, operating as part of organized groups like al Qaida, these detainees were at war. From my perspective, if the Guantanamo detainees are criminal suspects, laws of war cannot exist in a compatible reality.

Next, let's consider Guantanamo's procedural justice. In the past, many Guantanamo detainees haven't been given speedy trials. However, with President Obama having finally re-authorized the military commission process, more progress toward bringing detainees to trial will be made. That progress will illustrate America's commitment to the rule of law and undercut negative perceptions about Guantanamo. Contrary to popular opinion, anger toward Guantanamo amongst Islamic populations is not driven by an inherent discomfort with military commissions, but rather by the perception **that Guantanamo is a black hole of permanent**, un-reviewed detention.

Ultimately, the detention facility at Guantanamo Bay provides an imperfect solution to a highly complex problem. While **82% of all Guantanamo detainees have already been released,** wherever possible the U.S. government should expedite this process, repatriating those who are no longer believed to pose a substantial threat. At the same time, the accused should face military commissions. In the end, though, considering the many interests at stake and absence of good alternatives, I believe that the **Guantanamo detention facility must remain open for the foreseeable future.**

AT: SSP Misused / Overused

SSP is effective for national security – and multiple barriers check executive abuse

Nichols, 8 (Carl J Nichols served in the Department of Justice as the Deputy Assistant Attorney General for the Civil Division's Federal Programs Branch, " speech from, [Senate Hearing 110-923] [From the U.S. Government Printing Office] S. Hrg. 110-923 EXAMINING THE STATE SECRETS PRIVILEGE: PROTECTING NATIONAL SECURITY WHILE PRESERVING ACCOUNTABILITY", http://www.gpo.gov/fdsys/pkg/CHRG-110shrg53360/html/CHRG-110shrg53360.htm, TMP)

Mr. Nichols. Thank you very much. Chairman Leahy, Ranking Member Specter, and members of the Committee, thank you for the opportunity to testify concerning the important subject of today's hearing, the state secrets privilege. Since March 2005, I have served in the Department of Justice as the Deputy Assistant Attorney General for the Civil Division's Federal Programs Branch. In that capacity I've been involved in the decision-making process regarding whether, and when, the executive branch will assert the state secrets privilege in civil litigation. As the Committee is aware, **the state secrets privilege is a well-established legal doctrine that plays a vital role in protecting the national security** by ensuring that civil litigation does not result in the disclosure of information that, if made public, would cause serious harm to the United States. **This privilege plays an important role in times of war and times of peace**, has been asserted by the executive branch, and has been recognized by the courts, since the 19th century, and is subject to review by the judiciary. While the judiciary plays an important role in assessing any assertion of the state secrets privilege, the privilege **does have a constitutional pedigree**. The Supreme Court made that clear in United States v. Nixon when it stated that ``a claim of privilege on the ground that information constitutes military or diplomatic secrets"--that is,--the state secrets privilege--necessarily involves areas of Article 2 duties assigned to the President. It is important to emphasize-- however--I think it is very important to emphasize that although the state secrets privilege emanates from the President's constitutional authority, **the privilege is neither limitless nor unchecked.** It is also important to emphasize that the executive branch asserts the privilege selectively, and when doing so details the specific harms to national security That would occur if sensitive information is publicly **revealed**, and **it is important to emphasize that not every assertion of the state secrets privilege results in the dismissal of a pending case.** Any assertion of the state secrets privilege involves a **rigorous procedural and judicial process** to ensure that the privilege is not, in the words of the Supreme Court, lightly invoked. To begin, several formal requirements apply to the privilege assertion. **The privilege can be invoked only by the United States**, only through a formal claim of privilege,

only by the head of the department which has control of the matter, and only after that official has given actual personal consideration to the question. Meeting these requirements typically requires several layers of substantive departmental review and coordination, an important part of which is the agency head's--often Cabinet official's--personal review of various materials, including the declaration or declarations that he or she must sign, under penalty of perjury, in order to assert the privilege. **Once it has been decided that it is appropriate to assert the privilege in a particular case**, the **judicial branch** plays a **vital role in assessing whether the privilege will be upheld**. Specifically, the court must decide whether the invocation of the privilege is predicated upon a reasonable danger that disclosure of the information will harm national security. In making that determination, a court often reviews not just publicly available materials, but also classified declarations and other information providing further detail for the court's review. A common **misperception** is that classified information is never, or only rarely, shared with the courts and that the courts are therefore asked to uphold the privilege based on trust and non-specific claims of national security. **That is simply inconsistent with our practice**. In every case of which I am aware, we have made available to the courts both unclassified and classified declarations that justify, often in considerable detail, the bases for the privilege assertions.**Once a court has concluded that the information is privileged**, the information is removed from the case and the court plays a second and equally important role. It must decide whether, and if so how, the case can proceed without that information. **Sometimes a case must be dismissed because it is obvious that the case could not proceed without information that would harm the United States.** However, in other cases, and **contrary to a popular misconception**, the privileged information is peripheral and the case can proceed without it. Thus, rather than playing a passive role in accepting at face value blanket executive assertions of the state secrets privilege, **courts play a vital role in determining whether the privilege will be upheld and adjudicating how and when cases can proceed if sensitive national security information is excluded**. These dual roles underline the crucial role of the judiciary in checking assertions of the state secrets privilege and assuring against the disclosure of national security that would cause serious harm to the United States.Mr. Chairman, I would like to conclude with the following point. While there may be disagreement as to when this privilege ought to be asserted, rigorous **executive branch safeguards and judicial review ensure that it is invoked and upheld only in circumstances necessary to protect the national security of the United States.** On this point there should be no disagreement: such a privilege is not only desirable, but necessary to avert serious harm to national security. Thank you for the opportunity to appear before the Committee. I would be pleased to answer any questions you may have.

Safeguards prevent illegitimate overuse of state secrets privilege

Biskupic, 11

(1/17/2011, Joan, USA Today, "Cases challenge use of 'state secrets' shield ; Justices get rare chance to address exemption," Factiva)

WASHINGTON -- In a post-9/11 world, the federal government increasingly has invoked a "state secrets" argument to keep sensitive information out of court, notably in disputes over warrantless surveillance and the secret transfer of prisoners to foreign countries for interrogation.

Now, for the first time since the 2001 terrorist attacks and the first since the Supreme Court recognized the state-secrets exemption in 1953, the justices will hear a dispute testing some dimensions of the privilege intended to protect national security.

The paired cases to be argued Tuesday involve a long-running, otherwise dry defense-contracting conflict over a canceled stealth aircraft. Yet they offer the justices a rare chance to address the controversial privilege used to shut down litigation.

Most broadly at stake is the government's ability to shield information or win dismissal of a case based on a claim that the airing of sensitive material would hurt national security.

"We hope the court will take the opportunity to revisit and reform the privilege that has become more important in this era," says Sharon Bradford Franklin, a lawyer with the non-profit Washington, D.C.-based Constitution Project, which submitted a brief siding with the contractors that protests use of the state-secrets privilege.

Yet the Electronic Frontier Foundation, a San Francisco-based civil liberties group that has challenged National Security Agency wiretap programs, has entered the dispute (not on either side) to urge the justices to take a limited view and not delve into whether constitutional grounds exists for the state-secret privilege.

For years, the larger debate over the state-secrets privilege has played out in lower courts, in Congress and in the Bush and Obama administrations. Democrats. led by Sen. Patrick Leahy, D-Vt., and Rep. Jerrold Nadler, D-N.Y., have proposed legislation to set uniform procedures for such cases and require judges faced with state-secret claims to review in private evidence that the government says should be shielded.

More accountability sought

The Obama team generally has carried over Bush administration state-secrets arguments in lower-court cases. But in September 2009, it issued new overall guidelines to try to ensure greater accountability in the use of the privilege. Attorney General Eric **Holder said it should be "invoked only when necessary and in the narrowest way possible."**

One high-profile case related to the issue has just arrived at the Supreme Court, although the justices are not likely to announce until early spring whether they would accept Mohamed v. Jeppesen DataPlan.

It was brought by five men who say they were kidnapped by the CIA and flown to other countries by Jeppesen DataPlan, a subsidiary of Boeing, for harsh interrogation, including torture.

A deeply split U.S. appeals court dismissed the case on state-secret grounds after the government intervened. The ACLU, which represents the men, filed an appeal last month at the Supreme Court, arguing that the government is improperly using state-secrets privilege "to deny justice to torture victims." Responses from Jeppesen and the U.S. government are due to the court in February.

In the dispute justices will hear this week, the paired cases of General Dynamics Corp. v. U.S. and Boeing Co. v. U.S. began with a quarrel over development of the A-12 Avenger aircraft. Unlike in the usual state-secrets situations, where the government is being sued, the government started this case.

The Navy contracted in 1988 with General Dynamics and McDonnell Douglas Corp. (now Boeing) to develop the A-12, but after delays and conflicts over costs, terminated the contract for default in 1991 and sought return of more than $1 billion paid. The defense giants brought their own claim, arguing they were stalled by the government's reluctance to turn over secret technology needed for the project.

The government said that the main differences centered on costs, rather than access to certain information, yet invoked the state-secrets privilege to prevent disclosure of what it deemed highly sensitive information.

Safeguards asserted

As the case wended its way through courts for nearly two decades, the companies contended that by raising the state-secrets privilege and limiting access to documents, the government prevented them from proving they were not responsible for delays and should not have to repay the money. Lower courts ruled for the government.

General Dynamics and Boeing say that while there are times the state-secrets privilege is legitimately invoked, in this case it was used for a litigation advantage.

Department of Justice lawyers, led by acting Solicitor General Neal Katyal, defend the government's use of the state-secrets privilege in the A-12 dispute and insist that **sufficient "safeguards against capricious invocation of the state-secrets privilege" exist**.

No outside groups have joined the government's side. With the contractors, along with the Constitution Project, are business groups including the Chamber of Commerce. They say the federal government should not be able to invoke the privilege to its financial gain.

Carter Phillips, who represents the chamber and will argue the case for the two big contractors, said, "What distinguishes this case from others is that the government ... is trying to use the privilege as a mechanism to take away a contractor's ability to defend itself. This is not using it as a shield. This is unquestionably using it as a sword."

Solvency

Note for Glennon / Circumvention Ev

FYI --- "Trumanites" in the Glennon, 14 ev refers to:

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

President Harry S. Truman, more than any other President, is responsible for creating the nation's "efficient" national security apparatus.99 Under him, Congress enacted the National Security Act of 1947, which unified the military under a new Secretary of Defense, set up the CIA, created the modern Joint Chiefs of Staff, and established the National Security Council ("NSC").100 Truman also set up the National Security Agency, which was intended at the time to monitor communications abroad.101 Friends as well as detractors viewed Truman's role as decisive.102 Honoring Truman's founding role, this Article will substitute "Trumanite" for "efficient," referring to the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking.

1nc Circumvention

A network of national security officials actually determines policy --- enacting external checks just legitimates them without providing any constraint

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

VI. Conclusion

U.S. national security policy has **scarcely changed from** the **Bush to** the **Obama** Administration. The theory of Walter Bagehot explains why. Bagehot described the emergence in 19th-century Britain of a "disguised republic" consisting of officials who actually exercised governmental power but remained unnoticed by the public, which continued to believe that visible, formal institutions exercised legal authority.601 Dual institutions of governance, one public and the other concealed, were referred to by Bagehot as "double government."602 A similar process of bifurcated institutional evolution has occurred in the United States, but in reverse: a network has emerged within the federal government that **exercises predominant power with respect to national security matters**. It has evolved in response to structural incentives rather than invidious intent, and it consists of the several hundred executive officials who manage the military, intelligence, diplomatic, and law enforcement agencies responsible for protecting the nation's security. These officials are as little disposed to stake out new policies as they are to abandon old ones. **They define security more in military and intelligence terms rather than in political or diplomatic ones.** Enough examples exist to persuade the public that the network is subject to judicial, legislative, and executive constraints. This appearance is important to its operation, for **the network derives legitimacy from the ostensible authority of the public, constitutional branches of the government**. **The appearance of accountability is**, however, **largely an illusion** fostered by those institutions' pedigree, ritual, intelligibility, mystery, and superficial harmony with the network's ambitions. The courts, Congress, and even the presidency in reality **impose little constraint**. **Judicial review is negligible**; **congressional**

oversight dysfunctional; and presidential control nominal. **Past efforts to revive these institutions have thus fallen flat**. **Future reform efforts are no more likely to succeed**, relying as they must upon those same institutions to restore power to themselves by exercising the very power that they lack. External constraints—public opinion and the press—are insufficient to check it. Both are manipulable, and their vitality depends heavily upon the vigor of constitutionally established institutions, which would not have withered had those external constraints had real force. Nor is it likely that any such constraints can be restored through governmental efforts to inculcate greater civic virtue, which would ultimately concentrate power even further. Institutional restoration can come only from an energized body politic. The prevailing incentive structure, however, encourages the public to become less, not more, informed and engaged.

Executive will just ignore Congress and FISA typically defers to it

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

Even if Congress at some point enacted new restrictions on surveillance, **the executive might ignore the law and continue to make policy unilaterally**. The job of reviewing executive conduct would again fall to the FISA Court.56 In view of **this court's history of broad deference to the executive**, Congress would have a challenge to ensure that legislative policies were faithfully implemented.

Executive lawyers provides the means to circumvent the plan

Shane, 12 --- Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law (Peter M., Journal of National Security Law & Policy, "Executive Branch Self-Policing in Times of Crisis: The Challenges for Conscientious Legal Analysis," 5 J. Nat'l Security L. & Pol'y 507))

II. The Breakdown of Government Lawyering

The military and foreign policy disasters generated by presidential unilateralism demonstrate the practical importance of maintaining a pluralist view of checks and balances. Political officials are not simply rational actors who respond with dispassionate calculation to evidence and circumstance. Facts and options are always filtered through ideological prisms. Presidentialism narrows the prism. Pluralism works to offset that filtering. Pluralism guards against too much distortion by seeking to maximize the number of meaningful institutional voices in the policy making process.

Equally troubling is the risk of presidentialism to the rule of law. Even in normal times, a heavy burden falls on government attorneys in virtually every agency. Government lawyering frequently represents the exclusive avenue through which the law is actually brought to bear on decisionmaking. This professional review within the executive branch is crucial. Most

government decisions are simply too low in visibility, or too diffuse in impact, to elicit judicial review or congressional oversight as ways of monitoring legal compliance. Yet, **the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive**. **Champions of executive power** - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply **not subject to legal regulation by either of the other two branches of government**.

[*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power.

Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: **they blew through them in secret** based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." n7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." n8

OLC's analysis of the legality of NSA surveillance, issued on January 19, 2006, justified the program on two grounds: the President's inherent war powers and the Authorization for Use of Military Force (AUMF). However, the AUMF did not say anything about electronic surveillance. In 1978, Congress expressly stated that no statute other than the Foreign Intelligence Surveillance Act (FISA) or Title III - the law that applies to ordinary federal criminal prosecution - provides authority for electronic surveillance by the federal government. The AUMF could supersede FISA by repealing it, but only by making the repeal explicit. An argument that the AUMF implicitly repealed FISA necessarily falls short. OLC also argued that the President had an inherent constitutional power to conduct the NSA program no matter what FISA said. According to OLC, if FISA of 1978, as amended, were read to preclude the NSA program, the statute would be unconstitutional. n9

[*512] What prompted the Justice Department to argue in this fashion? One answer might be that Justice Department lawyers are institutionally expected to advocate for the President's powers and simply adopt the most ambitious arguments consistent with appropriate standards of professional competence in legal research and analysis. However, it is not the responsibility of Justice Department lawyers to advocate for every contemplated assertion of presidential authority, no matter how far-fetched. Even in my brief period at Justice, I witnessed multiple and significant examples of Department lawyers refusing to provide analytic support for legally ill-conceived proposals for executive action. Moreover, it is difficult to make a case for the

professional competence of the FISA memorandum. Although the Justice Department manages to elaborate its views in over forty pages of single-spaced and highly technical verbiage, its memorandum never confronts the enormity of the initiative it is endorsing or the power of alternative arguments. Instead, it proffers distinctions from contrary precedents that are often, in a word, silly. Even if the authors felt institutionally constrained to reach a particular bottom line, the failure to assert any principle limiting the claims being made and the too-frequent lack of rhetorical judgment in structuring their argument suggest something other than diligent lawyering was at play.

What accounted for the bad arguments was political and professional pressure. When I worked at Justice, the refusal to take positions that could not be defended by respectable standards did not harm the lawyer. As anyone who has ever worked in an organization knows, however, informal pressure can be an extraordinarily effective method of stifling disagreement and guiding decisions in the way top management desires. We know that supervision of the process of executive branch lawyering on the NSA memorandum was significantly usurped by the Office of the Vice President. David Addington, the Vice President's Counsel, and John Yoo, then a deputy in OLC, worked together to craft a series of arguments for unprecedented claims of executive power to pursue the campaign against terrorism. n10 Jack Goldsmith reports that Addington blackballed from future advancement in the executive branch any lawyer who dared cross swords with him. n11

The deficiencies of legal analysis of NSA surveillance were replicated in other initiatives after 9/11, including the treatment of persons captured and suspected of aiding and abetting terrorism. The Justice Department, through OLC, produced legal opinions stating, in effect, that anyone [*513] captured in the Afghanistan campaign had few, if any, rights under U.S. or international law and certainly no rights susceptible to vindication in U.S. courts. n12 The function of these legal opinions - indeed, their obvious purpose - was to ratify a scheme of maximum license to do with the detainees whatever the military, the CIA, or any other U.S. authority might choose to do with them. The Administration's lawyering process cleared the path to horrors at the Abu Ghraib prison and Guantanamo - crimes whose stain upon our national honor is likely to remain, for decades at least, firmly embedded in the world's collective memory, deeply undermining our image and influence abroad.

It is understandable that the Administration would want some flexibility in dealing with a threat it rightly regarded as in some ways unprecedented and of very grave magnitude. And yet, to move the detainees so completely beyond the realm of normal legal process was itself a plainly risky strategy in terms of compromising international support, exposing U.S. military personnel to mistreatment, risking the honor of U.S. military culture, and weakening the fabric of international law generally in its protection of both combatants and civilians during wartime. The desire for flexibility was understandable, but not at the cost of all other values.

On a number of the most important points discussed in the OLC lawyers' memoranda, the courts subsequently held them to be wrong. Contrary to OLC, the Supreme Court held that foreign detainees at Guantanamo who challenged their classification as enemy combatants were entitled to judicial review of the legality of their detention. n13 Contrary to OLC, the Court held that the Geneva Conventions protected the detainees, whether or not they strictly qualified as prisoners of war. n14 Contrary to OLC and Justice Department briefs, the Court held that the military commissions as originally constituted were not sufficiently protective of the detainees' rights to permit their use for war crimes trials. n15

On all of these questions, whether of morality, policy, or law, there were at least serious arguments to be entertained by both sides. The fact that the Administration reached incorrect conclusions is, in itself, only a limited indictment of its lawyering. Even good lawyers make mistakes, and the fact that executive branch lawyers would consistently make mistakes erring on the side of executive authority is not in itself damning. What is damning, however, is that on critical questions - questions going to the core of national honor and identity - executive branch lawyering was not just [*514] wrong, misguided, or ethically insensitive. It was incompetent. It was so sloppy, so one-sided, and at times so laughably unpersuasive that it cannot be defended as ethical lawyering in any context. Tax advice this bad would be malpractice. Government lawyering this bad should be grounds for discharge.

--- 2nc Circumvention

The plan can't solve --- creates illusion of control that allows national security bureaucracy to flourish

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

V. Is Reform Possible? Checks, Smoke, and Mirrors

Madison, as noted at the outset,543 believed that a constitution must not only set up a government that can control and protect the people, but, equally importantly, must protect the people from the government.544 Madison thus anticipated the enduring tradeoff: the lesser the threat from government, the lesser its capacity to protect against threats; the greater the government's capacity to protect against threats, the greater the threat from the government.

Recognition of the dystopic implications of double government focuses the mind, naturally, on possible legalist cures to the threats that double government presents. Potential remedies fall generally into two categories. First, strengthen systemic checks, either by reviving Madisonian institutions—by tweaking them about the edges to enhance their vitality— or by establishing restraints directly within the Trumanite network. Second, cultivate civic virtue within the electorate.

A. Strengthening Systemic Checks

The first set of potential remedies aspires to tone up Madisonian muscles one by one with ad hoc legislative and judicial reforms, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving congressional oversight of covert operations, including drone killings and cyber operations; or strengthening statutory constraints like FISA545 and the War Powers Resolution.546 Law reviews brim with such proposals. But their **stopgap approach** has been tried repeatedly since the Trumanite network's emergence. **Its futility is now glaring.** Why such efforts would be any more fruitful in the future is hard to understand. The Trumanites are committed to the rule of law and their sincerity is not in doubt, but the rule of law to which they are committed is largely devoid of meaningful constraints.547 **Continued focus on**

legalist band-aids merely buttresses the illusion that the Madisonian institutions are alive and well—and with that illusion, an entire narrative premised on the assumption that it is merely a matter of identifying a solution and looking to the Madisonian institutions to effect it. **That frame deflects attention from the underlying malady**. What is needed, if Bagehot's theory is correct, is a fundamental change in the very discourse within which U.S. national security policy is made. For **the question is no longer: What should the government do?** The questions now are: What should be done about the government? What can be done about the government? What are the responsibilities not of the government but of the people?

--- 2nc Turns the Case

Reform attempts just provide a veneer of legitimacy for national security officials to continue making decisions to perpetuate their existence

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Nonetheless, in the United States today, as in Bagehot's Britain, "[m]ost do indeed vaguely know that there are some other institutions"239 involved in governance besides those established by the Constitution. But the popular conception of an "invisible government," "state within," or "national security state" is off the mark. The existence of the Trumanite network is no secret. The network's emergence has not been the result of an enormous, nefarious conspiracy conceived to displace constitutional government. The emergence of the Trumanite network has not been purposeful. America's dual national security framework has evolved gradually in response to **incentives woven into the system's structure** as that structure has reacted to society's felt needs. Yet, as a whole, Americans still do not recognize the extent to which **Madisonian institutions have come to formulate national security policy in form more than in substance**.

One reason that they do not is that the double government system has exceptions. For the dual institutional structure to work, it is crucial, Bagehot believed, to "hide where the one begins and where the other ends."240 Overlap is required. Enough counterexamples must exist to persuade an optimistic public that the reason for policy continuity is human, not systemic. Thus, the counterexamples must be sufficient for the public to believe that if they elect different people then policy will change, **giving credence to the idea that the real institutions have not lost all power in making national security policy**. Similarly, the Trumanites often include some quasi-Madisonian officers, such as the Secretaries of State and Defense, who themselves generate deference through the same theatrical show common to the Madisonian institutions. Congress, the President, and the courts do sometimes say no to the Trumanites. But they do not do so often enough to endanger double government. The Trumanite network makes American national security policy; it is occasional exceptions to that policy that are made by the Madisonian institutions.

It is a unique turn --- Madisonians' role is decreasing now which risks exposing the illusion of double government

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E. Implications for the Future

The aim of this Article thus far has been to explain the continuity in U.S. national security policy. An all-too-plausible answer, this Article has suggested, lies in Bagehot's concept of double government. Bagehot believed that **double government could survive only so long as the general public remains sufficiently credulous to accept the superficial appearance of accountability**, and only so long as the concealed and public elements of the government are able to **mask their duality** and thereby sustain public deference.501 As evidence of duality becomes plainer and public skepticism grows, however, Bagehot believed that the cone of governance will be "balanced on its point."502 If "you push it ever so little, it will depart farther and farther from its position and fall to earth."503

If Bagehot's theory is correct, the United States now confronts a precarious situation. Maintaining the appearance that Madisonian institutions control the course of national security policy **requires that those institutions play a large enough role in the decision-making process to maintain the illusion**. But the Madisonians' role is too visibly shrinking, and the Trumanites' too visibly expanding, to maintain the plausible impression of Madisonian governance.504 For this reason and others, public confidence in the Madisonians has sunk to new lows.505 The Trumanites have resisted transparency far more successfully than have the Madisonians, with unsurprising results. The success of the whole dual institutional model depends upon the maintenance of public enchantment with the dignified/ Madisonian institutions. This requires allowing no daylight to spoil their magic,506 as Bagehot put it. An element of mystery must be preserved to excite public imagination. But transparency—driven hugely by modern internet technology, multiple informational sources, and social media— leaves little to the imagination. "The cure for admiring the House of Lords," Bagehot observed, "was to go and look at it."507 The public has gone and looked at Congress, the Supreme Court, and the President, and their standing in public opinion surveys is the result. Justices, senators, and presidents are not masters of the universe after all, the public has discovered. They are just like us. Enquiring minds may not have read enough of Foreign Affairs508 to assess the Trumanites' national security polices, but they have read enough of People Magazine509 to know that the Madisonians are not who they pretend to be. While the public's unfamiliarity with national security matters has no doubt hastened the Trumanites' rise, too many people will soon be too savvy to be misled by the Madisonian veneer,510 and those people often are opinion leaders whose influence on public opinion is disproportionate to their numbers. There is no point in telling ghost stories, Holmes said, if people do not believe in ghosts.511

--- XT: National Security Officials = Circumvention

No solvency --- executive officials control national security policy and will circumvent

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Abstract

National security policy in the United States has remained largely constant from the Bush Administration to the Obama Administration. This continuity can be explained by the "double government" theory of 19th-century scholar of the English Constitution Walter Bagehot. As applied to the United States, Bagehot's theory suggests that U.S. national security policy is defined by the network of executive officials who manage the departments and agencies responsible for protecting U.S. national security and who, responding to **structural incentives** embedded in the U.S. political system, **operate largely removed from public view and from constitutional constraints**. The public believes that the constitutionally-established institutions control national security policy, but that view is mistaken. **Judicial review is negligible**; **congressional oversight is dysfunctional**; and presidential control is nominal. Absent a more informed and engaged electorate, little possibility exists for restoring accountability in the formulation and execution of national security policy.

Entrenched national security officials ensure circumvention

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Introduction

Few who follow world events can doubt that the Obama Administration's approach to multiple national security issues has been essentially the same as that of the Bush Administration.2 The Obama Administration, like its predecessor, has sent terrorism suspects overseas for detention and interrogation;3 claimed the power to hold, without trial, American citizens who are accused of terrorism in military confinement;4 insisted that it is for the President to decide whether an accused terrorist will be tried by a civilian court or a military tribunal;5 kept the military prison at Guantánamo Bay open,6 argued that detainees cannot challenge the conditions of their confinement,7 and restricted detainees' access to legal counsel;8 resisted efforts to extend the right of habeas corpus to other offshore prisons;9 argued that detainees cannot invoke the Geneva Conventions in habeas proceedings;10 denied detainees access to the International Committee of the Red Cross for weeks at a time;11 engaged the United States in a military attack against Libya without congressional approval, in the face of no actual or imminent threat to the nation;12 and continued, and in some respects expanded, the Bush Administration's ballistic missile defense program.13

The Obama Administration, beyond ending torture, has changed "virtually none" of the Bush Administration's Central Intelligence Agency ("CIA") programs and operations,14 except that in continuing targeted killings, the Obama Administration has increased the number of covert drone strikes in Pakistan to six times the number launched during the Bush Administration.15 The Obama Administration has declined to prosecute those who committed torture (after the President

himself concluded that waterboarding is torture);16 approved the targeted killing of American citizens (Anwar al-Awlaqi and a compatriot17) without judicial warrant;18 rejected efforts by the press and Congress to release legal opinions justifying those killings or describing the breadth of the claimed power;19 and opposed legislative proposals to expand intelligence oversight notification requirements.20 His administration has increased the role of covert special operations,21 continuing each of the covert action programs that President Bush handed down.22 The Obama Administration has continued the Bush Administration's cyberwar against Iran (code-named "Olympic Games")23 and sought to block lawsuits challenging the legality of other national security measures,24 often claiming the state secrets privilege.25

The Obama Administration has also continued, and in some ways expanded, Bush-era surveillance policies. For example, the Obama Administration continued to intercept the communications of foreign leaders; 26 further insisted that GPS devices may be used to keep track of certain citizens without probable cause or judicial review27 (until the Supreme Court disapproved28); continued to investigate individuals and groups under Justice Department guidelines re-written in 2008 to permit "assessments" that require no "factual basis" for FBI agents to conduct secret interviews, plant informants, and search government and commercial databases;29 stepped up the prosecution of government whistleblowers who uncovered illegal actions,30 using the 1917 Espionage Act eight times during his first administration to prosecute leakers (it had been so used only three times in the previous ninety-two years);31 demanded that businesses turn over personal information about customers in response to "national security letters" that require no probable cause and cannot legally be disclosed;32 continued broad National Security Agency ("NSA") homeland surveillance;33 seized two months of phone records of reporters and editors of the Associated Press for more than twenty telephone lines of its offices and journalists, including their home phones and cellphones, without notice;34 through the NSA, collected the telephone records of millions of Verizon customers, within the United States and between the United States and other countries, on an "ongoing, daily basis" under an order that prohibited Verizon from revealing the operation;35 and tapped into the central servers of nine leading U.S. internet companies, extracting audio and video chats, photographs, emails, documents, and connection logs that enable analysts to track foreign targets and U.S. citizens.36 At least one significant NSA surveillance program, involving the collection of data on the social connections of U.S. citizens and others located within the United States, was initiated after the Bush Administration left office.37

These and related policies were formulated and carried out by numerous high- and mid-level national security officials who served in the Bush Administration and continued to serve in the Obama Administration.38

Given Senator Obama's powerful criticism of such policies before he took office as President, the question,39 then, is this: Why does national security policy remain constant even when one President is replaced by another who as a candidate repeatedly, forcefully, and eloquently promised fundamental changes in that policy?

The affirmative focuses on the wrong area of government --- U.S. national security decisions are made by executive officials, separate from even the President.

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As it did in the early days of Britain's monarchy, power in the **U**nited **S**tates lay initially in one set of institutions—the President, Congress, and the courts. These are America's "dignified" institutions. Later, however, a second institution emerged to safeguard the nation's security. This, America's "efficient" institution (actually, as will be seen, more a network than an institution) **consists of the several hundred executive officials** who sit atop the military, intelligence, diplomatic, and law enforcement departments and agencies that have as their mission the protection of America's international and internal security. Large segments of the public continue to believe that America's constitutionally established, dignified institutions are the locus of governmental power; by promoting that impression, **both sets of institutions maintain public support**. But when it comes to defining and protecting national security, the public's impression is mistaken. America's efficient institution makes most of the key decisions concerning national security, removed from public view and from the constitutional restrictions that check America's dignified institutions. The **U**nited **S**tates has, in short, moved beyond a mere imperial presidency to a bifurcated system—a structure of double government—in which **even the President now exercises little substantive control over the overall direction of U.S. national security policy**. Whereas Britain's dual institutions evolved towards a concealed republic, America's have evolved in the opposite direction, toward greater centralization, less accountability, and emergent autocracy.

--- XT: FBI Circumvents

FBI surveillance continues even after restrictions on its activities

Fisher, 4 --- Associate Professor of Law and Director, Center for Social Justice, Seton Hall Law School (Winter 2004, Linda E., Arizona Law Review, "Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups," 46 Ariz. L. Rev. 621, Lexis, JMP)

The history of the FBI and other law enforcement surveillance gives scant comfort to those engaged in lawful political and religious activities who are [*623] concerned about becoming targets of surveillance. n5 From its inception until restrictions on its activities were imposed in the mid-1970s - **and even sometimes thereafter** - the FBI regularly conducted politically motivated surveillance, choosing targets based on their political or religious beliefs. As part of its investigations, it compiled and widely disseminated political dossiers, engaged in warrantless searches, and disrupted the lawful First Amendment activities of a wide array of groups opposed to government policy. n6 Local police "Red Squads" did the same. n7 During the war in Vietnam, the CIA, **despite restriction of its mission to foreign intelligence**, also conducted domestic surveillance operations. n8 Religious groups engaged in political activity were among the targets of intelligence agency investigations. n9

--- XT: NSA Circumvents

Yes circumvention --- recent NSA action proves

Ackerman, 15 --- American national security reporter and blogger, national security editor for the Guardian (6/1/2015, Spencer, The Guardian, "Fears NSA will seek to undermine surveillance reform; Privacy advocates are wary of covert legal acrobatics from the NSA similar to those deployed post-9/11 to circumvent congressional authority," Lexis, JMP)

Privacy advocates fear the **N**ational **S**ecurity **A**gency will attempt to **weaken new restrictions** on the bulk collection of Americans' phone and email records with **a barrage of creative legal wrangles**, as the first major reform of US surveillance powers in a generation looked likely to be a foregone conclusion on Monday.

Related: Bush-era surveillance powers expire as US prepares to roll back NSA power

The USA Freedom Act, a bill banning the NSA from collecting US phone data in bulk and compelling disclosure of any novel legal arguments for widespread surveillance before a secret court, has already been passed by the House of Representatives and on Sunday night the Senate voted 77 to 17 to proceed to debate on it. Between that bill and a landmark recent ruling from a federal appeals court that rejected a longstanding government justification for bulk surveillance, civil libertarians think they stand a chance at stopping attempts by intelligence lawyers to undermine reform in secret.

Attorneys for the intelligence agencies react scornfully to the suggestion that they will **stretch their authorities to the breaking point**. Yet reformers remember that such legal tactics during the George W Bush administration allowed the NSA to shoehorn bulk phone records collection into the Patriot Act.

Rand Paul, the Kentucky senator and Republican presidential candidate who was key to allowing sweeping US surveillance powers to lapse on Sunday night, warned that **NSA lawyers would now make mincemeat of the USA Freedom Act's prohibitions** on bulk phone records collection by taking an expansive view of the bill's definitions, thanks to a pliant, secret surveillance court.

"My fear, though, is that the people who interpret this work at a place known as the rubber stamp factory, the Fisa [court]," Paul said on the Senate floor on Sunday.

Paul's Democratic ally, Senator Ron Wyden, warned the intelligence agencies and the Obama administration against attempting to unravel NSA reform.

"My time on the intelligence committee has taught me to always be vigilant for secret interpretations of the law and new surveillance techniques that Congress doesn't know about," Wyden, a member of the intelligence committee, told the Guardian.

"Americans were rightly outraged when they learned that US intelligence agencies relied on secret law to monitor millions of law-abiding US citizens. The American people are now on high alert for new secret interpretations of the law, and intelligence agencies and the Justice Department would do well to keep that lesson in mind."

The USA Freedom Act is supposed to prevent what Wyden calls " secret law ". It contains a provision requiring congressional notification in the event of a novel legal interpretation presented to the secret Fisa court overseeing surveillance.

Yet in recent memory, the US government permitted the NSA to circumvent the Fisa court entirely. Not a single Fisa court judge was aware of Stellar Wind, the NSA's post-9/11 constellation of bulk surveillance programs, from 2001 to 2004.

Energetic legal tactics followed to fit the programs under existing legal authorities after internal controversy or outright exposure. When the continuation of a bulk domestic internet metadata collection program risked the mass resignation of Justice Department officials in 2004, an internal NSA draft history records that attorneys found a different legal rationale that " essentially gave NSA the same authority to collect bulk internet metadata that it had ".

After a New York Times story in 2005 revealed the existence of the bulk domestic phone records program, attorneys for the US Justice Department and NSA argued, with the blessing of the Fisa court, that Section 215 of the Patriot Act authorized it all along - precisely the contention that the second circuit court of appeals rejected in May.

--- XT: CIA Circumvents

CIA controls policy --- it empirically lies and gets what it wants

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Justice Douglas, a family friend of the Kennedys, saw the Trumanites' influence first-hand: "In reflecting on Jack's relation to the generals, I slowly realized that the military were so strong in our society that probably no President could stand against them."375 As the roles of the generals and CIA have converged, the CIA's influence has expanded—aided in part by **a willingness to shade the facts, even with sympathetic Madisonian sponsors**. A classified, 6,000-word report by the Senate Intelligence Committee reportedly concluded that the CIA was "so intent on justifying extreme interrogation techniques that it blatantly misled President George W. Bush, the White House, the Justice Department and the Congressional intelligence committees about the efficacy of its methods."376 **"The CIA gets what it wants,"** President Obama told his advisers when the CIA asked for authority to expand its drone program and launch new paramilitary operations.377

CIA fights any restraints --- comes after legislators that try and reign it in

Friedersdorf, 14 (Conor, 3/20/2014, "Nancy Pelosi: When Legislators Take on the CIA, 'They Come After You'; A powerful legislator on the costs of properly overseeing the intelligence community," http://www.theatlantic.com/politics/archive/2014/03/nancy-pelosi-when-legislators-take-on-the-cia-they-come-after-you/284524/, JMP)

House Minority Leader Nancy Pelosi's remarks in support of fellow legislator Dianne Feinstein, who is embroiled in a dispute with the CIA, ought to be the sort of thing that alarms everyone. After all, another powerful member of Congress claims that the spy agency she is charged with overseeing illegitimately **resists checks on its autonomy**.

Here's how she put it:

"I salute Senator Feinstein. I tell you, you take on the intelligence community, you're a person of courage. And she does not do that lightly. Not without evidence."

"Wherever the decision is, whether it's from the administration, as was the case in the Bush Administration, to withhold information from Congress, I fought that. But you don't fight it without a price, because they come after you, and they don't always tell the truth about it. Now, where that's motivated from, I don't know."

"This is a matter of great seriousness, the attitude that the CIA had, to the rights of Congress in all of this. It's pretty appalling, what is being alleged or charged."

"The administration is the custodian of intelligence information. It is not the owner."

If Feinstein were taking on ATF or the Food and Drug Administration, no one would think to describe her as being a "person of courage." Congressional Republicans have been brutally attacking the IRS. None of them has suggested that, as a result, IRS officials or appointed leadership are bound to come after them.

In other words, **the CIA is out of control** in a way that these other agencies aren't. And the reason this isn't considered scandalous? We've grown to expect it. There are many patriots who serve their country in the intelligence community, Pelosi said. And presidential administrations are partly to blame here. She is absolutely right—none of which changes the urgent need to rein in the CIA.

--- XT: Agency Fill In

Other agencies empirically fill in to continue surveillance

Ackerman, 15 --- American national security reporter and blogger, national security editor for the Guardian (6/1/2015, Spencer, The Guardian, “Fears NSA will seek to undermine surveillance reform; Privacy advocates are wary of covert legal acrobatics from the NSA similar to those deployed post-9/11 to circumvent congressional authority,” Lexis, JMP)

The rise of what activists have come to call "bulky" surveillance, like the "large collections" of Americans' electronic communications records the FBI gets to collect under the Patriot Act, continue unabated - or, at least, will, once the USA Freedom Act passes and restores the Patriot Act powers that lapsed at midnight on Sunday.

Related: FBI used Patriot Act to obtain 'large collections' of Americans' data, DoJ finds

That collection, recently confirmed by a largely overlooked Justice Department inspector general's report, points to a slipperiness in shuttering surveillance programs - one that creates opportunities for clever lawyers.

The Guardian revealed in 2013 that Barack Obama had permitted the NSA to collect domestic internet metadata in bulk until 2011. Yet even as Obama closed down that NSA program, the Justice Department inspector general confirms that by 2009, **the FBI was already collecting the same "electronic communications" metadata under a different authority**.

It is unclear as yet how the FBI transformed that authority, passed by Congress for the collection of "business records", into large-scale collection of Americans' email, text, instant message, internet-protocol and other records. And a similar power to for the FBI gather domestic internet metadata, obtained through non-judicial subpoenas called "National Security Letters", also exists in a different, non-expiring part of the Patriot Act.

--- AT: President Will Comply

The President doesn't matter --- Glennon says a double government exists and a network of officials exists within government that exercises predominant power on national security.

The President can't ensure compliance --- the national security bureaucracy firmly controls the process

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Put differently, the question whether the President could institute a complete about-face supposes a top-down policy-making model. The **illusion** that presidents issue orders and that subordinates simply carry them out is nurtured in the public imagination by media reports of "Obama's" policies or decisions or initiatives, by the President's own frequent references to "my" directives or personnel, and by the Trumanites own reports that the President himself has "ordered" them to do something. But true top-down decisions that order fundamental policy shifts are rare.369 The reality is that when the President issues an "order" to the Trumanites, **the Trumanites themselves normally formulate the order**.370 The Trumanites "cannot be thought of as men who are merely doing their duty. They are the ones who determine their duty, as well as the duties of those beneath them. They are not merely following orders: **they give the orders**."371 They do that by "entangling"372 the President. This dynamic is an aspect of what one scholar has called the "deep structure" of the presidency.373 As Theodore Sorensen put it, "Presidents rarely, if ever, make decisions—particularly in foreign affairs—in the sense of writing their conclusions on a clean slate . . . . [T]he basic decisions, which confine their choices, have all too often been previously made."374

National security bureaucracy acts independent of the President

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Sometimes, however, the Trumanites **proceed without presidential approval**. In 1975, a White House aide testified that the White House "didn't know half the things" intelligence agencies did that might be legally questionable.378 "If you have got a program going and you are perfectly happy with its results, why take the risk that it might be turned off if the president of the United States decides he does not want to do it," he asked.379 Other occasions arise when Trumanites in the CIA and elsewhere originate presidential "directives"—directed to themselves.380 Presidents then ratify such Trumanite policy initiatives after the fact.381 To avoid looking like a bystander or mere commentator, the President embraces these Trumanite policies, as does Congress, with the pretense that they are their own.382 To maintain legitimacy, **the President must appear to be in charge**. In a narrow sense, of course, Trumanite policies are the President's own; after all, he did formally approve them.383 But the policies ordinarily are formulated by Trumanites—who prudently, in Bagehot's words, prevent "the party in power" from going "all the lengths their orators propose[]."384 The place for presidential oratory, to the Trumanites, is in the heat of a campaign, not in the councils of government where cooler heads prevail.385

Military frames decision-making to force President to accept the policy it wants

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Presidential choice is further circumscribed by the Trumanites' ability to frame the set of options from which the President may choose— even when the President is personally involved in the decisionmaking process to an unusual degree, as occurred when President Obama determined the number of troops to be deployed to Afghanistan.414 Richard Holbrooke, the President's Special Representative for Afghanistan and Pakistan, predicted that the military would offer the usual three options— the option they wanted, bracketed by two unreasonable alternatives that could garner no support.415 "And that is exactly what happened,"416 Nasr recalled. It was, as Secretary Gates said, "the classic Henry Kissinger model . . . . You have three options, two of which are ridiculous, so you accept the one in the middle."417 The military later expanded the options— but still provided no choice. "You guys just presented me [with] four options, two of which are not realistic." The other two were practically indistinguishable. "So what's my option?" President Obama asked. "You have essentially given me one option."418 **The military was "really cooking the thing in the direction that they wanted,"** he complained. "They are not going to give me a choice."419

Presidential control is very limited

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

This is, again, hardly to suggest that the President is without power. Exceptions to the rule occur with enough regularity to create the impression of overall presidential control. "As long as we keep up a double set of institutions—one dignified and intended to impress the many, the other efficient and intended to govern the many—we should take care that the two match nicely," Bagehot wrote.420 He noted that "[t]his is in part effected by conceding some subordinate power to the august part of our polity . . . ."421 Leadership does matter, or at least it can matter. President Obama's decision to approve the operation against Osama bin Laden against the advice of his top military advisers is a prominent example.422 Presidents are sometimes involved in the decisional loops, as Bagehot's theory would predict. Overlap between Madisonians and Trumanites preserves the necessary atmospherics. Sometimes even members of Congress are brought into the loop.423 But seldom do presidents participate personally and directly, let alone the Madisonian institutions in toto. The range of presidential choice is tightly hemmed in.424 As Sorensen wrote in 1981, "[e]ven within the executive branch, the president's word is no longer final . . . ."425 When the red lights flash and the sirens wail, it is the Trumanites' secure phones that ring.

--- AT: Other Branches Check

Checks by federal branches fail --- national security bureaucracy is only concerned with increasing its own power to address threats

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

A third internal "check," the Foreign Intelligence Surveillance Court, subsists formally outside the executive branch but for all practical purposes might as well be within it; as noted earlier, it approved 99.9% of all warrant requests between 1979 and 2011.561 In 2013, it approved the NSA collection of the telephone records of tens of millions of Americans, none of whom had been accused of any crime.562 An authentic check is one thing; smoke and mirrors are something else.

The first difficulty with such proposed checks on the Trumanite network is circularity; all rely upon Madisonian institutions to restore power to Madisonian institutions by exercising the very power that Madisonian institutions lack. All assume that the Madisonian institutions, in which all reform proposals must necessarily originate, can somehow magically impose those reforms upon the Trumanite network or that the network will somehow merrily acquiesce. All suppose that the forces that gave rise to the Trumanite network can simply be ignored. All assume, at bottom, that Madison's scheme can be made to work—that an equilibrium of power can be achieved—without regard to the electorate's fitness.

Yet Madison's theory, again,563 presupposed the existence of a body politic possessed of civic virtue. It is the personal ambition only of officeholders who are chosen by a virtuous electorate that can be expected to translate into institutional ambition. It is legislators so chosen, Madison believed, who could be counted upon to resist encroachments on, say, Congress's power to

approve war or treaties because a diminution of Congress's power implied a diminution of their own individual power. Absent a virtuous electorate, personal ambition and institutional ambition no longer are coextensive. Members' principal ambition564 then becomes political survival, which means accepting, not resisting, Trumanite encroachments on congressional power. The Trumanites' principal ambition, meanwhile, remains the same: to broaden their ever-insufficient "flexibility" to deal with unforeseen threats—that is, to enhance their own power. The net effect is imbalance, not balance.

This imbalance has suffused the development of U.S. counterterrorism policy. Trumanites express concerns about convergence, about potentially dangerous link-ups among narco-terrorists, cyber-criminals, human traffickers, weapons traders, and hostile governments.565 Yet their concerns focus largely, if not entirely, on only one side of Madison's ledger —the government's need to protect the people from threats—and little, if at all, on the other side: the need to protect the people from the government. As a result, the discourse, dominated as it is by the Trumanites, emphasizes potential threats and deemphasizes tradeoffs that must be accepted to meet those threats. The Madisonians themselves are not troubled about new linkages forged among the newly-created components of military, intelligence, homeland security, and law enforcement agencies—linkages that together threaten civil liberties and personal freedom in ways never before seen in the United States. The earlier "stovepiping" of those agencies was seen as contributing to the unpreparedness that led to the September 11 attacks,566 and after the wearying creation of the Department of Homeland Security and related reorganizations, the Madisonians have little stomach for re-drawing box charts yet again. And so the cogs of the national security apparatus continue to tighten while the scaffolding of the Madisonian institutions continues to erode.

Lack of civic virtue prevents effective constraints by 3 branches

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

There is a third, more fundamental, more worrisome reason why the Madisonian institutions have been eclipsed, as noted earlier in this Article.575 It is the same reason that **repairs** of the sort enumerated above likely will not endure. And it is not a reason that can be entirely laid at the feet of the Trumanites. It is a reason that goes to the heartbeat of democratic institutions. The reason is that Madisonian institutions rest upon a foundation that has proven unreliable: a general public possessed of civic virtue.

Civic virtue, in Madison's view, required acting for the public interest rather than one's private interest.576 Madison, realist that he was, recognized that deal-making and self-interest would permeate government; this could be kept in check in part by clever institutional design, with "ambition . . . to counteract ambition"577 among governmental actors to maintain a power equilibrium. But no such institutional backup is available if the general public itself lacks civic virtue—meaning the capacity to participate intelligently in self-government and to elect officials who are themselves virtuous.578 Indeed, civic virtue is thus even more important,579 Madison believed, for the public at large than for public officials; institutional checks are necessary but not sufficient. Ultimately, the most important check on public officials is, as Madison put it, "virtue and intelligence in the community . . . ."580 Institutional constraints are necessary but not

sufficient for the survival of liberty, Madison believed; they cannot be relied upon absent a body politic possessed of civic virtue.581

The negative feedback loop ensures that 3 branches will continue to atrophy and be unable to check national security bureaucracy

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

This is the nub of the negative feedback loop in which the United States is now locked. Resuscitating the Madisonian institutions requires an informed, engaged electorate, but voters have little reason to be informed or engaged if their efforts are for naught—and as they become more uninformed and unengaged, they have all the more reason to continue on that path. The Madisonian institutions thus continue to atrophy, the power of the Trumanite network continues to grow, and the public continues to disengage.

3 branches can't check national security bureaucracy --- they have an incentive to fall in line

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

The second difficulty with legal and public-opinion based checks on the Trumanite network is the assumption in Madison's theory that the three competing branches act independently. "[I]t is evident that each department should have a will of its own," says The Federalist.570 This is achieved by ensuring that each is "so constituted that the members of each should have as little agency as possible in the appointment of the members of the others."571 Different policy preferences will obtain because the three Madisonian branches will act upon different motives. But when it counts, the branches do not. Each branch has the same ultimate incentive: to bring its public posture into sync with the private posture of the Trumanites.572 The net effect is "balance," after a fashion, in the sense that the end result is outward harmony of a sort easily mistaken for Madisonian-induced equipoise. But the balance is not an equilibrium that results from competition for power among three branches struggling "for the privilege of conducting American foreign policy," as Edward S. Corwin memorably put it.573 The "system" that produces this ersatz consensus is a symbiotic tripartite co-dependence in which **the three Madisonian branches fall over themselves to keep up with the Trumanites**. The ostensible balance is **artificial**; it reflects a juridical legerdemain created and nurtured by the Trumanite network, which shares, defends, and begins with the same static assumptions. Bagehot relates the confidential advice of Lord Melbourne to the English Cabinet: "It is not much matter which we say, but mind, we must all say the same."574 The Madisonian institutions and the Trumanite network honor the same counsel.

Congress and courts can't constrain the national security establishment

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

IV. The Reality of Madisonian Weakness

Although the Madisonian institutions seem to be in charge and, indeed, to be possessed of power broad enough to remedy their own deficiencies, a close look at each branch of government reveals why they are not. A more accurate description would be that those institutions are in a state of entropy and have become, in Bagehot's words, "a disguise"—"the fountain of honour" but not the "spring of business."241 The Presidency, Congress, and the courts appear to set national security policy, but in reality **their role is minimal**. **They exercise decisional authority more in form than in substance.** This is the principal reason that the system has not, as advertised, self-corrected.242

--- AT: Congress Checks

Congress can't ensure implementation and enforcement --- it is a tool of the national security bureaucracy

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

B. The Congress

Like the courts, Congress's apparent power also vastly outstrips its real power over national security. Similar to the Trumanites, its members face a blistering work load. Unlike the Trumanites, their work is not concentrated on the one subject of national security. On the tips of members' tongues must be a ready and reasonably informed answer not only to whether the United States should arm Syrian rebels, but also whether the medical device tax should be repealed, whether and how global warming should be addressed, and myriad other issues. The pressure on legislators to be generalists creates a need to **defer to national security experts**. To a degree congressional staff fulfill this need. But **few can match the Trumanites' informational base**, drawing as they do on intelligence and even legal analysis that agencies often withhold from Congress. As David Gergen put it, "[p]eople . . . simply do not trust the Congress with sensitive and covert programs."344

The Trumanites' threat assessments,345 as well as the steps they take to meet those threats, are therefore **seen as presumptively correct** whether the issue is the threat posed by the targets of drone strikes, by weapons of mass destruction in Iraq, or by torpedo attacks on U.S. destroyers in the Gulf of Tonkin. Looming in the backs of members' minds is the perpetual fear of casting a career-endangering vote. No vote would be more fatal than one that might be tied causally to a cataclysmic national security breakdown. While the public may not care strongly or even know about many of the Bush policies that Obama has continued, the public could and would likely know all about any policy change—and who voted for and against it—in the event Congress

bungled the protection of the nation. No member wishes to confront the "if only" argument: the argument that a devastating attack would not have occurred if only a national security letter had been sent, if only the state secrets privilege had been invoked, if only that detainee had not been released. Better safe than sorry, from the congressional perspective. Safe means strong. Strong means supporting the Trumanites.

Because members of Congress are chosen by an electorate that is disengaged and uninformed, **Madison's grand scheme of an equilibrating separation of powers has failed**, and a different dynamic has arisen.346 His design, as noted earlier,347 anticipated that ambition counteracting ambition would lead to an equilibrium of power and that an ongoing power struggle would result among the three branches that would leave room for no perilous concentration of power.348 The government's "several constituent parts" would be "the means of keeping each other in their proper places."349 But the overriding ambition of legislators chosen by a disengaged and uninformed electorate is not to accumulate power by prescribing policy for the Trumanites, as Madison's model would otherwise have predicted. Their overriding ambition is to win reelection, an ambition often inconsistent with the need to resist encroachments on congressional power. All members of Congress know that they cannot vote to prescribe—or proscribe—any policy for anyone if they lose reelection. It is not that Madison was wrong; it is that the predicate needed for the Madisonian system to function as intended—civic virtue—is missing.

As a result, **Trumanite influence permeates the legislative process**, often eclipsing even professional committee staff. Trumanites draft national security bills that members introduce. They endorse or oppose measures at hearings and mark-ups. They lobby members, collectively and one-on-one. Their positions appear on the comparative prints that guide members through key conference committee deliberations. Sometimes Trumanites draft the actual language of conference reports. They wait outside the chambers of the House and Senate during floor debates, ready on-the-spot to provide members with instant arguments and data to back them up. Opponents frequently are blind-sided. **Much of this activity is removed from the public eye**, leading to the impression that the civics-book lesson is correct; **Congress makes the laws. But the reality is that virtually everything important on which national security legislation is based originates with or is shaped by the Trumanite network**.

Conversely, congressional influence in the Trumanites' decisionmaking processes is all but nil. The courts have, indeed, told Congress to keep out. In 1983, the Supreme Court invalidated a procedure, called the "legislative veto," which empowered Congress to disapprove of Trumanite arms sales to foreign nations, military initiatives, and other national security projects.350 The problem with the concept, the Court said, was that it permitted Congress to disapprove of executive action without the possibility of a presidential veto.351 A legislative proposal thereafter to give the Senate Intelligence Committee the power to approve or disapprove covert actions was rejected, on the grounds that the Court had ruled out such legislative controls.352

Restrictions will fail --- executive will circumvent

Pierce, 14 (Charles P., 2/17/2014, "The Imperial Masquerade of Barack Obama," http://www.esquire.com/blogs/politics/Imperial_Masquerade)

As much as we probably would like it not to happen, the Lawless President narrative seems to have reached that stage in our national dialogue in which enough of "some people" are "saying"

things about it that the courtier press feels obligated to "cover the controversy," which is how we're all going to have to spend months listening to our radio Tom Paines -- on whom the actual Tom Paine would not have deigned to spit -- tell us that Liberty (!) is indeed threatened by what the president is about these days.

Look, if I thought our current political class capable of engaging the public in a serious debate over the wild-assed expansion of executive power over the last 50 years, and if I thought it had the courage to do something about it, I'd be at the front of the line. But, come on, can you see the Congress making a serious attempt to re-establish the constitutional war powers that it has deeded away piecemeal to the Executive over the past 70 years? (In the long view of history, it was plain that the War Powers Act essentially was dead from birth.) Can you see the establishment of legitimate congressional oversight of, say, the intelligence community, and the use to which every president puts it? Can you imagine a serious congressional prohibition of drone warfare that the Executive would not feel free to violate with impunity? Instead, we get an argument whittled down to a fine point of stupid -- Our President Is A Nicer Authoritarian Than Yours Is. There is a Democrat in the White House so it is the Republicans -- and the conservative monkeyhouse that is the party's policy apparatus -- howling about imperial presidencies after being deadly silent about C-Plus Augustus and his signing statements and the vast arrogation of power that occurred under the doctrine of the unitary executive. And vice versa. And so on, forever, we go. Charlie Savage, the truly invaluable national-security reporter at The New York Times, put it plainly in Takeover, his book on the imperial administration of George W. Bush and Dick Cheney:

> Whenever presidentialists have gained control of the White House, they have tended to make grandiose claims of presidential power. Then, when scandals and misgovernment have arisen, the presidentialists have temporarily retreated, only to slowly retake the ground they lost. The Korean War, the Vietnam War and the Watergate scandal, the Iran-Contra scandal, and now the Iraq War and the war on terrorism are all chapters in this history. Each one has also been a difficult time in America.

As loud as is the current frothing over some unlateral tinkering with the Affordable Care Act, and the president's decision to get the Pentagon janitors a raise, prior to the John Yoo-sanctified follies of the previous administration, the clearest example of how destructive an unmoored and unrestrained Executive can be was, as Savage points out, the Iran-Contra foolishness, which remains the great lost opportunity for the country and its politicians to stuff the presidency back into the constitutional corral where it belongs. We all blew that one -- the politicians did, certainly, but so, disgracefully, did the elite media and, ultimately, so did the American people their own selves. In 1988, knowing full well what had gone on, we elected to the presidency a vice-president who was hip-deep in the crimes and the cover-up, and we did it because he was able to feign anger convincingly enough while lying his withered hindquarters off to Dan Rather. In A Very Thin Line, his definitive account of the Iran-Contra crimes, historian Theodore Draper gives us an account of what happened to the only serious congressional attempt to respond to the demonstrable lawlessness of the Reagan administration.

As you may recall, Iran-Contra was essentially an attempt by the Reagan White House to evade a law prohibiting direct American aid to the various priest-killers and nun-rapers we were supporting in Central America. (There were a number of other facets, but that's basically what it was all about.) One of the ways the Reagan people tried to get around the law was to solicit aid -- financial and otherwise -- from third countries. In the summer of 1989, Senator Daniel Patrick Moynihan introduced a bill specifically designed to close that loophole, and to make what the

Reaganauts tried to do a felony. As Draper points out, all hell promptly broke loose. President George H.W. Bush threatened to veto the bill, which he eventually did at the end of November. Nobody in the country said boo, even though Moynihan had drafted a bill that specifically addressed the crimes at the heart of a scandal that had occupied the government for two years, and that nearly blew up a presidency, and probably should have, and a president who knew goddamn good and well what had gone on vetoed the bill, which was directly aimed at prohibiting activities in which said president had been intimately involved.

The nation yawned. A lot of it was simple apathy, and the steady abandonment on the part of the country of the obligations of self-government, and the concomitant lassitude as to their duties by the politicians elected by an apathetic electorate. Some of it was simple fear; this was particularly true of the press, which, as Mark Hertsgaard explains in On Bended Knee, didn't want to be thought of as having "destroyed" another lawless presidency, as though that wasn't the essential job description in Amendment I. (This, of course, was not a consideration in the 1990's, when a lot of the same people spent two years chasing Bill Clinton's penis all over the Beltway.) This dereliction was usually excused within the elite media with the condescending argument that "the people" could not stand the trauma of another "failed presidency." But this is inexcusable timidity. As Draper writes:

Not every dispute over the Constitution endangers it. This one, however, is qualitatively different. An authoritarian, autocratic presidency in "the management of foreign relations" is still a clear and present danger, "most susceptible of abuse of all the trusts committed to a Government." And whatever we may think of the constitutional issue, there remains the question: Do we want that kind of presidency?

The answer, for the moment, remains generally yes. Everything else is political noise.

--- AT: Courts Check

Judicial restrictions can't solve --- will either throw out cases or be biased and defer

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

The judiciary, in short, does not have the foremost predicate needed for Madisonian equilibrium: "a will of its own."304 Whatever the court, judges normally are able to find what appear to the unschooled to be sensible, settled grounds for **tossing out challenges to the Trumanites' projects**. Dismissal of those challenges is **couched in arcane doctrine** that harks back to early precedent, invoking implicitly the courts' mystical pedigree and an aura of politics-transcending impartiality. But challenges to the Trumanites' projects **regularly get dismissed** before the plaintiff ever has a chance to argue the merits either before the courts or, sometimes more importantly, the court of public opinion. Try challenging the Trumanites' refusal to make public their budget305 on the theory that the Constitution does, after all, require "a regular statement and account of the receipts and expenditures of all public money";306 or the membership of Members of Congress in the military reserve307 on the theory that the Constitution does, after all, prohibit Senators and Representatives from holding "any office under the United States";308 or the

collection of phone records of the sort given by Verizon to the NSA on the theory that the law authorizing the collection is unconstitutional.309 Sorry, no standing, case dismissed.310 Try challenging the domestic surveillance of civilians by the U.S. Army311 on the theory that it chills the constitutionally protected right to free assembly,312 or the President's claim that he can go to war without congressional approval313 on the theory that it is for Congress to declare war.314 Sorry, not ripe for review, case dismissed.315 Try challenging the introduction of the armed forces into hostilities in violation of the War Powers Resolution.316 Sorry, political question, non-justiciable, case dismissed.317 Try challenging the Trumanites' refusal to turn over relevant and material evidence about an Air Force plane accident that killed three crew members through negligence,318 or about racial discrimination against CIA employees,319 or about an "extraordinary rendition" involving unlawful detention and torture.320 Sorry, state secrets privilege, case dismissed.321

Sometimes the courts have no plausible way of avoiding the merits of national security challenges. **Still, the Trumanites win.** The courts eighty years ago devised a doctrine—the "non-delegation doctrine"—that forbids the delegation of legislative power by Congress to administrative agencies.322 Since that time it has rarely been enforced, and never has the Court struck down any delegation of national security authority to the Trumanite apparatus.323 Rather, **judges stretch to find "implied" congressional approval of Trumanite initiatives**. Congressional silence, as construed by the courts, constitutes acquiescence.324 Even if that hurdle can be overcome, the evidence necessary to succeed is difficult to get; as noted earlier,325 the most expert and informed witnesses all have signed nondisclosure agreements, which prohibit any discussion of "classifiable" information without pre-publication review by the Trumanites. As early as 1988, over three million present and former federal employees had been required to sign such agreements as a condition of employment.326 Millions more have since become bound to submit their writings for editing and redaction before going to press. And as **the ultimate trump card**, the Trumanites are cloaked in, as the Supreme Court put it, "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress."327 **The basis of their power, the Court found, is, indeed, not even the Constitution itself**; the basis of Trumanite power is external sovereignty—the membership of the **U**nited **S**tates in the community of nations, which confers extra-constitutional authority upon those charged with exercising it.328

Courts can't effectively constrain executive national security officials

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Yet the larger picture remains valid. Through the long list of military conflicts initiated without congressional approval—Grenada, Panama, Kosovo, and, most recently, Libya—the courts have never stopped a war, with one minor (and temporary) exception. In 1973, Justice William O. Douglas did issue an order to halt the bombing of Cambodia333—which lasted a full nine hours, until the full Supreme Court overturned it.334 The Court's "lawless" reversal was effected through an extraordinary telephone poll of its members conducted by Justice Thurgood Marshall. "[S]ome Nixon men," Douglas believed, "put the pressure on Marshall to cut the corners."335

Seldom do judges call out even large-scale constitutional violations that could risk getting on the wrong side of an angry public, as American citizens of Japanese ethnicity discovered during World War II.336 Whatever the **cosmetic effect**, the four cases representing the Supreme Court's supposed "push-back" against the War on Terror during the Bush Administration freed, at best, a tiny handful of detainees.337 As of 2010 fewer than 4% of releases from Guantánamo followed a judicial release order.338 A still-unknown number of individuals, numbering at least in the dozens, fared no better. These individuals were detained indefinitely— without charges, based on secret evidence, sometimes without counsel—as "material witnesses" following 9/11.339 One can barely find a case in which anyone claiming to have suffered even the gravest injury as the result of the Bush-Obama counterterrorism policies has been permitted to litigate that claim on the merits—let alone to recover damages. The Justice Department's seizure of Associated Press ("AP") records was carried out pursuant to judicially-approved subpoenas, in secret, without any chance for the AP to be heard.340 The FISC 341 has barely pretended to engage in real judicial review. Between 1979 and 2011, the court received 32,093 requests for warrants. It granted 32,087 of those requests, and it turned down eleven.342 In 2012, the court received 1,789 requests for electronic surveillance, one of which was withdrawn. All others were approved.343 The occasional counterexample notwithstanding, **the courts cannot seriously be considered a check on America's Trumanite network**.

And, at best, the plan just perpetuates the façade that the judiciary can effectively constrain the executive

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

As is true with respect to the other Madisonian institutions, there are, of course, instances in which the judiciary has poached on the Trumanites' domain. The courts rebuffed an assertion of the commander-inchief power in ordering President Truman to relinquish control of the steel mills following their seizure during the Korean War.329 Over the Trumanites' objections, the courts permitted publication of the Pentagon Papers that revealed duplicity, bad faith, and ineptitude in the conduct of the Vietnam War.330 The Supreme Court did overturn military commissions set up to try enemy combatants for war crimes,331 and two years later found that Guantánamo detainees had unlawfully been denied habeas corpus rights.332 Personnel does sometimes matter. Enough apparent counterexamples exist to **preserve the façade**.

--- AT: We Make Congress / Courts / President Better

Madisonian institutions can't be reformed to effectively restrict national security bureaucracy

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

Some suggest that the answer is to admit the failure of the Madisonian institutions, recognize that for all their faults the external checks are all that really exist, acknowledge that the Trumanite

network cannot be unseated, and try to work within the current framework.530 But the idea that external checks alone do or can provide the needed safeguards is false. If politics were the effective restraint that some have argued it is,531 politics—intertwined as it is with law—would have produced more effective legalist constraints. It has not. The failure of law is and has been a failure of politics. If the press and public opinion were sufficient to safeguard what the Madisonian institutions were designed to protect, the story of democracy would consist of little more than a series of elected kings, with the rule of law having frozen with the signing of Magna Carta in 1215. Even with effective rules to protect free, informed, and robust expression—which is an enormous assumption—public opinion alone cannot be counted upon to protect what law is needed to protect. The hope that it can do so recalls earlier reactions to Bagehot's insights—the faith that "the people" can simply "throw off" their "deferential attitude and reshape the political system," insisting that the Madisonian, or dignified, institutions must "once again provide the popular check" that they were intended to provide.532

That, however, is exactly what many thought they were doing in electing Barack Obama as President. The results need not be rehearsed; little reason exists to expect that some future public effort to resuscitate withered Madisonian institutions would be any more successful. Indeed, the added power that the Trumanite network has taken on under the Bush- Obama policies would make that all the more difficult. It is simply naïve to believe that a sufficiently large segment of informed and intelligent voters can somehow come together to ensure that sufficiently vigilant Madisonian surrogates will somehow be included in the national security decisionmaking process to ensure that the Trumanite network is infused with the right values. Those who believe that do not understand why that network was formed, how it operates, or why it survives. They want it, in short, to become more Madisonian. The Trumanite network, of course, would not mind appearing more Madisonian, but its enduring ambition is to become, in reality, less Madisonian.

--- AT: Public Opinion Ensures Compliance

National security bureaucracy will buck the President and manipulate public opinion to control policymaking

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

The idea that presidential backbone is all that is needed further presupposes a model in which the Trumanites share few of the legitimacy-conferring features of the constitutional branches and will easily submit to the President. But that supposition is erroneous. Mass entertainment glorifies the military, intelligence, and law enforcement operatives that the Trumanites direct. The public is emotionally taken with the aura of mystery surrounding the drone war, Seal Team Six, and cyber-weapons. Trumanites, aided by Madisonian leaks, embellish their operatives' very real achievements with fictitious details, such as the killing of Osama bin Laden386 or the daring rescue of a female soldier from Iraqi troops.387 They cooperate with the making of movies that praise their projects, like Zero Dark Thirty and Top Gun, but not movies that lampoon them, such as Dr. Strangelove (an authentic F-14 beats a plastic B-52 every time).388 Friendly fire incidents are downplayed or covered up.389 The public is further impressed with operatives' valor as they

are lauded with presidential and congressional commendations, in the hope of establishing Madisonian affiliation.390 Their simple mission—find bad guys and get them before they get us—is powerfully intelligible. Soldiers, commandos, spies, and FBI agents occupy an honored pedestal in the pantheon of America's heroes. Their secret rituals of rigorous training and preparation mesmerize the public and fortify its respect. To the extent that they are discernible, the Trumanites, linked as they are to the dazzling operatives they direct, command a measure of admiration and legitimacy that the Madisonian institutions can only envy.391 Public opinion is, accordingly, a flimsy check on the Trumanites; it is a **manipulable tool of power enhancement**. It is therefore rarely possible for any occupant of the Oval Office to prevail against strong, unified Trumanite opposition, for the same reasons that members of Congress and the judiciary cannot; a non-expert president, like a non-expert senator and a non-expert judge, is intimidated by expert Trumanites and does not want to place himself (or a colleague or a potential political successor) at risk by looking weak and gambling that the Trumanites are mistaken. So presidents wisely "choose" to go along.

The public and media is not a suitable check

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

It might also be supposed that existing, non-Madisonian, external restraints pose counterweights that compensate for the weakness of internal, Madisonian checks. The press, and the public sentiment it partially shapes, do constrain the abuse of power—but only up to a point. To the extent that the "marketplace of ideas" analogy ever was apt, that marketplace, like other marketplaces, is given to distortion. Public outrage is notoriously fickle, manipulable, and selective, particularly when driven by anger, fear, and indolence. Sizeable segments of the public—often egged on by public officials—lash out unpredictably at imaginary transgressors, failing even in the ability to identify sympathetic allies.518 "[P]ublic opinion," Sorensen wryly observed, "is not always identical with the public interest."519

The influence of the media, whether to rouse or dampen, is thus limited. The handful of investigative journalists active in the United States today are the truest contemporary example of Churchill's tribute to the Royal Air Force.520 In the end, though, access remains everything to the press. Explicit or implicit threats by the targets of its inquiries to curtail access often yield editorial acquiescence. Members of the public obviously are in no position to complain when a story does not appear. Further, even the best of investigative journalists confront a high wall of secrecy. Finding and communicating with (on deep background, of course) a knowledgeable, candid source within an opaque Trumanite network resistant to efforts to pinpoint decision-makers521 can take years. Few publishers can afford the necessary financial investment; newspapers are, after all, businesses, and the bottom line of their financial statements ultimately governs investigatory expenditures. Often, a second corroborating source is required. Even after scaling the Trumanite wall of secrecy, reporters and their editors often become victims of the deal-making tactics they must adopt to live comfortably with the Trumanites. Finally, members of the mass media are subject to the same organizational pressures that shape the behavior of other groups. They eat together, travel together, and think together. A case in point was the Iraq War. The Washington Post ran twenty-seven editorials in favor of the war along with dozens of op-ed

pieces, with only a few from skeptics.522 The New York Times, Time, Newsweek, the Los Angeles Times, and the Wall Street Journal all marched along in lockstep. 523 As Senator Eugene McCarthy aptly put it, reporters are like blackbirds; when one flies off the telephone wire, they all fly off.524

More importantly, the premise—that a vigilant electorate fueled by a skeptical press together will successfully fill the void created by the hollowed-out Madisonian institutions—is wrong.525 This premise supposes that those outside constraints operate independently, that their efficacy is not a function of the efficacy of internal, Madisonian checks.526 But the internal and external checks are woven together and depend upon one another. 527 Non-disclosure agreements (judicially-enforced gag orders, in truth) are prevalent among those best positioned to criticize.528 Heightened efforts have been undertaken to crush vigorous investigative journalism and to prosecute and humiliate whistleblowers and to equate them with spies under the espionage laws. National security documents have been breathtakingly over-classified. The evasion of Madisonian constraints by these sorts of policies has the net effect of narrowing the marketplace of ideas, curtaining public debate, and gutting both the media and public opinion as effective restraints.529 The vitality of external checks depends upon the vitality of internal Madisonian checks, and the internal Madisonian checks only minimally constrain the Trumanites.

--- AT: Consensus Exists

Consensus not meaningful --- it is just political branches trying to stay in sync with national security bureaucracy

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

It is no answer to insist that, whatever the system's faults, the Madisonian accountability mechanisms have at least generated a political consensus.567 Even if consensus exists among the Madisonians themselves, the existence of a public consensus on national security policy is at best doubtful.568 Further, if the application of Bagehot's theory to U.S. national security policy is correct, whatever consensus does exist at the political level is synthetic in that it derives not from contestation among the three branches of the federal government but from efforts of the Madisonian institutions to remain in sync with the Trumanite network. That network is the moving force behind any consensus. It has forged the policies that the consensus supports; it has orchestrated Madisonian support. Finally, even if real, the existence of a Madisonian/Trumanite consensus says nothing about the content of the consensus—nothing about whether Madison's second great goal of protecting the people from the government has been vindicated or defeated. Autocracy can be consensus-based. The notion of a benign modern-day consensus on national security policy is, indeed, reminiscent of the observation of Richard Betts and Leslie Gelb who, reviewing agreements that emerged from national security deliberations during the Johnson Administration, concluded that "the system worked."569 Well, perhaps; the result was Vietnam.

--- AT: Double Government Thesis Wrong

Double government does exist in the U.S. --- bureaucracy is self-multiplying

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, "National Security and Double Government," http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf, JMP)

To many, inculcated in the hagiography of Madisonian checks and balances and oblivious of the reach of Trumanite power, the response to these realizations will be denial. The image of a double national security government will be shocking. It cannot be right. It sounds of conspiracy, "a state within," and other variations on that theme. "The old notion that our Government is an extrinsic agency," Bagehot wrote, "still rules our imaginations."603 That the Trumanite network could have emerged in full public view and without invidious intent makes its presence all the more implausible. Its existence challenges all we have been taught.

There is, however, little room for shock. The pillars of America's double government have long stood in plain view for all to see. We have learned about significant aspects of what Bagehot described—from some eminent thinkers. Max Weber's work on bureaucracies showed that, left unchecked, the inexorability of bureaucratization can lead to a "polar night of icy darkness" in which humanitarian values are sacrificed for abstract organizational ends.604 Friedrich Hayek's work on political organization led him to conclude that "the greatest danger to liberty today comes from the men who are most needed and most powerful in government, namely, the efficient expert administrators exclusively concerned with what they regard as the public good."605 Eric Fromm's work on social psychology showed how people unconsciously adopt societal norms as their own to avoid anxiety-producing choices, so as to "escape from freedom."606 Irving Janis's work on group dynamics showed that the greater a group's esprit de corps, "the greater the danger that independent critical thinking will be replaced by groupthink, which is likely to result in irrational and dehumanizing actions directed against out-groups."607 Michael Reisman's work on jurisprudence has shown how de facto operational codes can quietly arise behind publicly-embraced myth systems, allowing for governmental conduct that is not approved openly by the law.608 Mills' 1956 work on power elites showed that the centralization of authority among officials who hold a common world view and operate in secrecy can produce a "military metaphysic" directed at maintaining a "permanent war economy."609 One person familiar with Mills' work was political scientist Malcolm Moos, the presidential speechwriter who five years later wrote President Eisenhower's prophetic warning.610 "In the councils of government," Eisenhower said, "we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."611

Bagehot anticipated these risks. Bureaucracy, he wrote, is "the most unimproving and shallow form of government,"612 and the executive that commands it "the most dangerous."613 "If it is left to itself," he observed, "without a mixture of special and non-special minds," decisional authority "will become technical, **self-absorbed, self-multiplying**."614 The net result is responsibility that is neither fixed nor ascertainable but diffused and hidden,615 with implications that are beyond historical dispute. "The most disastrous decisions in the twentieth century," in Robert Dahl's words, "turned out to be those made by authoritarian leaders freed from democratic restraints."616

The benefits derived by the **U**nited **S**tates from double government—enhanced technical expertise, institutional memory and experience, quick-footedness, opaqueness in confronting adversaries, policy stability, and insulation from popular political oscillation and decisional idiosyncrasy —need hardly be recounted. Those benefits, however, have not been cost-free. The price lies in well-known risks flowing from centralized power, **unaccountability**, and **the short-circuiting of power equilibria**. Indeed, in this regard the Framers thought less in terms of risk than certainty. John Adams spoke for many: "The nation which will not adopt an equilibrium of power must adopt a despotism. There is no other alternative."617

Advantage Answers

1nc Terrorism Adv

****note when prepping file --- this block contains almost exclusively evidence to answer the 1ac internal links. You should supplement this with link turns (surveillance good to prevent terrorism) and uniqueness evidence about winning the war on terror now. If you are not straight turning the advantage, you should also supplement the block with other arguments, especially impact answers.*

CVE fails for a number of reasons --- won't check extremism

- Not implemented correctly, bureaucratic turf fights, lacks funding, doesn't make Americans safer

Crowley, 15 (1/8/2015, Michael, "No answer for homegrown terrorism? Obama's plan to combat radicalization is a flop, critics say," http://www.politico.com/story/2015/01/homegrown-terrorism-obama-administration-114100.html, JMP)

In early 2011, White House officials realized they had a problem on their hands: the threat of homegrown Islamic radicalism

In the two years since President Obama had taken office, several young Muslim Americans had plotted terrorist attacks at home, including one who nearly exploded a car bomb in Times Square. White House aides concluded that the government's efforts to combat radicalism within America's Muslim communities were a disjointed mess.

Denis McDonough, a top Obama aide who is now White House chief of staff, took charge of the problem, overseeing a strategy to prevent violent extremism. Released that summer, the plan focused on creating closer partnerships with community leaders to help identify budding radicals and steer them to a peaceful path.

Obama, McDonough said in a speech that year, "has been focused on this since he took office. Behind closed doors, he has insisted that his national security team make this a priority."

But after a recent string of attacks on their fellow citizens by Islamic radicals, including Wednesday's massacre in Paris by a pair of French nationals, critics complain that **the plan has**

been halfheartedly implemented, **produced bureaucratic turf fights**, **lacks funding**, and **does little to make Americans safer** at a moment when the Islamic extremist message is more prevalent than ever.

"I don't think we have a strategy," said House Homeland Security Committee Chairman Michael McCaul. "We don't see a lead agency, there's no line item in the budget. There are no metrics to measure success. We don't even have a common definition for what it is."

The complaints don't come only from Republicans like McCaul. Even one of the key authors of the 2011 White House strategy, issued under the president's signature, now doubts its effectiveness.

"Considering where we started, we've made progress. Is it really affecting things on the ground? I don't know," said Quintan Wiktorowicz, a former Obama national security council aide who specializes in radical extremism.

Their "Muslim-American cooperation" claim is wrong and offensive

Crowley, 15 (1/8/2015, Michael, "No answer for homegrown terrorism? Obama's plan to combat radicalization is a flop, critics say," http://www.politico.com/story/2015/01/homegrown-terrorism-obama-administration-114100.html, JMP)

Meanwhile, even as Obama's strategy takes fire from national security hawks like McCaul, it has rankled some civil liberties advocates — as well as senior law enforcement officials in Washington — who call it misguided and even counterproductive.

A public outreach strategy is built on a "false premise," says Mike German, a former undercover FBI agent now with the Brennan Center for Justice, namely that "there is a monolithic Muslim community [whose leaders] know who the bad guys are and simply aren't telling. **That's both factually wrong and insulting to the innocent Muslim community."**

Some Muslim leaders have in fact complained about Obama's strategy, which was careful not to single out any particular religion but has focused on Muslim communities in practice. Homeland Security Secretary Jeh Johnson has called building that trust "a personal priority," and has held closed-door meetings with American Muslim leaders.

Officials say that several would-be domestic terrorists have been identified thanks to tips from within their communities, and that better trust between law enforcement and Muslim leaders will encourage more such reporting.

But German warns that a "If you see something, say something" policy can be counter-productive, creating false alarms and deluging law enforcement officials with false leads.

German noted that, in an April 2014 speech, Obama's top counterterrorism advisor, Lisa Monaco, suggested that parents be alert to "sudden personality changes in their children at home — becoming confrontational."

"Okay, but do we want every parent with a belligerent teenager to call the FBI?" German asked. "Rather than spending resources focusing on innocent people and communities, they should be focusing their time and attention on people they have some factual basis to suspect of wrongdoing."

Programs to prevent extremism will fail --- we don't understand the causes AND Britain proves community outreach programs create a stigma that actually reduces cooperation

Byman, 15 --- professor in the security studies program at Georgetown University and research director of the Center for Middle East Policy at Brookings (2/13/2015, Daniel, "Five myths about violent extremism," http://www.washingtonpost.com/opinions/five-myths-about-violent-extremism/2015/02/13/2dc72786-b215-11e4-827f-93f454140e2b_story.html, JMP)

Citing the "tragic attacks in Ottawa, Sydney, and Paris," the White House on Wednesday is convening a summit on violent extremism. Its goal is admirable and ambitious: neutralizing terrorism's root causes by stopping people from radicalizing in the first place. **Yet the causes of violent extremism are poorly understood, and programs are often targeted at the wrong audiences.** So to help the world leaders at the summit do more good than harm, let's dispel some of the biggest myths.

1. We understand radicalization.

The just-released National Security Strategy warns repeatedly of the danger of extremism, citing weak governance, widespread grievances, repression and the lack of a flourishing civil society among other causes that allow "extremism to take root." This list suggests that we know what motivates radicalization — but almost every social malady falls into these categories. The difficult reality is that **there is no single path toward radicalization; it varies by country, by historical period and by person**.

Experts have long searched for a useful psychological profile of terrorists, without much success. The problem, as terrorism scholar Bruce Hoffman observed many years ago, is "how disturbingly 'normal' most terrorists seem."

Nor does the answer lie in the realm of faith. Many volunteers for terrorist groups have little knowledge of religion. Indeed, their lack of religious knowledge makes them easy prey for recruiters who don the mantle of religious authority. The two British Muslims who bought "Islam for Dummies" before heading to Syria are more the rule than the exception.

And **describing an entire religious group as potentially dangerous isn't especially helpful**. Britain's Prevent program, which included efforts to promote community cohesion and fight extremist ideology, **made Muslims feel stigmatized and made it harder to gain their cooperation**.

Community outreach not key to counter-terror programs AND Muslim-American communities are already providing info

Crowley, 15 (2/18/2015, Michael, "Barack Obama's 'extremism' language irks both sides; His carefully selected words on ISIL have frustrated both the left and the right," http://www.politico.com/story/2015/02/barack-obamas-extremism-language-irks-both-sides-115304.html, JMP) *****Note --- Hina Shamsi is director of the American Civil Liberties Union's national security project**

Critics of community outreach programs say **little data exists to demonstrate their effectiveness in spotting terrorists**. One academic guest at Wednesday's summit admitted as much, Shamsi said.

Nor, they argue, is there reason to believe Muslim-American communities are shy about reporting would-be radicals: A 2011 study by a University of North Carolina at Chapel Hill sociologist found that "the largest single source of initial information [about terror plots] … involved tips from the Muslim-American community."

The plan won't make CVE effective --- mistrust of government runs too deep because of past outreach programs that doubled as surveillance policies

Crowley, 15 (2/18/2015, Michael, "Barack Obama's 'extremism' language irks both sides; His carefully selected words on ISIL have frustrated both the left and the right," http://www.politico.com/story/2015/02/barack-obamas-extremism-language-irks-both-sides-115304.html, JMP)

Barack Obama's summit on violent extremism has come under fire from conservatives who are bashing his reluctance to use the words "Islam" and "Muslim" to describe the threat from terror groups like Al Qaeda and the Islamic State in Iraq and the Levant.

But in his remarks at the event Wednesday, Obama sounded more concerned about mollifying Muslim Americans who feel targeted by government outreach to their communities, promising not to "securitize" the relationship. Even so, some Muslim American and civil rights leaders said much of Wednesday's session of the White House's three-day Countering Violent Extremism summit — which focused on the threat from domestic radicals — **was based on flawed premises**.

"Today's summit confirmed that there are significant reasons for concern about [such] approaches and that none of the hard questions about protection of civil rights and privacy have yet been answered," said Hina Shamsi, director of the American Civil Liberties Union's national security project. Shamsi, who attended Wednesday's proceedings, said that while White House officials had listened to such concerns in private meetings, they were given little airing at the summit.

With Americans joining ISIL and Al Qaeda in Syria, and after recent domestic terror attacks in Europe and Canada, the Obama administration is on high alert for terror attacks staged from within. A plan to counter domestic radicalism launched in 2011 under the supervision of Denis McDonough, now Obama's chief of staff, aimed to identify possible terrorists before they struck through education about risk factors and greater dialogue and trust between law enforcement and local communities. On Wednesday, Obama touted pilot programs in Boston, Los Angeles and Minneapolis-St. Paul that embody such efforts.

Many Muslim leaders protest that they are the obvious focus of the initiatives, even if they are described in the generic, non-religious terms that annoy conservatives. And they say the difficult art of discerning emerging terrorists from brooding social misfits is outweighed by the risk of civil liberties violations.

"Since Sept. 11, Muslims have been targeted and profiled, and **we have created this narrative that we need to 'watch out' for the Muslim community**," said Jaylani Hussein, executive director of the Minnesota chapter of the Council on Muslim-American Relations.

In his remarks on Wednesday, Obama took care to address such anxieties.

"I know some Muslim Americans have concerns about working with government, particularly law enforcement. And their reluctance is rooted in the objection to certain practices where Muslim Americans feel they've been unfairly targeted," Obama said.

"So, in our work, we have to make sure that abuses stop, are not repeated, that we do not stigmatize entire communities. Nobody should be profiled or put under a cloud of suspicion simply because of their faith. Engagement with communities can't be a cover for surveillance."

Critics of Obama's efforts were not satisfied.

"The idea that you're tying outreach to terrorist activity is both offensive to the community and specious from a counterterrorism research perspective," said Mike German of the Brennan Center for Justice at New York University School of Law.

The frustration extends beyond civil liberties advocates and into the Muslim-American communities the Obama administration hopes to reach.

One of them is the Minneapolis-St. Paul area, home to a large Muslim immigrant population and the site of one of three counter-radicalism pilot programs featured by the White House during Wednesday's program. CAIR's Hussein said **many Muslims there mistrust government outreach** — especially after recent efforts appeared to be doubling as a means of surveillance.

After 22 Somali-Americans left the area to join the radical Islamic group Al Shabab in Somalia from 2007 to 2009, the FBI helped the Justice Department expand a longstanding community policing effort with no particular terrorism focus known as the Community Outreach program.

Unknown to local residents, according to a September 2014 report by the Brennan Center that drew from government documents, that program was funded and run by FBI counterterrorism officials in Washington collecting data on possible radicals.

The FBI revised its policies in 2010 to draw a clearer line between outreach and intelligence. "[M]embers of the public contacted through a community outreach activity," one internal memo noted, "generally do not have an expectation that information about them will be maintained in an FBI file or database."

The **mistrust lingers within Muslim communities**, Hussein said: "People believe that even talking about foreign policy puts you on some kind of watch list."

--- XT: CVE Fails

CVE won't solve --- funding shortages discourage outreach and there is resistance within the government to it

Crowley, 15 (1/8/2015, Michael, "No answer for homegrown terrorism? Obama's plan to combat radicalization is a flop, critics say," http://www.politico.com/story/2015/01/homegrown-terrorism-obama-administration-114100.html, JMP) *****note --- Quintan Wiktorowicz is a former Obama national security council aide who specializes in radical extremism, and Michael McCaul is House Homeland Security Committee Chairman**

Adding to frustration among the program's advocates, the White House announced in September that it would host an October summit dedicated to the issue. But the event has since been postponed twice, and a firm date still has not been set.

A senior administration official made no apology for the plan on Thursday, touting it as "a centerpiece of this administration's counterterrorism strategy."

"Our CVE approach is premised on the principle that local partners, including local law enforcement and communities, are at the forefront of preventing violent radicalization and recruitment both online and person-to-person," says the official.

But Wiktorowicz echoes McCaul's concern that no federal dollars are specifically allocated to the kind of counter-extremism programs Obama's 2011 strategy described, which included better communication between the government and community leaders from religious figures to Little League coaches, as well as efforts to challenge radical interpretations of Islam.

That means departments and agencies see a zero-sum game when it comes to reaching out to Muslim communities. A former government official says that local FBI offices often consider such outreach to be "social work" that requires agents to be pulled off active criminal cases. And while the FBI set up a Countering Violent Extremism Office in 2011, it **has been plagued by "personnel turnover, underfunding, and resistance from CVE skeptics in the Bureau**," Wictorowicz wrote in a June post for the national security blog Lawfare.

Funding shortfalls will undermine the program

Schmitt, 14 (10/5/2014, Eric, "U.S. Is Trying to Counter ISIS's Efforts to Lure Alienated Young Muslims," Lexis, JMP)

But efforts at countering violent extremism, especially at home, "have lagged badly behind other counterterrorism pillars," said Michael Leiter, a former director of the National Counterterrorism Center. "It is heartening to see the administration attempt to invigorate those efforts, but it is unfortunate that it has, despite the efforts of many, been so long in coming."

Government supporters question whether funds will be available to sustain these programs. "The administration has the right framework for doing this, but **long-term success will depend on sustainable resourcing to help local government, communities and law enforcement build initiatives** that can have impact," said Quintan Wiktorowicz, a former senior White House aide who was one of the principal architects of the current strategy.

That strategy here at home, called countering violent extremism, has proved much more difficult for American officials to master than the ability of the Pentagon and spy agencies to identify, track, capture and, if necessary, kill terrorists overseas.

--- XT: Muslim-American Cooperation Answers

Muslim leaders already cooperating to challenge ISIS recruitment

Goodstein, 15 (2/19/2015, Laurie, "U.S. Muslims Take On ISIS' Recruiting Machine," http://www.nytimes.com/2015/02/20/us/muslim-leaders-in-us-seek-to-counteract-extremist-recruiters.html?_r=0, JMP)

STERLING, Va. — Imam Mohamed Magid tries to stay in regular contact with the teenager who came to him a few months ago, at his family's urging, to discuss how he was being wooed by online recruiters working for the Islamic State, the extremist group in Syria and Iraq.

But the imam, a scholar bursting with charm and authority, has struggled to compete. Though he has successfully intervened in the cases of five other young men, persuading them to abandon plans to fight overseas, the Islamic State's recruiting efforts have become even more disturbing, he said, and nonstop.

"The recruiters wouldn't leave him alone," Imam Magid said of the young man he met with recently. "They were on social media with him at all hours, they tweet him at night, first thing in the morning. If I talk to him for an hour, they undo him in two hours."

President Obama on Wednesday described the fight against violent extremism as a "generational challenge" that would require the cooperation of governments, religious leaders, educators and law enforcement. But even before he called on more than 60 nations to join the effort, the rise of the Islamic State and the attacks by homegrown terrorists in Paris, Ottawa, Copenhagen and Sydney, Australia, **had jolted American Muslims into action**.

Muslim leaders here and elsewhere have already started organizing or expanding prevention programs and discussions on countering violent extremism, often with assistance from law enforcement officials and trained counter-recruiters who emphasize that the Internet's dangers for young Muslims now go far beyond pornography.

With the Islamic State in particular deploying savvy online appeals to adolescents alongside videos of horrific executions, the sense of urgency has grown. Though some Muslim leaders still resist cooperating with the government, fearing that they would be contributing to religious profiling and anti-Muslim bigotry, **many have been spurred to respond** as they have come into contact with religiously ardent youths who feel alienated by life in the West and admit that they have been vulnerable to the Islamic State's invitation to help build a puritanical utopia.

"The number is small, but one person who gets radicalized is one too many," said Rizwan Jaka, a father of six and the board chairman of the All Dulles Area Muslim Society, where Imam Magid is the spiritual leader. "It's a balancing act: We have to make sure our youth are not stereotyped in any way, but we're still dealing with the real issue of insulating them from any potential threat of radicalization."

No uniqueness for their internal link --- moderate Muslims are speaking out now against extremist violence

Byman, 15 --- professor in the security studies program at Georgetown University and research director of the Center for Middle East Policy at Brookings (2/13/2015, Daniel, "Five myths about violent extremism," http://www.washingtonpost.com/opinions/five-myths-about-violent-extremism/2015/02/13/2dc72786-b215-11e4-827f-93f454140e2b_story.html, JMP) *****note --- Byman is listing "myths" about violent extremism and answering them**

2. Moderate Muslims need to speak out.

Whenever an attack occurs, commentators chide moderate Muslims for not doing enough. Fox News contributor Monica Crowley argued that Muslims "should be condemning" the Charlie Hebdo attack but said that she hadn't "heard any condemnation." Bill Maher made a similar point when he claimed that "hundreds of millions" of Muslims "applaud an attack like this."

Impressionable young people should know that their communities reject violence, and Muslims should indeed speak out — **and they do. All the time**. They condemn specific attacks such as the Charlie Hebdo killings, and they condemn terrorism in general. As the Islamic State emerged, more than 120 Muslim scholars from around the globe issued a point-by-point rebuttal of its religious arguments.

One problem for Sunni Islam is that it lacks a single church or spokesperson, so unlike Catholicism or the more hierarchical Shiite Islam, it can't condemn (or endorse) anything in a categorical way. Blogger Daniel Haqiqatjou mockingly called for an iCondemn app that would allow Muslims to efficiently denounce acts of terror around the globe and reassure non-Muslims as to where they stand.

Of course, we shouldn't hold ordinary people responsible for what violent people do in their name. Catholics should condemn the killing of an abortion doctor, but I don't blame them for the murder if they don't.

Cooperation now with Muslim communities --- including on the CVE program

Audi, 15 (4/20/2015, Tamara, "U.S. Muslim Community Divided Over White House Outreach Plan; Law-enforcement efforts to prevent radicalization provoke both support and suspicion," http://www.wsj.com/articles/u-s-muslim-community-divided-over-white-house-outreach-plan-1429555173, JMP) ***** CVE = plan called Countering Violent Extremism**

Despite the criticism, government officials say **many Muslim communities have embraced the program**, such as in Denver and Detroit, especially in the wake of more high-profile prosecutions of young people from the U.S. attempting to join Islamic State.

Hennepin County Sheriff Rich Stanek, whose county includes Minneapolis, spoke about his outreach efforts at the White House summit on CVE earlier this year. He and others from his department attend Somali community events several nights a week. His department also hired a Somali refugee to serve as ambassador to the Somali community. Under CVE, Mr. Stanek said he hopes to expand that outreach with more community liaisons to the Somali community.

"We've built trust and that's paid off tremendously," Mr. Stanek said, pointing to the arrests in Minnesota as partly the result of information provided by community members. "This is what community outreach progarms are about."

"People are really worried about" ISIS recruitment, said an administration official. "So if Muslim-American groups are concerned, that's not the government singling them out. That's the government responding to their needs."

Another administration official recalled that in meetings with Muslim leaders at the White House earlier this year, President Barack Obama said that "there have been cases in the past that made the community more mistrustful, and said that's why it's so important for the community to be more involved."

"The core of this program is building healthy and resilient communities, promoting civic participation," said Joumana Silyan-Saba of the Los Angeles Human Relations Commission, who worked on L.A.'s CVE. Law enforcement has a role, she said, but the program also calls for beefing up social services for immigrant families.

Muslim anti-terror cooperation now

Glionna, 14 (11/3/2014, John M., "U.S. Muslim leaders say FBI pressuring people to become informants," http://www.latimes.com/nation/la-na-muslims-fbi-20141103-story.html, JMP)

In Florida, tips from the Muslim community led to the arrest of Sami Osmakac, later convicted of planning a terrorist attack at a Tampa-area nightclub. Osmakac was found guilty in June of attempted possession of a weapon of mass destruction.

--- AT: Economic Development & Education Solve Extremism

Economic development and education won't reduce terrorism

Byman, 15 --- professor in the security studies program at Georgetown University and research director of the Center for Middle East Policy at Brookings (2/13/2015, Daniel, "Five myths about violent extremism," http://www.washingtonpost.com/opinions/five-myths-about-violent-extremism/2015/02/13/2dc72786-b215-11e4-827f-93f454140e2b_story.html, JMP) *****note --- Byman is listing "myths" about violent extremism and answering them**

3. The best response is economic development and education.

It seems intuitive that poor people would be angry and that uneducated people would be more susceptible to terrorist brainwashing — a view that conservatives as well as liberals have embraced. President George W. Bush declared that it was important to fight poverty "because hope is an answer to terror." The 9/11 Commission also called for supporting public education and economic openness.

Yet even a moment's reflection shows the limits of this logic. Billions suffer poverty worldwide, and discrimination and ignorance are tragically widespread, yet few among these billions commit acts of terrorism. Religious schools in Pakistan do educate terrorists, but so do Pakistan's public

schools — and Western universities. Doctors and engineers are well represented in the ranks of international terrorists: Ayman al-Zawahiri, the current leader of al-Qaeda, is a trained surgeon.

Promoting education and economic development is good in its own right — but don't expect it to combat terrorism.

Instead, we should think small, in part because in the West the problem involves small numbers of potential terrorists: thousands, not millions. The focus should be on high-risk communities, both Muslim and non-Muslim. Prisons, for example, are breeders of terrorists, and ensuring that radicals do not dominate religious instruction behind bars and that there are programs (and intelligence agents) in place to stop terrorist recruitment is vital.

Particularly important is targeting what terrorism expert William McCants calls "law-abiding supporters" — those who embrace jihadist ideas on social media or are otherwise clearly at risk of joining a terrorist group, but have not yet broken the law. Using community interventions and other means to move these people off the path of violence will prevent the stark choice of jail or Syria, and give family members of potential recruits a reason to seek out government help.

--- 1nc Defense – No Impact

ISIS not plotting attacks against the West --- surveillance will prevent fighters returning home from carrying out attacks

Byman, 15 --- professor in the security studies program at Georgetown University and research director of the Center for Middle East Policy at Brookings (2/13/2015, Daniel, "Five myths about violent extremism," http://www.washingtonpost.com/opinions/five-myths-about-violent-extremism/2015/02/13/2dc72786-b215-11e4-827f-93f454140e2b_story.html, JMP) *****note --- Byman is listing "myths" about violent extremism and answering them**

4. The fighting in Iraq and Syria will spawn terrorism in the West.

The flow of foreign fighters to Iraq and Syria has understandably alarmed security officials around the world. FBI Director James Comey expressed the views of many when he warned in May 2014 that "there's going to be a diaspora out of Syria at some point, and we are determined not to let lines be drawn from Syria today to a future 9/11."

But officials raised similar fears about foreign fighters involved in earlier conflicts, especially after the 2003 U.S. invasion of Iraq, and those conflicts did not produce a surge in terrorism in Europe or the **U**nited **S**tates. Many of the most dangerous foreign fighters die on the battlefield, blowing themselves up in suicide attacks or perishing in firefights. Others opt to continue fighting in the region. And **those who return home are likely to be under the surveillance of state security services, inhibiting their ability to carry out attacks**.

So far the Islamic State's agenda is first and foremost local and regional — killing Alawites and Shiites, toppling the governments in Iraq and Syria, and so on — **not plotting attacks against the West**. There remains a real threat, especially from "lone wolf" attacks, as the cachet of the Islamic State inspires Muslims around the world. But such attacks are **unlikely to be on the scale of 9/11 or carried out in a sustained way**.

1nc Islamophobia / Discrimination Adv

****Note when prepping file --- this particular evidence is referencing an article by Michael Greenwald (https://firstlook.org/theintercept/2014/07/09/under-surveillance/) that claimed Muslim American Leaders were being spied on because of their race, religion, and political views.*

Their internal link is nearly impossible to prove --- built in checks prevent worst forms of discrimination

Harris, 14 --- senior staff writer at Foreign Policy, covering intelligence and cyber security (7/9/2014, Shane, "The FBI's Dirty Little Secret; The NSA wasn't the only one snooping on ordinary Americans," http://foreignpolicy.com/2014/07/09/the-fbis-dirty-little-secret/, JMP)
*****Mike German is a former FBI agent**

If the racial and religious profiling allegations prove true, the FBI would not only have broken the law, but it would be guilty of the worst intelligence abuses since the days of COINTELPRO, the covert and occasionally illegal spying programs that targeted American political activists, Vietnam War protesters, civil rights leaders, and even some U.S. government officials for their political associations and views. The ensuing scandal gave birth to the system of privacy laws that govern spying on Americans today.

But the article doesn't provide that evidence. The spreadsheet came from the seemingly endless trove of classified government documents that Snowden, a former NSA contractor, has provided to reporters, including Greenwald. **It apparently doesn't include the individual applications for warrants that Justice Department attorneys may have submitted** to the Foreign Intelligence Surveillance Court before collecting the men's emails. "It is unclear whether the government obtained any legal permission to monitor the Americans on the list," wrote Greenwald and his co-author, Murtaza Hussain. And given that any government justification for spying is presumably classified, "it is impossible to know why their emails were monitored, or the extent of the surveillance," they wrote.

And there's the rub. Absent the underlying presentations that FBI agents and Justice Department lawyers made to the court or to senior U.S. officials, **it's impossible to know what evidence the government believed justified reading the emails of five U.S. citizens**. That doesn't diminish the significance of the story in one respect: It's practically unheard of for a target of intelligence surveillance to be publicly identified. Usually, the targets themselves never find out. But without clear evidence that the men were spied on because they're of Muslim heritage, because they spoke out against government counterterrorism policies, or even because they represented individuals or groups accused of terrorism, as one lawyer did, the tale of the FBI spying is unlikely to provoke outrage on Capitol Hill or lead to any significant changes in U.S. surveillance law.

To bring more transparency to a historically secretive process, Congress is considering a bill that would require the intelligence surveillance court to hear challenges to the government's warrant requests from an adversarial attorney, one appointed by the court and allowed to examine classified information. The Intercept story could give ammunition to the backers of that proposal.

The story underscores how opaque the court process is to most Americans and even to lawmakers, German said. "There are some issues about the candor involved in these interactions between the government and the court," he added.

Government lawyers present their case, based largely off information collected by the FBI or the NSA. But a warrant application, which can number from 50 to 100 pages of material, is never made public, so it's impossible to publicly evaluate the merits of the government's argument. That has always been true, however, and is arguably essential to preserve the secrecy of covert intelligence operations. The system also **has a significant check**, defenders of the process point out: FBI agents and federal prosecutors can go to jail for misrepresenting facts to the court.

Supporters of the FBI saw not only an absence of evidence of illegal spying in the Intercept story, but said it was **highly unlikely that the government would have based its suspicions of terrorist ties solely on the targets' public speech or associations**. Surveillance court judges, they said, would **never approve a warrant based on activities protected by the First Amendment**.

The Justice Department and the Office of the Director of National Intelligence were quick to categorically deny the central allegations of the monitored men. "It is entirely false that U.S. intelligence agencies conduct electronic surveillance of political, religious or activist figures solely because they disagree with public policies or criticize the government, or for exercising constitutional rights," the agencies said in a joint statement.

Without acknowledging that the FBI collected the men's emails or whether a court approved the spying, the statement noted that the government, except for limited cases like emergencies, must obtain a court order "to target any U.S. citizen or lawful permanent resident for electronic surveillance." And that **permission only comes following a showing of "probable cause, based on specific facts** … that the person is an agent of a foreign power, a terrorist, a spy, or someone who takes orders from a foreign power," the statement said.

The former senior intelligence official said it would be illegal to monitor any of the five men simply because of their jobs or political affiliations. "Someone might be the head of a Muslim organization. But that cannot be the basis for suspicion" used to obtain a surveillance warrant, the former official said. "You have to make the case. **You have to have probable cause.** It can't be a fishing expedition."

Stewart Baker, who was the NSA's general counsel in the early 1990s, echoed that prohibition and added that the mere fact of someone's profession isn't proof that he was unfairly or illegally targeted. "Just because someone is a senior official at the Council on American-Islamic Relations doesn't answer the question of whether there's probable cause" to suspect him of terrorism or espionage, Baker said. "But it's not proof that he must be a victim of a witch hunt."

Ultimately, the FBI may not have to offer any public evidence of why it targeted the five men. Lawmakers on Wednesday showed no immediate signs that they were eager to hold hearings or grill the bureau and the Justice Department on the standards it uses in presenting evidence to the surveillance court — in this case or any others.

Rep. Michael Rogers, the chairman of the House Intelligence Committee and a former FBI agent, questioned how one spreadsheet showing a list of email addresses could lead to any definitive

answers about FBI spying. **"They're basing conclusions on a slide,"** Rogers said in an interview.

Recent court ruling will increase FBI transparency and accountability

ACLU, 15 (3/26/15, "FBI Ordered To Disclose Surveillance Tactics On Muslim Communities; As the FBI has expanded its activities to include generalized monitoring and surveillance, unconnected to any suspected criminal activity, it is critical that records related to those broad surveillance programs be available for public scrutiny," http://www.mintpressnews.com/fbi-ordered-to-disclose-surveillance-tactics-on-muslim-communities/203726/, JMP)

Today, a federal district court in San Francisco issued an important ruling for government transparency and accountability. Judge Richard Seeborg disallowed the FBI's attempt to use a "law enforcement exemption" in the Freedom of Information Act to shield from public disclosure details of the agency's surveillance programs.

The case originated in 2010, when—concerned about new FBI initiatives like "domain management" and "threat assessments" that do not require a criminal predicate, as well as intense and sometimes frightening efforts to recruit Muslim community members to become "informants"—the ACLU of Northern California, Asian Americans Advancing Justice – Asian Law Caucus and the San Francisco Bay Guardian filed a Freedom of Information Act request for records relating to FBI surveillance of Northern California's Arab, Middle Eastern, Muslim and South Asian ("AMEMSA") communities. Then, with the help of Morrison & Foerster, we filed suit to force release of the records and received over 50,000 pages of documents, many of which revealed troubling practices (see below).

But many of those documents were redacted in part, and many others withheld in full, based on a variety of rationales. One asserted justification—the one that was the sole focus of the court's opinion today—was that the records were "complied for law enforcement purposes," also called exemption 7. We argued that the documents related to surveillance techniques and activities that did not involve enforcement of a particular federal law could not be withheld based on that exemption. We highlighted records describing training to recruit community members to be "informants" unconnected to any actual criminal investigation, documents describing community outreach efforts, and threat assessment and domain management documents, which by definition do not require a criminal predicate. The court agreed with us and held, "Because the FBI's explanation of the link between its law enforcement activities and the particular documents withheld fails to meet the [applicable] 'rational nexus' standard . . ., the FBI is altogether precluded from withholding information under [the law enforcement exemption]." The court confirmed that "'generalized monitoring and information-gathering' are not sufficient justifications to apply Exemption 7." And, in this case, because the FBI failed to show any additional justification and failed to "tether the activities the withheld documents concern to the enforcement of any particular law," the court ruled that the FBI cannot rely on Exemption 7 to withhold the documents at issue.

This ruling well upholds the purpose of the Freedom of Information Act and its limited law enforcement exemption.

Review the documents

Documents that we received through this litigation have shed considerable light on FBI's surveillance activities and biased approach to AMEMSA communities, for example:

The FBI used "community" outreach to collect and possibly illegally store intelligence information on Americans' political and religious beliefs;

The FBI engaged in problematic racial profiling and racial "mapping;"

The FBI had used Anti-Arab and Anti-Muslim counterterrorism training materials; and

The FBI was not as responsive to hate crime complaints from some Northern California AMEMSA communities

Impact is overhyped and the only evidence is based on anecdotal claims

Tobin, 13 --- Senior Online Editor of Commentary magazine (11/26/13, Jonathan S., "FBI Stats Again Belie Islamophobia Myth," https://www.commentarymagazine.com/2013/11/26/fbi-stats-again-belie-islamophobia-myth/, JMP)

When it comes to the question of America's alleged Islamophobia, there is a consensus in the American media: American Muslims have been under siege since the 9/11 attacks. Every attempt on the part of law-enforcement agencies to probe the growth of homegrown terrorism and the possible incitement to hate and violence being conducted at some mosques, as well as by community groups influenced or controlled by Islamists, is branded as more proof of the allege persecution of Muslims and Arabs. The fact that **no proof of discrimination or systematic violence** other than anecdotal claims is ever brought forward is disregarded so as not to impinge on the need for Americans to feel guilty about the treatment of Muslims.

But with the annual release of the FBI's hate crime numbers, statistical proof is once again available for those who are interested in the real answer as to which groups are subjected to the most attacks. This year's numbers, like those of every other previous year since they began compiling such statistics, are clear: Jews remain the No. 1 target of hate crimes in America and no other group comes even close. Incidents involving Muslims, who are, according to the unchallenged meme that is central to every story or broadcast about the subject, the prime targets actually suffer only a fraction as much as Jews. Is it too much to ask reporters who regurgitate the same tired, unproven story lines about Muslims in the coming year to take these facts into account?

As in previous years, Jews top the figures for hate crimes, which the FBI claims are down from previous years. Of the 1,340 incidents of anti-religious hate crimes reported, 674 or 62.4 percent were anti-Jewish in nature. Only 130 incidents or 11.6 percent involved Muslim victims. These figures are not much different from those assembled by the government for previous years. In virtually every year, the number of anti-Semitic incidents is a multiple of those involving Muslims.

It is possible that some anti-Muslim attacks might be categorized as an ethnic issue involving Arabs rather than a religious one. But even if we were to try and take some attacks involving national origins, again the enormous gap between the anti-Semitic incidents and those about Muslims is not bridged. The total number of those attacks involving that category that were not

about targeting Hispanics (which make up over 60 percent of that total) was 283 and it is likely that, at best, only some of those were about Muslims or Arabs.

It is true that the Anti-Defamation League has criticized the FBI report for trumpeting the overall decline in hate crimes. The ADL rightly points out that hate crimes reporting isn't mandatory in parts of the country and that the number of agencies funneling figures to the FBI actually declined from 14,500 to 1,3022 in 2012. So it's likely that there wasn't any real decline in the number of hate crimes.

But there is no proof or any logical reason to believe that this flaw would lead to any underreporting of anti-Muslim crimes since the percentage of such incidents in 2012 is essentially the same as in previous years.

What does this all mean?

First, as much as we should decry all hate crimes and urge those responsible to be prosecuted and harshly punished, no matter who their victims might be, **there is no epidemic of such incidents directed at any single group**.

Though Jews are the most likely victims of religious crimes, no reasonable person can claim that they are under siege or that Jewish life is under attack in any manner in this country. Indeed, as the Pew Survey on American Jews that I discussed in the November issue of COMMENTARY reported, less than 20 percent of Jews have even experienced an anti-Semitic remark, let alone an attack. Anti-Semitism is on the rise around the world and particularly in Europe, but in a nation where a tenth of the U.S. Senate and a third of the U.S. Supreme Court are Jews, its impossible to argue that there are any genuine obstacles to Jewish achievement, let alone a wave of Jew-hatred.

Yet, we are asked by the mainstream media to believe that a group which claims to have roughly the same small slice of the national population as the Jews but which, at best, suffers only a fifth of the hate crimes incidents as Jews, is actually laboring under a grievous and discriminatory wave of bias attacks. It not only makes no sense, **it is not even remotely congruent with the facts**.

America isn't perfect. Hate still exists against religious and ethnic groups, and religious minorities. Yet once again the annual release of FBI statistics debunks the notion of a post 9-11 backlash against Muslims. But don't expect the liberal mainstream media to notice this or to take it into account when they resurrect the same misleading story lines in the coming year.

Doesn't solve --- most profiling occurs during traffic stops and pat-downs of pedestrians by state and local agents

Hannon, 14 (12/8/2014, Elliot, "Justice Department Announces New Limits on Racial Profiling by Law Enforcement," http://www.slate.com/blogs/the_slatest/2014/12/08/new_limits_on_racial_profiling_by_law_enforcement_announced.html, JMP)

The Obama administration released a new set of guidelines on Monday aimed at curtailing the profiling of specific groups by law enforcement. The Justice Department issued the expanded rules prohibiting profiling on the basis of race, religion, national identity, gender, sexual orientation, and gender identity by federal law enforcement—such as the FBI. The new policy

broadens the Bush administration's 2003 policy that banned racial and ethnic profiling, except for cases of national security. The new rules, however, "won't apply to screening at borders and airports, where Department of Homeland Security personnel have long given extra scrutiny to people from certain countries," the Wall Street Journal reports. "The policy also doesn't apply to local or state law enforcement, beyond those personnel assigned to federal task forces."

Attorney General Eric Holder ordered the review to the Justice Department policy in 2009 and the new guidlines were announced this week as local police tactics faced enormous criticism following the deaths of Michael Brown and Eric Garner. While the newly announced guidelines extend the restrictions on the use of profiling, **"[c]oncerns about racial profiling on the part of civil-liberties groups mostly have to do with traffic stops and pat-downs of pedestrians,"** according to the Journal. "Because **federal law-enforcement agents rarely engage in those activities**, barring them from profiling may have little impact on how and why people are stopped in their everyday lives."

Maximizing all lives is the only way to affirm equality

Cummiskey 90 – Professor of Philosophy, Bates (David, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. **Persons** may **have "dignity**, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), **but**, as rational beings, persons **also** have **a fundamental equality which dictates that some must** sometimes **give way for the sake of others.** The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, "The Implications of Preemptive and Preventive War Doctrines: A Reconsideration", http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein's Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy's military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government**.** It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention's critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

--- XT: Doesn't Solve State / Locals

Plan doesn't solve state and local officers that commit most of the abuses --- no modelling either

Saab, 14 --- Senior Government Relations Analyst at Deloitte (12/8/2014, Maria, "One Step Forward, Two Steps Back: DOJ Profiling Guidance Revisions Fail to Ban Profiling," http://www.aaiusa.org/blog/entry/one-step-forward-two-steps-back-doj-profiling-guideline-revisions-fail-to-a/, JMP)

Holder's new guidelines arrive during a time where law enforcement activities are under intense scrutiny. Conversations regarding immigration reform, border security, and recent events in Ferguson, MO., New York City, and Cleveland not only emphasize the need to address such activities, but also highlight how little these new guidelines will address the real issues at stake. For one thing, the changes will only apply to federal law enforcement agencies, and **will not extend to local and state law enforcement officers, which have been the source of a number of related controversies**. The Obama Administration hopes that the new guidelines will serve as a possible roadmap for local police to reform their own practices regarding profiling, but **this**

does not ultimately guarantee change on behalf of local police forces that work closely with particularly vulnerable communities.

Addressing only federal practices allows discriminatory surveillance to continue at the local level

Saab, 14 --- Senior Government Relations Analyst at Deloitte (12/8/2014, Maria, "One Step Forward, Two Steps Back: DOJ Profiling Guidance Revisions Fail to Ban Profiling," http://www.aaiusa.org/blog/entry/one-step-forward-two-steps-back-doj-profiling-guideline-revisions-fail-to-a/, JMP)

But profiling will by and large continue to be permitted in cases where national security and border protection are concerned. For example, federal agents are not obligated to abide by the Guidance's prohibitions within 100-miles of national borders, which includes nearly one-third of the country and places 197.4 million people under potentially arbitrary investigation. TSA officers will also be allowed to stop passengers at airports based on prohibited qualities. The national security exception will also allow for the FBI to continue "mapping" specific communities on the basis of race, religion, and ethnicity, which has been of particular concern to Arab American and American Muslim communities nationwide. Because the guidance is confined to federal law enforcement practices, this does nothing to address the types of discriminatory targeting and surveillance programs that local agencies, such as the New York Police Department, conduct in contravention to numerous constitutionally protected freedoms.

--- XT: Util

Consequentialism key---their existentialist focus is complicit with evil

Isaac 2 --- Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, "Ends, Means, and Politics," p. Proquest)

As a result, the most important political questions are simply not asked. It is assumed that U.S. military intervention is an act of "aggression," but no consideration is given to the aggression to which intervention is a response. The status quo ante in Afghanistan is not, as peace activists would have it, peace, but rather terrorist violence abetted by a regime--the Taliban--that rose to power through brutality and repression. This requires us to ask a question that most "peace" activists would prefer not to ask: What should be done to respond to the violence of a Saddam Hussein, or a Milosevic, or a Taliban regime? What means are likely to stop violence and bring criminals to justice? Calls for diplomacy and international law are well intended and important; they implicate a decent and civilized ethic of global order. But they are also **vague and empty**, because they are not accompanied by any account of how diplomacy or international law can work effectively to address the problem at hand**. The campus left offers no such account.** To do so would require it to **contemplate tragic choices** in which moral goodness is of limited utility. Here what matters is not purity of intention but the intelligent exercise of power. Power is not a dirty word or an unfortunate feature of the world. It is the core of politics. Power is the ability to effect outcomes in the world. Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness **undercuts political responsibility**. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention

does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the **clean conscience of their supporters**; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of **complicity in injustice**. This is why, from the standpoint of politics--as opposed to religion--**pacifism** is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that **politics is as much about unintended consequences as it is about intentions**; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

Ethical policymaking requires calculation of consequences

Gvosdev 5 – Rhodes scholar, PhD from St. Antony's College, executive editor of The National Interest (Nikolas, The Value(s) of Realism, SAIS Review 25.1, pmuse)

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable

compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

Survival focus inevitable, doesn't lead to tyranny, and preconditions all other human values

Callahan 73 (Daniel, The Tyranny of Survival, p 90-1, AG)

Moreover, I would want to argue that, in order to remain human, they should not be all that responsive. Or better, they should be responsive only to those survival arguments which manage to integrate the need for survival with a whole range of other human needs, some of which would risk survival for the achievement of higher values. A beginning can be made toward this integration by noting some of the uses and abuses of the concept of survival. Historically, the uses have been more evident than the abuses. Among the uses are those of a fundamental perception of a biological reality principle: unless one exists, everything else is in vain. That is why survival, the desire to live, is so potent a force, and why the right to life is such a basic part of any reasonably enlightened social, political and legal system. Politically, particularly in time of war, national survival has been a potent force for mobilization of community effort, transcendence of self-interest, and creation of patriotic spirit. For individuals, the desire to ensure the survival of offspring has been the source of great and selfless sacrifice and the voluntary acceptance of obligation to future generations. Within the private self, a will to live, to survival at all costs has literally kept people alive, starving off a despair which would otherwise have been totally destructive. That individuals, tribes, communities and nations have committed so much will, energy and intelligence to survival has meant that they have survived, and their descendants are present to tell the tale. Nothing is so powerful a motive force, for self or society, as the threat of annihilation, nothing so energizing as the necessity to live. Without life, all else is in vain. Leaving aside the question of whether we need more enlightened attitudes toward suicide in our society, which we may, it is still not for nothing that suicide has been looked upon with abhorrence, whether from a religious or a psychological perspective. It seems to violate the most fundamental of human drives, and has always required a special explanation or justification.

Extinction irreversibility justifies prioritizing survival

Callahan 73 (Daniel, The Tyranny of Survival, p 106-7)

At what point in the deterioration should survival become a priority? Observe that I said a priority; it should never become the priority if that means the sacrifice of all other values. But there are surely conditions under which it could become a priority, and a very high one. The most important of those conditions would be the existence of evidence that irreversibility was beginning to set in, making it increasingly impossible to return to the original conditions.

--- AT: No Value to Life

"No value to life" doesn't outweigh---prioritize existence because value is subjective and could improve in the future

Torbjörn **Tännsjö 11**, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, 2011, "Shalt Thou Sometimes Murder? On the Ethics of Killing," online: http://people.su.se/~jolso/HS-texter/shaltthou.pdf

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to

now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one's genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide "survivors" confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

Disad Links

Politics DA Links

The plan will be contentious --- Congress has consistently demonstrated an anti-Muslim attitude

Haqiqatjou, 15 (1/22/2015, Daniel, "Congress Doesn't Applaud Muslim Tolerance – Are We Surprised?" http://muslimmatters.org/2015/01/22/congress-doesnt-applaud-muslim-tolerance-are-we-surprised/, JMP)

Trust me, Congress. The feeling is mutual.

By now, we have all seen it. During the State of the Union, President **Obama called for a rejection of offensive Muslim stereotypes. Instead of applauding approval, the crowd went dead silent.** As far as we can tell, Congress and the other government officials who were in attendance are perfectly fine with offensively stereotyping Muslims.

My question is, are we really surprised?

Let's take a look at a brief list of facts in order to gauge how Muslim-friendly Congress and the US government at large have been over the years.

1. This is the same Congress and the same President that have initiated and continued the "War on Terror," backing military operations in seven different Muslim nations over the past fourteen years: Afghanistan, Iraq, Libya, Somalia, Yemen, Syria, North West Pakistan. In the few Muslim nations that have not been subjected to direct assault, the US has supported brutal dictators (Egypt, the Gulf) or perpetuated punitive sanctions (Iran, pre-invasion Iraq). The loss of innocent life in these parts of the Muslim world is beyond tallying. To add insult to injury, the instability

caused by the "War on Terror" has directly led to the rise of brutal warlords and radical groups, like ISIS, which predominantly kill Muslims.

2. Did you know that as of 2014, there are eight US states that ban Shariah law? Did you know that 34 states have considered banning Shariah just in the past five years?

3. Some Muslims have praised President Obama for speaking against offensive Muslim stereotypes in the State of the Union address. But, let's not overlook the fact that right before the Muslim stereotypes line, Obama said, "As Americans, we respect human dignity, even when we're threatened, which is why I've prohibited torture and worked to make sure our use of new technology like drones is properly constrained." Is it not interesting that he references two programs that have disproportionately affected Muslims? Many will argue that Obama's drone program is anything but "constrained," considering the hundreds of civilians killed to date, as well as the brutal tactic of "double tapping" strike targets. Also, it is inaccurate for Obama to claim that he has "prohibited torture." Torture was prohibited by President Reagan in 1988 when he signed the UN General Assembly's Conventions Against Torture. In light of the CIA Torture Report, Obama is violating international law by not prosecuting those in the Bush Administration who authorized torture.

4. On that point, let's not forget the recent CIA Torture Report and how the victims of CIA torture were, again, predominantly Muslim, many of whom were not even suspected of any wrongdoing. So far, neither President Obama nor Congress has felt the need to prosecute the perpetrators of these crimes against humanity. Again, failing to prosecute torturers is itself a crime according to international law.

5. Also mentioned in the State of the Union was good ol' Guantanamo. Obama promised to shut it down. We can only wonder if this latest promise will be as hollow as the promise he made as a presidential candidate in 2008. Be that as it may, the fact remains that the majority of Gitmo prisoners are Muslims who have not been charged with any crime, yet have had to endure torture and all manner of barbarity.

6. The 2011 Congressional hearing on "domestic Islamic terrorism" is a great example of how many key members of Congress have viewed the American Muslim community and Muslims at large. The House Committee on Homeland Security, which orchestrated this farce, was accused of "Muslim McCarthyism" by implying that all Muslims are loosely responsible for terrorism. Rep. Peter King went so far as to question the legitimacy of CAIR, i.e., the most important legal advocacy group the American Muslim community has. Of course, we were all left wondering, what is the grave "domestic Islamic terrorism" threat Congress is so concerned about, since the vast majority of domestic terrorism in the US is not conducted by Muslims. The FBI itself reports that, between 1980 and 2005, there were more Jewish acts of terrorism within the United States than Muslim (7% vs. 6%). In light of this fact and others, multiple university studies have concluded that the threat of American Muslim terrorism is greatly exaggerated. Hmm, who could possibly benefit from this overt stigmatization of Muslims?

7. How about NYPD illegal surveillance of Muslims? Just your everyday racial profiling run amok, putting hundreds of thousands of innocent American Muslims under the pressure of unfounded suspicion. But what did the federal government have to say? Well, John Brennan, Obama's Homeland Security adviser at the time praised the program. Obama himself praised Ray Kelly, the NYPD commissioner who oversaw Muslim surveillance, and in 2013 strongly considered appointing him as Secretary of Homeland Security.

8. Another major federal agency is the FBI. Perhaps you have heard of the FBI's entrapment program, known best for foiling terror plots of its own making. According to a report published by Project SALAM, nearly 95% of terror related arrests post 9/11 have been the result of the FBI foiling terror plots of its own making. As the report describes: "The government uses agents provocateur to target individuals who express dissident ideologies and then provides those provocateurs with fake (harmless) missiles, bombs, guns, money, encouragement, friendship, and the technical and strategic planning necessary to see if the targeted individual can be manipulated into planning violent or criminal action." I highly encourage people to peruse all the different cases of Muslim entrapment over the years as the details are often unbelievable. Some have even reported on how the FBI and other agencies use "outreach" programs to spy on the Muslim community. As far as the Obama Administration is concerned, Attorney General Eric Holder of the DOJ has expressed support for the FBI's tactics with respect to the Muslim community.

9. It hardly requires mention, but surely we cannot overlook President Obama demanding, in an address to the UN last year, that Muslims denounce ISIS and radical Islamic ideologies. As myself and many other commentators have repeatedly explained, requiring Muslims as a collective to apologize for and denounce the crimes of a deranged few to which we have no connection is nothing other than racist stereotyping. Even comedian Aziz Ansari made this simple point on Twitter, but apparently our President and much of Congress are too dense to understand this. If Obama wants us to reject offensive Muslim stereotypes, he should start with himself.

10. Remember the "Ground Zero Mosque"? How many members of Congress actively condemned it back in 2010? Quite a few, actually. Obama did make some tepid comments in support of Park51 initially but quickly backtracked and stated: "I was not commenting and I will not comment on the wisdom of making the decision to put a mosque there." So much for offensive Muslim stereotypes.

11. So, we have covered the CIA, the FBI, the DOJ, the Department of Homeland Security. How about the NSA? Do they have a disproportionate interest in Muslims? Why, yes indeed! As the Snowden leaks detail, the NSA has been datamining the communications of Muslim leaders and activists for years.

12. We would be remiss not to mention the Israeli Lobby and the US government's undying support for every crime and act of genocide that that nation commits, despite the fact that Israel has more spies in the US than any other country. The fact that Palestinians are majority Muslim I'm sure has no impact on influencing how congressmen view Muslims in general, given that those same congressmen grovel at the feet of their Zionist handlers. Let's be real.

Anyway, this brief list merely scratches the surface. An entire five volume set could be written cataloging the depth and breadth of US policy disproportionately and negatively impacting Muslims in America and abroad, causing all manner of death, destruction, detention, bullying, and violence in the past 14 years alone. And it is no secret that Islamophobia and riling people up with anti-Muslim fervor is quite lucrative for everyone involved.

So, no, it is not a surprise that Congress withheld applause for Muslims. At least they were consistent, unlike President Obama, who, as always, waxes poetic about tolerance, acceptance, mutual understanding, etc., while his policies, in effect if not intent, are diametrically opposed to those ideals.

The plan will be contentious --- there is political division over the issue

Mint Press, 13 (4/23/2013, Mint Press News Desk, "Ellison Fights Back Against Calls For Police Surveillance Of Muslim American Communities," http://www.mintpressnews.com/ellison-fights-back-against-calls-for-police-surveillance-of-muslim-american-communities/61575/, JMP)

"This individual came to the attention of the FBI because of things he said and things he did. That's appropriate. What should not be cause for alarm is somebody's status as a member of a particular religious faith or how devout they may happen to be," Congressman Keith Ellison (D-Minn.) said in an interview this week with Tamron Hall on MSNBC.

Ellison was speaking about the recent arrest of Dzhokhar Tsarnaev, the sole surviving Boston bombing suspect who is being held in police custody and charged with crimes that could carry the death penalty if he is convicted. Ellison, one of only two Muslims elected to the U.S. Congress, has tried to stave off the onslaught of accusations against Muslims living in the U.S., **pitting himself against other elected officials calling for broad FBI surveillance of Muslim communities**.

"Ninety-nine percent of the Muslims are outstanding Americans," said Rep. Peter King (R-N.Y.) on "Fox News Sunday." "The fact is, that's where the threat is coming from. When the FBI was after the Westies, they went to the Irish community. When they were after the mafia, they went to the Italian community. If you know a certain threat is coming from a certain community, that's where you have to look."

The FBI and U.S. police departments began broad surveillance of mosques and Muslim communities in the aftermath of the Sept. 11, 2001 attacks, a method some believe has unfairly targeted a group of people for their religious affiliation and physical appearance.

"All Americans should be concerned," said New York City Democratic Councilmember Daniel Dromm after the release of "Mapping Muslims," a report issued by the Muslim American Civil Liberties Coalition, the Asian American Legal Defense and Education Fund and the Creating Law Enforcement Accountability & Responsibility (CLEAR) project last month. "The policing that's going on now encourages mistrust or distrust within the Muslim community. It is not good policing."

These rights groups claim that the NYPD has targeted Muslim communities around the city. The report alleges that since 2001, the NYPD "has mapped, monitored and analyzed American Muslim daily life throughout New York City, and even its surrounding states."

In the present case, some elected officials are calling for similar surveillance techniques for Muslim communities in the wake of the bombings and shootings that killed four and injured 170.

Ellison has led the pushback in Congress against expanding surveillance based upon religion or physical appearance, saying, "In all these cases, where you see acts of radicalized individuals using violence, they may have a religious affiliation, but oftentimes, when they give reasons for why they did what they did, it is politics." He added, "The FBI did not go after all Italians or all Irish people. No one ever said let's surveil a whole ethnic community. They went after people who were criminals and who were exhibiting criminal behavior … To say that because of the

Westies that every Irish person was under suspect; Everyone in America knows that is ridiculous. But still, [King] wants to cast a wide net with regard to Muslims."

The plan will be contentious --- there is congressional division on the issue

Gentilviso, 13 (4/28/2013, Chris, "Peter King, Keith Ellison Spar Over Muslim Community Views (VIDEO)," http://www.huffingtonpost.com/2013/04/28/peter-king-keith-ellison_n_3175292.html, JMP)

Reps. Peter King (R-N.Y.) and Keith Ellison (D-Minn.) **clashed** on Sunday **over the idea of using surveillance in America's Muslim communities**.

One week after stressing the need to go after known threats from "a certain community," King reinforced that notion, specifically questioning the FBI's decision to not speak to Boston police about now deceased bombing suspect Tamerlan Tsarnaev.

Ellison recognized the need for public safety. But he sees it as "ineffective law enforcement to go after a particular community."

"Once you start saying we're going to dragnet or surveil a community, what you do is you ignore dangerous threats that are not in that community and you go after people who don't have anything to do with it," Ellison said.

Ellison pointed to events in the past and present, notably the recent string of ricin letters in Washington and historic example of Japanese Americans in World War II. King scoffed at that latter comparison, saying that "no one is talking about internment."

Terrorism DA Links

New profiling rules preserves FBI flexibility to fight terrorism --- broader restrictions will wreck mission effectiveness

Apuzzo, 14 (4/9/2014, Matt, **"Profiling Rules Said to Give F.B.I. Tactical Leeway,"** http://www.nytimes.com/2014/04/10/us/profiling-rules-said-to-give-fbi-tactical-leeway.html?_r=0, JMP)

WASHINGTON — Attorney General Eric H. Holder Jr.'s long-awaited revisions to the Justice Department's racial profiling rules would allow the F.B.I. to continue many, if not all, of the tactics opposed by civil rights groups, such as mapping ethnic populations and using that data to recruit informants and open investigations.

The new rules, which are in draft form, expand the definition of prohibited profiling to include not just race, but religion, national origin, gender and sexual orientation. And they increase the standards that agents must meet before considering those factors. But they **do not change the way the F.B.I. uses nationality to map neighborhoods, recruit informants, or look for foreign spies**, according to several current and former United States officials either involved in the policy revisions or briefed on them.

While the draft rules allow F.B.I. mapping to continue, they would eliminate the broad national security exemption that former Attorney General John Ashcroft put in place. For Mr. Holder, who has made civil rights a central issue of his five years in office, **the draft rules represent a compromise between his desire to protect the rights of minorities and the concern of career national security officials that they would be hindered in their efforts to combat terrorism**.

The Justice Department has been reworking the policy for nearly five years, and civil rights groups hope it will curtail some of the authority granted to the F.B.I. in the aftermath of the 9/11 terrorist attacks. Muslims, in particular, say federal agents have unfairly singled them out for investigation. The officials who described the draft rules did so on the condition of anonymity because they were not authorized to discuss them.

Mr. Holder, who officials say has been the driving force behind the rule change, gave a personal account of racial profiling on Wednesday before the National Action Network, the civil rights group founded by the Rev. Al Sharpton.

"Decades ago, the reality of racial profiling drove my father to sit down and talk with me about how, as a young black man, I should interact with the police if I was ever stopped or confronted in a way I felt was unwarranted," he said.

Throughout the review process, however, the attorney general and his civil rights lawyers ran up against a reality: **Making the F.B.I. entirely blind to nationality would fundamentally change the government's approach to national security**.

The Bush administration banned racial profiling in 2003, but that did not apply to national security investigations. Since then, the F.B.I. adopted internal rules that prohibited agents from making race or religion and nationality the "sole factor" for its investigative decisions.

Civil rights groups see that as a loophole that allows the government to collect information about Muslims without evidence of wrongdoing.

Intelligence officials see it as an essential tool. They say, for example, that an F.B.I. agent investigating the Shabab, a Somali militant group, must be able to find out whether a state has a large Somali population and, if so, where it is.

As written, the new rules are unlikely to satisfy civil rights groups and some of the administration's liberal allies in Congress. Senator Richard J. Durbin, Democrat of Illinois, has said the existing rules "are a license to profile."

The Justice Department rules would also apply to the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, but it is the F.B.I. that takes the lead on most national security investigations.

Farhana Khera, the president of Muslim Advocates, said expanding the rules to cover nationality and religion would be a significant step forward. But she opposed any rule that allowed the F.B.I. to continue what it calls "domain mapping" — using census data, public records and law enforcement data to build maps of ethnic communities. **Agents use this data to help assess threats and locate informants.**

"It would certainly mean we have work to do," said Ms. Khera, who was one of several rights advocates who met with Mr. Holder about the profiling rules last week. "We want an effective ban on all forms of profiling."

Before federal agents could consider religion or other factors in their investigations under the new rules, they would need to justify it based on the urgency and totality of the threat and "the nature of the harm to be averted," according to an official who has seen the draft.

That would not prevent agents from considering religion or nationality, but officials said the goal was to establish clear rules that made doing so rare.

Department officials were prepared to announce the new rules soon and had told Congress to expect them imminently. But recently, the White House intervened and told Mr. Holder to coordinate a larger review of racial profiling that includes the Department of Homeland Security, officials said.

That is significant because the Bush-era racial profiling rules also contained an exception for border investigations, which are overseen by the department. Hispanic advocacy groups are as opposed to that caveat as Muslims are to the exception for national security investigations.

Mr. Holder cannot tell Homeland Security what rules to follow. But he has told colleagues that he believes border agents can conduct their investigations without profiling and by following the same rules as the Justice Department, one law enforcement official said.

It is not clear how long this broader review will take, but for now it has delayed release of the Justice Department rules.

Relations between the F.B.I. and Muslims have at times been strained since the weeks after 9/11, when agents arrested dozens of Muslim men who had no ties to terrorism.

Since then, the F.B.I. has adopted new policies and invested heavily to explain them to Muslim populations. Senior agents speak at mosques and meet regularly with imams and leaders of Muslim nonprofit groups, but suspicions remain.

Internal F.B.I. documents revealed that agents used their relationship-building visits at mosques as a way to gather intelligence. Leaked training materials, which the F.B.I. quickly disavowed, described the Prophet Muhammad as a cult leader and warned that mainstream Muslims shared the same "strategic themes" as terrorists.

The draft rules would establish a program to track profiling complaints. The current process is less organized, making it difficult to track patterns in complaints or how they are resolved.

Surveillance of Muslim communities key to prevent terrorism

Lengell, 15 (1/7/2015, Sean, "Peter King: Surveillance of Muslim community vital for national security," http://www.washingtonexaminer.com/peter-king-surveillance-of-muslim-community-vital-for-national-security/article/2558311, JMP)

Rep. Peter King said Wednesday's attack on a Paris newspaper that killed a dozen people highlights the need for enhanced police surveillance in Muslim communities to help combat terrorism.

"It shows us that we should put political correctness aside and realize that it is important to have police in the communities to be using sources, to be using informers," the conservative New York Republican told Fox News on Wednesday.

“Let's face it. The threat is coming from — for the most part, it's coming out of the Muslim community. It's a small percentage, but that's where it's coming from.”

King said law enforcement spying of certain ethnic communities is nothing new, saying that police for decades have used such tactics to combat the Italian-American Mafia and the Westies, a gang that sprang from New York City's Irish-American community in the 1960s.

“We have to be able to go in there and find out what's happening so we can be tipped off and not stand back and treat all communities as if they're the same,” he said. "If it's Islamist terrorism, we have to have more surveillance in those communities.”

The Associated Press reported that three masked gunmen shouting "Allahu akbar!" stormed the Paris offices of the satirical weekly newspaper Charlie Hebdo, killing 12 people, including its editor, before escaping in a car. The publication's caricatures of the Prophet Muhammad have frequently drawn condemnation from Muslims.

King said that while it’s uncertain if enhanced surveillance could have stopped the Paris shooting, “it shows the absolute necessity” of “on-the-ground intelligence.

“You can't provide security for every soft target in a major city. But if you have surveillance, if you're in the community, if you have informers, that shows how essential this [is], like the NYPD's been doing over the years,” he said.

Terrorism DA Link Uniqueness

Recent DOJ guidelines won’t result in any changes to FBI practices and still permits surveillance in critical areas

Phelps, 14 (12/9/2014, Timothy M., “Comey says new profiling guidelines will have no effect on the FBI,” http://www.latimes.com/nation/la-na-fbi-comey-profiling-20141209-story.html, JMP)

The new Justice Department guidelines governing profiling by federal law enforcement officers **will have no effect on FBI practices**, its director, James B. Comey, said Tuesday.

On Monday, Comey’s boss, Atty. Gen. Eric H. Holder Jr., said the new guidelines were “a major and important step forward to ensure effective policing by federal law enforcement officials.”

But at a press briefing Tuesday, Comey said that the FBI, the lead federal law enforcement agency, is already in compliance with the new guidelines and strongly asserted that no changes were required.

The guidelines “don’t have any effect on the FBI,” he said

Asked whether the new guidance would change anything to FBI does now, Comey said, “No, nothing. It doesn’t require any change to our policies or procedures.”

He said the FBI field manual for agents would not be changed because it was already in compliance with the guidelines, which expand restrictions on racial and ethnic profiling to cover religion, national origin, sexual orientation and gender identity.

He defended the FBI practice of "mapping" communities to identify neighborhoods by race, religion or national origin. Civil rights leaders were critical Monday of the failure of the Justice Department to curtail the practice.

"We need to be able to understand the communities we serve and protect," Comey said. "When there is a threat from outside the country, it makes sense to know who inside the country might be able to help law enforcement."

"It is about knowing the neighborhoods: what's it like, where's the industry, where are the businesses, are there particular groups of folks who live in a particular area?"

Despite shortcomings, recent review demonstrates FBI's effectiveness because of unfettered surveillance

Ackerman, American national security reporter and blogger, national security editor for the Guardian, **and Yuhas, 15** (3/25/2015, Spencer & Alan, The Guardian, "FBI told its cyber surveillance programs have actually not gone far enough; In-house 9/11 Review Commission calls for further expansion of informant and cyber surveillance networks but largely ignores domestic intelligence gathering," Lexis, JMP)

An in-house review of the FBI has found the agency failing to go far enough in its expansion of physical and cyber surveillance programs, urging the bureau to recruit deeper networks of informants and bring its technological abilities up to pace with other intelligence agencies.

While billed as a damning critique of the FBI, the in-house assessment known as the 9/11 Review Commission primarily attacks the bureau for not moving fast enough to become a domestic intelligence agency, precisely the direction in which the FBI has pivoted since the 2001 terror attacks.

The majority of the panel's findings recommend bureaucratic changes - such as expanded training for FBI intelligence analysts or expanding cooperation with local and state law enforcement through the agency's Joint Terrorism Task Force - or otherwise urge Director James Comey onward in the long-set course he and predecessor Robert Mueller have set, such as bolstering the FBI's "human intelligence" (Humint) network of informants.

In particular, the report found that the agency fails to support analysts and linguists who interpret intelligence behind the scenes. The "imbalance" between support for field agents and analysts "needs urgently to be addressed to meet growing and increasingly complex national security threats, from adaptive and increasingly tech-savvy terrorists, more brazen computer hackers, and more technically capable, global cyber syndicates", the report's authors wrote.

Yet the "Review Commission cannot say that with better JTTF collaboration, Humint or even intelligence analysis that the FBI would have detected those plots beforehand", the panel concedes, offering only that FBI counterterrorism "might have benefited" with an acceleration of what the agency has already been doing.

Much of the report remarked approvingly on the FBI's activities of the past decade, **praising the way it shares information with government agencies and the new rules that allow it to surveil a target without a warrant**.

"With the new and almost entirely unclassified AG Guidelines, special agents working on national security issues could now at the assessment stage 'recruit and task sources, engage in interviews of members of the public without a requirement to identify themselves as FBI agents and disclose the precise purpose of the interview, and engage in physical surveillance not requiring a court order' just as special agents working on organized crime investigations could do," the authors wrote.

Administrative Law CP

Notes

Given how well this counterplan clashes with the FBI political and religious surveillance aff, you probably don't need to risk competition issues by including "propose [the plan]" in text. You can credibly say that the two mandates resolve civil liberty concerns.

1nc Administrative Law CP

The United States federal government should propose [the plan] but require that:

The Attorney General or FBI Director provide both notice of a decision to amend the Attorney General's Guidelines for Domestic FBI Operations or the Domestic Investigations and Operations Guide and written justifications for their ultimate decisions.

Any changes to the Guidelines regime be accompanied by a binding "Civil Liberties Impact Statement" prepared by the Justice Department, and that the Privacy and Civil Liberties Oversight Board be given veto power in the process of drafting or modifying the Guidelines and their implementing regulations.

The counterplan solves the case and still preserves the FBI's decision-making role and expertise to prevent terrorism

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A recent quote from former Director of National Intelligence Mike McConnell captures the sentiment of many security policymakers. In his view, the American people have "very little appreciation for the threat," and "special interests, particularly civil liberty groups with privacy concerns," prevent the intelligence community from doing its job as well as it otherwise could.

n153 This view of the need to consider privacy concerns as a [*41] hurdle to effective policy, rather than as an integral part of policymaking, illustrates the tension that sometimes arises between the FBI's primary mission and its responsibility to protect civil liberties. As others have pointed out, the FBI will value success in carrying out its primary mission and will favor terrorism prevention "over competing concerns such as the protection of civil liberties." n154

Pointing out the elevation of the FBI's anti-terrorism mission over other considerations is not meant to be an indictment. That mission is a vital one that should be pursued vigorously. **And with over a century of experience conducting criminal and security investigations, the FBI is the agency in the best position to determine the most effective means of pursuing that mission.** This includes decisions regarding which investigative methods will be most successful in countering threats to the country. **This expertise should not be undervalued.**

At the same time, the decision about what level of intrusiveness society is prepared to accept in pursuit of security is not a matter of technical, investigative, or intelligence-collection expertise. Determining the intrusiveness of an investigation justified by any particular set of circumstances necessarily involves normative judgments implicating fundamental values. As should now be clear however, the only true constraints on the FBI's intelligence-collection activities are the Guidelines and the DIOG. This leaves decisions regarding the appropriate balance between the FBI's security mission and the interests on the other side of the scale in the hands of the Attorney General. He, in turn, has delegated many of those [*42] decisions to the FBI itself. Thus, concerns over security will have a prominent role in such decision making and other interests will be short-changed.

III. Administrative Strategies as Governance

If the usual tools of governance fail to apply effectively to the Guidelines and the DIOG, how do we devise mechanisms to fill this governance gap? This Part argues that we can borrow from the institutional design principles of the administrative state to address three specific challenges presented by the Guidelines regime. First, the absence of both doctrinal and practical limits on the FBI's intelligence collection confers expansive discretion on the Attorney General and the FBI. Second, the lack of judicial, legislative, or public scrutiny of FBI policy results in a deficit of both accountability and democratic legitimacy. And third, the FBI's focus on threat prevention creates a risk that its rulemaking decisions will give insufficient attention to liberty and privacy interests. With respect to each of these challenges, this Part identifies strategies the administrative state employs, and uses those strategies to develop concrete suggestions to improve intelligence-collection governance.

This examination of administrative law strategies--**designed to channel discretion, increase accountability and legitimacy, and ensure that competing priorities are afforded sufficient attention**--suggests the following concrete reform proposals. First, a reason-giving framework should be implemented that (1) requires the Attorney General to provide notice of his or her intention to modify the Guidelines; and (2) specifies that any modifications must be justified in writing. n155 Second, to promote meaningful pluralist input, the Attorney General should be obligated to consider as part of the Guidelines-development process the views of stakeholders outside the intelligence community (though not necessarily outside the government). n156 Third, in order to ensure liberty interests are not marginalized, [*43] (1) the Justice Department should be required to prepare a statement indicating the likely impact on civil liberties of any changes to the Guidelines, and (2) the Privacy and Civil Liberties Oversight Board should be empowered to

participate meaningfully in the Guidelines' development. n157 Before beginning the analysis that suggests these particular reforms, however, a few preliminary points are in order.

2nc Must Read for Net Benefits & Solvency ***

CP is a distinct process that avoids our net benefits because it doesn't require FBI to cede any particular powers or to discontinue existing policy, BUT it solves better because adopting the procedural framework will result in better substantive rules. The counterplan boosts FBI transparency, consistency, fairness, and accountability and ensures public confidence.

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[*46] Given the appropriate political environment, there are at least three reasons to think that the imposition of a framework like the one suggested here is not entirely implausible. As an initial matter, there is the FBI's concern over legitimacy. The Bureau's ability to succeed in its mission requires constructive relationships with the communities in which it operates. n168 Yet its aggressive intelligence-collection tactics--and their concentration in Muslim communities--has alienated many members of that community, raised suspicion and distrust of the Bureau in some quarters, and undermined cooperative relationships. n169 Improved governance is thus not the only benefit that would flow from implementing APA-like procedures; institutionalizing rulemaking procedures would also yield improvements in community relations, public perceptions of legitimacy, and consequently, FBI effectiveness. In addition, government documents and scholarly commentary are replete with arguments about the value of process in legitimating government action. n170 The FBI's practice of reaching out to nongovernmental organizations in anticipation of issuing new intelligence-collection rules indicates an awareness of the benefits of generating the support of outside stakeholders. n171 Subjecting itself to a set of procedural rules would go far in this regard. And finally, none of the proposals here are substantive. **They do not call upon the FBI to cede any particular powers, or to discontinue existing policy.** Indeed, **they acknowledge the Attorney General's and FBI's role in generating the rules by which the FBI operates**, so long as they can show [*47] both that changes in the FBI's authority are needed and that the proposed changes are reasonable ones. And finally, **when it comes to imposing limits on government actors, broad procedural frameworks often face less opposition than substantive policy changes**. n172

A second preliminary note concerns the role of the APA. While several of the proposed reforms are inspired by provisions of the APA, **this Article does not argue that the APA's procedural rules apply to the FBI as a matter of binding law**. n173 In fact, it does not take a position with respect to whether the Guidelines or the DIOG constitute legislative rules subject to APA requirements, or whether they represent informal guidance documents or "rules of agency organization, procedure, or practice," which are explicitly exempt from many of the APA's constraints. n174 Instead, the Article looks to the way the APA and other sources of administrative law address particular concerns and argues that **intelligence-collection governance would benefit from implementing procedures inspired the animating principles behind these sources of administrative law**.

The idea of imposing a governance framework on the development of rules in the absence of a statutory requirement to do so is not a novel one. The Office of Management and Budget (OMB)--part of the Executive Office of the President tasked with overseeing the regulatory decisions of administrative agencies n175--in its Final Bulletin for Agency Good Guidance Practices "establishes policies and procedures for the development, issuance, and use of significant guidance [*48] documents." n176 These policies are designed to **increase the quality, transparency, consistency, fairness, and accountability of agency guidance practices**. n177 To that end, the Bulletin suggests that agencies engage in "procedures similar to APA notice-and-comment requirements" for some types of guidance documents in order to **"increase the quality of the guidance and provide for greater public confidence in and acceptance of the ultimate agency judgments."** n178 Similar language appears in the Department of Homeland Security's (DHS) official guidance on preparing Privacy Impact Assessments (PIAs), n179 which all agencies--including the FBI--must generate for any substantially revised or new Information Technology System that collects, maintains, or disseminates personally identifiable information from or about members of the public. n180 According to the DHS Guidance, requiring agencies to follow procedures designed to call attention to issues of legitimacy **"demonstrates to the public and to Congress" that the new systems "have consciously incorporated privacy protections."** n181 In other words, both OMB and DHS policy takes the position that **procedural constraints result in both better substantive rules and an increase in the perceived legitimacy of those rules, even when those constraints are self-imposed rather than statutorily required.**

2nc Terrorism NB

Continued congressional delegation to the FBI is necessary for counter-terrorism effectiveness

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The accountability gap left by the absence of judicial review will not be filled by legislative or public scrutiny. The origin story of the original Attorney General Guidelines included a significant role for Congress. n121 Having been prompted by the Church [*35] Committee's findings of misconduct and the resulting public outrage, the legislature was intimately involved in developing the contents of the Guidelines. n122 Congress held a series of hearings on the issue over the course of several years, and saw its suggestions ultimately reflected in the Levi Guidelines. n123 Given that the Guidelines were implemented, at least in part, to avoid more stringent legislative action, n124 this is not a surprise. Surely Attorney General Levi knew that if the rules he instituted did not appear to address Congress's concerns, they would fail to sap the momentum for enacting a statutory charter for the FBI.

The contemporary political economy of congressional oversight in this area means that legislative oversight will not provide any more effective a check than judicial action. Legislators' incentives weigh against aggressive involvement. The downside risks of unsuccessful counterterrorism policies (additional attacks) are high. n125 If those policies are developed outside of the legislative process, Congress can share (if not entirely evade) blame. Moreover,

counterterrorism policy "is a subject matter that is especially prone to legislative delegation because it often entails hard trade-offs," which are the types of questions Congress is least likely to address. n126 In addition to undermining legislative involvement in counterterrorism policy formulation, existing institutional features also render [*36] congressional oversight of domestic intelligence-collection policy ineffectual. Congress, of course, retains oversight authority over the FBI. n127 If it wants to play a more active role in overseeing the Guidelines, it has the tools to do so. n128 After all, Congress determines whether and to what degree the FBI's intelligence-collection activities are funded. n129 Moreover, the relevant committees of jurisdiction conduct regular oversight hearings at which the Attorney General and FBI Director appear. n130 Legislators can ask Justice Department and FBI officials for information about the Guidelines or the FBI's activities at any time. n131

Administrative governance balance competing missions so security is not undermined

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[*66] D. Reconciling Conflicting Missions

Administrative governance also has developed ways to address the challenges posed when agencies are responsible for pursuing multiple, competing goals. The FBI must carry out its mission of preventing security threats from manifesting while simultaneously protecting fundamental rights. The principles behind the administrative state's tactics for reconciling conflicting missions offer ideas about how to **implement structural checks to prevent the FBI's intelligence-collection mission from overwhelming these other important interests**.

1. Juggling Mandates

Conflict among agency missions comes about when one or more statutes issue mandates to a single agency that come into tension with one another or when government-wide mandates conflict with the primary goals of individual agencies subject to those mandates. n251 In one example, the National Park Service must protect the natural resources of the parks while simultaneously developing facilities for visitors. n252 Similarly, the Fish and Wildlife Service is required to manage wildlife refuges for the conservation of plants and animals while also providing for recreation on those refuges. n253 And the National Environmental Policy Act of 1969 (NEPA) n254 requires "all federal agencies" to minimize the environmental impacts of their actions. n255 For an agency focused on, for example, building roads [*67] through environmentally sensitive territory, the charge to protect the environment can be at odds with this focus.

The FBI's mandate to protect civil liberties can be viewed as a "secondary" mission--one that frequently comes into tension with its primary mission of preventing security threats. n256 Studies show that an agency will focus on what it considers to be its primary mission, and it will shirk on performing "secondary" or less easily evaluated goals. n257 As a secondary mission, protection of civil liberties is, therefore, sure to be short-changed in favor of security in the same way that environmental concerns have so often gone under-addressed in favor of development or other economically profitable activities.

2. Relieving the Tension Among Multiple Missions

Fortunately, **several administrative law strategies suggest ways to ensure that the Guidelines regime sufficiently takes into account civil liberties concerns as well as security concerns**. n258 Though all of the options discussed below are possible paths to follow, the final two approaches discussed below seem particularly promising.

Regulatory strategies can ensures the protection of civil liberties without undermining the FBI's ability to prevent terrorism

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HIGHLIGHT: Abstract

Scholars have long recognized that a Federal Bureau of Investigation wielding robust domestic intelligence-collection powers poses a threat to civil liberties. Yet the FBI's post-9/11 mandate to prevent terrorist attacks (not merely investigate completed attacks) demands that the agency engage in broad intelligence-collection activities within the **U**nited **S**tates--activities that can threaten fundamental freedoms. This Article argues that strategies derived from administrative law principles can help alleviate the tendency of threat-prevention efforts to erode civil liberties.

The fundamental problem this Article tackles is that the traditional governance mechanisms we rely upon to protect individual rights are ineffective in the domestic intelligence-collection realm. This failure of traditional checks stems from, first, the absence of practical constraints to channel the enormous discretion that the Justice Department and the FBI enjoy in determining the scope and nature of the FBI's domestic 6intelligence-collection activities; second, the lack of judicial or political checks on these activities, resulting in a deficit of democratic legitimacy and accountability; and third, the risk that the FBI's singular focus on terrorism prevention will overwhelm rights-protection concerns.

Drawing on principles of administrative law, this Article explains how regulatory strategies can be employed to **improve governance of domestic intelligence gathering**. It recommends imposing procedural requirements on the exercise of discretion, facilitating meaningful pluralist input into relevant decision making processes, and augmenting the attention given to civil liberties concerns by requiring the Justice Department to prepare Civil Liberties Impact Statements and by including in the process an entity whose primary goal is the protection of civil liberties. These governance reforms will prompt domestic intelligence regulation to take account of civil liberties **while preserving the ability of law enforcement to pursue security**.

--- AT: Secrecy Link Applies to CP

Notice and justification can be limited to those with a security clearance to maintain necessary secrecy

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Rules should similarly dictate that the Attorney General or FBI Director provide notice explaining the reasons for any proposed changes to the Guidelines or the DIOG and a justification for the ultimate decisions that demonstrates that all of the relevant available information was taken into consideration and that there was a valid basis for the change. The distinctions between traditional administrative law and national security administration require, however, some adjustments to the usual procedural design. While most agency notices of proposed rulemaking are part of the public record and freely available for wide dissemination, the classified nature of much of the FBI's activity and some of the rules contained in the DIOG requires that the dissemination of the notice and justification will often be limited to individuals with the necessary security clearance. n205 Imagine, for example, a proposed rule-change designed to modify surveillance operations to make them less likely to be detected by the target. Publicizing that intention and [*55] the resulting rule might undermine entirely the purpose of the revision.

1nc Politics NB

Only the plan will face congressional opposition --- Congress wants to defer to the executive on the issue and avoid blame for intelligence failures

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First, some brief thoughts on political economy. This Article aims to propose some plausible reforms in an area where what Professor Heather Gerken calls the "here to there" problem is a significant obstacle. n158 Perhaps even more than in other policy areas, expectations that Congress will act to implement these recommendations--through legislation or through other available levers of power--are likely to be disappointed. Indeed, congressional oversight of national security policy has long been considered ineffective by government officials, outside task forces, and scholars. n159 The dearth of public information about national [*44] security policy, which makes oversight significantly more challenging, is partially to blame. n160 But there are also perverse incentives at work: **legislators have no incentive to engage in aggressive oversight of intelligence-collection powers**. n161 Legislators gain little by taking ownership over security policy. n162 Meanwhile, **so long as Congress can label such policies "executive," it cannot be blamed for intelligence failures**. n163 The result is that all electoral incentives point toward congressional deference to executive policy preferences in this area. n164 This is [*45] especially so for intelligence-collection policies imposing disproportionate impact on certain segments of society, such as minorities or noncitizens, whose interests carry little electoral weight with legislators. n165 Expectations that Congress will take action in this area are thus likely to be disappointed.

CP avoids political battles in congress and insulates policies from backlash

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Similarly, because granting decision-making authority to bureaucrats not subject to electoral forces that constrain other policymakers **removes those decisions from the field of political battle**, Congress both eludes responsibility for making difficult policymaking decisions and **insulates the policies themselves from electoral backlash**. n185 Broad agency discretion thus undermines the very nature of participatory democracy and raises concerns about political accountability for critical decisions of national policy. n186

[*51] And while the Supreme Court's decisions limiting legislative delegations to agencies were confined to the New Deal-era, n187 so long as Congress sets down an "intelligible principle" for the agency to follow, n188 many of the procedural rules developed in the administrative state serve to cabin discretion. n189 Thus, while agency decision makers continue to enjoy significant leeway, the threat to democracy and accountability posed by agency discretion has not gone unaddressed.

CP alone doesn't link to politics --- Congress wants to delegate the policy-making to others

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The accountability gap left by the absence of judicial review will not be filled by legislative or public scrutiny. The origin story of the original Attorney General Guidelines included a significant role for Congress. n121 Having been prompted by the Church [*35] Committee's findings of misconduct and the resulting public outrage, the legislature was intimately involved in developing the contents of the Guidelines. n122 Congress held a series of hearings on the issue over the course of several years, and saw its suggestions ultimately reflected in the Levi Guidelines. n123 Given that the Guidelines were implemented, at least in part, to avoid more stringent legislative action, n124 this is not a surprise. Surely Attorney General Levi knew that if the rules he instituted did not appear to address Congress's concerns, they would fail to sap the momentum for enacting a statutory charter for the FBI.

The contemporary political economy of congressional oversight in this area means that legislative oversight will not provide any more effective a check than judicial action. Legislators' incentives weigh against aggressive involvement. The downside risks of unsuccessful counterterrorism policies (additional attacks) are high. n125 **If those policies are developed outside of the legislative process, Congress can share (if not entirely evade) blame.** Moreover, **counterterrorism policy "is a subject matter that is especially prone to legislative delegation** because it often entails hard trade-offs," which are the types of questions Congress is least likely to address. n126 In addition to undermining legislative involvement in counterterrorism policy formulation, existing institutional features also render [*36] congressional oversight of domestic

intelligence-collection policy ineffectual. Congress, of course, retains oversight authority over the FBI. n127 If it wants to play a more active role in overseeing the Guidelines, it has the tools to do so. n128 After all, Congress determines whether and to what degree the FBI's intelligence-collection activities are funded. n129 Moreover, the relevant committees of jurisdiction conduct regular oversight hearings at which the Attorney General and FBI Director appear. n130 Legislators can ask Justice Department and FBI officials for information about the Guidelines or the FBI's activities at any time. n131

Perhaps as a result of the existing incentive structure, however, **Congress has shown little appetite to pursue Guidelines-related issues of late**. n132 The most recent modification to the Guidelines, for example, failed to reflect congressional input. The Justice Department provided the Senate Judiciary [*37] Committee a completed draft of the Mukasey Guidelines a few months before they were implemented. n133 A handful of senators requested that Attorney General Mukasey delay their implementation until Congress had the opportunity to develop suggestions regarding ways to minimize civil liberties concerns. n134 Their request went unanswered. And even when FBI Director Robert Mueller III inaccurately testified in 2010 before Congress that the FBI did not have the authority to conduct unpredicated investigations, legislators took no follow-up action. n135

While Congress has shown little interest in scrutinizing the Guidelines, the public is not given a choice in the matter. Activity undertaken pursuant to the Guidelines is secret and therefore rarely apparent on its own or reported in sufficient detail in the news media. n136 Moreover, information about how the Guidelines are used is exempt from disclosure under the Freedom of Information Act on the basis of either the law enforcement or the classified-information exemption contained in that statute. n137 The public also lacks means to scrutinize how the rules are [*38] implemented. In some cases even the rules themselves are secret. The publicly available version of the DIOG, for example, entirely redacts the rules governing undisclosed participation in religious or political gatherings. n138

Attorney General Guidelines are empirically designed to prevent legislative action

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Over time, both the Bureau's focus and the rules governing its activities have swung back and forth along the spectrum between the targeted investigations of crime solving and the broader intelligence gathering associated with prevention. The Guidelines themselves are the product of the FBI's early-1970s move away from intelligence collection. After the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, commonly known as the Church Committee for its chair Senator Frank Church (D-ID), [*13] revealed that decades of unregulated intelligence collection by the FBI had resulted in widespread abuses of the government's investigative powers, n29 Congress determined that the FBI should be subject to a legislative charter setting out strict limits on its intelligence-collection authority. n30 **In an effort to stave off potentially more restrictive legislative action**, President Gerald Ford's Attorney General, Edward Levi, issued in 1976 the first set of Attorney General's Guidelines--known as the Levi Guidelines. n31

Guidelines are shrouded from public criticism

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2nc Solvency ***

****note when prepping file --- the ev in "AT: No Enforcement" is also very useful to defend the general solvency of the counterplan. The ev in both blocks are useful in many different ways.*

Indicts of the administrative law process assume the current Guidelines and do not reflect the counterplan's changes to the process --- it creates a more transparent, accountable, and legitimate means to balance security objectives with the protection of civil liberties.

CP ensures accountability and constrains agency abuses

- Reason-giving requirements will help constrain agency abuses and ensure accountability --- CP would have prevented most dangerous changes in 2008 Guidelines

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B. Reason-Giving as Constraint

Courts and commentators have raised a litany of reasons why extending broad discretion to administrative agencies can be problematic from a governance standpoint--reasons that apply with equal force to the FBI's exercise of intelligence-collection powers. **Agency strategy for channeling discretion, largely dominated by reason-giving requirements, is therefore an important source of ideas for addressing that concern in the context of the Guidelines regime.**

1. The Downsides of Discretion

Consigning significant policy choices to administrative agencies operating with broad discretion undermines the constitutional mechanism of promoting both accountability and sound decision making. When it comes to legislation, the Constitution seeks to avoid these concerns by subjecting legislative decisions to the deliberation and contestation that serves as a bulwark against faction and tyranny. n182 Freed from [*50] the requirements of Article 1, § 7, n183 however, agency decision makers might engage in a wise and thoughtful decision-making process; but they are equally capable of making poor choices, opting for policies that are uninformed, arbitrary, irrational, self-interested, or otherwise untethered to the public interest. n184 Absent some alternative check on the way in which discretion is exercised, there is therefore no reason to expect an agency's decision-making process to result in the best outcome--however that is defined.

Similarly, because granting decision-making authority to bureaucrats not subject to electoral forces that constrain other policymakers removes those decisions from the field of political battle, Congress both eludes responsibility for making difficult policymaking decisions and insulates the policies themselves from electoral backlash. n185 Broad agency discretion thus undermines the very nature of participatory democracy and raises concerns about political accountability for critical decisions of national policy. n186

[*51] And while the Supreme Court's decisions limiting legislative delegations to agencies were confined to the New Deal-era, n187 so long as Congress sets down an "intelligible principle" for the agency to follow, n188 many of the procedural rules developed in the administrative state serve to cabin discretion. n189 Thus, while agency decision makers continue to enjoy significant leeway, **the threat to democracy and accountability posed by agency discretion has not gone unaddressed**.

2. Channeling Discretion into Reasoned Decision-Making

The administrative state has grappled with legitimizing broad delegations throughout its history. n190 Over the years, reasoned decision making emerged as an important means of [*52] limiting discretion and improving the quality of agency policymaking by requiring agencies to justify their actions. n191 And while these reason-giving requirements exist in part to facilitate judicial review of agency action, they also have the intrinsic value of promoting agency experts' exercise of their discretion in a thoughtful, principled fashion. n192 These requirements come from two sources: the Administrative Procedure Act n193 supplemented by the requirement from SEC v. Chenery Corp. (Chenery II) n194 that agency actions are valid only if they can be upheld according to the rationale given by the agency at the time the decision was made. n195

[*53] The APA procedures for informal rulemaking employ two strategies for ensuring that agencies can engage in a process of reasoned decision making. n196 First, the APA has a notice requirement, which is designed to broaden the range of information and perspectives the agency must take into account n197 in order to promote more informed decision making. n198 To ensure these goals are met, the APA demands that an agency's notice must "fairly apprise interested persons of the subjects and issues" at stake whenever they intend to engage in a rulemaking n199 and indicate the rulemaking's legal and factual basis as well as its policy purpose. n200 Thus, the APA aims to ensure that agencies have before them all relevant information when making policy decisions

The second element of the APA's strategy for channeling discretion is the obligation that agencies issue a public statement when announcing a final rule. n201 Just as written judicial opinions demonstrate that a court's decision is supported by facts, law, and [*54] precedent, these statements of purpose serve to demonstrate that agency officials considered all of the information before them and engaged in a "process of reasoned decision-making." n202 To that end, the statement must include the rule's basis and purpose as well as a justification of the decisions that led to its adoption, and it must "indicate the major issues of policy that were raised in the proceedings and explain why the agency decided to respond to these issues as it did." n203 Moreover, under Chenery II, only if the purpose provided by the agency constitutes a valid justification for the decision will it be legitimate. n204

Rules should similarly dictate that the Attorney General or FBI Director provide notice explaining the reasons for any proposed changes to the Guidelines or the DIOG and a justification for the ultimate decisions that demonstrates that all of the relevant available information was taken into consideration and that there was a valid basis for the change. The distinctions between traditional administrative law and national security administration require, however, some adjustments to the usual procedural design. While most agency notices of proposed rulemaking are part of the public record and freely available for wide dissemination, the classified nature of much of the FBI's activity and some of the rules contained in the DIOG requires that the dissemination of the notice and justification will often be limited to individuals with the necessary security clearance. n205 Imagine, for example, a proposed rule-change designed to modify surveillance operations to make them less likely to be detected by the target. Publicizing that intention and [*55] the resulting rule might undermine entirely the purpose of the revision.

While the effect of limited dissemination of notice and justification will not be as robust as a process that is entirely transparent, limits on dissemination need not render written notice and justification worthless. In addressing concerns over excessive discretion, the crucial elements of the relevant administrative strategy are (1) that the notice broaden the range of information and perspectives that the agency considers and (2) that the written justification demonstrates that the agency's decision enjoys sufficient factual and legal support. To accomplish this, the notice and justification must go to individuals or entities whose participation would serve to expand the information and perspectives available to the decision makers and whose scrutiny of the ultimate justification would encourage the adoption of rules supported by reasoned argument and available evidence.

Candidates to receive this notice and justification are both inside and outside the Justice Department. The Justice Department's Civil Rights Division and Office of Privacy and Civil Liberties as well as the National Security Division could be invited to comment. Similarly, other members of the intelligence community, such as the Office of the Director of National Intelligence should be involved. But the Privacy and Civil Liberties Oversight Board (PCLOB) should contribute its perspective as well. This is not meant to be an exhaustive list of possibilities. Nor will each of these institutions necessarily take on the role of civil-liberties champion or do so effectively. n206 For now, it is enough to say that so long as they have access to the relevant information and bring a perspective different from the one within the Attorney General's office or the FBI, their participation would help to channel discretion in a productive direction.

The 2008 modifications to the Guidelines provide a concrete example of how the requirement that the Attorney General provide reasons justifying amendments could impact the process. [*56] One proffered justification for amending the Guidelines in 2008 was that they were necessary to

provide tools the FBI needed to support its preventive role. n207 But the then-existing Guidelines already described prevention as the FBI's "central mission," and included several provisions added in 2002 that were aimed at empowering and enabling this aspect of the FBI's activities. n208 In asserting that the 2008 Guidelines were necessary for terrorism prevention, the Bureau had no obligation to explain how its activities were unacceptably constrained by the rules that were then in effect, which were drafted for the same purpose. n209 Under these proposed rules, the Attorney General would have had to make that case, allowing those entities that were notified the opportunity to question the need for changes and possibly even make those concerns public. n210 And if the Attorney General could not do so satisfactorily, it would have made altering the Guidelines a much more controversial proposition.

Requiring written justification of the final rules also might have had an impact on the 2008 revisions. On the one hand, the Justice Department downplayed the extent to which the Guidelines expanded the FBI's powers. The new Guidelines were characterized as merely consolidating several existing sets of rules without making substantive changes. n211 In fact, Justice Department officials asserted that assessments were nothing [*57] new, and that under the pre-2008 Guidelines it could already conduct assessments using pretext interviews, physical surveillance, and the tasking of informants. n212 But there was no "assessment" level in the pre-2008 Guidelines. n213 Indeed, they explicitly prohibited both pretext interviews and physical surveillance until a preliminary inquiry--a predicated investigation--had been opened. n214 "Threat assessments" were permitted in some contexts under the 2003 National Security Investigation Guidelines, but by the FBI's own admission, some of the techniques available in today's assessments were prohibited in that context. n215 Had the Attorney General or FBI Director been required to explain exactly what changes were being made and provide the rationale for the new rules, the creation of assessments in their current form--the central innovation of the 2008 Guidelines--might have met with more resistance. In particular, the ways in which assessments expanded the FBI's powers, for example permitting use of several investigative techniques historically reserved for predicated investigations, would have become clear and consequently would have been subject to closer examination. As it was, the Attorney General could simply disclaim the idea that new powers were being granted without having to substantiate that statement.

[*58] In addition to any substantive differences to the 2008 Guidelines that would have resulted, a notice and justification requirement would have provided other concrete benefits. First, **it would have guaranteed that decision makers had the benefit of additional perspectives while they were still developing the policy**. It is much easier--and therefore more likely--for policymakers to incorporate alternative perspectives into policy still being developed than once that policy is nearing its final form. n216 Second, obligating the Attorney General to address the information that was submitted to him and to explain in writing why the Guidelines should be implemented in his chosen format would force him to digest that information and therefore might actually **result in a more informed decision**. n217 Third, **it would have added additional legitimacy to the final product** if n218 the 2008 Guidelines development had been based on specific, reasoned arguments regarding the need for modifications.

CP's participatory process makes the guidelines more democratic and boosts support and cooperation from communities

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C. Participatory Policymaking

Nowhere does the Constitution provide for the existence of administrative agencies, much less for specific means of ensuring that their actions do not infringe on fundamental rights or that they are subject to democratic accountability. n219 The administrative state has grappled with this "democracy deficit" almost since its inception. n220 One means employed to address it has been through increasing opportunities for broad participation in agency decision making. Designing ways to employ these [*59] strategies for increased participation could lend increased democratic legitimacy to the intelligence-collection realm.

1. Administrative Agencies' Democracy Deficit

Administrative agencies initially were viewed either as entities merely implementing congressional will or as bastions of expertise, making decisions on the basis of scientific or technical knowledge. n221 By the latter half of the twentieth century, however, it had become clear that many congressional delegations are vague and that many agency decisions cannot be resolved definitively through substantive expertise. n222 Instead, such decisions often rest on subjective judgments about policy priorities, the value of human well-being, and who should bear the costs of inevitable risks. The Guidelines are thus not alone in their undemocratic nature. This democracy deficit "has spawned an extensive literature concerning the legitimacy of the administrative state." n223 Indeed, Professor Jody Freeman has suggested that "[a]dministrative law scholarship has organized itself largely around the need to defend the administrative state against accusations of illegitimacy" n224 based on the unaccountability of agency officials, a lack of transparency, and limited opportunities for public participation. n225

[*60] 2. Increasing Democracy, Increasing Participation

One answer to the democracy deficit implemented by the administrative state has been to boost the democratic pedigree of agency rules by insisting on broad participation. n226 **A variety of procedural and doctrinal rules in the administrative state promote the broad participation of interested stakeholders.** As with limits on discretion, the informal rulemaking process set out in the APA promotes participation through the implementation of strategies that can help **improve the democratic pedigree of the Guidelines and the DIOG**.

The first element of the strategy for improved democratic legitimacy is that the notice of proposed rulemaking itself must be provided in such a way as to facilitate meaningful participation, n227 such as including the legal and factual basis for the proposed rule n228 and the data on which the agency relied in making its proposal. n229 These mandates ensure that stakeholders who want to participate have enough information to permit them to raise objections, provide additional information, or offer alternative perspectives. The notice, therefore, not only alerts diverse interested parties that there is a decision being contemplated for which they might want to provide input, but also ensures that input can be meaningful. Second, the agency must actually consider this input. A final rule's statement of basis and purpose must "indicate the major issues of policy that [*61] were raised in the proceedings and explain why the agency decided to

respond to these issues as it did." n230 Thus any failure to take into account relevant comments can invalidate the rule. **This risk of invalidation discourages the development of rules that do not take all relevant perspectives into consideration.** n231

Again, these requirements will also result in rules that enjoy more democratic legitimacy than a rule prepared without such input. Affected parties are more likely to view agency decisions as legitimate if the process provides for a meaningful opportunity for presentation and consideration of their views. And **if the rules are considered legitimate, the FBI will be much more likely to enjoy the full support and cooperation of the communities it is policing, leading to more effective intelligence collection**.

Devising rulemaking mechanisms that are inclusive and allow for meaningful input from interested stakeholders presents a challenge when it comes to the domestic-intelligence regime because secrecy presents a formidable barrier to inclusion. n232 Even with respect to rules that are themselves public, such as the Guidelines, robust public participation in the process is impractical because there is insufficient public information about how those rules are implemented. The public may know, for example, that FBI agents are permitted to attend any religious service that is open to the public. n233 But it will not know how [*62] often agents engage in this activity, what information they collect, or what is done with the information. Rules that are themselves secret, such as portions of the DIOG, present an even more formidable challenge. To be sure, a strong case can be made that the existing levels of secrecy--with respect to both the rules and the policy implementation--are excessive. n234 Unless and until that secrecy is reduced, however, intelligence-collection policies will struggle to gain the benefits that inhere in broadly inclusive agency rulemaking.

Yet, the Justice Department clearly hopes to realize at least some of the benefits of democratic input when it comes to the Guidelines. Recall the Department's 2008 briefing of relevant congressional committees and other interested parties prior to the Guidelines' adoption. n235 The Bureau did the same thing in 2001 when it revised the DIOG. n236 These meetings allowed the FBI to characterize these documents as rules developed with input from an array of stakeholders and thus deserving of the enhanced legitimacy that broad participation confers. n237 So even if the consultations themselves failed to result in meaningful participation beyond the Justice Department, n238 they indicate recognition that agency decision makers desire (at least the appearance of) an inclusive process.

The benefits of participatory decision making require a more robust process than the one undertaken in 2008. Recognizing that [*63] the public at large will not be able to play a meaningful role, a second-best measure is to seek out proxies for points of view currently not formally represented in the process of developing the Guidelines and the DIOG. An example comes from Professors DeShazo and Freeman's empirical case study of the licensing practices of the Federal Energy Regulatory Commission. n239 In the amended Electric Consumers Protection Act of 1986, n240 "Congress [required the Commission] to consult with fish and wildlife agencies prior to issuing licenses [and demanded] that nondevelopmental values be given 'equal consideration' with power concerns." n241 DeShazo and Freeman explain that this amendment was specifically intended to strengthen the role of resource agencies in the Federal Energy Regulatory Commission's decision-making process n242 and that it did in fact have the desired effect. n243

[*64] A procedural regime governing the Guidelines' development could similarly mandate the participation of particular entities that will bring alternative perspectives to the discussion. Each of the entities noted as a potential recipient of notice and source of information could play this role. One especially promising candidate for this role is the Privacy and Civil Liberties Oversight Board (PCLOB), a statutorily created independent agency charged with ensuring that privacy and civil liberties concerns are considered in the development and implementation of laws, regulations, and policies related to terrorism. n244 The PCLOB took several years to get off the ground. n245 In the wake of recent revelations regarding NSA surveillance, however, it has demonstrated its ability to participate in the surveillance-policy conversation by insisting on a classified briefing about the controversial surveillance programs, meeting with the President, n246 holding a public hearing seeking concrete suggestions for improving the civil liberties protections included as part of those programs. n247 Based in part on what members of the Board learned at that meeting, the PCLOB issued a detailed report recommending specific changes to one existing surveillance program and anticipates issuing similar reports about other programs. n248 Whether any of the PCLOB's recommendations will [*65] be adopted remains to be seen. But giving the Board an official role in the process in which the Guidelines and the DIOG are formulated would ensure that the civil liberties point of view is represented.

This participation could take one of several forms, ranging from an opportunity to express views to veto power. n249 If the requirement is modeled on the concept behind the participation requirements included in notice-and-comment rulemaking, then it will end up somewhere between these two extremes, with something like the following arrangement: The PCLOB would have the opportunity to submit its perspective; having received this input, the Attorney General or the FBI Director would be required to demonstrate that it was taken into consideration.

Finding ways to broaden the perspectives involved when it comes to the DIOG is particularly important. Currently, nobody outside the FBI must be involved. Ensuring that alternative perspectives are voiced and requiring that the final rules reflect, or explain why they fail to reflect, these perspectives may provide some of the benefits of the multilateral, deliberative process that truly pluralist rulemaking procedures promote. n250

Administrative state mechanisms can check the AG and FBI --- external checks fail

- The administrate state has developed mechanisms that can be borrowed to ensure the Attorney General and FBI protect civil liberties and maintain anti-terror effectiveness --- other external checks will fail

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[*5] I. Introduction

In the summer of 2013, former National Security Agency contractor and Central Intelligence Agency employee Edward Snowden shook the world with revelations of extensive United States government surveillance activities--including surveillance of American citizens. n1 The revelations sparked a renewed debate about the proper scope of intelligence collection in a democracy. What has gone unaddressed in this debate, however, is the vast investigative powers

conferred on America's domestic surveillance agency--the Federal Bureau of Investigation (FBI). And unlike the foreign-intelligence programs disclosed by Snowden's leaks, some of the FBI's most powerful domestic intelligence-collection authorities include neither statutory limits nor judicial oversight. n2

If the FBI determines that an individual's daily life is relevant to a terrorism investigation, it can easily draw a detailed picture of that life. n3 With no reason at all for suspicion and no judicial approval, agents can follow the individual around the clock to ascertain where he goes. They can ask his neighbors about their conversations with him, or dispatch an informant to his house of worship to report on the individual's religious [*6] observance. With the minimal process associated with issuing an administrative subpoena, n4 the government can establish a record of the individual's movements and social dealings by acquiring financial and employment records, a list of email addresses with which he has corresponded, and a list of phone numbers he has dialed.

These broad investigative powers operate in tension with fundamental rights. Collecting extensive personal information about innocent Americans raises concerns about privacy; about impact on freedoms of expression, association, and religious practice; and to the extent that such activity is disproportionately focused on particular communities, it can raise equal protection concerns as well. n5 The challenge, then, is how to mitigate these civil liberties threats without unduly interfering with the FBI's ability to prevent terrorist attacks.

This Article argues that **administrative law strategies suggest several measures that, taken together, would represent a domestic intelligence governance regime better equipped to safeguard civil liberties**. This argument bridges a gap between two growing areas of literature. The first, which I label "risk-management literature," advocates taking a regulatory approach to the threat of terrorism--to treating it not as an enemy to defeat, but, like environmental or health and safety risks, as a chronic problem to be assessed and managed. n6 The other, the [*7] "rights-protection literature," argues that the current domestic intelligence-collection governance regime fails to address effectively the tension with civil liberties created by the FBI's contemporary counterterrorism efforts. n7 I contend that the risk-management literature's valuable insight that administrative law can usefully be applied to improve governance in the security context suggests a means of mitigating the rights-protection scholars' concerns

These rights-protection concerns arise in large part because **traditional means of regulating executive power cannot effectively protect civil liberties in this area**. This failure of traditional checks results from three characteristics of the regime regulating domestic intelligence collection. First, it lacks both doctrinal and practical constraints on the FBI and Justice Department's enormous discretion in drafting and implementing the applicable rules. n8 Second, the checks that normally ensure the accountability and democratic legitimacy of government actions--judicial review, congressional oversight, and public scrutiny--simply **do not operate effectively in the secretive world of intelligence collection**. n9 And third, in its vigorous pursuit of [*8] terrorism prevention, the FBI is not subject to any structural checks to prevent it from undervaluing rights protection. n10

This broad discretion, democracy deficit, and absence of counterweight to the FBI's prevention goal means that--despite the privacy and liberty implications of the FBI's activities--**the responsibility of striking a balance between security needs and other important interests is left almost entirely to the Attorney General and the FBI itself**. Restraints on the FBI's

domestic intelligence-collection activities come from the Attorney General's Guidelines for Domestic FBI Operations (Guidelines) n11 and the Domestic Investigations and Operations Guide (DIOG). n12 The Guidelines are developed by the Attorney General and set out a basic framework for the FBI's operations; the several-hundred-page DIOG, promulgated by the FBI, specifies more detailed rules for the Guidelines' implementation. n13 The Guidelines were originally created to forestall impending legislative efforts to cabin the Bureau's intelligence-collection powers n14 but due to subsequent changes--particularly post-9/11 changes aimed at promoting terrorism-prevention efforts--the Guidelines and DIOG now serve to facilitate rather than limit the Bureau's intelligence-collection role.

[*9] Conceptualizing the threat of terrorism as a regulatory challenge represents a significant first step toward devising an improved governance regime for the Guidelines and the DIOG. But there are additional steps that the existing risk-management literature has not yet taken. The idea of how administrative law would apply to intelligence collection remains undertheorized--an unsurprising state of affairs given the recent emergence of this line of inquiry. Scholars have not yet tackled the thorny question of how to truly reap the benefits that the regulatory approach offers, while simultaneously taking into account the unique governance challenges presented by the domestic-intelligence context. Nor has the literature to date sufficiently grappled with civil liberties concerns. n1

This Article seeks to fill these gaps, drawing on administrative law principles to suggest novel governance designs custom tailored to address the civil liberties concerns inherent in domestic intelligence collection. To do so it looks to areas of administrative law that present similar governance challenges, identifies how those challenges have been addressed in the administrative state, and suggests how to adapt those strategies to function in the intelligence-collection context. n16

Each of the governance challenges this Article identifies has an analog in the administrative state. Take first the scope of discretion conferred on federal officials. This delegation of discretionary authority to the Attorney General and the FBI resembles the broad delegations in statutes establishing administrative agencies' powers and responsibilities. Concerns arising from the scope of these delegations are addressed through [*10] the Administrative Procedure Act's (APA) n17 procedural requirements. n18 Second, the absence of judicial, legislative, or public involvement in the design and implementation of the Guidelines is reminiscent of the democracy deficit inherent in the promulgation of regulations by technical experts so often at the heart of debates over the legitimacy of the administrative state. **The administrative state has responded to this deficit by developing mechanisms to increase the participatory nature of administrative activity.** n19 And third, the risk that the Guidelines privilege the FBI's primary mission--the prevention of terrorism and protection of national security--over concerns for fundamental rights mirrors the many circumstances where agencies are charged simultaneously with multiple, competing goals. **A menu of regulatory tools has been developed to reconcile competing agency missions.** n20 Looking to the lessons that can be gleaned from these administrative governance strategies provides a useful roadmap for filling the intelligence-collection governance gap in a way that also protects civil liberties.

The Article proceeds in three parts. Part II first argues that the expansive scope of investigative authority that the current Attorney General's Guidelines and the FBI's implementing procedures confer on the Bureau exist in tension with the protection of civil liberties. It then contends that the lack of practical, traditional judicial or political, and structural checks to impose effective

oversight on domestic intelligence gathering necessitates the implementation of alternative governance mechanisms.

In Part III, the Article harnesses administrative law strategies to suggest regulatory tools custom tailored to yield [*11] regulatory benefits that protect fundamental rights in the context of the FBI's Guidelines regime. To do so, it first explores the underlying purposes and justifications of traditional administrative law tools that are used to address governance challenges conceptually similar to those that the Guidelines regime presents. n21 It then suggests specific reforms designed to achieve the same ends as those traditional tools in the intelligence-collection context. n22 First, the Attorney General's discretion in the development and implementation of the Guidelines should be subject to a reason-giving requirement. Specific procedural limitations should require that the Attorney General or FBI Director provide both notice of a decision to amend the Guidelines or the DIOG and written justifications for their ultimate decisions. Second, to enable meaningful pluralist input into the process, the FBI must go beyond the cursory meetings with interested stakeholders that it has relied upon to date. Instead, a variety of entities inside the government should be empowered to participate in the amendment process. Third, **to balance the government's interest in security with privacy and liberty concerns**, (1) any changes to the Guidelines regime should be accompanied by a "Civil Liberties Impact Statement" prepared by the Justice Department, and (2) stakeholders whose primary goal is the protection of liberties--rather than the pursuit of security--should be involved in the process of drafting or modifying the Guidelines and their implementing regulations. n23 This approach will impose a meaningful governance regime crafted for domestic intelligence gathering that **mitigates concerns about the impact on civil liberties without sacrificing security**.

Part IV addresses some possible sources of skepticism for this proposal. It first explains why reliance on existing administrative law tools--even if those tools are partially modified to operate in the intelligence-collection realm--will be [*12] insufficient to protect civil liberties. n24 It then responds to questions about how to enforce these reforms in the absence of judicial review, suggesting alternative compliance mechanisms. n25

CP ensures that civil liberties are considered and protected

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V. Conclusion

Domestic intelligence collection presents a challenge in a democracy. While it can play a crucial role in keeping our nation secure, it also poses threats to the very freedoms that make that nation worth defending. When the prevention of terrorism is viewed as a regulatory problem--one to be managed rather than defeated--the challenge becomes more manageable. Examining regulatory strategies developed over the past half-century in the administrative state provides a roadmap for **the development of structural and procedural mechanisms to channel executive discretion into reasoned, evidence-based decisions**; to include viewpoints from outside the intelligence community in the process; and to **ensure that the Justice Department explicitly takes into account the civil liberties perspective**. n350 The need to substitute alternative mechanisms for tools that are often effective in governing agency action, such as judicial review and public

scrutiny, means that they may be less directly effective in achieving their goals. n351 But developing such a framework is a [*91] viable second-best option in a context where the traditional means of government oversight break down. n352 It will contribute to generating the appropriate FBI for the twenty-first century, one that takes into account not only the nature of the disease, but also the potential costs of the cure.

Solves Terrorism / Community Trust / Legitimacy

****note when prepping file --- there is also ev in "2nc Solvency" that defends why the CP boosts ties with communities.*

CP allows the FBI to boost its legitimacy and rebuild trust with communities

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[*46] Given the appropriate political environment, there are at least three reasons to think that the imposition of a framework like the one suggested here is not entirely implausible. As an initial matter, there is the FBI's concern over legitimacy. The Bureau's ability to succeed in its mission requires constructive relationships with the communities in which it operates. n168 Yet its aggressive intelligence-collection tactics--and their concentration in Muslim communities--has alienated many members of that community, raised suspicion and distrust of the Bureau in some quarters, and undermined cooperative relationships. n169 Improved governance is thus not the only benefit that would flow from implementing APA-like procedures; institutionalizing rulemaking procedures would also yield improvements in community relations, public perceptions of legitimacy, and consequently, FBI effectiveness. In addition, government documents and scholarly commentary are replete with arguments about the value of process in legitimating government action. n170 **The FBI's practice of reaching out to nongovernmental organizations in anticipation of issuing new intelligence-collection rules indicates an awareness of the benefits of generating the support of outside stakeholders.** n171 Subjecting itself to a set of procedural rules would go far in this regard. And finally, none of the proposals here are substantive. They do not call upon the FBI to cede any particular powers, or to discontinue existing policy. Indeed, they acknowledge the Attorney General's and FBI's role in generating the rules by which the FBI operates, so long as they can show [*47] both that changes in the FBI's authority are needed and that the proposed changes are reasonable ones. And finally, when it comes to imposing limits on government actors, broad procedural frameworks often face less opposition than substantive policy changes. n172

The problem with the current FBI Guidelines is that they shrouded from public input and criticism

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While Congress has shown little interest in scrutinizing the Guidelines, the public is not given a choice in the matter. Activity undertaken pursuant to the Guidelines is secret and therefore rarely apparent on its own or reported in sufficient detail in the news media. n136 Moreover, information about how the Guidelines are used is exempt from disclosure under the Freedom of Information Act on the basis of either the law enforcement or the classified-information exemption contained in that statute. n137 The public also lacks means to scrutinize how the rules are [*38] implemented. In some cases even the rules themselves are secret. The publicly available version of the DIOG, for example, entirely redacts the rules governing undisclosed participation in religious or political gatherings. n138

AT: Solvency Deficit --- Top Level

Aff can't solve any better --- external checks embodied in the plan aren't applicable in this context

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B. Existing Failures of Intelligence-Collection Governance

If the FBI's intelligence-collection authorities do not run afoul of existing legal limits, why is the way in which they are governed a cause for concern? Because despite these authorities' [*29] undisputed implications for civil liberties n94--indeed, their tendency to result in civil liberties infringements is what inspired the implementation of the Guidelines in the first instance--they are untouched by the nondoctrinal constraints that usually accompany law enforcement activities. This means that the only constraints on the FBI's intelligence-collection powers are the internal rules the Justice Department and the FBI have imposed on themselves.

Several inherent differences between intelligence collection and crime-solving investigations account for the inapplicability of constraints that usually limit government action. First, the very nature of the intelligence-collection enterprise is inherently more expansive in scope--proactive rather than reactive and less narrowly targeted. n95 Consequently, practical constraints that usually serve to limit law enforcement agencies' activities--resource limitations and a focus on solving individual crimes--are inapplicable. Second, **the secretive nature of intelligence-collection activities renders them effectively immune to judicial review as well as scrutiny from the legislature and the public**. n96 And third, the Justice Department and the FBI generate the Guidelines and the DIOG in the context of the FBI's post-9/11 focus on terrorism prevention. n97 This means that the rules are crafted by government officials with security and intelligence-collection expertise. There are, therefore, no structural checks to remove from the hands of security technocrats the normative judgments that must be made about the relative importance of [*30] aggressive intelligence collection and rights protections. n98 The result is that, despite the fact that intelligence collection implicates important values, the only constraints on that collection are effectively self-imposed.

AT: Solvency Deficit --- Court Specific

CP solves better --- judicial restrictions will fail for 3 reasons

- Secrecy, no standing, state secrets privilege

Berman, 14 --- Visiting Assistant Professor of Law, Brooklyn Law School (Winter 2014, Emily, Washington & Lee Law Review, "Regulating Domestic Intelligence Collection," 71 Wash & Lee L. Rev. 3, Lexis, JMP)

2. Intelligence Collection and Judicial or Political Constraints

In engaging in the broad intelligence-collection activities envisioned by the Guidelines, the FBI will elude traditional checks on power, such as judicial review and congressional or public oversight. The result is that the Guidelines and their implementation lack both the accountability and the democratic legitimacy that usually accompanies government policy. n108

There are several obstacles to judicial review of the Guidelines and the activities undertaken pursuant to them. As an initial matter, the Guidelines themselves disclaim any intention to create enforceable rights, so any action taken pursuant to them can be challenged only if it is otherwise unlawful. n109 In addition, the secrecy of these activities ensures that individuals who seek to challenge intelligence-collection regimes will struggle to demonstrate a sufficiently concrete injury to establish standing to sue. n110 Surveillance tactics are designed to prevent targets from being alerted to the fact that law enforcement is gathering information about them, so it is difficult to point to specific government action causing harm. n111 Moreover, courts have held [*33] that neither allegations of general chill nor an "objectively reasonable likelihood" that a plaintiffs' communications will be subject to surveillance are sufficient. n112 Thus, standing remains a bar to the courthouse door.

Another barrier that has proved fatal to judicial review of intelligence collection is the state secrets privilege, n113 which allows the government to withhold evidence whose disclosure might endanger national security. n114 At times the privilege results in a case being dismissed outright. n115 In other instances, a [*34] suit may proceed with evidence that the government is willing to share only ex parte, n116 undermining the proceedings' adversarial nature.

The government's investigative actions are most frequently scrutinized through motions to suppress evidence collected in violation of the Fourth Amendment. n117 But this process generally eludes the targets of surveillance. When the government gathers information for the purposes of criminal prosecution and seeks to introduce it as evidence at trial, only the individual about whom the information was gathered--the criminal defendant--will have the opportunity to challenge the government's actions through a suppression motion. n118 This means that these practices will face challenges in those circumstances where the government's case is most compelling--when a guilty person seeks to exclude probative inculpatory evidence. n119 Moreover, **much of the government's intelligence-collection activity never leads to prosecution**. As a result, innocent targets of surveillance--those whose information is collected because it is deemed "relevant" to an investigation, or members of a house of worship who change their religious practices due to fear of surveillance--**will be unable to invoke judicial protection**. n120

AT: Solvency Deficit --- Congress Specific

Congress can't solve --- strong incentives will discourage effective follow through

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The accountability gap left by the absence of judicial review will not be filled by legislative or public scrutiny. The origin story of the original Attorney General Guidelines included a significant role for Congress. n121 Having been prompted by the Church [*35] Committee's findings of misconduct and the resulting public outrage, the legislature was intimately involved in developing the contents of the Guidelines. n122 Congress held a series of hearings on the issue over the course of several years, and saw its suggestions ultimately reflected in the Levi Guidelines. n123 Given that the Guidelines were implemented, at least in part, to avoid more stringent legislative action, n124 this is not a surprise. Surely Attorney General Levi knew that if the rules he instituted did not appear to address Congress's concerns, they would fail to sap the momentum for enacting a statutory charter for the FBI.

The contemporary political economy of congressional oversight in this area means that legislative oversight will not provide any more effective a check than judicial action. Legislators' incentives weigh against aggressive involvement. The downside risks of unsuccessful counterterrorism policies (additional attacks) are high. n125 **If those policies are developed outside of the legislative process, Congress can share (if not entirely evade) blame.** Moreover, counterterrorism policy "is a subject matter that is especially prone to legislative delegation because it often entails hard trade-offs," which are the types of questions Congress is least likely to address. n126 In addition to undermining legislative involvement in counterterrorism policy formulation, existing institutional features also render [*36] congressional oversight of domestic intelligence-collection policy ineffectual. Congress, of course, retains oversight authority over the FBI. n127 If it wants to play a more active role in overseeing the Guidelines, it has the tools to do so. n128 After all, Congress determines whether and to what degree the FBI's intelligence-collection activities are funded. n129 Moreover, the relevant committees of jurisdiction conduct regular oversight hearings at which the Attorney General and FBI Director appear. n130 Legislators can ask Justice Department and FBI officials for information about the Guidelines or the FBI's activities at any time. n131

Perhaps as a result of the existing incentive structure, however, Congress has shown little appetite to pursue Guidelines-related issues of late. n132 The most recent modification to the Guidelines, for example, failed to reflect congressional input. The Justice Department provided the Senate Judiciary [*37] Committee a completed draft of the Mukasey Guidelines a few months before they were implemented. n133 A handful of senators requested that Attorney General Mukasey delay their implementation until Congress had the opportunity to develop suggestions regarding ways to minimize civil liberties concerns. n134 Their request went unanswered. And even when FBI Director Robert Mueller III inaccurately testified in 2010 before Congress that the FBI did not have the authority to conduct unpredicated investigations, legislators took no follow-up action. n135

AT: Doesn't Curtail Surveillance

Attorney General Guidelines have the capability to curtail surveillance --- only recently has there been a departure from those past restrictions

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Over time, both the Bureau's focus and the rules governing its activities have swung back and forth along the spectrum between the targeted investigations of crime solving and the broader intelligence gathering associated with prevention. The Guidelines themselves are the product of the FBI's early-1970s move away from intelligence collection. After the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, commonly known as the Church Committee for its chair Senator Frank Church (D-ID), [*13] revealed that decades of unregulated intelligence collection by the FBI had resulted in widespread abuses of the government's investigative powers, n29 Congress determined that the FBI should be subject to a legislative charter setting out strict limits on its intelligence-collection authority. n30 In an effort to stave off potentially more restrictive legislative action, President Gerald Ford's Attorney General, Edward Levi, issued in 1976 the first set of Attorney General's Guidelines--known as the Levi Guidelines. n31

The Levi Guidelines strictly curtailed domestic intelligence investigations through a basic regulatory structure that subsequent versions of the Guidelines have largely retained. n32 [*14] This structure consists of multiple investigative levels. For each successive level, a higher threshold of suspicion is necessary to proceed; the investigative tools agents may use are more intrusive; and procedural safeguards, such as the need for supervisory approval and limits on the temporal length of investigations, are more robust. n33 The Guidelines continue to function as the primary constraint on the FBI's operations and remain a justification for the lack of a statutory charter governing the FBI's activities, but they have not remained static. n34 Multiple modifications made in the years between 1976 and 2001 eased, though ultimately retained, restrictions on intelligence collection. n35

With 9/11, however, came a wholesale rejection of the anti-intelligence-collection mindset of the Levi era, resulting in a dramatic shift in favor of an aggressive prevention paradigm. The FBI's prioritization of preventing terrorism was reflected not only in the allocation of its resources, its focus, and its conception of its core mission but also in some dramatic modifications to the Guidelines themselves. n36 The eventual result was a set of [*15] Guidelines--which were implemented by Attorney General Michael Mukasey in 2008 and remain in effect today--embodying an unprecedented license for domestic intelligence collection and delegating to the FBI responsibility for imposing limits on that power. n37

AT: No Enforcement

Justification requirements create incentives for agencies to follow the impact statement – the Inspector General will make up for the secret nature of the process

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B. Oversight of Procedural Requirements

One possible objection to this Article's proposals is that, in eschewing judicial review and conceding the secret nature of the Guidelines regime, they relinquish all means of enforcing their requirements. As with the proposed procedural rules themselves, however, the principles behind the administrative state's compliance mechanisms offer a (partial) solution. n332

Notice-and-comment rulemaking employs the transparency of the rulemaking process followed by public and judicial review to enforce the regulatory regime to which agency decision making is subjected. n333 The public's role in that regime is to play watchdog. Because rulemaking and its results are conducted in a transparent fashion, interested stakeholders can be relied upon to object if they believe that an agency has not acted appropriately. n334 The public will scrutinize not only proposed rules to ensure that they do not suffer from procedural, logical, or evidentiary deficiencies, but also any information that is made public as part of the process. If, for example, an Environmental Impact Statement predicts dire environmental consequences from a proposed agency action, environmental activists will use that [*86] Statement to lobby not only the agency but also Congress and the President to prevent the agency from taking the proposed action. n335 Another important compliance-related element of public scrutiny is the fact that it can lead to legal challenges to agency rules. If a regulated entity believes that a regulation applied to it was adopted through flawed procedures, it can bring suit, thereby subjecting the regulation to judicial review. n336 Through this review, courts serve to confirm that agency decisions are not unjustified exercises of discretion and that they followed the mandated procedures. n337 Consequently, courts engage in a "searching and careful" review of the record an agency makes of its decision-making process n338 and will invalidate the results of proceedings that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." n339 These standards are not necessarily particularly stringent, but like public scrutiny, [*87] they do ensure that agency decisions have been reached through the proper procedures and therefore that they are reasoned rather than arbitrary or irrational.

Perhaps just as importantly, the roles that the public and the courts play impose an important "prior restraint" on agencies. Knowing that their rules and the justifications that they offer for them will be public and potentially subject to judicial scrutiny, **agencies will be more likely to be conscientious, hoping to ensure that their decision-making processes pass judicial muster**. n340 In other words, they will take any procedural requirements seriously from the outset knowing that, if they do not, any resulting rule could ultimately be invalidated.

Fashioning equally effective means of supervising Justice Department or FBI compliance with any relevant rules is a challenge, because the transparency that facilities both public scrutiny and judicial review is concededly difficult to replicate. Any proceedings regarding the Guidelines that take place outside of public view are shielded from the public-as-watchdog. If the relevant rules were legislatively mandated, challenges to any failure to abide by them theoretically could be reviewed by the courts. n341 But even in the unlikely event that Congress imposes procedural requirements akin to those suggested here, such suits will fall prey to the same barriers that

currently exist to challenging the FBI's intelligence-collection activities--any individual or entity seeking to challenge the Guidelines or the DIOG on the grounds that they did not follow the required procedures would struggle to establish standing and to overcome the state secrets privilege. n342

As with the reforms suggested to channel the Justice Department's discretion and to improve the participatory nature of the Guidelines' development process, ensuring compliance with procedural requirements would necessitate a means of approximating the traditionally public and judicial roles. One [*88] option in this regard would be to enlist proxies within the executive branch to engage in scrutiny of the decision-making process, to inquire whether the process complied with any required procedures, and to consider whether the required statement(s) of justification are adequate. A government watchdog could be assigned to take the place of the public and judicial watchdogs that normally play this role. n343 The Justice Department's Inspector General (IG)--who is statutorily empowered to conduct audits, investigations, inspections, and reviews of Justice Department programs and to issue reports to Congress regarding the results of any investigations that it does conduct--might play a constructive role in holding the Attorney General and FBI Director accountable for following any applicable procedural rules. The IG investigates not only alleged violations of the law by DOJ employees, but also audits and inspects DOJ programs regularly. n344 That office could perform reviews of the process employed each time the Guidelines or the DIOG are amended. Audits conducted by the IG would be especially effective in replicating the effects of traditional transparency if the results of those audits could be released publicly. Indeed, IGs have, at times, **played quite important roles in uncovering violations of law and policy in pursuit of security**. n345 **Perhaps more than any other oversight mechanism** (with the exception of unlawful leaks of classified information), **audit reports from the** Justice Department's **I**nspector **G**eneral **have shed light on the FBI's investigative activities** in the wake of 9/11. These reports, some of which revealed violations of law or [*89] policy, **drew both public and congressional attention, and consequently prompted changes to internal FBI policy**. n346

To be sure, even publicly released IG conclusions would lack some of the other compliance-enhancing characteristics of public and judicial scrutiny. The IG does not have the power to invalidate rules that are adopted through flawed procedures or lack sufficient justification. It can point out flaws and insufficiencies, but ultimately any findings or recommendations would be nonbinding. This absence of compulsory power sacrifices some of the sword-of-Damocles threat inherent in the promise of judicial review. If, however, the findings and recommendations can be made public, the threat of reputational costs to the FBI still imposes some ex ante incentive to comply with required procedures. And IGs have been particularly successful in generating public reports for reviews of even the most sensitive programs. n347

Civil Liberties Impact Statement will force information assessments that facilitate oversight efforts from the public, the legislature, or internal watchdogs and check government abuses

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Generating Information. More promising models of reconciling conflicting priorities are **focused on agency culture, rather than agency structure**. One mechanism for placing pressure on

agency culture and prompting decision makers to consider factors that they otherwise might not give much weight is a requirement that an agency generate certain types of [*71] information. According to Professor Eric Biber, for example, "[a] major goal of NEPA was to force agencies that formerly had focused too heavily on primary missions such as highway construction, water-project development, or the extraction of natural resources, to also consider the impacts of their actions on the environment." n272 To accomplish this goal, NEPA requires all federal agencies proposing actions that will "significantly [affect] the quality of the human environment" to prepare an Environmental Impact Statement and make copies available to the public for written comments. n273 These statements augment the information available to agencies, including the possible impacts on the environment, and proposals about how to avoid adverse environmental effects. n274 And commentators agree that NEPA has been successful in integrating environmental goals into agency decision making. n275 Similarly, all agencies--including the FBI--must generate a Privacy Impact Assessment (PIA) for "any substantially revised or new Information Technology System" n276 that collects, maintains, or disseminates personally identifiable information from or about members of the public. n277 And the Department of Homeland Security's Office of Civil Rights and Civil Liberties generates Civil Rights and Civil Liberties Impact Assessments when required to do so by statute, when [*72] they are requested by Department officials, or when the Officer for Civil Rights and Civil Liberties believes it appropriate. n278

Generating these assessments not only **facilitates oversight efforts from the public, the legislature, or internal watchdogs**, but--like requiring written justifications for changes--it has other benefits as well. As an initial matter, **it forces agency decision makers to consciously consider the impact their proposed policy will have**. n279 As one set of commentators put it, "a systematic review of potential impacts **during the planning process** can focus the attention of decision makers on issues that they would otherwise deem to be outside their agency's mandate." n280 Requiring that effort will, at times, lead to agency choices more solicitous of the issue on which the assessment is focused. Decision-makers might simply need to be made aware of the impact of their choices. In addition, they will recognize that the substance of the assessment will be subject to scrutiny and, perhaps, criticism that they would rather avoid. And by ensuring that this information is before the decision makers while they are engaged in the decision-making process--rather than after the fact--makes the exercise all the more likely to have an impact. n281 In addition, DHS's Privacy Office Official Guidance on Privacy Impact Assessments notes that the use of PIAs "demonstrates to the public and to Congress" that the new systems "have consciously incorporated privacy protections," **contributing to the legitimacy of the systems**. n282

In order to ensure that the Attorney General or FBI Director consider explicitly specific "secondary" goals, he or she should be required to prepare a "Civil Liberties Impact Statement," [*73] articulating the likely effects of any proposed changes to the Guidelines. Requiring the Attorney General to consider, and to explain, whether the cost to civil liberties of any particular rule or tactic outweighs its investigative benefits is **sure to raise the profile of civil liberties protection in the decision-making process**. And while these Statements will not include the detailed scientific analysis that forms part of Environmental Impact Statements, they will identify the potential civil liberties impacts of proposed rules and **force government officials both to note those impacts, and to think about what steps can be taken to mitigate them**.

Strong PCLOB role will force the FBI to internalize the protection of civil liberties

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Inter-Agency Lobbying. A final mechanism the administrative state has used successfully to force agencies to consider specific, under-emphasized perspectives is for the political branches to **enlist other agencies to police the primary decision-making agency**. This idea, too, has potential in the Guidelines context. In some ways, this approach is simply a form of expanding the scope of participation, including a "lobbying" agency in the decision-making process to represent a particular interest that the decision-making agency is required to consider. n283 In other words, for the lobbying agency, its primary mission is to promote an interest that may be a "secondary" goal to the decision-making agency. This approach can differ from merely expanding participation in the process in that it envisions a more active role for the lobbying agency than merely providing a particular view to the decision maker. Again, a recommendation already mentioned provides an example. Recall Professors DeShazo and Freeman's study about the licensing practices of the Federal Energy Regulatory Commission and the impact of Congress's requirement that the Commission consult with fish and wildlife agencies prior to issuing licenses. n284 They concluded that this requirement had a real impact on the Commission's treatment of the fish and wildlife agencies' concerns. n285

[*74] Conferring a role in the decision-making process on an agency whose priority is the protection of fundamental rights might **mitigate concerns that the FBI's primary mission will unnecessarily endanger civil liberties**. The Attorney General might, for example, be required to include officials from such an agency in the process of devising the FBI's investigative rules--to give them a seat at the table. Just as including the Fish and Wildlife Service in agency decision making ensures that decisions take animal habitats into account, including an agency like the PCLOB could play a similar role with civil liberties concerns in the intelligence-collection context. n286 Members and staff of the board--many of whom, unlike staff at the Office of the Director for National Intelligence (ODNI) or FBI charged with protecting civil liberties offices, are drawn from the privacy and civil liberties advocacy community n287--could raise civil liberties concerns that particular rules present, offer alternative means of achieving the FBI's desired ends, suggest procedural protections that should accompany particular rules, or argue that certain rules should not be approved at all. Most importantly, ensuring an entity such as the PCLOB a seat at the table means that there is a voice actively involved in the process whose primary concern is not necessarily the prevention of terrorist acts.

While this type of interagency influence exertion can happen informally, n288 the regulatory or legislative creation of more hierarchical forms of agency interaction to vindicate "secondary" goals is likely more effective. Such a hierarchical structure causes decision makers to regulate in the "shadow" of that lobbying agency, **prompting the decision-making agency "to internalize the** [*75] **secondary mandates."** n289 Consider the role of the OIRA, through which the Executive Office of the President monitors regulation. n290 A presidential order places OIRA in a hierarchical position over federal agencies to evaluate whether the benefits of agencies' proposed rules exceed their costs. n291 And OIRA has the power not just to make suggestions for modifications but actually to block implementation of an agency regulation on this basis. n292 This "veto" power requires those agencies to take into account what they might consider a secondary goal--efficiency--when contemplating regulatory action. n293

As with the requirement that the Attorney General or FBI Director consider input from particular entities, the impact and effectiveness of this model would be highly contingent on the degree to which Justice Department officials were obligated to take the PCLOB's opinions into account. n294 **An agency statutorily empowered to overrule DOJ proposals would have enormous practical effect.** But such drastic (and implausible) measures are not required. Again, there are a range of possible roles for the PCLOB. For example, it could simply be given a seat at the table during the formulation of the Guidelines, allowing its representative to raise civil liberties concerns. n295 Or a stronger [*76] thumb on the scale of civil liberties might be to require a report to Congress about any instances in which the PCLOB and the Attorney General or FBI Director are unable to reach agreement on a particular issue. n296

In sum, the procedural framework for the Guidelines should explicitly require that the Attorney General or FBI Director take into account the civil liberties costs when weighing policy options by preparing a "Civil Liberties Impact Statement" detailing the likely impact of the proposed changes on fundamental rights, and should empower the PCLOB to play an active role in formulating the Guidelines. These suggested procedures will not eliminate all concerns about civil liberties raised by the Guidelines and the DIOG. But in a context where preferred methods of rights protection break down, they offer a second-best option. n297

AT: CP Process is Burdensome / Costly

Potential costs or personnel tradeoffs are productive --- they will serve as a barrier to arbitrary or unnecessary changes

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A final preliminary note: implementing these reforms would not be costless. As an initial matter, any increase in the onerousness of modifying the Guidelines creates pressure to shift [*49] policy-making decisions to a level where these rules do not apply, making accountability even more elusive. For this reason, any efforts at reform would have to apply to changes to the DIOG as well as the Guidelines, and consider ways to prevent further devolution of decision-making responsibility. These suggested changes would also, of course, consume time and personnel not currently devoted to the Guidelines. But these costs need not be prohibitive. As an initial matter, **the costs themselves would impose a potentially valuable barrier to arbitrary or unnecessary changes**. Only when changes are in fact necessary will the Attorney General or FBI Director undertake the amendment process. Moreover, the Guidelines and DIOG are modified so infrequently that the need to allocate additional resources to the project would be rare. If implemented effectively, these rare additional costs would be justified by their benefits.

AT: SQ Laws Prevent the CP

Very few statutory or constitutional constraints --- Justice Department and FBI set their own internal rules

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In this Part, Section A demonstrates the scope of some of the FBI's contemporary intelligence-collection powers and their potential to create tension with privacy; rights of association, expression, and religious exercise; and equal protection principles. n38 Section B then argues that the absence of nondoctrinal checks--whether practical, judicial, political, or [*16] structural--on domestic intelligence collection means that **the only constraints on the FBI's intelligence-collection powers are the internal rules that the Justice Department and the FBI have imposed on themselves**.

A. The Scope of the FBI's Intelligence-Collection Powers

Statutory and constitutional doctrine provides very few limits on government access to a vast amount of information about innocent Americans. n39 Any information that we have disclosed to a third-party individual or business entity, for example, lacks Fourth Amendment protection against unreasonable searches and seizures. n40 Thus the Constitution places no limits on the collection of information contained in credit card transactions, bank records, Internet service provider (ISP) records, Amazon.com transaction histories, Facebook activities, electronic toll records, cell-tower location data (in some jurisdictions n41), and even statements made to undercover agents or government informants--regardless of whether the agent or informant discloses his intention to share the contents of the conversation. n42 The First Amendment similarly lacks purchase [*17] here. Intelligence-collection powers that impact religious practice would likely run afoul of the Free Exercise Clause as a facial matter only if they were being implemented with the purpose of suppressing religious exercise. n43 And if the Guidelines chill expression or curtail association, the activities they permit would be immune to facial constitutional challenge so long as they were narrowly tailored to further the compelling interesting in preventing terrorism, an interest that has been afforded great weight by the courts. n44 Statutes provide only slightly more protection. n45

The permissiveness of the doctrine means that the FBI's intelligence-collection powers face very few external legal constraints. In this doctrinal vacuum, the Attorney General was able to make several post-9/11 amendments to the Guidelines that facilitate an aggressive intelligence-collection role for the FBI. The first relevant amendment is the Guidelines' expression of the FBI's newly adopted preventive mission. Specific language explicitly affirms the FBI's role in the intelligence community and specifies authority to collect, retain, and analyze information for intelligence purposes. The Guidelines declare that "[t]he FBI is an intelligence agency as well as a law enforcement agency . . . [whose] functions accordingly extend beyond limited [*18] investigations of discrete matters" n46 and urge the Bureau to use its analytic authority to "identify and understand trends, causes, and potential indicia of criminal activity and other threats to the United States that would not be apparent from the investigation of discrete matters alone." n47 To facilitate this analytical project, the Guidelines provide that all information collected "at all stages of investigative activity is . . . to be retained and disseminated for [intelligence purposes to facilitate the solution and prevention of crime, protect the national security, and further foreign intelligence objectives] regardless of whether it furthers investigative objectives in a narrower or

more immediate sense." n48 Even information that wholly exonerates a group or individual from suspicion remains in government databases for storage, analysis (sometimes by algorithmic data-mining), and dissemination for inclusion in other government agencies' databases. n49

AT: Permutation – Do the CP

****note when prepping file --- a longer version of this ev is the "2nc Must Read" block*

Permutations severs --- doesn't mandate curtailment of government surveillance. It just institutes a process that might in the future result in reduced FBI powers.

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[*46] Given the appropriate political environment, there are at least three reasons to think that the imposition of a framework like the one suggested here is not entirely implausible. As an initial matter, there is the FBI's concern over legitimacy. The Bureau's ability to succeed in its mission requires constructive relationships with the communities in which it operates. n168 Yet its aggressive intelligence-collection tactics--and their concentration in Muslim communities--has alienated many members of that community, raised suspicion and distrust of the Bureau in some quarters, and undermined cooperative relationships. n169 Improved governance is thus not the only benefit that would flow from implementing APA-like procedures; institutionalizing rulemaking procedures would also yield improvements in community relations, public perceptions of legitimacy, and consequently, FBI effectiveness. In addition, government documents and scholarly commentary are replete with arguments about the value of process in legitimating government action. n170 The FBI's practice of reaching out to nongovernmental organizations in anticipation of issuing new intelligence-collection rules indicates an awareness of the benefits of generating the support of outside stakeholders. n171 Subjecting itself to a set of procedural rules would go far in this regard. And finally, none of the proposals here are substantive. **They do not call upon the FBI to cede any particular powers, or to discontinue existing policy.** Indeed, **they acknowledge the Attorney General's and FBI's role in generating the rules by which the FBI operates**, so long as they can show [*47] both that changes in the FBI's authority are needed and that the proposed changes are reasonable ones. And finally, when it comes to imposing limits on government actors, broad procedural frameworks often face less opposition than substantive policy changes. n172

A second preliminary note concerns the role of the APA. While several of the proposed reforms are inspired by provisions of the APA, **this Article does not argue that the APA's procedural rules apply to the FBI as a matter of binding law**. n173 In fact, it does not take a position with respect to whether the Guidelines or the DIOG constitute legislative rules subject to APA requirements, or whether they represent informal guidance documents or "rules of agency organization, procedure, or practice," which are explicitly exempt from many of the APA's constraints. n174 Instead, the Article looks to the way the APA and other sources of administrative law address particular concerns and argues that intelligence-collection governance

would benefit from implementing procedures inspired the animating principles behind these sources of administrative law.

Reject severance --- prevents testing the opportunity costs of the plan with counterplans and disadvantages.

They are disingenuous --- the 1ac is littered with references why external controls are necessary for the FBI. The CP takes a very different approach that promotes internal, agency based limitations.

Relevant scholarly literature also proves the counterplan is a competing policy option --- you should defer to lit because that is the source of topic education and legal experts have a much greater understanding of policy precision.

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2. Relieving the Tension Among Multiple Missions

Fortunately, **several administrative law strategies suggest ways to ensure that the Guidelines regime sufficiently takes into account civil liberties concerns as well as security concerns**. n258 Though all of the options discussed below are possible paths to follow, the final two approaches discussed below seem particularly promising.

Congress Reclaims Authority. One option, of course, is for Congress simply to relieve an agency of responsibility for one of [*68] the competing goals, reclaiming that decision-making authority for itself. n259 Following revelations of civil liberties violations in the 1970s, Congress reclaimed some decision-making authority regarding the executive's surveillance powers by enacting the Foreign Intelligence Surveillance Act (FISA). n260 Or Congress could generate more piecemeal limitations, barring particular techniques that pose threats to civil liberties, or defining the circumstances under which such techniques could be used. Congress could, for example, statutorily reinstate the rule regarding the use of undercover agents to investigate First Amendment protected activities as it existed in the Guidelines in 2001, which required that the FBI have probable cause or a reason to believe a crime had been committed before sending an agent into the meetings of a religious or political group. n261

Congress need not legislate to bring such changes about. If Congress wanted to alter particular investigative tactics, or even to pressure the Justice Department to adopt of its own volition the type of procedural framework suggested in this Article, it has an array of tools at its disposal to press for its desired policy change. Just the threat of legislation, so long as it is credible, can spur executive action. Recall that the original Attorney General's Guidelines were implemented to sap the momentum from Congress's efforts to enact a legislative charter for the FBI. n262 So long as the option of enacting an FBI charter remains a viable means for Congress to limit the Attorney General's discretion when it comes to FBI investigations, the threat of such legislation can be used to press for Congress's desired policy outcomes. Congress possesses carrots as well as

sticks--its control over the FBI and Justice Department's budget also can impose a great [*69] deal of pressure for policy change. Given the political economy of this policy area, n263 however, reliance on Congress to reconcile the tension between the FBI's security mission and civil liberties is not the most promising route.

Separate Agency Functions. Another way that the administrative state deals with competing mandates is to separate agency functions, assigning one mandate to another (new or pre-existing) agency and leaving each free to focus solely on its own particular mandate. The APA's requirement that investigative and adjudicative functions be separated from one another, thereby insulating some decision making from possibly biased influences, n264 is a way to implement this division-of-functions idea within a single agency. Professor Rachel Barkow has advocated, for example, for the separation of adjudicative and enforcement functions within prosecutors' offices. n265 And in the domestic investigative context, the United Kingdom offers an illustration. Rather than relying on one agency both to enforce criminal laws and to collect intelligence, those functions are divided between two different agencies. n266 The police forces investigate crimes and enforce criminal law, and MI5 collects intelligence. n267 Some commentators have argued that the United States should consider more closely the idea of spinning off the FBI's intelligence-collection function into an independent agency. n268 This alone would not, of course, address many of the concerns that the FBI's current powers raise. But it is possible that, recognizing the special threats to civil liberties that [*70] intelligence collection poses, an agency designed solely for that purpose would be subjected to more stringent limits. Indeed, to prevent overreaching, MI5's expansive intelligence-collection powers do not include arrest or detention authority. n269 Thus powers that are necessary for successful anti-crime efforts could nonetheless be off-limits or curtailed for the intelligence agency.

This division-of-functions solution, whether within or between agencies, is also unlikely to garner much support in the Guidelines context. As an initial matter, congressional passivity with respect to intelligence oversight will undermine any legislative efforts in this direction. But more importantly, many of the reforms to the intelligence community's structure in the past decade-plus have been explicitly designed to consolidate, rather than separate, functions. Perceived information-sharing failures prior to 9/11 led to a chorus of calls for breaking down barriers both within and between agencies, n270 and both Congress and the executive branch have responded. The USA PATRIOT Act's removal of the so-called "wall," which barred coordination between law enforcement and intelligence officials, is perhaps the most well-known, though by no means the only, post-9/11 change along these lines. n271 Regardless of the salutary impact that separation of functions might have on civil liberties, the perceived security value of consolidation means that neither Congress nor the executive seems likely to reverse this trend.

Generating Information. **More promising models of reconciling conflicting priorities are focused on agency culture, rather than agency structure.** One mechanism for placing pressure on agency culture and prompting decision makers to consider factors that they otherwise might not give much weight is a requirement that an agency generate certain types of [*71] information. According to Professor Eric Biber, for example, "[a] major goal of NEPA was to force agencies that formerly had focused too heavily on primary missions such as highway construction, water-project development, or the extraction of natural resources, to also consider the impacts of their actions on the environment." n272 To accomplish this goal, NEPA requires all federal agencies proposing actions that will "significantly [affect] the quality of the human environment" to prepare an Environmental Impact Statement and make copies available to the

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mentioned provides an example. Recall Professors DeShazo and Freeman's study about the licensing practices of the Federal Energy Regulatory Commission and the impact of Congress's requirement that the Commission consult with fish and wildlife agencies prior to issuing licenses. n284 They concluded that this requirement had a real impact on the Commission's treatment of the fish and wildlife agencies' concerns. n285

[*74] Conferring a role in the decision-making process on an agency whose priority is the protection of fundamental rights might mitigate concerns that the FBI's primary mission will unnecessarily endanger civil liberties. The Attorney General might, for example, be required to include officials from such an agency in the process of devising the FBI's investigative rules--to give them a seat at the table. Just as including the Fish and Wildlife Service in agency decision making ensures that decisions take animal habitats into account, including an agency like the PCLOB could play a similar role with civil liberties concerns in the intelligence-collection context. n286 Members and staff of the board--many of whom, unlike staff at the Office of the Director for National Intelligence (ODNI) or FBI charged with protecting civil liberties offices, are drawn from the privacy and civil liberties advocacy community n287--could raise civil liberties concerns that particular rules present, offer alternative means of achieving the FBI's desired ends, suggest procedural protections that should accompany particular rules, or argue that certain rules should not be approved at all. Most importantly, ensuring an entity such as the PCLOB a seat at the table means that there is a voice actively involved in the process whose primary concern is not necessarily the prevention of terrorist acts.

While this type of interagency influence exertion can happen informally, n288 the regulatory or legislative **creation of more hierarchical forms of agency interaction** to vindicate "secondary" goals is likely more effective. Such a hierarchical structure causes decision makers to regulate in the "shadow" of that lobbying agency, prompting the decision-making agency "to internalize the [*75] secondary mandates." n289 Consider the role of the OIRA, through which the Executive Office of the President monitors regulation. n290 A presidential order places OIRA in a hierarchical position over federal agencies to evaluate whether the benefits of agencies' proposed rules exceed their costs. n291 And OIRA has the power not just to make suggestions for modifications but **actually to block implementation of an agency regulation on this basis**. n292 **This "veto" power** requires those agencies to take into account what they might consider a secondary goal--efficiency--when contemplating regulatory action. n293

As with the requirement that the Attorney General or FBI Director consider input from particular entities, the impact and effectiveness of this model would be highly contingent on the degree to which Justice Department officials were obligated to take the PCLOB's opinions into account. n294 **An agency statutorily empowered to overrule DOJ proposals would have enormous practical effect.** But such drastic (and implausible) measures are not required. Again, there are a range of possible roles for the PCLOB. For example, it could simply be given a seat at the table during the formulation of the Guidelines, allowing its representative to raise civil liberties concerns. n295 Or a stronger [*76] thumb on the scale of civil liberties might be to require a report to Congress about any instances in which the PCLOB and the Attorney General or FBI Director are unable to reach agreement on a particular issue. n296

In sum, the procedural framework for the Guidelines should explicitly require that the Attorney General or FBI Director take into account the civil liberties costs when weighing policy options by preparing a "Civil Liberties Impact Statement" detailing the likely impact of the proposed changes on fundamental rights, and should empower the PCLOB to play an active role in

formulating the Guidelines. These suggested procedures will not eliminate all concerns about civil liberties raised by the Guidelines and the DIOG. But in a context where preferred methods of rights protection break down, they offer a second-best option. n297

And, the counterplan gives the PCLOB a veto over the process, means no certain outcome is guaranteed.

"Should" means "must" and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, "Kelsey v. Dollarsaver Food Warehouse of Durant", 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 **The legal question to be resolved by the court is whether the word "should"**13 in the May 18 order connotes futurity or **may be deemed a ruling *in praesenti***.14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16

[CONTINUES – TO FOOTNOTE]

13 "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. **Certain contexts mandate a construction of the term "should" as more than merely indicating** preference or **desirability**. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) **("should" would mean the same as** "shall" or **"must"** when used in an instruction to the jury which tells the triers they "should disregard false testimony"). 14 ***In praesenti* means literally "at the present time."** BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance **the phrase denotes** that which in **law is** *presently* or ***immediately effective*, as opposed to something that *will*** or *would* **become effective *in the future*** *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

Religious Surveillance Neg Wave 2

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Advantage Answers

1nc Profiling / Discrimination Advantages

Current Scholarship exaggerates the claims of civil liberties abuses.

Deflem & McDonough, 15 --- *Professor of Sociology at the University of South Carolina, AND ** Instructor, Social Sciences at Allen University (February 2015, Mathieu & Shannon, Society, "The Fear of Counterterrorism: Surveillance and Civil Liberties Since 9/11," Volume 52, Issue 1, SpringerLink database, WM)

The terrorist attacks of September 11, 2001 have dramatically heightened concerns over national security and brought about, in the United States perhaps more than anywhere else, a sharp rise in anti-terrorism laws and related initiatives to build and improve counterterrorism efforts. In addition to a sharp increase in the budget and resources assigned to counterterrorism investigations and intelligence-gathering agencies, US Congress formally approved the expansion of power of the executive branch, including the authorization of new surveillance techniques and procedures for law enforcement agencies in terrorist-related investigations (Deflem 2010). The most prominent and commonly scrutinized source of the formal expansion of investigative powers in the United States since 9/11 is the 2001 USA PATRIOT Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism"), which was swiftly passed with little congressional debate in October of 2001. Civil liberties organizations as well as a number of academic scholars have routinely criticized post-9/11 counterterrorism initiatives as unconstitutional and major threats to civil liberties and privacy. Harmonizing with the claims from civil liberties groups are contributions in the popular and scholarly discourse on surveillance and counterterrorism that lament the purported negative impact of governmental policies and related surveillance and intelligence activities on personal rights and liberties. The revelations by former security contractor Edward Snowden in June 2013 concerning alleged spying practices by the National Security Agency (NSA) greatly reinvigorated these debates. We investigate here if there is any counter-evidence to the alarmist statements that are often made in the popular and scholarly discourse on civil liberties and surveillance. Against the background of academic scholarship on surveillance and criticisms from civil liberty and privacy groups, we rely on archival sources, government documents, and media reports to examine a variety of claims made concerning civil liberties violations by security agencies. **Our analysis reveals that at least a sizeable number of claims raised against counterterrorism practices are without objective foundation in terms of any actual violations**. As an explanation for this markeddiscrepancy, we suggest that, as various survey data show, there is a relatively distinct, albeit it uneven and not entirely stable, culture of privacy and civil liberties in contemporary American society which independently contributes to **a fear of counterterrorism, rather than of terrorism**. These specific cultural sensitivities bring about an increase in the amount of civil rights allegations independent of actual violations thereof. Surveillance Studies Meets Civil Liberties Advocacy In recent years, especially since the events of 9/11, a new social-science field of surveillance studies has been developing (Ball et al. 2012; Contemporary Sociology 2007; Lyon 2007). Briefly reviewing this new burgeoning area, it can be observed that most contributions exhibit a critical and, implicitly or explicitly, fearful view of surveillance as a powerful and deeply invasive social force. Such worrying observations are particularly made in the context of the development of technologically advanced means of information gathering that can threaten privacy and civil liberties. Surveillance expert David Lyon (2003, 2007), for example, laments the inherent consequences of the new surveillance methods as a powerful tool for profiling that would produce and reinforce long-term social inequalities. Surveillance scholars have suggested such novel concepts as a 'surveillant assemblage' to denote the convergence of once separate and discrete surveillance

systems in order to mark nothing short of a gradual destruction of privacy (Haggerty and Ericson 2000). Surveillance technologies are argued to turn into instruments of totalitarian control that create or exacerbate inequality and lack accountability (Haggerty and Ericson 2006). Some differences in perspective on the impact of surveillance are to be noted among social-science scholars (Deflem 2008; Dunér 2005), but the research community has nonetheless not sufficiently acknowledged whatever gains and positive contributions have been made in providing security.

No FBI racial profiling --- it doesn't target individuals based on race or ethnicity and investigates only to protect the communities it serves

Arab American News, 11

(10/29/11, Arab American News, "ACLU says documents obtained from FBI show unconstitutional racial profiling", ProQuest)//Yak

In response to the ACLU release, Detroit Special Agent in Charge of the FBI Andy Arena said that accusations of profiling were not accurate.

"I would not describe it as racial profiling, it is geo-spacial mapping and domain awareness, it's about knowing the area that you serve," he said.

"All it basically is looking at the makeup of communities across the board, not any specific person, and learning about who are potential victims and targets but not targeting any specific individual or group."

His office also said that it is mainly responding to profiling allegations with a statement on the FBI's website. The statement said: "FBI joins the ACLU in opposing racial or ethnic discrimination. The AG Guidelines and the FBI's Domestic Investigations and Operations Guide **(DIOG) clearly prohibit the predication of investigative activity solely on the exercise of First Amendment rights, including freedom of religion, or on race or ethnicity**. The FBI does not investigate individuals, groups, or communities based on ethnicity or race.

"Certain terrorist and criminal groups target particular ethnic and geographic communities for victimization and/or recruitment purposes. This reality must be taken into account when determining if there are threats to the United States.

"These efforts are intended to address specific threats, not particular communities."

The FBI has an outstanding civil rights record

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Civil-Liberties Allegations Against the FBI On the basis of news reports retrieved via Lexis-Nexis, we investigated civil liberties violations against the FBI in the period between January 1, 2002 and December 31, 2013. Though not based on a complete universe of cases or a random sample thereof, evidence gathered from these sources suggests that the number of civil rights violations by the FBI has been reported to be **much lower** than one would expect considering the potential problems voiced in the discourse on post-9/11 surveillance. During the examined period, some 20 cases

involving allegations against the FBI received media attention. Some of the cases involves multiple individuals or groups claiming civil liberties violations. Only five cases involved a substantiated violation, two of which concerned certain provisions of the Patriot Act before they were excluded as unconstitutional upon reauthorization of the Act. Other claims are either still under investigation or were proved to be unsubstantiated. Among the unsubstantiated claims are the cases of Mohamad K. Elzahabi and the FBI surveillance of protesters before the 2004 political conventions. In 2004, the FBI questioned Mohamad K. Elzahabi, a Lebanese national put on an FBI watch list after 9/11. Elzahabi claimed that the FBI violated his rights when they questioned him for 17 days before his arrest in 2004 (Louwagie 2006). Elzahabi made statements during questioning that he taught sniping in Afghanistan and associated with Al Qaeda leaders, which his lawyers attempted to suppress, claiming coercion and involuntary detention. However, in June 2007, a judge denied the request, concluding that FBI agents explicitly told Elzahabi participation in the questioning was voluntary (Browning 2007).

--- XT: Impact Exaggerated

Actual civil rights violations are small compared to ALLEGED threat to liberties

Deflem & McDonough, 15 --- *Professor of Sociology at the University of South Carolina, AND ** Instructor, Social Sciences at Allen University (February 2015, Mathieu & Shannon, Society, "The Fear of Counterterrorism: Surveillance and Civil Liberties Since 9/11," Volume 52, Issue 1, SpringerLink database, WM)

Surveillance and counterterrorism activities are by definition oftentimes secretive and raise sensitive matters on rights and justice. Such issues are particularly important in a democratic society where violations of civil liberties by intelligence and other security agencies, even in an area as pressing as terrorism, cannot be condoned. Yet, a democratically committed society will also be more likely to produce a cultural climate in which concerns surrounding privacy and civil liberties can lead to claims over rights-related violations that cannot be substantiated on the basis of actual incidents of such violations. Our findings suggest that the amount of civil rights violations in the post-9/11 context is relatively **small** when compared to the **alleged** threat to civil liberties suggested in the surveillance discourse among academicians and advocates. In view of our analysis, it is important for social-science scholars to understand the social realities involved with surveillance and counterterrorism as involving a subjective dimension related to legitimacy—especially the lack thereof— that co-exists with objective conditions that are rooted in technology and bureaucratic development. For whereas government and private measures against terrorism and other security concerns have certain measurable consequences, it is also to be noted that they are evaluated by a citizenry that is more or less concerned about such issues irrespective of actual violations. The need is thereby affirmed for sociologists to examine the social conditions affecting security measures regardless of stated motives. Since the classic contributions of Emile Durkheim on the role of law and punishment (Durkheim 1893), it can no longer suffice to view counterterrorism (and other forms of social control) as a mere dependent variable related to terrorism (and other crimes). Instead, as our analysis shows, a more useful framework examines the entire range of factors shaping surveillance activities, ranging from situational factors to deep-rooted cultural traditions. From the viewpoint of civil liberties, our study should not be misinterpreted to assume that we would suggest that the contemporary practices of surveillance and counterterrorism in post-9/11 America (and in other nations across the world) would not have the potential and actuality to violate civil rights. Our analysis does not imply that the threats that surveillance programs and practices may pose to civil liberties should be dismissed, a priori or otherwise. Instead, we suggest that a cultural fear of surveillance and counterterrorism may be so pervasive and deep-rooted that it leads to **overstating the amount of civil liberties violations**. The culturally embedded assumption that surveillance is powerful and harmful to rights and liberties, which is also sustained by claims-making by surveillance scholars and activists alike, may drive civil liberties allegations independent from actual violations thereof. In the interest of both social-science analysis as well as civil liberties protection, surveillance scholars

and civil liberties advocates would do well to not overestimate and speculate, without evidence, on the powers of surveillance and counterterrorism outside of the social context in which relevant practices as well as their study and debate take place.

The rise of civil liberty groups has created an unwarranted culture of distrust towards counter terrorism efforts

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Besides surveillance scholars, major civil liberties organizations have greatly criticized the post-9/11 expansion of the surveillance powers of government and intelligence agencies by means of aggressive public campaigns, critical reports, and lawsuits. The American Civil Liberties Union (ACLU) is one of the most active and prolific of such groups oriented at protecting the rights granted to US citizens by the constitution. The ACLU has instituted a so-called 'Safe and Free' campaign to address a number of issues related to surveillance and civil liberties on the basis of the notion that "there has never been a more urgent need to preserve fundamental privacy protections and our system of checks and balances than the need we face today, as illegal government spying, provisions of the Patriot Act and government-sponsored torture programs transcend the bounds of law and our most treasured values in the name of national security" (ACLU website). The ACLU claims that post-9/11 systems of mass surveillance threaten civil liberties more than that they can effectively combat terrorism. Yet, ACLU campaign tactics may aggravate the fear of surveillance by exaggerating the actual threat to civil liberties. For example, an analysis of an ACLU 'Safe and Free' commercial regarding the FBI's authority to perform 'sneak-and-peek' searches shows that the ACLU overstates the extent of the threat to civil liberties imposed by counterterrorism laws (Factcheck.org 2004). The ACLU's ad claims that the Patriot Act authorizes government agencies to search homes without notification, leaving out the condition of obtaining a warrant from a judge on the basis of regular probable-cause criteria. Campaigns similar to those launched by the ACLU have also been established by other civil liberties organizations. The Electronic Frontier Foundation (EFF), for example, set up the FLAG (FOIA Litigation for Accountable Government) Project, which "aims to expose the government's expanding use of new technologies that invade Americans' privacy… [and] to protect individual liberties" (EFF website). The project utilizes Freedom of Information Act (FOIA) requests to reduce government secrecy and thwart potential abuses of power in regard to government surveillance. Likewise, the Electronic Privacy Information Center (EPIC) works to "focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values" (EPIC website). EPIC has set up a 'Watching the Watchers' program to assess the impact of public surveillance programs proposed following 9/11 (ObservingSurveillance.org). An EPIC report reviewing a budget plan of the Department of Justice criticizes the proposed surveillance programs for their inadequate public scrutiny and possible violations of civil rights under the telling title of "Paying for Big Brother" (EPIC 2002). Using such strong imagery and provocative language, civil liberties groups may effectively contribute to create a fear of surveillance and counterterrorism irrespective of actual practices concerning rights violations.

Amount of actual civil liberties abuses by agencies ON THE WHOLE is still incredibly miniscule --- proves their examples are just isolated cases

Deflem & McDonough, 15 --- *Professor of Sociology at the University of South Carolina, AND ** Instructor, Social Sciences at Allen University (February 2015, Mathieu & Shannon,

Society, "The Fear of Counterterrorism: Surveillance and Civil Liberties Since 9/11," Volume 52, Issue 1, SpringerLink database, WM)

An analysis of the findings of the OIG reports pertaining to investigations between October of 2001 and June of 2013 reveals that the number of civil rights claims and allegations far exceeds the number of violations. Table 1 presents the distribution of all claims versus credible claims in each investigative half-year period. Overall, in the period between 2001 and 2013, the Office of the Inspector General received 21,248 claims of civil rights or civil liberties violations. Of these claims, only 3,421 fell within DOJ's jurisdiction or warranted further review. Of the DOJ claims warranting further review, only 265 were deemed credible enough to open an OIG investigation. Thus, only 7.7 % of the claims within DOJ jurisdiction warranting further review and 1.2 % of the total claims received were identified as potential civil liberties violations, showing that the number of civil liberties violation claims made against DOJ far exceeds the number of credible claims.

--- NYPD Surveillance Program Ended

DeBlasio is ending the NYPD's intrusive Muslim surveillance measures due to political pressure

Paybarah, 14 --- senior writer at Capital New York. He's covered politics in New York for The New York Observer, WNYC Public Radio, New York Sun and New York Press.

(4/16/14, "Was it Justice or Politics that Killled the NYPD Muslim Spy Unit?", http://www.thedailybeast.com/articles/2014/04/16/was-it-justice-or-politics-that-ended-the-police-program-to-spy-on-new-york-s-muslim-community.html)//Yak

New York is the country's largest city and one of its most progressive but since 2001 it's also been at the forefront of some of the most aggressive and controversial anti-terrorism tactics. Yesterday, city officials announced the end of one of those major tactics: targeted spying on Muslim communities.

But there's some strange timing going on here. For one thing, New York's liberal Mayor Bill de Blasio was in favor of the surveillance program before he was against it. Then there's the fact that just days after the New York Times reported that Attorney General Eric Holder will sign off on new guidelines for the FBI that would allow it to continue using nationality to map and surveil neighborhoods, the NYPD program that had been assembling detailed files on Muslim neighborhoods is being publicly dismantled.

More on that in a bit, first some background on the program itself.

Officially, the spying was done under the auspices of the NYPD's "Zone Assessment Unit." Muslims in New York City saw their mosques, restaurants and, in some cases, student associations infiltrated by undercover NYPD officials and confidential informants who took notes on overheard conversations, television programs that were playing, nationality of store owners and customers, and anything else that NYPD officials thought gave them a flavor for what was happening in the city's cloistered immigrant communities that catered to Muslims from the Middle East, North Africa and Eastern Europe.

The Associated Press first reported on NYPD spying in 2011, in a series of articles that later were awarded the Pulitzer Prize. The series culminated in a 2013 book by those reporters, Matt Apuzzo and Adam Goldman, arguing that the labor-intensive and intrusive tactics were also not effective.

Justin Elliott at Pro Publica also questioned the NYPD's claims that its anti-terrorism tactics helped ward off more than a dozen terrorist plots, as was claimed by police officials. Setting aside that debate, the politics of ending what critics called "muslim spying" weren't as easy or palatable in New York City as observers might think. As Michael Powell noted in an unrelated television interview, New York City is progressive … as long as everything is functioning.

But the criticisms made of the spying program weren't heeded by the Justice Department when it reviewed racial profiling rules for a similar FBI program that used ethnic mapping to focus intelligence and recruit informants. According to the Daily News, the Justice Department's ruling, "should once and for all settle the debate about whether what's been wrongly labeled "Muslim surveillance" should continue under Bill Bratton." But the opposite has happened. Shortly after Holder's decision on the FBI, Bratton has discontinued a high profile unit in the NYPD's own surveillance program.

So, what gives? As usual in New York, this is about politics.

Bill de Blasio's meteoric rise from fourth to first place in last year's mayoral race was predicated on a few simple facts: addressing New York's out of control income inequality (who doesn't want someone richer than them to pay a little more?) and, electing someone as far away as possible from Mayor Michael Bloomberg, who earned a lot of resentment from New Yorkers after extending term limits to stay in office.

De Blasio took office with a progressive mandate and promises to reform New York law enforcement policies and make them more responsive to minority concerns. But the public safety issue de Blasio focused on wasn't Muslim spying. It was the controversial stop-and-frisk tactic. The reason was simple, stop-and-frisk was the high profile cause that grabbed headlines. Regular reporting on frisking was required under city law; professors had reams of data to study and analyze; and local lawmakers from majority-minority districts had countless constituents who were the victims of this policy. And in a Democratic primary, those constituents would make up a decisive number of votes.

The targets of Muslim spying had much less ammunition at their disposal. There was hardly any data to analyze — the surveillance programs were, by design, kept from public disclosure. Most information gleaned about the program came from leaks, primarily to Apuzzo and Goldman. Politically, Muslims were a fraction of the voting bloc in New York, and had no real recognizable spokesperson. The only Muslim elected official in New York City — Councilman Robert Jackson of Harlem — questioned the program, but hardly made a sustained effort to be seen as the face of its opposition.

De Blasio himself initially backed the NYPD as the first wave of Associated Press stories were published. In April 2013, de Blasio told me "I spent a lot of time with Commissioner Kelly reviewing the situation. I came to the conclusion that the NYPD had handled it in a legal and appropriate manner with the right checks and balances." He also said he wanted to "constantly monitor" them to make sure "it was done right."

By October, after more AP stories, de Blasio was standing in front of "Muslims for de Blasio," and publicly distinguishing between his policies and Ray Kelly's, telling reporters that spying would have to be based on "specific leads" and not done "on a wholesale basis."

When de Blasio appointed Bill Bratton as the city's police commissioner, he might as well have announced the end of Kellys' surveillance program too.

After the AP stories first appeared in 2011, Kelly defended the program as necessary and accused the outlet of inaccuracies and biases and, later, ginning up stories to promote their forthcoming book. No corrections were ever run. The series won a Pulitzer Prize. (And, in an ironic twist, the Rupert Murdoch-owned TV operation bought the rights to the book, despite the vicious attacks it got on the editorial pages of a Rupert Murdoch-owned paper.)

Years earlier, Bratton had his own short-lived Muslim controversy but he handled it very differently than Kelly did. To observers, he began to look like the opposite of Ray Kelly.

In 2007, as police commissioner in Los Angeles, Bratton sent Michael Downing, the LAPD's commanding officer for Counterterrorism and Special Operations, to testify at a Senate Homeland Security Committee hearing. Downing said, "We probably have over 700,000 American Muslims throughout the Los Angeles region but we don't really know where they live, or what they do or how they're structured" and "We have great outreach and we've got great relationships, but the idea here is to actually map out, to find out where the Pakistani Muslims live, the Somalians, the Chechnyans, the Jordanians."

Sixteen days later, Bratton held a press conference to announce there would be no mapping.

The FBI and NYPD are revising their surveillance policies and moving away from informal informants

Apuzzo and Goldstein, 14- Matt Apuzzo is a Pulitzer Prize-winning American journalist. Apuzzo was born in Cumberland, Maine and attended Colby College.

(4/15/14, "New York Drops Unit that Spied on Muslims", http://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html)//Yak

The New York Police Department has abandoned a secretive program that dispatched plainclothes detectives into Muslim neighborhoods to eavesdrop on conversations and built detailed files on where people ate, prayed and shopped, the department said.

The decision by the nation's largest police force to shutter the controversial surveillance program represents the first sign that William J. Bratton, the department's new commissioner, is backing away from some of the post-9/11 intelligence-gathering practices of his predecessor. The Police Department's tactics, which are the subject of two federal lawsuits, drew criticism from civil rights groups and a senior official with the Federal Bureau of Investigation who said they harmed national security by sowing mistrust for law enforcement in Muslim communities.

To many Muslims, the squad, known as the Demographics Unit, was a sign that the police viewed their every action with suspicion. The police mapped communities inside and outside the city, logging where customers in traditional Islamic clothes ate meals and documenting their lunch-counter conversations.

"The Demographics Unit created psychological warfare in our community," said Linda Sarsour, of the Arab American Association of New York. "Those documents, they showed where we live.

That's the cafe where I eat. That's where I pray. That's where I buy my groceries. They were able to see their entire lives on those maps. And it completely messed with the psyche of the community."

Ms. Sarsour was one of several advocates who met last Wednesday with Mr. Bratton and some of his senior staff members at Police Headquarters. She and others in attendance said the department's new intelligence chief, John Miller, told them that the police did not need to work covertly to find out where Muslims gather and indicated the department was shutting the unit down.

The Demographics Unit, which was renamed the Zone Assessment Unit in recent years, has been largely inactive since Mr. Bratton took over in January, the department's chief spokesman, Stephen Davis, said. The unit's detectives were recently reassigned, he said.

"Understanding certain local demographics can be a useful factor when assessing the threat information that comes into New York City virtually on a daily basis," Mr. Davis said. "In the future, we will gather that information, if necessary, through direct contact between the police precincts and the representatives of the communities they serve."

The department's change in approach comes as the federal government reconsiders and re-evaluates some of its own post-9/11 policies. Although the police department's surveillance program was far smaller in scope than, say, the bulk data collection by the National Security Agency, a similar recalibration seems to be unfolding.

The Demographics Unit was the brainchild of the Central Intelligence Agency officer Lawrence Sanchez, who helped establish it in 2003 while working at the Police Department and while he was still on the spy agency's payroll.

The goal was to identify the mundane locations where a would-be terrorist could blend into society. Plainclothes detectives looked for "hot spots" of radicalization that might give the police an early warning about terrorist plots. The squad, which typically consisted of about a dozen members, focused on 28 "ancestries of interest."

Detectives were told to chat up the employees at Muslim-owned businesses and "gauge sentiment" about America and foreign policy. Through maps and photographs, the police noted where Albanian men played chess in the afternoon, where Egyptians watched soccer and where South Asians played cricket.

After years of collecting information, however, the police acknowledged that it never generated a lead. Since The Associated Press published documents describing the program in 2011, Muslims and civil rights groups have called for its closing.

Mr. Bratton has said that he intends to try to heal rifts between the Police Department and minority communities that have felt alienated as a result of policies pursued during the Bloomberg administration. The meeting last week put Mr. Bratton in the room with some of his department's harshest critics.

"This is the first time we've felt that comfort sitting with them," said Ahmad Jaber, who resigned from the Police Department's Muslim advisory board last year to protest the surveillance tactics. "It's a new administration, and they are willing to sit with the community and listen to their concerns."

1nc Terrorism Adv

CVE focuses counter-radicalization efforts in Muslim communities --- that ignores the threat of attacks from non Islamic groups --- results in Islamophobia and turns the Muslim cooperation internal link

Iyer and Sarsour, 2/17/15 --- *South Asian American activist and the former executive director of South Asian Americans Leading Together, AND **National Advocacy Director for the National Network for Arab American Communities (NNAAC), the Executive Director of the Arab American Association of New York.

(Deepa and Linda, 2/17/15, "Obama wants to 'counter violent extremism'. He should look beyond Muslims", http://www.theguardian.com/commentisfree/2015/feb/17/obama-counter-violent-extremism-conference-muslims)//Yak

On Tuesday, the White House will convene a national summit on combatting violent extremism – but, despite a plethora of attacks by domestic right-wing extremists and the increase in white supremacist hate groups, no one expects that to be on the agenda.

Just a week ago, Craig Hicks, an apparently militant anti-theist murdered three American Muslim college students in Chapel Hill; the FBI and local law enforcement have opened an inquiry into the possibility that it was a hate crime. In August 2012, Wade Michael Page, an avowed white supremacist, stormed into the Sikh Temple of Wisconsin outside Milwaukee and killed six people. Page died, but Attorney General Holder made it clear that the community had endured an act of terrorism and hatred at Page's hands. Frazier Glenn Miller Jr, a neo-Nazi who founded the White Patriot Party, allegedly killed three people at a Jewish retirement community in Overland Park, Kansas on 13 April 2014. He awaits trial for murder.

One would think the federal government's response to this and other threats against communities of color would be to develop programs and practices to confront the very real threat of right-wing violence and the alarming increase of such hate groups in the United States. Instead, the Obama Administration's programs to counter violent extremism (CVE) almost exclusively focus on the recruitment and radicalization of Muslims to engage in terrorist attacks in this country.

While it is important for our government to address all forms of violent extremism to keep Americans safe, the CVE framework is deeply flawed because of its failure to do that and its reliance on unworkable models. Last December, a range of interfaith, community and civil rights organizations sent a letter to the White House expressing these concerns. They noted that the CVE program characterizes Muslims as suspect – which fosters the existing culture of Islamophobia and hostility in the country that leads to discrimination.

Moreover, the government's practice of providing funds to Muslim community partners in the fight against violent extremism has also raised concerns about the true goal of these partnerships. Are they being formed in order to gather intelligence and information about community members, or to actually engage in valuable community outreach about civil rights protections? CVE programs can foster mistrust between government entities and community members. To counter that, the government should engage with Muslim, Arab and South Asian communities to protect

their civil rights – especially since hate violence and discrimination against our communities have not abated.

The threat of right-wing domestic extremism is not far-fetched. According to the Southern Poverty Law Center (SPLC), since the year 2000, the number of hate groups in the United States has increased by 56%; they now include anti-immigrant, anti-LGBT, anti-Muslim and anti-government "Patriot" groups. The federal government too is aware of the threats from these groups. In April 2009, a report by the Department of Homeland Security (DHS) on right-wing extremism was leaked and then withdrawn. It revealed the government's assessment that "white supremacist lone wolves" posed the most significant domestic terrorist threat in the US.

Yet, despite this complicated and growing landscape of domestic right-wing groups, the Obama Administration's Countering Violent Extremism programs continue to focus on the threat of radicalization in Muslim communities. Last September, Attorney General Holder announced that the Department of Homeland Security, the National Counterterrorism Center and the White House would be working with local US Attorney offices to conduct pilot programs in Boston, Los Angeles and Minneapolis to counter violent extremism. At the CVE summit held by the White House this week, these programs will likely be highlighted. Participants at the Summit must ask whether, in these cities, government agencies are focusing on the range of organizations that espouse violent extremism, including hate groups and white supremacists.

One thing is clear: **the federal government's one-note approach to countering violent extremism fosters distrust and hostility towards Muslim communities** while disregarding threats to Americans' safety from racist hate groups in the country. As the CVE Summit unfolds this week, we must ask critical questions about the government's implementation of CVE programs for the sake of not only Muslim communities, but all Americans.

No homegrown terrorist threat --- unreliable studies, increased law enforcement, execution failures

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

Is the Muslim homegrown terrorism threat growing?

Despite the concerns expressed by many analysts and public officials, the evidence does not support the conclusion that Americans face a growing threat of deadly attacks plotted by Muslims in the United States. First, it is unclear that more American Muslims are intent on mounting such attacks. Although it may yet prove to be the case, the evidence at present does not substantiate such a finding. The exploratory nature and approach of studies of radicalization provide limited tools for evaluating whether Muslim Americans are increasingly exhibiting cognitive and behavioral changes that predispose them to violence. Even if the behaviors and beliefs sometimes associated with radicalization are detected, it is unclear that they will culminate in individuals undertaking terrorist activity, and if so, in what incidence individuals will engage in violent acts. Other evidence that radicalization is increasing, such as a surge in arrests, is also a poor indicator of a growing inclination toward violence. The surge could be the result of a clustering of arrests of those long engaged in militancy or the apprehension of large groups, such as the members of

the Daniel Boyd network or the al-Shabaab recruits. Improvements in detection or other actions by law enforcement could also be contributing to an increase in the number of individuals charged with terrorist offenses independent of any larger trends in the population.

Second, there is a dearth of evidence suggesting that American Muslims, even if they were to aspire in greater numbers to plot deadly attacks, would be more capable of doing so without being prematurely apprehended than their counterparts in the past. The evidence cited above suggests that a significant grassroots investigative and monitoring architecture is in place in the United States, such that those who do aspire to plot will continue to be hard pressed to do so undetected. There is no basis for anticipating that the security environment has become more permissive for terrorists. If anything, the commitment to a steady growth of resources, an emphasis on federal, state, and local cooperative initiatives in counterterrorism, ongoing signs of societal vigilance, and continued resistance to militancy in Muslim communities suggest that terrorist plots, as in the past, have a high probability of being detected and foiled before they culminate in the deaths of Americans.

Finally, even if attacks are not foiled, there is little basis for anticipating that those that are executed will be less prone to failure than in the past. Muslim homegrown terrorists in 2009 or 2010 do not appear to have been better equipped to overcome the challenges of bomb making, or preparing attacks, than in prior years. Indeed, mistakes in operational security and tradecraft are common even among skilled terrorists and, in the case of the mostly inexperienced and unprofessional cohort of American terrorists, may be endemic.110 The evidence from several 2010 cases, including those of Finton, Smadi, Farooque, Martinez, and Mohamud, suggests that militants make even the most basic mistakes in terrorist tradecraft, including soliciting help from friends for their plots, advertising their intentions on the internet, and trusting informants and undercover agents often with few questions asked.111 Even the most capable homegrown terrorists—such as those few who managed to navigate security obstacles to obtain overseas training and guidance—ran into difficulty in preparing for their attacks. For example, both Zazi and Shahzad had to contend with serious technical problems and committed errors in operational security.

No impact --- Acquiring and storing equipment and preparation mistakes

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

Acquiring equipment, or simply storing materials, generates yet another set of risks of being exposed. Recall the case of the Saudi student, Khalid Aldawsari, who was arrested in February 2011 after he was reported to authorities, first by the chemical company from which he ordered a large quantity of phenol and second from the freight-forwarding company he hoped to use to receive the shipment.80 According to the New York City Police commissioner, Shahzad purchased fertilizer with an inferior grade of ammonium nitrate and bought M-88 fireworks rather than more powerful equipment to lessen the chance his expenditures would be detected.81 Shahzad's example illustrates how the security environment could indirectly elevate the capabilities required for attacks by forcing militants to rely on obscure or difficult-to-work-with materials in order to evade detection.82

Finally, fabricating viable explosive devices is not the only obstacle that terrorists must overcome to prepare and execute deadly attacks. Preparing attacks often entails pre-operational activity, including identifying and surveilling targets while maintaining operational security. Errors in pre-operational activity are common even among established or well-resourced terrorist networks and organizations and are likely to be pervasive among less experienced militants.83 Take, for example, the 2003 Casablanca suicide bombings. In that case, the plotters had a secure community sanctuary and a skilled coordinator (and, at least according to the Moroccan authorities, help from al-Qaida).84 Yet they still made serious errors in surveillance and planning, including blowing up a Jewish community center on a Saturday. Fortunately, no one was killed, because the plotters did not consider that the center would be closed for the Sabbath.85

Empirics prove resiliency to terrorist attacks --- focusing on Muslim threats ignores far more lethal right wing extremists

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

A final way of evaluating the seriousness of the homegrown Islamist threat is to compare it with other terrorist threats that Americans have faced in the past and others they face in the present—threats the population has heretofore managed rather capably. Seen in light of the threats posed by other segments of the population, the one posed by Muslim Americans appears neither especially novel, nor severe. Take, for example, the United States' recent history with terrorism. As Brian Jenkins observes, in the 1970s the country experienced a rash of bombings by Puerto Rican nationalist groups and the militant left, such as the Weather Underground, which combined were responsible for more than 100 bombings.127 Contemporaneous reports underscore the magnitude of the threat at the time. Between January 1969 and October 1970, 370 bombings occurred in New York City alone, an average of more than one every other day.128 In just over two weeks in March 1970, 14 bombs exploded in New York City, and there were nearly 2,300 bomb scares—numbers that defy imagination today.129 Overall, according to the National Consortium for the Study of Terrorism and Responses to Terrorism, from 1970 to 2007 the United States experienced nearly 1,300 terror attacks—an average of more than 36 per year—with about 10 percent yielding at least one fatality.130

The United States' recent experience with terrorist violence from offshoots of antigovernment and Christian Patriot movements as well as white supremacist groups provides further evidence of Americans' resilience in the face of terrorism, and therefore their capacity to weather terrorist attacks of the kind most likely to originate with Muslim homegrown terrorists.131 In some ways similar in form to the terrorist violence that has been perpetrated by Muslims, right-wing terrorism is often inspired by an overarching ideology or worldview and occurs in operationally disconnected attacks usually outside the boundaries of formal organizations or hierarchies.132 According to the Southern Poverty Law Center's Intelligence Project, there were nearly sixty rightwing terrorist plots largely of this nature from 1995 to 2005.133 Another study found that from September 2001 through September 2010, there were eighty domestic plots involving primarily right-wing terrorists.134

Moreover, a subset of these cases appears to be especially frightening. When white supremacist William Klar was apprehended in 2003 as the result of a postal mistake and the actions of an alert citizen, he had allegedly amassed a large amount of sodium cyanide for use in a terror attack.135 In 2009 a wealthy white supremacist acquired materials that he hoped to use in a radio logical weapon.136 In 2010, members of a local Michigan militia helped to expose a plot by the Hutaree militia, which allegedly sought to kill a policeman and then bomb attendees at his funeral—an assault, as Al-Jazeera's correspondents did not fail to observe, that is as serious in its particulars as those of other recent "jihadi" plots.137

Interestingly, Americans do not seem especially terrorized by the right-wing threat. Even the 1995 Oklahoma city bombing of the Alfred P. Murrah Federal Building—the most lethal attack on U.S. soil bar September 11—seemed to horrify more than terrify people, even though among the 168 dead were 19 children less than six years old. As one study of public opinion in the aftermath of the Oklahoma City bombing concluded, the bomber's actions "altered neither the public's assessment of personal risk nor its reported behavior."138 Despite a jump in the month following the April 1995 attack in the number of respondents who said they were very concerned about terrorist violence in the United States, by June 1995 that figure had fallen below its July 1993 level. The title of the public opinion study captured the prevailing sentiment: "The Terror That Failed."139

In short, Americans have long experience in dealing with the kind of terrorist challenges that Muslim homegrown terrorism is most likely to present.

--- XT: CVE Bad Turns

Community engagement turns on itself exacerbates intercommunal inequalities

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Part III moves to the material implications of community engagement. Community engagement efforts constitute one of many entry points for federal law enforcement into Muslim communities today. But unlike other types of radicalization policing, community engagement efforts draw their legitimacy from ideas of inclusion and democratic participation. Most acutely, my concern is that **community engagement turns on itself by providing police with greater power and discretion over marginalized communities**. Rather than enhance participation, community engagement may simply provide opportunities for select members of Muslim communities to approve preexisting law enforcement commitments - and create an additional source of pressure on Muslim communities to perform their Americanness - without meaningful openings for Muslim communities to communicate, collaborate, and contest the relationship, its modalities, and its outputs. The coercive effect of these practices has been underexplored, even as their success at increasing democracy and inclusion is taken for granted. While it is beyond the scope of this Article to engage the premise that cultivating pro-law-enforcement attitudes is necessary for democracy, the Article does raise questions about how the government should cultivate these attitudes, and how cultivating such attitudes may clash with the duty of people to hold their governments accountable.

Focusing only on Muslim communities and linking CVE to terror efforts stigmatizes Muslim Americans

Muslim Advocates, 14- letter from civil liberty organizations to Obama about CVE

(12/18/14, "Coalition Letter to Obama Administration on Countering Violent Extremism", http://www.muslimadvocates.org/coalition-letter-to-obama-administration-on-countering-violent-extremism/)//Yak

The undersigned human rights, civil liberties and community-based organizations write to express our concern about the targeting of American Muslim communities and communities presumed to be Muslim through activities conducted under the auspices of Countering Violent Extremism (CVE).

In 2011, the White House released a strategic implementation plan with the overarching goal of "preventing violent extremists and their supporters from inspiring, radicalizing, financing or recruiting individuals or groups in the United States to commit acts of violence." 1 The plan describes federal support for "community-led efforts to build resilience to violent extremism" and "preventative programming." It tasks the Department of Homeland Security, Department of Justice and FBI to execute CVE programs and emphasizes the coordinating role of local US Attorneys' Offices. However, the White House has not described the basic parameters, methods and metrics of CVE, which appear to vary at the local level.

Our organizations have diverse perspectives on the wisdom and legality of CVE and therefore do not take a final position on CVE here; however, we all agree that where the federal government encourages these efforts, it also bears responsibility for their impacts. In this letter, we describe some of these impacts, including on: religious exercise; freedom of expression; government preference for or interference in religion; stigmatization of American Muslims; and ongoing abusive surveillance and monitoring practices. We recommend necessary initial steps toward addressing our concerns.

Impact on Religious Exercise and Political Expression

One purported method of CVE is to provide a space for community discussion of alternative political opinions and religious viewpoints, without the threat of government surveillance and monitoring. Yet CVE may also task community members to expansively monitor and report to law enforcement on the beliefs and expressive or associational activities of law-abiding Americans. That approach to American Muslim communities—or any belief community—reproduces the same harm as government surveillance and monitoring. The result of generalized monitoring—whether conducted by the government or by community "partners"—is a climate of fear and self-censorship, where people must watch what they say and with whom they speak, lest they be reported for engaging in lawful behavior vaguely defined as suspicious.

Religious exercise and political expression are among the casualties, as individuals may abandon discussions about religion and politics—or avoid mosque and community spaces altogether—to avoid being tracked into CVE programs that brand them as "at risk" or potential "terrorists." Indeed, insofar as CVE trainings and guidance promote a theory of "radicalization" and malleable "indicators" and "predictors" of violence including patterns of lawful political activism, ideology and religious worship, they are likely to result in law enforcement targeting based on political opinion and religious exercise. These are First Amendment-protected activities—no government-sponsored programs should chill them and law enforcement cannot use them as a basis for action.

Even where the parameters of CVE and community outreach are more narrowly defined, we are concerned based on prior incidents of law enforcement overreach that law enforcement may use them as a pretext for intelligence gathering activities that treat entire communities as suspect. Indeed, in any community roundtable or event, the presence of Justice Department officials and police creates the risk that community members' participation and statements may be recorded in intelligence databases.

Improper Characterization of American Muslims as a Suspect Community

CVE's stated goal is to "support and help empower American communities."2 Yet CVE's focus on American Muslim communities and communities presumed to be Muslim stigmatizes them as inherently suspect. It sets American Muslims apart from their neighbors and singles them out for monitoring based on faith, race and ethnicity.

CVE's focus on supporting local communities links it to traditional community policing initiatives. Yet federal support for community policing should focus on crime reduction in communities overall—and not succumb to a singular focus on terrorism or American Muslims. The federal government's support for community policing should also be delinked from "radicalization" theory and related concepts. Empirical studies show that violent threats cannot be predicted by any religious, ideological, ethnic, or racial profiling. The evidence suggests that there is no direct link among religious observance, radical ideas and violent acts.

Moreover, all agencies involved in CVE should be mindful of potential stigmatizing impacts when they publicize and promote their efforts to engage with American Muslim communities. Materials should avoid linking federal engagement with these communities to actions to counter armed groups such as ISIS, especially as many federal officials acknowledge ISIS does not pose a credible threat of attack within the United States and the number of Americans who have allegedly traveled to join ISIS—let alone returned—is miniscule.

Harmful associations with ISIS and other armed groups play into fear-mongering about American Muslim communities. They are amplified and distorted by the media and can be exploited by individuals and groups who promote anti-Muslim rhetoric. Government and law enforcement authorities have the power to significantly shape public discourse and send a strong message to the American public that fundamental rights such as equal protection and religious liberty must be defended. Singling out one community for special interventions and enhanced monitoring may have the effect of aggravating existing prejudices and reinforcing intolerance.

CVE provides legitimacy to status quo FBI practices- encourages community to spy on each other and creates a global industry upon counterproductive law enforcement practices- results in international violations on human rights

Fernandez, 15 --- journalist who observes political and social events (4/17/14, Belén, "The pseudoscience of countering violent extremism", http://america.aljazeera.com/opinions/2015/4/the-pseudoscience-of-countering-violent-extremism.html)//Yak

The CVE industry

Despite the seemingly innocuous nature of government campaigns such as "If You See Something, Say Something™," the field of domestic terrorism prevention is one of refined Orientalist pseudoscience. Among its guiding texts is a 2007 manual, courtesy of the NYPD's Intelligence Division, which lists signs that an individual may be on a path to "Jihadization."

According to the report, a person's "progression along the radicalization continuum" can be signaled by "giving up cigarettes, drinking, gambling and urban hip-hop gangster clothes" or "becoming involved in social activism and community issues."

Beneath the invented technical jargon is an invitation to unabashed and limitless racial and religious profiling, with the apparent crime of being Muslim further underscored by an expansive list of "radicalization incubators" and "nodes" that can host the radicalization process. In addition to mosques, these include "cafes, cab driver hangouts, flophouses, prisons, student associations, nongovernmental organizations, hookah (water pipe) bars, butcher shops and book stores."

Meanwhile, given that "urban hip-hop gangster clothes" often trigger other police responses such as stop-and-frisk, it might be helpful if the NYPD sat down and composed a coherent inventory of approved wardrobe items.

No serious government undertaking is complete without acronyms, and here too the counter-radicalization program shines. Take the NSI: the Nationwide Suspicious Activity Reporting (SAR) Initiative — a collaborative effort between the Department of Homeland Security, the Federal Bureau of Investigation and SLTT (state, local, tribal, and territorial law enforcement outfits). As a blog post by American Civil Liberties Union attorney Julia Harumi Mass notes, this has enabled the FBI to collect a colossal database of information, because the state's "loose standards define practically anything as suspicious."

Then there's the trendy business of Countering Violent Extremism (CVE), which, among other things, encourages teachers and parents to serve as the eyes and ears of the national security state. The problem here, Harumi Mass writes, is that "under CVE, normal teenage behavior could be an indicator of the potential to engage in terrorism."

DHS advocates a prevention-focused, community-based approach to CVE, which will ideally render the members of said community "more inclined to share suspicious information with law enforcement." A CVE working group (CVEWG) led by a CVE Coordinator has been established to oversee operations.

To be sure, there's no better way to promote resilient and cohesive communities that aren't susceptible to radical antisocial pathologies than by **having residents spy on one another** and parents terror-tattle on their children. (Better still when the FBI pays informants to radicalize folks.)

Beyond its own immediate battle against Domestic Terrorists and Homegrown Violent Extremists (HVEs), the U.S. is also deeply concerned with helping other nations confront their problems. In February, the White House Summit To Counter Violent Extremism gathered foreign leaders, United Nations officials, and "a broad range of international representatives and members of civil society" — including those interested in making a buck off the CVE industry.

And many a buck is to be made, judging from the White House's press release about the summit, which plugs "social media solutions" to violent extremism. According to the release, the US "and our partners in the private sector are organizing multiple 'technology camps' in the coming

months, in which social media companies will work with governments, civil society, and religious leaders to develop digital content that discredits violent extremist narratives and amplifies positive alternatives." Google, Facebook and Twitter were all represented at the summit.

Violence and safe spaces

Among America's illustrious allies in its global counterterrorism effort is the United Arab Emirates, which with the United Kingdom co-chairs the CVE working group at the Global Counterterrorism Forum, launched in New York in 2011. Abu Dhabi also plays host to Hedayah, the International Center for Excellence in Countering Violent Extremism, which is listed as one of DHS's crucial CVE partners.

Never mind that the Emirates' version of CVE appears to include such dubious actions as deporting resident Shiites en masse and hiring Erik Prince, the founder of Blackwater (rebranded as Academi), to form secret mercenary armies. It's no doubt fitting that the UAE, an eager client of the U.S. defense industry, has been propelled to the vanguard of counter-jihad.

A State Department fact sheet boasting $188 million worth of "ongoing and planned CVE efforts" emphasizes support for Hedayah as well as other initiatives such as those that "seek to create safe spaces for dialogue between women community leaders and law enforcement" and that "amplify … the voices of victims/survivors of terrorism." Drone-strike survivors need not apply.

This brings us to the question: **how does one counter violent extremism when so much of what one does qualifies as extreme violence**? Furthermore, don't one's own violent acts — drone assassinations, bombing civilians, torturing people and supporting oppressive governments — help breed the very violence that must then be countered? Owning up to this arrangement would, of course, mean ceasing to have our cake and eat it too.

In an op-ed for Al Jazeera America on the February summit in Washington, Amnesty International USA director Steven W. Hawkins warned that abusive **regimes could take advantage of CVE-mania and use international funding to violate human rights** if the U.S. failed to insist on appropriate safeguards.

But this analysis overlooks the fact that CVE programs are already an affront to these rights, right here at home. As the ACLU's National Security Project Director Hina Shamsi recently emailed me, the CVE strategy "does not include necessary safeguards to protect privacy and constitutional rights [and] risks treating people, especially young people, as security threats based on vague and virtually meaningless criteria."

In the end, she wrote, the strategy "**risks further alienating the very communities it's meant to engage**."

Surely it's nothing that can't be fixed with CAI, a counter-alienation industry.

Only community initiated reforms can solve – plan doesn't hold police accountable

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For community policing to be an effective tool in changing the relationship between the marginalized and law enforcement, marginalized communities cannot simply be offered a seat at the table to participate in preconceived policing [*907] programs. They **must have the political power to hold police accountable**. For community policing mechanisms to offer potential for real change to marginalized communities, communities must **build capacity** and political power to demand accountability. So while we might advocate for law enforcement to engage marginalized communities, we cannot rely on law enforcement initiatives to recalibrate **relationships long rife with deep inequality**. The pressure for meaningful change must come from outside, from the communities themselves organizing for change. n325

--- XT: No Homegrown Terrorist Threat

Empirics prove threat of homegrown terrorism threat is low

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

How serious is the threat?

If there are no solid reasons for anticipating that the threat of deadly attacks in the United States is growing, how should Americans evaluate the seriousness of the threat of Muslim homegrown terrorism? A first step is to review the record of homegrown terrorism in the years since September 11. From September 2001 through December 2010, approximately 175 Muslim citizens or residents of the United States were charged with terrorist-related offenses, including fundraising on behalf of an overseas terrorist organization such as alQaida or al-Shabaab, seeking to join one, or plotting an attack in the United States.112 The surge in arrests noted at the start of this article included 43 people in 2009 and 32 in 2010.113 Among these were 31 individuals seeking to join or aid al-Shabaab as well as 9 individuals involved in sting operations.114

Within the smaller sample of operational plots aimed at homeland targets within the United States (the focus of this article), there were 18 such plots from 2001 to 2010. Of those, 12 involved the extensive participation of informants and undercover agents from the plots' early or formative phase. Two—the Little Rock and Fort Hood shootings—resulted in deaths.115 The perpetrators of those attacks had singled out soldiers, as have about one-third of all terrorist-related activities and attacks in the United States and overseas.116 Only one plot reached the execution stage—Shahzad's Times Square bombing attempt—without the perpetrator being known to law enforcement before the attack. No explosive device has been successfully detonated by a Muslim American in a terrorist attack in the United States.

Thus the record suggests, on both analytical and empirical grounds (to the extent one can extrapolate from such a small number of successful attacks), that the plots most likely to succeed are those that involve accessible weapons (e.g., firearms) and small numbers of individuals and

that require minimal skill and pre-operational steps. Because individual plotters do not risk exposure through contacts with others and may use weapons that require minimal skills, they likely have the greatest chance of avoiding detection and being successful.117

No risk of terror in Muslim communities --- cultural values, societal connections, and reporting of suspicious activity already exist

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

I first consider the possibility that militants could and a complicit environment within American Muslim communities that could constitute a form of community or local sanctuary. The conventional wisdom, as noted above, has been that Muslim communities are inhospitable to militancy, especially compared with those in Europe, because American Muslims are more thoroughly assimilated and enjoy middle-class status.43

Studies of Muslim communities provide little evidence of changes or trends that suggest they are becoming any less resilient against the threat of militancy in their midst.44 For example, one major effort funded by the Department of Justice, in which researchers resided for periods of two to three months in four midsized Muslim American communities, found that several features of these communities rendered them intrinsically resistant to militancy, including, in particular, the strength of their communal organizations and social networks. In addition, there were efforts expressly geared toward preventing and exposing any signs of militancy, including both outreach programs and a variety of internal monitoring, or self-policing, practices.45

In particular, two forms of self-policing underscore Muslim American resistance to militancy. First is the willingness of members to voluntarily alert authorities, through unsolicited tips, when an individual professes extreme views or is engaging in suspect behavior. In table 1, I detail the central role played by informers and tips from the community in exposing militants. In addition, a study by Syracuse University found that from 2001 through 2010, in 22 percent of all cases in which defendants were charged with some terrorist related offense, tips from family or community members brought the person to law enforcement's attention.46 Another indication that communities—or at least some crucial subset of their members—are repulsing rather than embracing militants is the (not uncontroversial) success that law enforcement has had in cultivating informants. Informants are individuals who are engaged by law enforcement to covertly monitor people and activities in their communities. The Syracuse University study, for example, found that 35 percent of terrorist cases have involved an informant. Another 9 percent of cases involved undercover officers exposing plots.47

Finally, even if some Muslims sympathize with militant causes, and believe that violence might occasionally be justiªed in some political contexts,48 attitudes alone do not indicate a willingness to support terrorism, especially when aimed against fellow citizens.49 Beyond any moral or ethical considerations it raises, supporting terrorism is a costly act that can result in the perpetrator and his or her community becoming objects of suspicion.50

Militants cannot avoid suspicion --- alert citizens will report suspicions of homegrown terror before attacks

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

Anonymity

A second option for militants hoping to avoid detection is to seek anonymity by living in population centers where individuals of similar backgrounds reside, or in places where social norms or environmental factors render them less likely to be observed (e.g., urban areas, rural/remote places, or commuter/transient neighborhoods). For example, depending on their ethnicity, some militants could conceal themselves in immigrant population centers where they blend in demographically.51 In the United States, there are both moderately sized and several large population centers of Muslims (e.g., Chicago, Los Angeles, the Bay Ridge neighborhood of Brooklyn, New York, and Dearborn, Michigan).

The mere existence of such large population centers, however, does not mean it is easy to hide within them, especially given the social norms and intracommunal patterns of engagement observed within these communities. According to one survey, American Muslims engage in social services at their mosque at a rate equivalent to U.S. congregations in general and are slightly more likely to engage in activities in the community beyond (38 percent vs. 32 percent).52 These patterns suggest that there are interconnections among individuals that heighten the odds that individuals who withdraw from the community or exhibit changes in belief or behavior will be noticed. Especially when militants are young and inexperienced—as in the 2010 case of the accused Portland bomber, whose family apparently tipped off authorities about his increasingly extreme views—they may be especially likely to do and say things that draw attention to themselves.53

Enhanced societal vigilance and awareness of terrorism after the September 11 attacks may also render it harder for militants to remain anonymous. Compare the environment in which the September 11 hijackers operated to that in the present-day United States. Despite warnings by the plot's mastermind, Khalid Sheikh Mohammed, to avoid Muslim communities— warnings that underscore the recognized dangers of living within them—some of the operatives did just the opposite, without provoking the suspicions of those around them.54 Zacarias Moussaoui befriended members of a Norman, Oklahoma, mosque who apparently did not question his potential pursuit of terrorist activity even when he professed extreme views.55 Similarly, in San Diego, two of the September 11 hijackers relied on the hospitality of members of a local mosque to find them an apartment and purchase a car.56

Contrast the reaction of members of a Hawaiian mosque who in October 2010 reported a new member to authorities after they became suspicious about his recent move to the area.57 Consider, also, the case of Khalid Aldawsari, the Saudi student who in February 2011 was charged with plotting bomb attacks on U.S. targets after he was reported to the FBI and local police by, respectively, employees at a chemical company and a freight vendor.58 Or take the example of the Circuit City employee who helped to foil the 2007 Fort Dix plot after observing disturbing footage on a video and informing authorities.59 In each case, alert citizens, otherwise unacquainted with the militants, helped to expose their potential interest in violent activity

--- XT: No Impact

No impact to lone wolf terrorists- they prioritize psychological effect over the number of lives taken

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(Fall 2011, Risa A Brooks, "Muslim "Homegrown" Terrorism in the United States How Serious Is the Threat?", projectmuse) //Yak

The difficulties associated with plotting attacks in the United States help to explain why "lone wolf" attackers are sometimes identified as the mainline domestic threat.118 How serious a threat do such disconnected, unsophisticated attacks pose to Americans? They can certainly prove lethal. Take, for example, Maj. Nidal Hasan's shooting spree at Fort Hood, Texas, which killed 13 soldiers and wounded many more. Alternatively, consider the outcome if Times Square bomber Faisal Shahzad had chosen an easier method of attack and a more dependable weapon—firing his newly purchased Kel-Tec semiautomatic riºe into the square on a Saturday night, rather than attempting a technically ambitious car bombing. He could have killed a large number of people with a higher probability of success.119 As demonstrated by the 421 workplace shootings that, according to the U.S. Bureau of Labor Statistics, occurred in 2008, simple attacks can be deadly.120

Whether attacks of this kind present a serious terrorist threat, however, is a somewhat different question.121 Conceptually, terrorism is commonly understood as being about more than killing; its impact depends on whether attacks generate deeply rooted psychological reverberations in society. As one ob server captures it, "Terrorism is about terrorizing. It's about creating fear; it is not just about attacking."122 Moreover, as terrorists themselves appear to understand implicitly, the operational complexity of their attacks can affect how much they terrorize: generating a psychological impact requires undertaking attacks that demonstrate ruthlessness, premeditation, and technical capability.123 For example, there is likely a reason why Shahzad chose to use a bomb instead of his riºe, or why al-Qaida did not use its U.S.-based operatives to shoot up suburban malls in the days following the September 11 attacks and why, since then, it may be willing to advocate doing so only as a last resort.124 The very fact that aspiring militants are regularly attracted to using explosives,125 despite the risks of detection and failure they invite, underscores a desire to generate the maximum psychological effect possible.126

Homegrown terror studies are flawed --- analysts have not understood the radicalization process, and those who avoided terrorist activities are excluded from studies

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While there may be evidence of common changes or behaviors observed within these samples of militants, it is unclear whether evidence of similar changes in the present-day Muslim American population would reliably indicate that its members will initiate terrorist activity. How or when

such actions or beliefs will lead to terrorism is not yet well understood. Analysts, for example, acknowledge that "only a tiny minority of radicalized individuals actually cross over to become terrorists."19 Although the problem of anticipating when people will turn to violence is understandably complex, without a better grasp of that process, arguments about when terrorist acts will occur based on observed changes in thought or actions will suffer from analytical indeterminacy. This, in turn, makes it difficult to hypothesize about when a set of individuals—such as American Muslims—is inclined to engage in terrorist related activity.

Moreover, it is unclear whether analysts are at present able to provide insight into what to look for in the beliefs and behaviors of American Muslims, even in a preliminary or exploratory effort to assess any propensity for violence. General arguments about how radicalization results in individuals becoming involved in terrorism are derived from the experiences of a sample of individuals known to have engaged in terrorist activity. To establish that these patterns in beliefs and behaviors are causally related to the turn to terrorism and generalizable across cases, however, the arguments need to be evaluated against new data, beyond that from which the patterns were initially induced.

Another limiting factor is a research design in which analysts of radicalization select cases to study on the dependent variable—that is, they analyze only cases of individuals charged with terrorism. By not also looking at individuals who have forgone violence, analysts cannot determine if they have isolated what is unique or distinctive about those individuals who engage in terrorism. Many people could be doing or thinking things similar to those committed to violence, but never take actions related to terrorism. They may listen to radical sermons and engage with activists, discuss with friends Muslim persecution across the globe, and exhibit the signifiers of extremist modes of thinking, without considering plotting an attack or otherwise aiding a terrorist organization. Two recent studies of militant Muslims in Europe that do employ control groups of nonmilitants, for example, suggest that the beliefs of those inclined toward violence and those who pursue nonviolent political change may not be very different.20

The number cases of homegrown terrorism exaggerate the real number of homegrown terror attacks

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Finally, it is worth considering the nature of the particular cases that represent the surge of arrests to see what they reveal about a supposed growing trend in Muslim homegrown terrorism. Several features of that data cast doubt on whether they represent the "watershed" in plots that some analysts fear.

From 2002 to 2008, the number of arrests involving Muslim Americans varied considerably, from a low of 5 individuals charged in 2008 to a high of 23 in 2003.39 Estimates for 2009 cite 11 to 13 terrorist incidents, involving 43 Americans charged in the United States or abroad.40 In 2010 the number charged was 32, or 33 if one ambiguous case is included. (See the online appendix and table 1 for details on 2009–10 cases.) Those numbers clearly represent a major slice of the 175 total number of individuals charged from 2001 to 2010.

Consider, however, that although terrorist indictments against Muslim Americans in 2009 involved an unusually large number of individuals, many were charged in groups. For example, 14 individuals were charged in two groups with joining or aiding a foreign insurgency, Somalia's al-Shabaab; a group of 5 Americans was charged with seeking terrorist training in Pakistan; and another group of 7 North Carolina men, led by Daniel Patrick Boyd, was charged with seeking to aid foreign insurgencies in Israel and Kosovo (this group was also suspected of plotting an attack against the Marine base at Quantico, Virginia).

The 2009 figures could also represent a clustering of arrests for terrorist cases that had been unfolding for years prior, such as that of Bryant Neal Vinas, who traveled to Waziristan, Pakistan, in 2007 only to be apprehended in 2008 and charged in January 2009. Similarly, Terek Mehanna's long odyssey to become a terrorist allegedly began in 2002, although he was not arrested until 2009. The charges against Boyd and his cohort include acts committed as early as November 2006 (and his militant actions allegedly long predate those activities).41

The al-Shabaab cases raise an additional issue. On definitional grounds, it makes sense to include them as instances of Muslim homegrown terrorism in that the cases represent Americans engaging in terrorist activity. Conceptually grouping these cases with all other terrorist offenses, however, might obscure very different phenomena that fall under the rubric of homegrown terrorism. There are reasons why officials worry about the al-Shabaab cases (especially that the individuals will someday return to the United States and do harm). Leaving the United States to join a group engaged in a regional insurgency, such as al-Shabaab or the Taliban, however, may be different from plotting to attack Americans within their own borders even if the intent is to attack American soldiers or Marines overseas.42 This means that the 43 arrests in 2009 do not really represent a singular threat, but rather the conglomeration of actors with somewhat different militant aspirations.

Finally, if 2009 represents a watershed year, one might expect to see a continuation in the upward trend in Muslim American terrorist activity in 2010. Although still elevated, especially compared with 2008 (which represented a low point in terrorism arrests), the number of arrests in 2010 fell to 33, which suggests that 2009 could have been an empirical anomaly.

Reports of homegrown terrorism are only a result of harsher law enforcement --- no real increase in terrorist activity

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Do terrorist arrests indicate a growing threat?

If studies of radicalization shed little light on the propensities toward violence of Muslims in the United States, then what should Americans make of the surge in terrorism arrests observed in 2009? Do they indicate a growing trend of radicalization and propensity toward terrorist violence among American Muslims?

Focusing on a surge in arrests as an indication of radicalization could be misleading for at least two reasons. First, there could be alternative explanations: more terrorist offenses could have

come to official attention, and produced arrests, as a result of more aggressive law enforcement. Second, the spike could be the result of factors related to the timing of those arrests and the other details of the cases, which would suggest that the increase is more an artifact of the data than indicative of a larger trend in the population.

Since the September 11 attacks, the Department of Homeland Security and other entities have invested significant resources aimed at monitoring and investigating terrorist activity within the United States (see table 1). In turn, there are two ways that this "grassroots" law enforcement effort could be contributing to an increase in arrests and the appearance that homegrown terrorism is on the rise, even if the incidence of terrorist activity within the Muslim population has not actually increased. First, a more comprehensive law enforcement effort could result in more cases being detected that in the past might have been missed. For example, incidents in which individuals travel overseas to join or aid a terrorist organization, such as those related to the Somali terrorist group al-Shabaab, which, over the 2009–10 period amounted to thirty-one cases, could conceivably have been missed and never found their way into terrorist statistics without a comprehensive law enforcement effort to detect terrorist activity (see the online appendix).

Second, some terrorist acts might be detected and produce arrests, which in the past might never have become known to law enforcement because the militants abandoned their plots or failed to progress beyond the "talking" or aspirational stage without taking actions monitored by authorities. There is, in fact, evidence that authorities might be better prepared to detect potential terrorist activity in its initial phases.21 In December 2008, the Justice Department provided new guidance to federal agents that allows the FBI to initiate "assessments" to "proactively" pursue information against a potential terrorist outside of a formal investigation, and therefore without supplying a particular factual justification for the evaluation.22 Among the activities authorized under an assessment are employing human sources or informants.23 According to documents provided by the FBI to the chairman of the Senate Judicatory Committee, Patrick Leahy, from December 2008 through March 2009, the FBI initiated 11,667 assessments of persons and groups, which produced 427 more intensive investigations.24 In the summer of 2011, the FBI further loosened restrictions, rendering it easier for agents to employ lie detector tests, comb through people's trash, and search databases prior to initiating an assessment.25

One piece of evidence that also suggests that detection has been occurring at early stages is the declination rates observed in terrorism cases (i.e., the rate of terrorism matters referred by law enforcement for criminal prosecution that prosecutors decline to pursue). The declination rate rose to 73 percent in fiscal year (FY) 2008 from 61 percent in FY 2005 and from 31 percent in 2002.26 These cases often lack sufªcient evidence and are too weak for prosecutors to pursue.27 One cause for the increase in declination rates is that authorities could be unearthing terrorist-related activity at earlier stages, when it is less likely to form the basis of a substantial case. If, as a result, even some number of these cases that might in the past have gone under the radar result in arrests, then the actions of law enforcement, independent from any actual change in the amount of terrorist activity being undertaken by the population, could be producing larger numbers of recorded terrorist incidents.

Equally important, law enforcement may not just be detecting more cases; it could also be generating more cases through its actions in two ways. First, law enforcement could be seeking to build more substantial cases against those accused of terrorism-related offenses, which could increase the number of incidents counted in the data. Law enforcement officials might, for example, hope to push down the high prosecutorial declination rate noted above by investing

more resources in investigations or holding out longer before making arrests. One expert captures this rationale, "[I]f you nip [the case] too early in the bud, then you may not have credible evidence to use in court."28 Alternatively, officials might be motivated to build stronger cases, so that defendants can be charged with serious terrorism violations, rather than lesser or "preventive charges" such as immigration violations.29 For example, the Center for Law and Security reports that between September 2001 and September 2010, only 31.6 percent of defendants in cases associated with terrorism (defined as cases in which the word "terrorism" is mentioned in indictments or press releases) were charged on core terrorism statutes, while an additional 12.2 percent were charged with national security violations.30

The case of Hosam Smadi, who was accused of trying to blow up a Dallas office building in 2009, is instructive in this regard. As a special agent involved in the case reported, Smadi had overstayed his visa, and "law enforcement could have arrested and deported him." Instead, the FBI decided to use undercover agents "to set up a sting."31 Given the political pressure over declination rates that the FBI has experienced in the past, it makes sense that officials might seek to build the most substantial cases possible whenever they suspect that an individual is seriously inclined toward militancy.32 In turn, if cases that might otherwise have ended in lesser or no charges being ªled are instead pursued by agents to the point where they seem viable, this could yield an increase in the number of terrorist-associated offenses recorded in the data.33

No threat of Muslim homegrown terrorism --- overstating the threat is counterproductive for national security and decreases resiliency against attacks

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Conclusion

This article demonstrates that the threat posed by Muslim homegrown terrorism is not particularly serious, and it does not appear to be growing, especially in its most lethal incarnation—deadly attacks within the United States. Indeed, many analysts and public officials risk overstating the threat posed by Muslim American terrorism. Mischaracterizing that threat, in turn, is potentially costly and counterproductive for the security of the United States and the welfare of its citizens, for several reasons.

First, misjudging the homegrown threat could lead the country to overinvest or poorly spend on counterterrorism initiatives. Since the September 11 attacks, the government's investments in resources oriented toward grassroots homeland security have risen steadily. Although these are modest in comparison with other federal expenditures, they nevertheless detract from other priorities. Consider, for example, how the reallocation of resources toward terrorism within the FBI has undermined its capacity to pursue white-collar crimes. After 2001, the FBI reduced the number of agents for its criminal program by 30 percent (from 6,179 in 2001 to 4,353 in 2008), while the number of agents speciªcally allocated for white-collar crime fell by 36 percent, from 1,722 to 1,097. Consequently, the number of cases brought forward related to financial institution fraud plummeted by 48 percent (dropping from 2,435 to 1,257), and during the height of the 2008

financial crisis, the FBI was left struggling to find resources to investigate major financial and other mortgage and securities crimes.141 In short, the "terrorism trade-off" can be significant, especially if serious questions remain about whether that investment is warranted.142

Second, overstating or poorly characterizing the challenges posed by Muslim American terrorism risks undermining societal resilience in the face of terrorism.143 Take, for example, Director Leiter's characterization of the homegrown threat: while noting that recent attacks are "operationally unrelated," he nonetheless described them as being "indicative of a collective subculture and a common cause that rallies independent extremists to want to attack the homeland."144 Alternatively, consider FBI Director Mueller's warning that homegrown terrorists "inspired by a violent jihadist message . . . may be as dangerous as groups like Al Qaida, if not more so."145 This language reinforces the sense of homegrown terrorism constituting not only a major threat, but a monolithic campaign against Americans.

--- Overstating Terrorist Threat Bad

Their framing of the Muslim threat undermines societal resilience to a terror attack threats of terror activity

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If a shooting at Fort Hood is scary, however, more terrifying is seeing it as part of a larger conspiracy against Americans and their livelihoods. Comments that magnify the threat undermine society's capacity to withstand what in fact are mostly self-initiated, disconnected attacks whose only real association to a centralized conspiracy is within the minds of the terrorists.

Public officials and expert commentators might consider reframing the Muslim American homegrown threat by doing more, for example, to present it as one among many domestic threats of terrorist activity posed by ideologically motivated segments of society—threats, for the most part, that Americans do not appear especially afraid of and have managed rather capably.146 Officials might also emphasize what Leiter duly observed is the "operational unrelatedness" of recent plots and the diversity of terrorist offenses grouped under the rubric of homegrown terrorism. Instructive is former National Intelligence Director Dennis Blair's characterization in February 2011 of violence from "homegrown jihadists" as "sporadic," in which a "handful of individuals and small, discrete cells will seek to mount attacks each year, with only a small portion of that activity materializing into violence against the homeland."147 Such framing efforts could help to render threats of militancy originating from Muslim Americans more familiar and less formidable—akin to other terrorist threats from domestic militants the country faces. There are, however, serious obstacles to such a balanced discussion of terrorism in American politics. One indication of the problem is the political backlash that ensued after the Department of Homeland Security issued a report in 2009 warning that the threat from violent right-wing extremist activity was growing.148 Secretary Napolitano came under fire for one section of the report that warned that returning veterans could become drawn to extremist groups. She subsequently issued an apology letter to the American Legion, posted on the department's

website a formal statement clarifying the report's intent, and eventually disowned the report, calling it "not a well-produced product."149 Perhaps unsurprisingly, the Department of Homeland Security has been notably reticent to label right-wing attacks "terrorism," even when they qualify by many people's standards.150

These political obstacles aside, more should be done to promote a balanced discussion of terrorist threats in the United States. Otherwise, Americans are presented with a distorted picture in which terrorist attacks appear to be originating primarily with Muslims, rather than with extremists of all varieties. In an era when the mistrust of Muslim communities is a serious social and political issue, this unbalanced presentation is corrosive to American society.151

Finally, mischaracterizing and inflating the Muslim homegrown American threat could prove self-defeating to the country's efforts to defend against it. Especially worrisome is the potential that, in an atmosphere in which the threat of homegrown terrorism appears serious and worsening, law enforcement will employ counterproductive methods that threaten the trust between its officials and Muslim communities—trust that underpins the demonstrated capacity and willingness of American Muslim communities to self-police and root out militants in their midst.152 For example, although the cultivation of informants and infiltration of undercover agents into Muslim communities can be helpful to investigators, there are inevitable risks associated with these methods, and using them requires care and awareness of how they may affect the communities in which they are employed. In many places, federal law enforcement and local police departments have sought to build strong relationships through outreach to Muslim communities. Such efforts help to lay the groundwork for good relations and ease tensions associated with law enforcement's monitoring efforts.153 But FBI sting operations, such as those employed in the case of the Portland bombing suspect, Mohamed Osman Mohamud, can seriously test those relationships.154 Evidence of mismanagement and insensitivity are similarly troubling.155 More broadly, the perception that authorities "routinely run armies of informers" through American Muslim communities contributes to the sense, as the president of the Islamic Society of North America describes it, that "law enforcement is viewing our communities not as partners but as objects of suspicion."156 Equally insidious is how these tactics, by generating suspicion and eroding norms of communal openness, undermine the community's capacity to self-police, thereby making it harder for members to detect militants in their midst.157

No homegrown terrorism due to lack of incentive or capability --- US rhetoric undermines Muslim cooperation and stigmatizes Muslims

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Are Muslims born or living in the United States increasingly inclined to engage in terrorist attacks within the country's borders? For much of the post–September 11 era, the answer to that question was largely no. Unlike its European counterparts, the United States was viewed as being relatively immune to terrorism committed by its residents and citizens—what is commonly referred to as "homegrown" terrorism—because of the social status and degree of assimilation evinced by American Muslims.1 In 2006, in the long shadow cast by the Madrid 2004 and London 2005 attacks perpetrated by European homegrown terrorists, there was a perceptible shift

in the characterization of the threat posed by American Muslims.2 Public officials began to speak more regularly and assertively about the potential threat of some Muslims taking up terrorism, elevating it in their discussions alongside threats from foreign operatives and transnational terrorist organizations.3 By 2009, in part catalyzed by a surge in terrorist-related arrests and concerns that they could portend a growing radicalization of the American Muslim population, policymakers and terrorist analysts seemed increasingly worried about homegrown terrorism.4 When U.S. Special Forces killed Osama bin Laden in May 2011, some members of Congress and other commentators argued that the threat of homegrown terrorism would become even more important.5

Thus, in the decade since the September 11 attacks, homegrown terrorism has evolved from a peripheral issue to a major theme in contemporary debates about the terrorist threats facing the United States. Public officials such as Secretary of Homeland Security Janet Napolitano, Federal Bureau of Investigation Director Robert Mueller, and Attorney General Eric Holder regularly counsel that the number of Americans engaging in terrorist activity has risen.6 As Napolitano cautions, "One of the most striking elements of today's threat picture is that plots to attack America increasingly involve American residents and citizens."7 According to Holder, "The American People would be surprised at the depth of the [homegrown terrorist] threat."8

Concerns about homegrown terrorism, in turn, have generated a variety of think tank reports and associated warnings by many of the country's most accomplished terrorism researchers.9 Analysts such as Peter Bergen, Paul Cruickshank, Bruce Hoffman, and Marc Sageman have all expressed concern about a potential rise in terrorism initiated by Muslim Americans.10 Indeed, Bergen and Hoffman call the year 2009 a "watershed in terrorist attacks and plots in the United States."11

Clearly, public officials and analysts are worried about the prospect that Americans will face a growing trend of violent attacks from extremist elements within the country's Muslim population. Less certain, however, is whether those warnings and the sense of urgency associated with the homegrown terrorism threat are warranted. In fact, the threat of Muslim American terrorism may not be especially serious or growing. It could remain a modest challenge, similar to what it was for much of the decade following September 11.

The stakes for Americans in an accurate assessment of the threat of Muslim homegrown terrorism are significant. If the threat is overstated, the United States risks becoming preoccupied with this incarnation of terrorism and could make unwarranted investments in intelligence and law enforcement to address it, while underemphasizing other terrorist or nonterrorist threats. Overstating or miscasting the homegrown threat could also undermine society's resilience to terrorism, while feeding a climate of fear and misunderstanding between Muslims and other Americans. In addition, overestimating the threat could contribute to the adoption of counterproductive counterterrorism methods, especially those that threaten to alienate Muslim communities from law enforcement. Given that cooperation from these communities has proven a major safeguard against the homegrown threat, any breach of trust between their members and government authorities would be a worrisome development.

It is therefore essential that Americans have a clear picture of the magnitude of the threat they face from Muslim homegrown terrorism. This article aids in that endeavor by systematically analyzing the argument that Muslim residents or citizens of the United States represent a serious and growing terrorist threat to American society, particularly in their supposed willingness or

capacity to execute deadly attacks in the United States. I structure my analysis around three alternative pathways, or conditions, that alone or in combination could in principle contribute to a growing threat of homegrown terrorism. In so doing, I probe what is known about the motivations and capacity of American Muslims to execute deadly attacks in the United States and thus provide a comprehensive analysis of that threat.

My conclusion should be generally reassuring to Americans: Muslim homegrown terrorism does not at present appear to constitute a serious threat to their welfare. Nor is there a significant analytical or evidentiary basis for anticipating that it will become one in the near future. It does not appear that Muslim Americans are increasingly motivated or capable of engaging in terrorist attacks against their fellow citizens and residents.

--- AT: Terrorists Train Abroad

Training abroad fails --- western recruits get rejected and value of training is limited

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The difficulty of acquiring expertise overseas

What if homegrown terrorists do not need to acquire skills or plan and prepare their attacks in the United States and can instead travel overseas to train and then return to execute them?96 Some analysts contend that training Westerners who travel overseas to then attack targets in their countries of residence is a favored strategy of al-Qaida Central, and that this is contributing to a growing homegrown terror threat.97

There are, however, considerable obstacles to receiving remote training that cast doubt on whether it offers such unmitigated benefits to aspiring terrorists. To start, leaving the United States and reentering requires navigating significant post–September 11 security regimes in Western countries; similarly, entering and exiting a terrorist camp in the foreign country without exposing one's identity can be a complicated process.98 According to Nesser, many activists in Europe in the last decade who traveled overseas to obtain training were exposed or captured before they could undertake their missions.99

In addition, Western "self-recruits" have to connect with terrorist organizations in their base countries, and leaders have to accept them for training. Take the case of five Muslim American suspects who traveled to Pakistan for training but were repeatedly turned down "because they were foreigners and had no local references."100 Or consider the case of Terek Mehanna, whose associate sought to solicit training, only to be turned down by two Pakistani militant groups.101 Even someone with significant personal ties to Pakistan, such as Faisal Shahzad, can encounter problems; he reported that establishing his connection with the Tehrik-e-Taliban organization took six months.102 Indeed, from the perspective of militant groups, as much as American or European citizens represent an opportunity to train Westerners and send them back to wreak havoc in their home countries, they also represent serious security risks to the organization.103

Finally, even if a recruit is accepted for training, the practical value of that remote instruction once the militant is back home may be limited.104 The cases of Najibullah Zazi and Faisal Shahzad, the respective New York subway and Times Square bombers, are instructive. Zazi was extensively trained and guided by an al-Qaida operative.105 Still, he ran into technical problems while fabricating his TATP bombs in a hotel kitchenette and was forced to contact his associates in Pakistan for instruction; those communications were intercepted.106 Or consider that Faisal Shahzad was trained by the Pakistani Taliban for forty days, in which five were devoted to explosives training and yet, leaving aside his use of nonexplosive fertilizer, his device was poorly constructed.107 He also made several errors in operational security, including failing to destroy one VIN number on his vehicle, as well as leaving behind car keys and a prepaid cellphone used to receive calls from Pakistan and to call the ªreworks store where he purchased bomb-making materials—errors that helped to ensure he would be unable to repeat his attempt, despite his professed plans to do so.108 Even if Shahzad's training was cursory or incompetent, it underscores the necessity and difficulty of bringing together professional experts with capable students.109 Finally, trainees still face the selflimiting conditions of their untrained counterparts once they are back home, which will also complicate their efforts to undertake pre-operational activity and execute attacks without first being detected; for all his overseas training, for example, Zazi's plot was still detected by authorities in the United States.

--- AT: Terrorists Get Info from Internet

Militants are unable to deploy information from the internet effectively --- especially in insecure environments

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The internet as a technical and instructional resource

The proliferation of online training and explosives manuals has raised serious concerns that these materials could enhance the skills of aspiring terrorists. Director of the National Counterterrorism Center Michael Leiter captured these worries, "[I]ncreasingly sophisticated English language jihadist propaganda remains easily downloadable via the internet and provides young extremists with guidance to carry out Homeland attacks." As Gabriel Weimann contends, the internet constitutes an "online terrorism university."68

These concerns aside, there are analytical and empirical reasons to question how much online resources can improve militant capabilities. One set of problems relates to the quality of information available from training and explosives manuals. In a survey of online Arabic- and English-language training materials, for example, Anne Stenerson found that the information in her sample was often poorly conveyed or organized.69 In a separate study, Jennifer Yang Hui found that many of the technical instructions for explosives appearing on Indonesian militant websites were patchy and incomplete.70 Although analysts at Jane's Intelligence Weekly observed improvements over time in online materials, they nonetheless concluded as recently as 2006 that "it is probably fair to say that the jihadist online infrastructure is still in its infancy."71

In addition to shortcomings in training manuals, militants may have a difficult time employing technical information effectively, especially when, as Michael Kenney describes, they lack practical experience and the capacity to tailor abstract information to local conditions.72 Failed attacks in Europe (where attempted attacks have been more plentiful than in the United States) provide numerous examples of these difficulties. In 2006 two Lebanese men left suitcase bombs on German trains that failed to detonate because of errors in the fabrication of the explosives. In 2007 a British engineer and medical doctor set gas cylinder bombs in automobiles outside London nightclubs, which also exhibited technical flaws.73 Most striking is Nesser's finding: in his detailed survey of plots in Western Europe, Nesser could not find a single example of terrorist cells developing operational capabilities, including building working bombs, solely from instructions downloaded from the internet.74 Consider that even members of technically capable organizations often make errors, including the leader of the Basque nationalist group ETA, who was killed by his own bomb,75 or the operatives maimed by the Provisional Irish Republican Army's "own goals."76

Moreover, in evaluating the implications of online manuals, it is essential to consider the security context in which militants in the United States operate and how this bears on their capacity to capitalize on those resources. In a permissive security environment, militants might be able to experiment, train over time, and perfect their skills and capacity to translate abstract information into practical know-how. In a less secure environment, however, efforts to practice, especially with explosive devices, generate risks that the militants will be observed and exposed. Consider the network responsible for the Madrid bombings on March 11, 2004. When members of the network rented a farm house to train and practice using detonators, their activities were noticed by the local population; although not reported, the fact that they were observed underscores the risk inherent in such activities.77 In the United States, the 2003 Virginia paintball network was uncovered as a result of a tip about its efforts to enhance its skills through paramilitary training.78 Even seemingly inconspicuous bomb-making activities can be detected. Producing chemicals can leave telltale signs on interior spaces, changing paint colors and generating fumes, which may be observed by alert hotel operators or landlords.79

--- AT: Terrorists Will Use Remote Communications

Remote communications have limited utility for terrorists --- errors and increased risk of detection

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Although arguably of limited use for building explosives and training, the internet could help militants implement their attacks more effectively in another way: it could mitigate the risks of exposure inherent in pre-operational activity, especially by facilitating communications and substituting for on-theground surveillance.86 Maps and satellite imagery, for instance, can be helpful in gathering information about targets. Shahzad, for example, reportedly tracked pedestrian traf^{a}c in Times Square with real-time video feeds.87 Also, communications may be facilitated through the use of methods such as "electronic dead-drops," in which militants leave

messages in the draft folder of an email account and others retrieve the information without sending the message.88

Nonetheless, there are limits to the utility of the internet for these purposes. Take, for example, the 2008 Mumbai attack by Lashkar-e-Taiba. In preparing for the attack, leaders employed satellite maps, GPS, mobile phone applications, and a variety of other technologies.89 Those leaders, however, also sent an American, David Headley, on five surveillance trips to Mumbai during which he scouted targets and hired fishermen for private tours of the harbor to determine landing points for the attackers.90 Despite being trained in surveillance techniques, Headley made several errors in a subsequent plot aimed at the Danish newspaper Jyllands-Posten, and he was ultimately apprehended because of his activities in preparation for that attack.91

As one U.S. military study observes, figuring out the details of local targets and their defenses often requires some physical surveillance.92 Consider the requirements of a 2004 plot in which two men sought to bomb the subway station in Herald Square by leaving explosive devices in refuse containers and under benches. Before undertaking the attack, the plotters "wanted to know the number and location of cops on the platforms at different times of the day. Which areas were covered by video cameras? Since the likeliest place to hide a bomb was a garbage can, they needed to know how many there were, where they were located, and when they got emptied. And they needed to find the best path to go in and then get out quickly after planting the device."93 Growing advances in the technology and methodology of countersurveillance increase the risks inherent in such surveillance activities.94

This discussion, in fact, underscores an overarching constraint facing militants in the United States, which originates in the country's significant investment in security and dearth of community sanctuaries. Assume that an individual is able to connect with an acquaintance and they can securely interact and discuss in the abstract a terrorist plot. As soon as they attempt to recruit others, seek training or resources, or undertake surveillance, they create security risks that threaten to expose themselves to authorities. In this sense, terrorist plotting in the United States may be self-limiting: the greater the number and layers of complexity in the campaign, the more it requires resources and activities that render the plotters vulnerable to exposure.95

AT: First Amendment Adv

The First Amendment legitimizes hate speech and reaffirms status quo notions of racial minority's inferiority.

Delgado and Stefancic 97 – Delgado is the founder of critical race theory and professor of civil rights and race theory at the University of Alabama School of Law; Stefancic is an Affiliate Professor at the University of Alabama in Civil Rights, Constitutional Law, and Critical Race Theory (Richard Delgado, Jean Stefancic, *Must We Defend Nazis?*, NYU Press, January 1 1997, **fc*)

In the last few years observers have noticed a sharp upsurge in intellectual activity surrounding the role of speech and expression. Reformers have been demonstrating how hate speech and

pornography injure minorities and women. Postmodernists have been pointing out how every speech controversy can be approached in at least two ways. (See chapter 4.) A the same time, defenders of tradition such as the ACLU and other free-speech absolutists have been writing books and articles defending an unfettered First Amendment, to which yet other observers such as Jack Balkin reply: they are caught up in "ideological drift"—failure to notice how an instrument that once promoted dissent and other causes dear to liberals is now wielded chiefly by white supremacists, pornographers, and other dubious allies.

Is this debate merely about who possesses the correct ~~vision~~ [idea]—about who is the real defender of the right and the true? No. We think there is another, far more intellectually intriguing explanation for the rifts and tugs-of-war over issues such as pornography and hate speech that are testing the limits of First Amendment orthodoxy. In this other ~~vision~~ [idea], the skirmishes are not so much questions of standing one's ground, as some of the old-timers see it, or even of refining that ground slightly, as some want to make it appear. Rather the ground itself is shifting. The prevailing First Amendment paradigm is undergoing a slow, inexorable transformation. We are witnessing the arrival, nearly seventy years after its appearance in other areas of law, of First Amendment legal realism. The old, formalist views of speech as a near-perfect instrument for testing ideas and promoting social progress is passing into history. Replacing it is a much more nuanced, skeptical, and realistic view of what speech can do, one that looks to self- and class interest, linguistic science, politics, and other tools of the realist approach to understand how expression functions in our political system. We are losing our innocence about the First Amendment, but we will all be wiser, not to mention more humane, when that process is complete.

The Transition

Early in American history, we thought the First Amendment was the crowning jewel of our jurisprudence. As recently as 1970, scholars de-scribed our system of free expression in sweeping, exalted terms.; But shortly thereafter some writers began expressing doubts about whether First Amendment doctrine was capable of delivering on its lofty promises.4 In the last few years, under the impetus of challenges from critical race, feminist, and other writers, the trickle of doubts has turned into a flood.' The transition to the new paradigm is far from complete. Those who write in the new tradition still expend much energy defending themselves from charges that they are Satanic, forgetful of history, deluded, in league with fascism, etc.6 It is impossible to predict what the new understanding of the First Amendment will look like when fully mature, just as the early Realists, seventy years ago, scarcely could have predicted how their move-ment would lead the way to clinical legal education, perspectivism, critical legal studies, and elite law reviews. With these cautions, we offer here the themes and outlines of a new conception of the First Amendment. We make no claim to be comprehensive; the list may be personal to us.

The New First Amendment Legal Realism First, the paradigm includes an awareness of the First Amendment's limitations. Early in our republic, we made grandiose claims for what the system of free expression could do.7 But recently, scholars have shown that our much-vaunted marketplace of ideas works best in connection with questions that are narrowly limited in scope. Is this parking space safer to leave the car in than another? Does a heavy object fall faster than a light one in a vacuum? Would a voucher school-finance scheme ad-versely affect the poor? (See chapter 5.) With such clearly bounded disputes, free speech can often help us avoid error and arrive at a consen-sus. But with systemic social problems like racism and sexism, the market-

place of ideas is much less effective. These broad-scale ills are embedded in the reigning paradigm, the set of meanings and conventions by which we construct and interpret reality. Someone who speaks out against the racism of his or her day is seen as extreme, political, or incoherent. Speech, it turns out, is least effective where we need it most.

A second theme of First Amendment legal realism is the role of free expression in legitimating the status quo.' If, as a starting point, we posit a perfect marketplace of ideas, then, according to the old paradigm, the current distribution of social power and resources must be roughly what fairness and justice would dictate. Our more energetic European ideas, for example, competed with others and won: it was a fair fight. But, of course, it was not fair: communication is expensive, so the poor are often excluded; the dominant paradigm renders certain ideas unsayable or incomprehensible; and our system of ideas and images constructs certain people so that they have little credibility in the eyes of listeners.

This leads to a third component of the new approach, namely that language and expression can sometimes serve as instruments of positive harm. Incessant depiction of a group as lazy, stupid, and hypersexual—or ornamental for that matter—constructs social reality so that members of that group are always one-down.' Thereafter, even the most scrupulously neutral laws and rules will not save them from falling further and further behind as private actions compound their disadvantage. (See chapter 5.) Affirmative action becomes necessary, which in turn reinforces the view that members of these groups are naturally inferior (because they need special help). Pornography and hate speech are the two most visible fronts on which the fight to make the legal order recognize and prevent these harms is waged, often against great resistance. But when powerful groups find a particular type of speech offensive and likely to render them one-down, they blithely pass a law to curtail it. We rarely notice these "exceptions" and special doctrines, however, because they are time-hon-ored and second nature. Of course there would be an exception for state even label, secrets, plagiarism, false advertising, and dozens of other types of speech, we say. But one to protect eighteen-year-old black undergraduates at dominantly at white institutions? Oh no, we say, the First Amendment must be a seamless web.10

1nc Religion Freedom Adv

The chilling effect isn't real – Muslims respond to surveillance with increased visibility.

Bayoumi 12 – Associate Professor of English at Brooklyn College, City University of New York, with a Ph.D. in English and Comparative Literature from Columbia (Moustafa Bayoumi, The Nation, "Fear and Loathing of Islam," June 14 2012, http://www.thenation.com/article/168383/fear-and-loathing-islam, *fc)

Does this mean that the United States is an Islamophobic country? Of course not. Large support for American Muslims exists in many quarters [see Laila Al-Arian's essay in this issue, page 31]. Polls may suggest that about half the population is anti-Muslim, but that leaves half that isn't. In many quarters of the country, there is genuine, not suspicious, interest in American Muslims and the realities they face, as evidenced by the fact that TLC produced All-American Muslim. Aasif Mandvi's contributions to The Daily Show routinely deflate the power of this contemporary prejudice, and libraries, museums, classrooms and houses of worship across the country now

regularly include Muslims and Islam in their programming in an attempt to further understanding and combat bigotry.

American Muslims have responded to events over the past decade and the expansion of an anti-Muslim network largely by being more, not less, visible. The number of mosques grew 74 percent over the past decade, despite the opposition Muslims sometimes confront in their construction. Even if a 2011 poll found that 48 percent of American Muslims reported experiencing discrimination in the previous twelve months, they also showed more optimism than other Americans in the poll that their lives would be better in five years (perhaps, in part, because of today's discrimination). The guiding belief in the American Muslim community today is that the country will recognize that Muslims have always been and will continue to be a part of America.

An ordinary life is more meaningful than it sounds. It signifies being able to live your life as you define yourself, not as others define you, and being able to assume a life free of unwarranted government prying. In fact, ordinariness is the foundation of an open society, because it endows citizens with a private life and demands that the government operate openly—not the other way around, which is how closed societies operate.

IRF programs have existed for decades and are expanding

Mandaville and Silvestri, 15 – *Peter, Professor in Government & International Affairs at George Mason U and ** Sara, Senior Lecturer in Religion and International Politics at City University London and Director of Research at U of Cambridge ("Integrating Religious Engagement into Diplomacy: Challenges & Opportunities" 1/29/15, Brookings Institution, http://www.brookings.edu/~/media/research/files/papers/2015/01/29-religious-engagement-diplomacy-mandaville-silvestri/issuesingovstudiesmandavillesilvestriefinal.pdf,//BR/)

The last few years have witnessed a flurry of interest and activity around religion and religious engagement in diplomatic circles on both sides of the Atlantic. In 2013, the US State Department established a new Office of FaithBased Community Initiatives as part of a broader national strategy on religious leadership and faith community engagement led by the White House's National Security Council.1 Within the same year, the European Union issued new guidelines on the promotion and protection of freedom of religion or belief; the Canadian Department of Foreign Affairs, Trade and Development opened a new office focused on similar issues; and the French Foreign Ministry sponsored a major conference on the question of religion and foreign policy with a keynote address delivered by Foreign Minister Laurent Fabius. <These moves are but the latest in a much longer story of efforts on the part of foreign policy leaders to integrate greater attention to religion in the conduct of diplomacy. Since the end of the Cold War and the accompanying upsurge in world events driven by questions of identity and culture, observers of international affairs have been searching for answers and solutions in religion. In 1995, Doug Johnston and Cynthia Sampson published Religion: the Missing Dimension of Statecraft, a pioneering book that sought to make a case for including a focus on religion within the practice of diplomacy.2 Regarded at the time as somewhat radical, the fact that the volume's contents would raise very few eyebrows today speaks to just how prescient it was. There is now a considerable track record of diplomats having worked both formally and informally to include a focus on religion and religious engagement in their work. For example, the advancement of religious freedom has been a formal component of U.S. foreign policy since the late 1990s with the passage of the International Religious Freedom Act (IRFA), which created a United States Commission on International Religious Freedom as well as an Office of International Religious Freedom within the State Department. Certain domains of foreign policy have seen more attention paid to the question of religion than others. The United States Agency for International Development (USAID), for example, has had an office focused

on faith-based actors in development since 2002. Since 9/11, the national security services of the United States and many of its European partners have devoted enormous time and resources to the question of religion and violent extremism—and almost exclusively with a focus on the Muslim world.

IRF fails – religious presumptions and the constitution

Mandaville and Silvestri, 15 – *Peter, Professor in Government & International Affairs at George Mason U and ** Sara, Senior Lecturer in Religion and International Politics at City University London and Director of Research at U of Cambridge ("Integrating Religious Engagement into Diplomacy: Challenges & Opportunities" 1/29/15, Brookings Institution, http://www.brookings.edu/~/media/research/files/papers/2015/01/29-religious-engagement-diplomacy-mandaville-silvestri/issuesingovstudiesmandavillesilvestriefinal.pdf,//BR/)

<Properly undertaken, any effort to better appreciate the role of religion in foreign affairs must involve at least some modicum of willingness to examine the assumptions we hold about the place of religion in society. This is not about advocating for diplomats to accept as correct or appropriate a more expansive role for religion in society. Rather, it is about pointing out that it may only become possible to see and appreciate the bigger picture of religion's role in some societies if we first set aside our own particular set of lenses on this issue. For some—particularly in the United States—the aversion to mixing religion and diplomacy arises not out of an ideological commitment to secularism but more from concerns about the need to respect the legal sense of secularism embedded in the US constitution. The key question here is about whether the so-called "establishment clause" of the First Amendment, which prohibits any act that would indicate a specific religious preference on the part of the federal government—applies overseas. Case law history is mixed on this issue, but the overall trend is one that suggests a tendency in American jurisprudence to view the establishment clause as indicative of a universal principle.7

The plan fails – can't resolve Islamophobia on a state or local level

Ghazali, 14 - Abdus Sattar, Chief Editor of the Journal of America ("2013: Another Hard Year For American Muslims" Countercurrents, 1/2/14, http://www.countercurrents.org/ghazali020114.htm,//BR/)

Anti-Sharia (read anti-Islam) bills Anti-Muslim prejudice is now institutionalized at the state level, as well. Over the past two years, lawmakers in 32 legislatures across the country have targeted Muslims by moving to ban Islamic law, or "Shariah." Seven states - Arizona, Kansas, Louisiana, North Carolina Oklahoma, South Dakota and Tennessee - have signed the proposed ban into law, despite the inability of legislators to name a single specific case in which a court ruling based on Shariah law was allowed to stand. The bills were patterned on a template produced by a leading Islamophobe David Yerushalmi who founded an organization in 2006 with the acronym SANE (the Society of Americans for National Existence) with the aim of banishing Islam from the US. He proposed a law that would make adherence to Islam a felony punishable by 20 years in prison. What is the fall out of the anti-Sharia campaigns? Such campaigns increase bias among the public by endorsing the idea that Muslims are second-class citizens. They encourage and accelerate both the acceptability of negative views of Muslims and the expression of those negative views by the public and government agencies like the police. Anti-Muslim sentiment has not only manifested itself through mosque arsons, assaults, murders and invariably hostile rhetoric from society's extreme fringes. It has also become a permanent fixture of the very institutions that should provide safeguards against those things. The fallout of anti-Islam and anti-Muslim rhetoric, which is socially acceptable, appeared in different spheres. Hate crimes against

Muslims or perceived to be Muslim is not an uncommon phenomenon while Mosques also became a target of hate. NYPD declares mosques as terrorist organizations Amid the concerted Islamophobic campaigns the America Muslim community was stunned to know that the New York Police Department (NYPD) has secretly designated mosques as "terrorist organizations." The Associated Press reported on August 28 that the designation allowed the police to use informants to record sermons and spy on imams, even without any evidence of criminal activity. According to the AP report, designating an entire mosque as a terrorism enterprise means that anyone who attends prayer services there is a potential subject of an investigation and fair game for surveillance. The AP report further said: "Since the 9/11 attacks, the NYPD has opened at least a dozen "terrorism enterprise investigations" into mosques..... The TEI, as it is known, is a police tool intended to help investigate terrorist cells and the like. Many TEIs stretch for years, allowing surveillance to continue even though the NYPD has never criminally charged a mosque or Islamic organization with operating as a terrorism enterprise." It may be pointed out that in August 2011, the AP exposed the NYPD spy program, which is allegedly being conducted with the assistance of individuals linked to the CIA. The AP reported that the NYPD is using covert surveillance techniques "that would run afoul of civil liberties rules if practiced by the federal government" and "does so with unprecedented help from the CIA in a partnership that has blurred the bright line between foreign and domestic spying." Understandably, on June 18, 2013, civil rights groups filed a federal lawsuit charging that the NYPD's Muslim Surveillance Program has imposed an unjustified badge of suspicion and stigma on hundreds of thousands of innocent New Yorkers. It was filed on behalf of religious and community leaders, mosques, and a charitable organization that were all swept up in the NYPD's dragnet surveillance of Muslim New Yorkers.

No spillover post-plan – Obama, Congress, and State Department are ineffective – empirics prove

Farr 11 – Professor of Religion and International Affairs – Georgetown's Edmund A. Walsh School of Foreign Service and Director (Thomas F., Berkley Center for Religion, Peace, and World Affairs "Preventing Another Attack: International Religious Freedom", 9/23/11, http://berkleycenter.georgetown.edu/posts/preventing-another-attack-international-religious-freedom, //11)

Given the evidence that religious freedom can contribute to de-radicalization, American foreign policy should be integrating international religious freedom into its governance strategies for the broader Middle East. Unfortunately, it is failing to do so. In his June 2009 Cairo speech, President Obama said that "freedom of religion is central to the ability of peoples to live together." He's right; but **words do not substitute for policy action.** It took the Obama administration two and a half years to get in place its ambassador-at-large for international religious freedom—the senior official who implements American policy on religious freedom—and when the ambassador finally stepped into her office, she found herself working for a **lower-ranking official, far removed** from the Secretary of State. While other similarly ranked officials, such as the ambassador-at-large for women's issues, work directly under Secretary Clinton, the ambassador for religious freedom remains isolated and under-resourced. Meanwhile, minority Christians, disfavored Muslims, and other groups are being persecuted around the globe. In 2009, the Pew Forum reported that 70 percent of the world's population lives in countries where their religious freedom is severely restricted, often by violent persecution. An August update says that the problem is getting worse. Political upheaval in the Middle East will likely lead to catastrophe unless the religion-state problem is resolved. Yet the administration does not see the urgency. Obama and Clinton have prioritized other foreign policy issues, investing the administration's energy and resources in projects like climate change research, closing Guantanamo, "engaging Islam," and internationalizing gay rights. Of late, **Congress also has done little to advance the cause of religious freedom.** In 1998, it passed the International Religious Freedom Act, which provided the statutory basis for U.S. policy. Recently, a bipartisan group in the House sponsored a bill with amendments that would force the State Department to prioritize religious freedom—putting the ambassador under the Secretary, allocating democracy funding to religious freedom, and mandating training for American diplomats. Unfortunately, neither Senate Democrat nor House Republican leaders appear to see the value of passing these amendments. In mid-September, all

State Department language was summarily stripped from the bill, leaving only the reauthorization of an advisory panel called the Commission on International Religious Freedom. The Commission is important and should be reauthorized, but it is only an advisory body, unable to drive U.S. policy.

Cultural Movements are emerging to challenge islamophobia

Haddad and Harb 6-12-**14** – Yvonne Yazbeck*, The Center for Muslim-Christian Understanding, Georgetown University, and Nazir Nader**, Department of Arabic and Islamic Studies, Georgetown University, ("Post-9/11: Making Islam an American Religion," Religions, http://www.mdpi.com/2077-1444/5/2/477/htm,//BR/)

10. American Muslims Engaging in New Ways American Muslims have responded to Islamophobia and shari'aphobia in variegated and creative ways [111]. They have assumed a redemptive posture in combatting misinformation about Islam and American Muslim identity while reclaiming each by supporting, participating in, and initiating community and civic engagement projects as well as contributing to U.S. politics, popular culture, and an ongoing national interfaith dialogue. American Muslims today emphasize what they see as shared American and Islamic values of honoring and celebrating difference. They also envision their efforts to integrate Islam into the tapestry of American society as a way of protecting themselves from the phobias that adversely affect and threaten their communities. In 2006, the first Muslim congressman in the U.S., Keith Ellison of Minnesota, was sworn into office on a copy of Thomas Jefferson's Qur'an from 1734, after much consternation over whether or not an oath is valid on any scripture other than the Bible [112]. His experience paved the way in 2008 for Andre Carson, democrat from Indiana, the second Muslim elected to Congress whose campaign and election were much quieter and drew fewer questions about his religion [113]. American Muslims today understand newfound forms of cultural engagement and civic activism to be important avenues for securing the right of religious freedom in the name of the Constitution and the Bill of Rights for American Muslims. U.S.-based partnerships like the 501(c)(3) Clergy Beyond Borders (CBB), founded jointly by Muslim, Jewish, and Christian American clerics, further illustrate this larger trend among forward-looking Muslim Americans and their counterparts in other faiths to integrate Islam into America's cultural and religious fabric. The CBB website emphasizes the organization's vision that "all religions contain a message of commitment to improving the world" [114]. CBB advocates "mutual recognition among religious communities, seeking not to remove meaningful borders between them, but rather to build bridges of understanding and cooperation" [114]. Like American Muslim youth organizations, part of the goal of CBB is to educate non-Muslims and Muslims about the uniquely democratic, pluralistic, and modern nature of Islam, or at least American Islam [114,115]. Muslim American youth have set out to integrate Islam into the American popular conception of religious pluralism and diversity through the modern avenues of networking, blogging, events on college campuses, and conferences and seminars open to the public that cater to non-Muslims around the country [116]. Other Muslim-based organizations, including the United Muslims of America (UMA), the American Muslim Alliance (AMA), the Council on American Islamic Relations (CAIR), the Muslim Ummah of North America (MUNA), and the Muslim Public Affairs Council (MPAC), began increasingly to support interfaith engagement across the United States after 9/11 [117]. Appropriating "One God We Trust," UMA's website features a full section devoted to interfaith activism. The description of the section explains that UMA sees "America as one nation, endeavoring to create one family through interfaith understanding. We promote racial and religious harmony through religious institutions, projecting an image of America as a world leader who stands up for the human rights for all communities." Eboo Patel, well-known for his work in interfaith around the world, drew a lot of attention with the establishment of the Interfaith Youth Core that some people likened to a "Muslim Peace Corps" interfaith organization [117]. American Muslims have found a kind of special kinship with American Jews in working toward greater interfaith cooperation [118]. Not to be left in the dust of the rapid advancements in post-9/11 Muslim interfaith engagement, ISNA president Mohamed Magid and a delegation of imams from around the world, along with Congressman Keith Ellison, traveled with the U.S. State Department to the Wall of Death in Auschwitz, Germany to offer prayers where many thousands of Jewish prisoners

were killed during the Nazi Holocaust [119]. Muslim-Christian alliances in the 12 years after 9/11 have also expanded widely and, along with improving Muslim-Jewish relations, may help to create a more accepting space for American Muslims in U.S. society in the long term [120]. American Muslim communities, particularly mosques, which may not be directly affiliated with interfaith organizations, have also opened their doors to Americans of other faiths to join in worship services as well as holiday celebrations. American Muslims have also led prayer services and vigils at times of national mourning in the last 12 years, whether or not the assailant was allegedly Muslim [121]. Ramadan, the holy Muslim month of fasting, provides an opportune venue for interfaith engagement at meals where Muslims are encouraged to break the day's fast with their neighbors [122]. An important feature of American Islam in the last 12 years has also been intra-faith dialogue and engagement—"intra-faith" in this case refers to work by American Muslims on improving Sunni-Shi'a relations. The website The American Muslim (TAM), run by Sheila Musaji, a leader in developing frameworks of understanding American Islam, quotes a 1959 fatwa, or religious treatise, by Shaikh Mahmood Shaltoot of Al-Azhar University: "Islam does not require a Muslim to follow a particular Madh'hab (school of thought). Rather, we say: every Muslim has the right to follow one of the schools of thought which has been correctly narrated and its verdicts have been compiled in its books" [123]. The excerpt goes on to specify that the Shi'ite school of thought is "religiously correct to follow in worship as are other Sunni schools of thought." Musaji's piece includes a nearly exhaustive list of articles and links to websites dedicated to Sunni-Shi'a, or "SuShi", reconciliation, mutual understanding, and intra-faith engagement [124]. This too marks a significant shift in American Muslim attitudes since 9/11. Whereas before 9/11, American Muslims either ignored Sunni-Shi'a issues or assumed sectarianism was not a problem in the United States, post-9/11, American Muslims are acknowledging that this is an important area with increasingly profound consequences for the world community of Muslims [125]. In fact, the sphere of Sunni-Shi'a intra-faith activism may be one field in which American Muslims are leading the way forward internationally. Amid rising tensions between Sunni and Shi'a Muslims in Iraq, Pakistan, Lebanon, Syria and other countries where sectarian violence has spilled over into civil war and attempts at genocide, a group of American Muslim scholars and Imams were convened by ISNA in September 2013 to sign the "Washington Declaration Uniting Shi'ah and Sunni Scholars of North America" [126]. According to one of the signatories, "this declaration rejects all forms of sectarian violence between schools of thought within Islam… It calls for the respect of religious symbols of all sects of Islam… (and) for dialogue between the schools of thought and calls for imams to carry this message of mutual respect to their communities" [127]. ISNA president Mohamed Magid asserted that "ISNA is a platform for the unity of Muslims—whatever brings Muslim together strengthens all of them." Among some of the most active groups of American Muslims in the pre- and post-9/11 efforts to integrate Islam into the mainstream of American psyches and culture have been activist youth programs [128]. The February 2010 Purple Hijab Day was promoted as an annual event where women don purple headscarves to end domestic violence "in our ummah," a reference to the Muslim community [129]. Green Muslims in the District, based in Washington D.C., have evolved from an online blog to a full website where events are coordinated, such as Zero Trash Parties and networking mixers for Muslim green activists to meet and pool efforts [130]. The nationwide Ramadan Fast-a-Thon has quickly developed a positive legacy on campuses across the country. Muslim Student Associations typically organize a day of fasting where non-Muslims are invited to join their Muslim classmates in abstaining from food and water from sunup to sundown and are then welcomed to partake in a special meal to break the fast (iftar) and accompanying prayers. They donate the funds they gather to a charity. Students spend the day in communication and many participants have explained that Fast-a-Thon helped them better relate to Muslims in America and at their universities.10 Other programs established by American Muslims are run by professionals but targeted toward American Muslim youth, such as IMAN's Takin' it to the Streets, Patel's above-mentioned Interfaith Youth Core (IFYC), and the Muslim Public Service Network (MPSN) [131]. More and more Muslim college students are finding creative ways to reach out to their local communities beyond their campuses as well. Georgetown University's Muslim Chaplaincy, one of only 13 such programs in the United States, offered a "Muslim Alternative Spring Break" for the first time in March 2012. After a competitive selection process, 12 Muslim undergraduate students led by their campus Imam traveled to Parkersburg, West Virginia to work with Habitat for Humanity building homes for a family in need. Students spent their entire Spring Break in service working side-by-side in the community. Parkersburg is a city with likely very little to no direct exposure to Islam or Muslims in the recent past. The Georgetown group attended church services in solidarity with the local community and baked cookies for the congregation after the service. The church community broke bread with the Muslim students before the week's end, and they are working to maintain strong ties and possibly return to Parkersburg the following year. Their service was noted by local newspapers and television news media who pointed out that these students willingly came to snowy Parkersburg rather than enjoy a more "traditional" Spring Break [132]. As American Muslims come to define Islam in America, they are also poised to contribute to Islamic scholarship and the training of Imams. In 2008, the Zaytuna Institute, founded in 1996 in Berkeley, California by Muslim "rock stars" Hamza Yusuf, Zaid Shakir, and Hatem Bezian, became Zaytuna College. The college follows an integrated curriculum of Islamic studies, Arabic language, and liberal arts including U.S. history and literature. Its motto is "Where America meets Islam," and its goal is to be accredited by the University of California system—it compares itself to private religiously-based universities founded by American Jews and Christians [133].

--- XT: International Religious Freedom Fails

The government is not equipped to promote Religious freedom diplomatically

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One final challenge relating to institutional capacity has to do with the structure and relatively short timelines—often two years—that govern diplomatic postings. This is not a new problem, and it is not at all uncommon for Foreign Service officers to complain that such brief tenures make it difficult for diplomats to develop sustained competencies. They arrive in a new position or posting, spend the better part of a year acculturating and getting up to speed, and then deliver at full capacity for only a few months before starting to focus on the next assignment and a new transition. This problem is particularly pronounced when it comes to specialized skill sets such as those required for effective religious engagement. Rather than cultivating institutional memory about how a focus on religion can help to advance the objectives of a particular bureau or overseas post, it is far more common for the departure of a foreign affairs officer competent in religious affairs to create a situation where that office has to start over from scratch when the next designee comes into position. The fact of the matter is, however, that very few Foreign Service officers and other diplomats possess either sufficient understanding of religion or the necessary skillsets to effectively undertake religious engagement. This fact speaks to the need for any serious effort at integrating religion into foreign policy to do more than just create new functionaries or offices with a religious designation. Rather, it is crucial to build an awareness of religion and the many ways it bears on foreign policy and national security objectives into the systems and curricula used for training and preparing professional diplomats.

Structural trends – including restrictions in other countries – prevent effective reform of religious freedoms abroad

George 14 – holds the McCormick Chair in Jurisprudence at Princeton University, founding director of the James Madison Program in American Ideals and Institutions at Princeton University, Vice Chairman of the US Commission on International Religious Freedom (Robert, Foreign Policy Research Institute, "The State Of International Religious Freedom and Why It Matters", November 2014, http://www.fpri.org/articles/2014/11/state-international-religious-freedom-and-why-it-matters, //11)

When it comes to state hostility toward religions, some of these governments, like North Korea or China, are secular tyrannies which consider all religious beliefs as **potential competitors** of state secularist ideology such as Communism. Others, like Iran, Saudi Arabia, and Sudan, are religious tyrannies which **enthrone one religion or religious interpretation over all others**, which they see as rivals to the one they favor. Still others, like Russia, are a hybrid of secular and religious. In North Korea, the government severely represses religious activity, and individuals who defy it are arrested, imprisoned, tortured, or executed. In China, the government continues its persecution of Tibetan Buddhists and Uighur Muslims. To stem the growth of independent Catholic and Protestant groups, Beijing has arrested leaders and shut churches down. There have been reports of officials even going after registered churches, tearing down crosses and church steeples. Members of Falun Gong, as well as those of other groups deemed "evil cults," face long jail terms, forced

renunciations of faith, and torture in detention. In Iran, the government has executed people for "waging war against God," while relentlessly targeting reformers among the Shi'a Muslim majority, as well as religious minorities, including Sunni and Sufi Muslims, Bahai's, and Christians. Pastor Sayeed Abedini remains in prison, and the regime has stirred up anti-Semitism and promoted Holocaust denial. Saudi Arabia completely bans the public expression of religions other than Islam. Not a single church or other non-Muslim house of worship exists in the country. In addition, the Kingdom enthrones its own interpretation of Sunni Islam over all others and has arrested individuals for apostasy, blasphemy, and sorcery. Sudan continues its policy of Islamization and Arabization, imposing Shari'ah law in Muslims and non-Muslims alike, using amputations and floggings for acts of so-called indecency and immorality and arresting Christians for proselytizing. And finally, Russia has a secular government but favors the Moscow Patriarchate of the Russian Orthodox Church while persecuting competitors, such as Jehovah's Witnesses, or those it deems a threat to the state, such as Muslims. Regarding state sponsorship of radical ideology which targets others' religious freedom, Saudi Arabia continues to export its own extremist interpretation of Sunni Islam through textbooks and other literature which teach hatred and even violence toward other religious groups. Regarding state enforcement, Egypt and Pakistan enforce anti-blasphemy or anti-defamation codes, with religious minorities bearing the brunt of the enforcement. And finally, regarding state failure to protect religious freedom, the abysmal record of the governments of Burma, Egypt, Iraq, Nigeria, Pakistan, and Syria exemplifies those of nations which do not protect their citizens against religion-related violence. In Burma, sectarian violence and severe abuses against Christians and Muslims continue with impunity. The plight of the Rohingya Muslims is especially alarming and heartbreaking, as countless numbers are stateless, homeless, and endangered. In Egypt, Cairo has failed repeatedly over time to protect religious minorities, including Coptic Orthodox and other Christians, Baha'is, Shi'a Muslims, and dissident Sunni Muslims from violence or to bring perpetrators to justice. In Iraq, the rise of the so-called "Islamic State" is a major consequence of the government's continued failure to protect the lives and freedoms of non-Muslims minorities such as Christians and Yazidis, as well as Shi'a Muslims and dissenting Sunni Muslims. In Nigeria, as Boko Haram attacks Christians, as well as fellow Muslims, the government continues its failure to prosecute perpetrators of religiously-related violence that has killed more than 14,000 Nigerians, both Christian and Muslim, since the turn of the century. In Pakistan, the government's continued failure to protect Christians, Ahmadis, Shi'a, and Hindus, has created a climate of impunity resulting in further vigilante violence. And in Syria, a civil war triggered at least in part by the Assad regime's refusal to respect human rights and embrace reform has devolved into a sectarian religious conflict. We now have a combination of state tyranny and state failure to protect life and freedom. While the Assad regime targets Sunni Muslims, its terrorist opponents (such as the "Islamic State") are targeting those on all sides, from Sunnis and Alawites to Christians, who oppose their dictates. It is a complete nightmare. THE TOTALITARIAN IMPULSE As we survey this bleak landscape for religious freedom abroad, **we detect a number of unmistakable patterns and trends.** We see the **rise of violent religious extremism**, largely through radical Islamism, and its continued conflicts with the majority of Muslims, as well as with non-Muslim religious minorities**. We see the continued persecution of Christians**—a persecution the sheer size and scope of which is astonishing. And we see the stubborn persistence and in some places revival of anti-Semitism across countries and cultures. Let me offer a few words on these disturbing patterns and trends. It has often been said that radical Islamism and its leaders seek to recover a mythical golden age from a far-distant past. While this is undoubtedly the case, we must also realize that they are also propelled by an inescapably modern—and terrifying—idea. Surfacing in the last century, that idea came to be known as **totalitarianism.** What defines totalitarianism is a series of demands which may be summarized as follows: Give fanatical leaders and movements absolute and permanent authority. Make these leaders and their followers into virtual gods, charged with seizing control of history and transforming humanity itself. Release these leaders and their followers from accountability to any law or institution, belief or custom, and moral norm or precept. Grant these leaders and their followers complete control of every facet of human existence, from outward conduct to the innermost workings of conscience. For the better part of a century, those promoting and exploiting this malignant idea have advanced it by dressing it up in a variety of costumes and by hijacking various ideals and institutions and putting them to work in its cause. In the 1930s and 1940s, it threatened humanity through Nazism and other forms of fascism which exploited the concept of race and the ideology of nationalism. After World War II, totalitarianism posed its greatest threat through Communism, which exploited the concepts of class and class consciousness and highjacked people's strivings for social justice. By the close of the 20th century, these movements had committed every crime under the sun, triggering the deaths of nearly 150 million human beings. They also waged war against the rights and duties of conscience, leaving behind a world where to this day, most people live in countries that are hostile—in many cases deeply hostile—to freedom of religion or belief. Today, that same totalitarian impulse which drove Nazism and Communism has hijacked religion as its latest vehicle, creating radical Islamism. From the "Islamic State" in Iraq and Syria to the extremist mullahs in Iran, and from al Qaeda to the Taliban, these new totalitarians pose similar threats to the world. Displaying utter contempt for the rule of law and for any distinction between combatants and non-combatants in the conduct of war, they target civilians and commit mass torture and murder, precisely as the Nazis and Communists did. Many observers presume that these movements and their leaders simply represent Islam on steroids. Some even claim they represent the "true Islam." I submit to you today that they are mistaken. Granted, the history of nearly every religion—including Islam—contains periods of despotism and bloodshed. Granted, every major religion has had to go through periods of reform or clarification of some of its beliefs and ideas. Granted, as so many Muslim reformers have stated repeatedly, Islam should be no exception. But let us be clear. No civilized religion—certainly no creed in the tradition of ethical

monotheism—including Islam, ever stood in principle, as the Nazis and Communists did, and as the "Islamic State" does today, for what amounts to sheer, unadulterated nihilism—the idea that any and every means—torture, rape, prostitution, drug sales, the slaughter of innocent children and defenseless elderly people, genocide—may be carried out in the cause of regional hegemony and, ultimately, world domination. No world religion ever granted any human being, group, or government the permanent right in principle to flout any rule, break any law, or commit any atrocity at will. In other words, **the struggle we face is not that of one religion against another, nor of religion against humanity**. Rather, it is a struggle that pits lawlessness and tyranny against basic decency and dignity. And in this struggle, reformers must be applauded for their resolute stand not only to reform and clarify from within, but to stand against the hijacking of Islam by those driven by the same impulse that drove the likes of Hitler and Stalin, Mao Zedong and Pol Pot. They must rip away radical Islamism's religious mask – revealing its idolatrous soul before the world. At the hands of violent religious extremists, Christians especially face severe persecution. Ironically, it is in the Middle East, the cradle of Christianity, that both persecution and the flight of the persecuted cloud the future of the world's oldest Christian communities. Unless circumstances change, many are asking whether a graveyard will one day replace the cradle. In Egypt, violence against Coptic Christians reached alarming proportions in recent years. In Iraq, severe violence against Christians, which peaked after Saddam Hussein's fall, has returned with a vengeance. The "Islamic State" is principally to blame for that. Once home to approximately one million Christians, Iraq has half that number today. Many Iraqi Christians sought refuge in Syria, where fellow Christians and Muslims—from Sunnis to Shi'a, including Alawites—once had co-existed peacefully. We all know how that turned out. For Christians, Syria's civil war has been nothing short of calamitous. In Saudi Arabia and Iran, it is mainly the government that severely represses Christians and other religious minorities. And just outside the Middle East, in Pakistan, attacks against Christians are escalating. In September 2013, suicide bombers launched the worst anti-Christian attack in Pakistan's history, assaulting All Saints Church in Peshawar, leaving nearly 100 dead and more than 150 other parishioners wounded. In looking at the plight of Christians, especially those in the Middle East, those who know Jewish history see something hauntingly familiar. Iraq's Jewish community provides a somber example of what the future may hold. Like Iraq's Christians, the Jews were there for a long time—perhaps as many as 20 centuries or even more. As of 1947, the country's Jewish population exceeded 50,000. Today only a handful remain. People professed shock when it was revealed that in 2010, Mohammed Morsi, who was later elected Egypt's president, depicted the Jewish people as "descendants of apes and pigs," whom Egyptian children and grandchildren must be taught to hate "down to the last generation." Yet his comments were no worse than those of Iranian leaders, who denied the Holocaust and allowed state-run media to broadcast anti-Semitic messages and hateful cartoons. Nor are they worse than the lies and defamations against Jews and Judaism that one finds in the media elsewhere in the region, including in Egypt itself. Yet it would be a mistake to say that anti-Semitism is confined to the Middle East. In post-Soviet Russia, skinhead groups commit acts of anti-Semitism in the name of Russian nationalism. In Belarus, the anti-Jewish utterances of President Lukashenko and the state media are accompanied by a failure to identify or punish the vandals of Jewish cemeteries and other property. Even in Western Europe, anti-Semitism has been making a comeback. Since 2000, anti-Jewish graffiti increasingly have appeared in Paris and Berlin, Madrid and Amsterdam, London and Rome, and synagogues have been vandalized or set ablaze in France and Sweden. In Malmo, Sweden, physical attacks fueled a Jewish exodus. In France, according to a report by the security unit of its Jewish community, there were 614 anti-Semitic incidents in 2012, compared to 389 in 2011. Who are the perpetrators of these hateful acts in Europe? Some are neo-Nazis. Others claim to act in the name of Islam. Compounding the problem are four factors. First, **European officials remain reluctant to identify the ideological or religious motivations of perpetrators.** Second, surveys show that anti-Semitic attitudes among Europe's population are shockingly widespread. Third, these surveys confirm that some of this bias manifests itself in harsh and unbalanced criticisms of the state of Israel. While no nation is beyond reproach, when such criticism includes language intended to delegitimize Israel, demonize its people, and apply to it standards to which no other state is held, we must call it what it is—anti-Semitism. Finally, a number of European governments and political parties have **added fuel to the fire by backing restrictions on vital religious expression** such as the donning of religious garb in public or the performance of kosher slaughter and male infant circumcision. They have proposed or enacted similar kinds of restrictions on practitioners of other religions, including Christianity and Islam. France and Belgium, for example, bar students in state schools and government workers from wearing "conspicuous" religious symbols, such as the Muslim headscarf, the Sikh turban, large crosses, and the Jewish yalmulke and Star of David. Sweden, Switzerland, Norway, and Iceland have banned kosher and halal slaughter. In Germany and Sweden, government authorities have told Jewish and Christian parents that they cannot homeschool their children for religious reasons. And government officials in the United Kingdom are forcing Catholic adoption agencies to shut down because they follow the moral criteria of their faith—criteria that are by no means idiosyncratically Catholic—in placing orphaned children in homes that provide a mother and father and not in same-sex headed households. What drives these governments and parties is an attempt to grant secularist ideology dominance in the public square by placing serious restrictions on religious expression or practice. It is an extreme view of state-church separation which seeks to relegate religion to the purely private domain of the home, church, synagogue, mosque, or temple.

IRF fails – leaders who need to convert are already too far gone

Farr, 9 - Thomas F., Professor of Religion and International Affairs – Georgetown's Edmund A. Walsh School of Foreign Service and Director – Berkley Center for Religion, Peace, and World Affairs ("The Future of U.S. International Religious Freedom Policy", Research Gate,//BR/)

The arguments presented above about the value of democracy and religious freedom are highly unlikely to appeal to religious actors who are already radicalized. There is some evidence that a few radicals have experienced "conversions" to more moderate forms of Islam under the influence of reeducation programs performed by authoritarian governments such as Saudi Arabia and Yemen . While such programs may be useful, they are unproven and should not be the primary content of U .S. diplomatic efforts against Islamist terrorism. Those efforts should center on the empowerment of democratic Muslim reformers, speaking from the heart of Islam, rather than relying on the actions of authoritarian governments. Second, Islamist organizations that have engaged in the democratic process, such as Egypt's Muslim Brotherhood or Pakistan's Jamaat-eIslami, contain factions that have historically undertaken violence and terrorism. The radicalism of such groups does not arise solely in reaction to authoritarian regimes; their arguments for extremist measures, including illiberal measures in criminal law, the treatment of women, and the treatment of religious minorities, derive from religious arguments as well. But on balance authoritarian settings exacerbate the violent and radical tendencies of such groups while democratic settings can lead them to be more moderate and peaceful than they otherwise would be. Part of the moderating mechanism is the requirement to submit their religious and political truth claims to public scrutiny and debate. It is by no means inevitable that moderation will result from opening a political environment, but democracy grounded in religious freedom can increase the chances of political and religious moderation. Third, a key obstacle to the employment of IRF policy as a counterterrorism strategy is the arguments made by terrorists themselves, i.e., that U.S. policy is intended to separate Islam from politics and facilitate the operation of American missionaries. Islamist radicals have successfully exploited Muslim familiarity with the French model of managing and marginalizing religion. They have conflated the French and American models, and branded American "freedom" strategy as secular, godless, and anti-Islamic. U.S. IRF policy can overcome these perceptions by communicating, in public and private diplomacy, foreign aid, democracy programs, and Track II efforts, that religious freedom means the right of religious communities to participate in forming the laws and policies of a democratic state. It does not mean the banishment of Islam from public life.

Legitimizing Multilateralism is a prerequisite to solvency

Farr, 9 - Thomas F., Professor of Religion and International Affairs – Georgetown's Edmund A. Walsh School of Foreign Service and Director – Berkley Center for Religion, Peace, and World Affairs ("The Future of U.S. International Religious Freedom Policy", Research Gate,//BR/)

One of the ironies of U .S. IRF policy is that while some critics accuse it of being a peculiarly and unilaterally American crusade, international law has long been abundantly clear in setting robust standards for freedom of religion or belief. Article 18 of the Universal Declaration of Human Rights is unambiguous and remarkably comprehensive in defining these freedoms. The Universal Declaration was adopted by the General Assembly without a single negative vote and to this day is still regarded as the seminal international human rights document. The Universal Declaration's Article 18 is also the source text of subsequent international human rights instruments, notably the International Covenant on Civil and Political Rights (ICCPR), which stipulates that religious freedom cannot be impinged even during war-time. It is listed as one of the ICCPR's "non-derivable" rights. Freedom of religion or belief is reinforced in other human rights declarations and treaties as well, including the UN Declaration on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, the European Convention for the Protection of Human Rights and Fundamental Freedoms (which established the European Court of Human Rights), the American Convention on Human Rights, the African Charter on Human Rights, and key documents of the Organization for Security and Cooperation in Europe (OSCE) such as the Helsinki Final Act and the Vienna Concluding Document . Furthermore, many of the formal protections for religious freedom in international law and institutions came into being not in spite of American unilateralism but with active American multilateral engagement. Former First Lady Eleanor Roosevelt was the driving force behind the UN's adoption of the Universal Declaration. American diplomats and NGOs were also deeply engaged in other international human rights efforts, such as the ICCPR and the Declaration on Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. American diplomats were likewise key players working to ensure that OSCE documents included language on religious freedom. And

it was the U .S. that introduced the UN resolution creating a Special Rapporteur on Freedom of Religion or Belief. In short, international law has been important to the cause of international religious freedom, and international religious freedom has been important in the development of international human rights law. At least on paper, there is now and has long been widespread international support for freedom of religion or belief. And there are ample precedents of American leadership and cooperation in efforts to include these freedoms in multilateral documents and institutions. Notwithstanding the existence of these international protections for religious freedom on paper, many signatory nations violate religious freedom in practice. Moreover, signatory nations that are not themselves gross violators of religious freedom will often take no meaningful action, either individually or via international law/institutions, in response to gross violators. This problem is, of course, not unique to religious freedom; other human rights are also often ignored in favor of competing national and political interests. The practical weakness of existing international institutions leads some frustrated U .S. policy makers to abandon or neglect multilateral engagement. Indeed, the U .S. can rightly be criticized for inconsistency in its relationship to international human rights. While the U .S. has at times exercised leadership in creating international human rights law, and its rhetoric on the global stage is full of bold statements on human rights, it has not always avoided the temptation to seek exceptions for itself. It has even failed to ratify human rights treaties that its own officials were influential in negotiating. Of course, human rights treaties will never be perfect—some may never warrant U .S. approval, and others may only warrant approval with specific reservations. But the U .S. has not invested deeply and consistently enough in the development of legitimate international institutions capable of enforcing the high ideals of international law. The U .S. needs efficacious international human rights institutions in order to promote genuinely sustainable religious freedom and in order to protect its own interests and reputation. Its lack of investment undermines U .S. credibility when it tries to use its own foreign policy tools (such as those available under IRFA) to influence other nations' human rights records.

--- XT: SQ Solves

Post 9/11 hysteria is fading and the government is learning its wrongdoing - inevitably solving Religious free speech

Awad, 11 – Nihad, target of NSA surveillance, Executive Director and Founder of the Council on American-Islamic Relations ("Muslims and religious freedom in post-9/11 America", San Diego Union Tribune, 9/11/11, http://www.utsandiego.com/news/2011/sep/09/muslims-and-religious-freedom-in-post-911-america/all/,//BR/)

Oddly, in an interview about the CIA-NYPD spying, the FBI's own legal counsel said that sending an informant into a mosque with no evidence of wrongdoing runs "right up against core constitutional rights. You're talking about freedom of religion." In another California case involving spying on Muslims, government lawyers admitted to lying to a federal judge, then justified the deceit on national security grounds. The case involved a routine attempt to obtain government documents using the Freedom of Information Act. Such deception of a judge undermines the checks and balances the founding fathers believed were crucial to preserving our liberty. I am confident that at this point in the debate about Islam in America we have reinforced our nation's commitment to religious freedom. I say this because Muslims – a disliked minority – can still run for president, are able to file lawsuits to challenge discriminatory laws and are still considered adherents of a recognized religion. I say this because the legal and advocacy tools to challenge spying have not been stripped away in a misguided effort to defend America by morphing it into a tyranny. My confidence in American common sense is

reinforced by other facts. Since 9/11, two Muslims have been elected to the U.S. Congress. General revulsion at a Florida pastor's plan to burn a Quran last year was an inspiring reminder that America can both respect free speech and at the same time marginalize bigots. Broad-based pushback against Rep. Peter King's anti-Muslim hearings is another sign that pluralism is alive and well. Our national debate will end when American Muslims no longer have a need to employ legal tools because Islam is seen as equal among many faiths in America's pluralistic society. Until that day, Muslims are honored to be on the cutting edge of the struggle to preserve American religious freedom.

AT: Islamophobia Adv

Terrorism is only the media's mask for a deeper issue – Islamophobia is rooted in a xenophobic concern of a new religion challenging Western culture.

Iqbal, 10 – Professor of Media and Communication Studies at the International Islamic University, Islamabad (Zafar Iqbal, Islamic Studies, Vol. 49, No. 1, "Islamophobia or Islamophobias: Towards Developing a Process Model", Spring 2010, JSTOR, *fc)

The evidence presented above indicates that Islam has been perceived primarily as a contra religio-political force with a great **potential to threaten the West. It appeared to be the 'new enemy' of the West, providing the latter with justification of hoarding ammunitions** and pursuing its designs of expansionism. 'Cultural anomie,'46' opposing cultural ecologies,'47a 'challenge' and 'threat' to the western world,48a 'threat to western security,'49'present terror of the world,' 'the Other,'50 and 'fifth column'51 are some of the labels that have been applied to Islam in the recent past. Strangely, the confusion underlying this contrast between Islam, a religion, and the West, a geographical area, has scarcely been noticed.52

Coming to the contemporary posture of the problem, we find that Islam appeared to be a 'powerful' socio-politico-religious force of the medieval times when other religions were passing through their 'Dark Age.' **This presents a passive-active relationship between the West and Islam which was negatively viewed by Christianity and instead of improving that relationship, the West resorted to jingoistic policies**, which finally resulted in the Crusades- a struggle to balance out dominant socio-politico-religious forces of the time. **The antagonism towards Islam spanning over centuries has led to the emergence of anti-Islamic and anti-Muslim racial and cultural sentiments in contemporary times.** Not long ago, the 'political' or 'active Islam'53 in the Muslim world, especially the Arabian peninsula and Iran, added insult to the injury and cultural and racial prejudices turned into threats from Islam and the Muslims. Thus, Islamophobia is more than mere hostility, or else we would have found it in the former USSR, a home to a large Muslim population, and in India, Thailand, and Malaysia (with a Muslim population almost equal to that of non-Muslims).

It is quite strange that although the racial and cultural prejudices against Islam and Muslims are fairly noticeable, Islam can hardly be found as a threatening 'other' in literature. It was the demise

of communism that gave impetus to the portrayal of these stereotypes in the media. Therefore, communism- a great 'threat' to the West and the rest of the world- was replaced by Islam as a threatening 'other.'54**This seems to be the replacement of one threatening' ideology' with 'another.'** The fact that the contemporary Muslim world is suffering from problems like those of terrorism, subjugation, subversion and animosity substantiate the western notion that Islam and Muslims are 'threatening others.'

Another dimension of the difference between Islam and 'others' rests on the concept of 'race.' 'Race' was a concept in Arabic literature which referred to a lineage of animals, particularly applied to horses, while 'ethnicity' referred to people with common histories, languages, rituals, food, songs, etc.55 Nevertheless, the Spanish literature took 'race' to be synonymous with 'blood' and 'religion.' New terminologies were introduced. People of the newly discovered America were labelled 'mestizo' - mixed blood - , and the mixed breed of Spanish and black as 'mulatto.'56 Thus, while tracking the traces of difference between various segments of humanity in history, we find that not only 'blood' but 'colour' was also thought to be an ingredient of the concept of 'race.'

Islam became a victim of racial prejudice due to its rapid expansion worldwide in a very short span of time. Its erstwhile tendency to grow swiftly **challenged the West theologically, politically and culturally.**57As a result of mass conversions to Islam,58 **the West found it easier to demonize this religion and its followers than to take up the challenge to understand it.**59 Islam and Muslims were thus labelled with demonizing racial stereotypes meant to arouse hatred towards them. The long stretched' Crusades' further aggravated the situation and institutionalized the racial prejudice between 'us and them.' Today, these prejudices, having historical reasons, and the growing unrest and rise of 'jihadt' movements across the Muslim world, are responsible for augmenting the process. Hence, new terminologies have been constructed for the historic differences which seem to continue apace. Thy name is Islamophobia.

Government policy alone can't solve – Islamophobia is too deeply engrained in a history of religious conflict.

Iqbal, 10 – Professor of Media and Communication Studies at the International Islamic University, Islamabad (Zafar Iqbal, Islamic Studies, Vol. 49, No. 1, "Islamophobia or Islamophobias: Towards Developing a Process Model", Spring 2010, JSTOR, *fc)

Intolerance towards other religions or doctrines is universal and perhaps as old as humanity itself. The worst of its manifestations have been the wars spanning over centuries- crusades, genocides and deep rooted hostility on the basis of religious identities. Islam, at the time of its emergence in history, faced severe opposition since some quarters represented it as a **'problem'**6 **to the world.**7 This negative representation of Islam has marked the human history especially that of last 14 centuries by mutual hostilities despite the affinity that could bind Muslims, Christians and Jews the as 'people of the book,' as Prince of Wales rightly pointed out during his speech at the Oxford Centre for Islamic Studies on 27 October 1993.8

The Byzantine Christians, Greek monks and the Church establishment, threatened by the rapid spread of Islam from Arabia to its close and remote neighbours, started an obdurate campaign of slander and vilification against Islam, depicting it as a mere "apostasy"9 and a sort of "barbaric paganism."10 The foundation of this antagonism against Islam was articulated in the early Islamic period mainly by John of Damascus (676-749), a Christian scholar of the Umayyad

period, by declaring Islam to be a "pagan cult," and heaping derogations on the Prophet (peace be on him).11 For long, his writings and accusations remained the major source of the writings against Islam.

In addition to Christian scholars, the church elders regarded Islam as evil and "absolutely alien to God."12 Alexander Gainem, a freelance journalist, also observes that the campaign to reject Islam and Muslims touched its peak in Dante Alighieri's Divine Comedy.13 Dante Alighiri (1265-1321) was an Italian poet, known as "the Supreme Poet,"14 and his work is one of the masterpieces in the Italian language, in fact, Western literature as a whole. Hence, his views had a strong impact on the European attitude to Islam.

Some religious stalwarts in 14th century also saw Islam as a "theological heresy" at the level of morals and practice.15A round this period, the Council of Vienna met between 1311 and 1312, 16 declaring that Muslims could not be converted or persuaded and thus an academic onslaught should be initiated against them.17 The Qur'an was also subjected to criticism in the meetings of the Council.

Early 15th century witnessed further hostility towards Islam and Muslims when the controversial painting 'The Last Judgment'18 by Giovanni Da Modena (c. 1409-c. 1455) was displayed in Italy. It attacked the Prophet (peace be on him), thereby further widening the already existing gulf between Islam and Christianity.

The sensitivity of the issue was further aggravated by the introduction of the concept of La Raza in the 15th century. La Raza was a campaign to create a 'mix' of conflicting races. The 'mix' was desired to be different in its outlook, having prominent attributes of the dominant cultures, but, with least cultural incompatibility. José Vasconselos (1882-1959) in his work titled La Raza Cósmica 19 attempted to trace the historical outline of the phenomenon from 15th century and hoped it to be the 'Fifth Race'20- an acceptable blend of all human races irrespective of colour, creed and caste in order to develop a new civilization, ' Universópoli.s'2 1 Referring to La Raza, an American scholar has suggested that the efforts in this regard emerged from Spain where the existence of races seemed more consciously observable. He adds that even Columbus's voyage to America was racially biased since the salves he brought with him were mostly Muslims.22

Another's important name in the history of the Christian version of Islamophobia is that of Humphrey Prideaux, who saw the emergence of Islam as a part of God's inscrutable purposes: i.e. as a punishment for the sins of Christians.23 He took the establishment of the Muslim continental rule as a scourge to Christians and expected it to continue till they mend themselves. Some of his contemporaries like Peter Heylyn (1599-1662) in his work Cosmographie1a4n d Alexander Ross25 (c. 1590-1654) in Pansebeia were grossly illogical in condemning a religion with a large body of followers. Following in the footsteps, Broughton's Dictionary of All Religions (1745) categorized the world religions into 'true religions' (Christianity and Judaism) and 'false religions' (all others).26

The same attitude towards Islam prevailed during the 19th and 20th centuries. J. Alley published Vindicia Christiana attacking Islam, Hinduism and other religions on grounds of being "perpetual falsehood, pernicious and extravagant."27 The Balkan War of 1912-1913 was depicted, mainly by the British press, as a 'Crusade against Islam.'28 More recent web bloggers and literary artifacts like The House of Apostasy keep the door open for hurling blasphemy and libel at Muslims as 'intellectually weak' and as people who 'enjoy killing.'29 William Miller says, "Islam is Satan's most brilliant and effective invention for leading men astray,"30 and John Laffin

condemns the "Islamic" concept of "holy war" and stresses that the treaties with infidels be broken.31 Of course, Salman Rushdie and Taslima Nasrin are just recent manifestations of indignation against Islam and Muslims;32 nevertheless, media contributed substantially to making their works world famous.

Analysis of the media is necessary to deconstruct Islamophobia – constant portrayals of Muslims as foreign and violent negatively shape people's understandings.

Iqbal, 10 – Professor of Media and Communication Studies at the International Islamic University, Islamabad (Zafar Iqbal, Islamic Studies, Vol. 49, No. 1, "Islamophobia or Islamophobias: Towards Developing a Process Model", Spring 2010, JSTOR, *fc)

In the present days Islamophobia appears to be a heavily mediated construct. Hence, **it is pertinent to observe the involvement of media in the process of constructing it.** This is thanks to the power of the media in **conveying, explaining and articulating specific discourses that help represent or misrepresent a social group or minority.**2 Media critics argue that media misrepresentation has been influential in the spread of Islamophobia in the West.3 Media develop stereotypes by framing the attributes of a community or individual more often in a systematic way. The Australian experience shows that media portrayed Muslims as alien and foreign to the Western society,4 as a "backward, uneducated, vulgar, violent"5 community which consequently strained the relations between Muslims and other Australians. Thus, while discussing and explaining Islamophobia, we shall also dwell on the media's role in framing the Muslims and Islam for it shapes the way people understand them, eventually generating Islamophobia or Islamophilia as a process of binary schematization.

1nc Judicial Independence Adv

Partisan judicial appointments make judicial independence impossible

King 7 — Carolyn Dineen King, Circuit Judge, United States Court of Appeals for the Fifth Circuit, 2007 (CHALLENGES TO JUDICIAL INDEPENDENCE AND THE RULE OF LAW: A PERSPECTIVE FROM THE CIRCUIT COURTS, Marquette Law Review, Summer, Vol. 90, No. 4, http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1072&context=mulr)

Instead, the Supreme Court generally takes cases where the law is unclear or in need of further development or where the circuits are in conflict. What this means is that the intermediate federal appellate courts are the courts of the last resort for all but the handful of cases that the Supreme Court will agree to hear. It is precisely that fact that has resulted in the politicization of the intermediate federal appellate court appointment process. Political and issue activists understand only too well that ideologically committed judges on these benches can make an **enormous difference** in the outcomes of **hundreds of cases each year**. Too, it would be a mistake to think that ideologically committed judges affect the outcomes only in cases that involve the so-called hot button issues: the civil rights of racial and ethnic minorities and women; abortion; the rights of criminal defendants; the death penalty; and states' rights (or the proper balance of power between federal and state governments). My own observations suggest that these judges cast a much wider net. They have strong views on plaintiffs' jury verdicts, especially (but not only)

large ones; on class actions; on a wide range of federal statutes imposing burdens on corporate defendants; on religion in schools and in public areas; and on and on.

If candidates for the presidency of both parties continue, as they have now for decades, to energize issue activists within or allied with their parties by promising the appointment of judges who will pursue the respective political and ideological agendas of those parties in their decisions, then **judicial independence will continue to be severely threatened**, and with it the rule of law in the United States. The Washington Post, in a 2005 editorial, captured the imminence of the threat:

The war [over Justice O'Connor's successor] is about money and fundraising as much as it is about jurisprudence and the judicial function. It elevates partisanship and political rhetoric over any serious discussion of law. In the long run, the war over the courts—which teaches both judges and the public at large to view the courts simply as political institutions—threatens judicial independence and the integrity of American justice."8

Judiciary will never be legitimate as long as financing and elections are common practice

Sarokin 14—retired federal judge--(08/07/2014, Judge H. Lee, "For Sale -- Going Fast: An Independent Judiciary -- Buy a Judge Today," Huffington Post, http://www.huffingtonpost.com/judge-h-lee-sarokin/judicial-elections_b_5655959.html) . WM

According to the New York Times the retention election of three Tennessee judges "has been preceded by an expensive and acrimonious campaign bolstered by organizations like Americans for Prosperity, which receives financial support from the billionaires Charles G. and David Koch and other conservative groups". Those supporting retention of the judges have been compelled to raise "more than $1 million" to combat the effort to defeat them. Could there be anything more unseemly or contrary to the purposes for which the judiciary was established?

I do not doubt that there are persons out there (and even corporations now) who contribute to judicial campaigns for the purpose of electing or retaining judges who are fair, competent and impartial and who will carry out the applicable laws and enforce the state and federal constitutions. Then there are the other 99 percent who wish to influence particular matters or judicial philosophy in general. Judges are not and were never intended to be elected representatives. I cringe at the constant contention that judges should be held "accountable". They are accountable to the laws and the Constitution. They should not be subject to the whim of those who find certain past rulings objectionable or seek to influence future ones by buying elections. Nothing could weaken the independence of the judiciary more than having judges removed or not re-elected because of prior decisions that they have made.

The whole concept of judicial independence is that judges should feel to rule as they deem correct without fear of retaliation. Nor should judges undertake the position with some feeling that they are indebted to those who have financed their election. Per the Times: "The Republican State Leadership Committee, a national group, plans to spend at least $5 million on judicial races this year." Why? Because they want to influence future judicial decisions.

Let's face it -- this movement is exclusively a conservative one. Conservatives own it. Judges are to be ousted for "liberal" rulings like upholding same-sex marriage, ordering new trials in death penalty cases or generally ruling in favor of persons charged with crimes -- stuff like upholding

the Constitution. Judicial elections are degrading. Voters do not know whether or not the candidates are qualified. And finally money has further corrupted the process. I have said on prior occasions: Can you imagine a lawyer or a litigant walking up to a judge in the middle of a trial and handing the judge a check for his or her campaign? Would it make any difference if the check was delivered a week before? And isn't it even worse now that the big boys are coming in with even bigger checks?

We should end judicial elections entirely, but until we do, we must find a way to limit the corrupting influence of money in the election process and stop putting the judiciary up for sale.

No modelling --- Supreme Court losing international influence

Liptak 08 (Adam, Supreme Court correspondent for NYT. "U.S. Supreme Court's global influence is waning," NYT. 9/17/2008.
http://www.nytimes.com/2008/09/17/world/americas/17iht18legal.16249317.html?pagewanted=all&_r=0)//CB

But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices."One of our great exports used to be constitutional law," said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. "We are losing one of the greatest bully pulpits we have ever had."

From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by more than half, to about five.

Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72.

The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, "they tend not to look to the rulings of the U.S. Supreme Court."

The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court's fading influence, legal experts said. The new courts are, moreover, generally more liberal that the Rehnquist and Roberts courts and for that reason more inclined to cite one another.

Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration's unpopularity abroad. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience.

"It's not surprising, given our foreign policy in the last decade or so, that American influence should be declining," said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role, some foreign judges say

"Most justices of the United States Supreme Court do not cite foreign case law in their judgments," Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. "They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems."

Partly as a consequence, Chief Justice Barak wrote, the United States Supreme Court "is losing the central role it once had among courts in modern democracies."

Justice Michael Kirby of the High Court of Australia said that his court no longer confines itself to considering English, Canadian and American law. "Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa," he said in an interview published in 2001 in The Green Bag, a legal journal. "America" he added, "is in danger of becoming something of a legal backwater."

Independent judiciaries continue to apply state corruption in rulings—judge selection.

Gibler and Randazzo 11. (Douglas, professor of political science at University of Alabama. Kirk, assistant professor of political science at University of South Carolina. "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding," American Journal of Political Science. Vol. 55, No. 3. July 2011. JSTOR.)//CB

The difficulties of establishing judicial independence have led some to argue that courts only reflect elite interests. Tsebelis (2002), for example, argues that courts almost never constitute a separate veto player within a polity. Judicial-selection procedures in most countries practically guarantee that courts will fail to provide new constraints on the policymaking process. Only when other political actors take extreme positions or when a new issue, not related to judicial selection, comes before the court can the judiciary pose an effective veto. This is why judicial independence does not necessarily lead to higher rates of judicial annulment (Burbank, Friedman, and Goldberg 2002). This is also why institutionalization of the courts matters as newly independent courts will tend to reflect executive and/or legislative policy preferences on most issues (Epstein, Knight, and Shvetsova 2001). Nevertheless, the attention other political actors devote to the courts suggests that judicial institutions can matter. Yeltsin was concerned enough with the Russian constitutional court to dismiss it entirely, as was Argentina's military regime in 1976 and its democratic regime in 1983. These rulers understand that even courts lacking judicial independence can provide increased legitimacy for the dominant position of other political actors (Larkins 1998.)

--- XT: Alt Causes

Political intimidation undermines judicial independence — empirics

Dinh 7 — Viet D. Dinh, Professor of Law, Georgetown University Law Center; A.B., J.D., Harvard University, 2007 (Threats to Judicial Independence, Real and Imagined, Georgetown Law Journal, Vol. 95, http://georgetownlawjournal.org/files/pdf/95-4/dinh.pdf)

B. THREATS OF IMPEACHMENT AND POLITICAL INTIMIDATION

Criticism of judges by politicians is not new, either, but its frequency has picked up in recent decades. While virtually everyone agrees that federal judges may be impeached if they commit crimes31, in the modern era, threats of impeachment often follow unpopular rulings. In 1996, Judge Harold Baer, a federal district judge in New York, ordered the suppression of evidence found during a traffic stop in New York City's Washington Heights neighborhood. The judge reasoned that, in that neighborhood, it was reasonable for people to fear the police and so the defendants' running did not give the officers a reasonable basis for searching the car. 32 Judge Baer's ruling was immediately denounced, and by members of both political parties. The Clinton Administration called for the judge's resignation, while some congressional Republicans proposed impeachment.33 **Several weeks later, Judge Baer reconsidered the case and reversed his prior ruling**.34

More recently, former House Majority Leader Tom DeLay advocated impeachment investigations of several sitting judges such that Congress could be "a check on the court system."35 The House Judiciary Committee has considered creating an office of inspector general for the Judiciary to investigate allegations of judicial misconduct.36 The goal of such proceedings is not necessarily to actually remove the judges from the bench. Rather, **threats of impeachment can serve as a tool of intimidation**, having a chilli**ng effect** that encourages judges to look over their shoulders when deciding cases.

The desire for decisional accountability in the judge selection process undermines judicial independence

Geyh 8 — Charles G. Geyh, Professor of Law at University of Indiana, J.D. at University of Wisconsin School of Law, 2008 (The Endless Judicial Selection Debate and Why It Matters for Judicial Independence, THE GEORGETOWN JOURNAL OF LEGAL ETHICS, Vol. 21, http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1052&context=facpub)

V. CONCLUSION

In our existing legal structure, states lay claim to having independent judiciaries, whose judges take oaths to uphold the law. They have codes of judicial conduct that direct judges, on pain of discipline and removal, to follow the law and resist public and political pressure to do otherwise. And they require judges in all courts of general jurisdiction to have training and experience in the law, because unlike legislators and governors who make or execute the law, judges who interpret the law must possess special expertise that non-lawyers lack. These features of the legal structure are compatible with judicial elections as originally conceived. As originally envisioned, contested elections were to promote judicial independence and the rule of law by transferring control of judicial selection from manipulative governors and legislatures to the people, and were to promote behavioral accountability by weeding out the incompetent, the lazy and the corrupt.

In the new world order, however, the primary justification for contested judicial elections has moved from preserving judicial independence and behavioral accountability to promoting **decisional accountability** by subjecting judges to loss of tenure for making decisions unpopular with the electorate. This new justification is fundamentally incompatible with the principles that underlie the existing legal structure. It assumes either that average voters are able to review judicial decisions for themselves and intelligently second guess a judge's interpretations of law, or that the decisions judges make are matters of public policy rather than law, which voters have a

right to control. The first assumption is at odds with the notion embedded in state law, that intelligently interpreting the law requires judges who have years of legal training and expertise that non-lawyers lack. The second assumption—that judges simply make policy masquerading as law—guts the rule of law altogether and de-legitimizes constitutional structures and codes of conduct that preserve judicial independence.

Judges are paid off-alt cause to judicial legitimacy

Zelden 13 --- professor of history at Nova Southeastern University in Fort Lauderdale, Florida (June 2013, Charles L. Reviews in American History, "The Many Faces of Judicial Independence", Volume 41, Number 2, Project Muse)//Jmoney

In the last decade, the cost of running for judicial office in America has exploded, doubling to over $200-million nationwide. With each election cycle, running for judicial office has only grown costlier, as ever-larger amounts of money are raised, and then spent, to elect state judges. As the cost of running for judicial office has grown, so too have charges of vote-buying and undue influence.

Most infamous in this regard was the 2002 Supreme Court election in West Virginia, where the CEO of Massey Energy, a coal company facing a fifty-million–dollar verdict for illegal and fraudulent business practices, spent three-million dollars in support of a successful judicial campaign by Brent Benjamin for a seat on that court. In turn, Benjamin proved to be the deciding vote in overturning the fifty-million–dollar jury award in 2007. When the case was appealed to the U.S. Supreme Court, a five-to-four majority of the Justices overturned the West Virginia Supreme Court's decision and returned the case to the lower court for further proceedings; in so doing, the Justices addressed the dangers that funding support for judicial candidates could pose. "There is a serious risk of actual bias," noted Justice Anthony Kennedy for the majority, "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds . . . when the case was pending or imminent." Where this was the case, the majority ruled, elected judges were supposed to recuse themselves from the proceedings.1

Yet despite the Supreme Court's words of warning, the West Virginia example is but one among many cases in which those with personal or ideological interests before the courts have given significant financial support to judicial candidates—and those candidates later ruled in favor of their financial backers. Such examples have become so numerous, in fact, that many ask if justice is for sale in America—or, as Andrew Rosenthal of the New York Times put it: does America have "The Best Courts Money Can Buy"?2 For too many [End Page 356] Americans, the answer to this question is a resounding "yes." As former U.S. Supreme Court Justice Sandra Day O'Connor noted in 2010, the unchecked role of money in judicial elections has produced a "crisis of confidence in the impartiality of the judiciary," undermining faith in "the rule of law that the courts are supposed to uphold." Her solution, one advocated by many others, is to take the partisanship out of judicial elections, either by adopting judicial appointment with retention elections as the means of choosing judges or by publicly funding judicial races.3

Political interference undermines independence --- lifetime appointment doesn't solve for corruption

Zelden 13 --- professor of history at Nova Southeastern University in Fort Lauderdale, Florida (June 2013, Charles L. Reviews in American History, "The Many Faces of Judicial Independence", Volume 41, Number 2, Project Muse)//Jmoney

Lifetime appointment did not fully isolate the judiciary from political interference, however. As the nation's politics evolved into a tug-of-war between competing political parties, judicial rulings inevitably came to have political consequences. Viewed in this light, the power of judicial review, articulated at various points during the 1790s and famously asserted in 1803's Marbury v. Madison, became a two-edged sword for the courts. Whereas judicial review gave judges the capacity to affect the direction and scope of government policies and actions, it also inevitably put judges into conflict with the popularly elected branches of government. This conflict was potentially catastrophic for the courts, Shugerman argues. Though the implementation of lifetime appointment "took very significant steps toward an independent judiciary, there still were plenty of ways to change, challenge, or undermine the . . . courts" (p. 22). Angry politicians could punish assertive judges by "sweeping them off the bench or [by] abolishing their jobs" (p. 31). After 1800, state legislatures also shortened judicial tenures from lifetime to term appointments varying[End Page 358] in length from seven years to no term at all (known as "at pleasure" tenure). The result was that appointed judges needed to be very careful in the application of their powers of judicial review—"announcing the theory of judicial review . . . but often refus[ing] to put this theory into practice" in the face of political pressures. The consequence, Shugerman argues, was that, although many landmark judicial rulings during the Early Republic pushed the theory of judicial review, they refused to apply these powers in practical ways. In other words, as Shugerman puts it, judicial review in the Early Republic was "more paper than practice, more bark than bite" (p. 9).

--- XT: No Modelling

Other countries are gaining more influence than the US due to its conservative nature and lack of judicial activism

Liptak, 08- Adam Liptak is the Supreme Court correspondent of The New York Times

(9/17/08, Adam Liptak, "U.S. Court Is Now Guiding Fewer Nations", http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all&_r=0)//Yak

The trend abroad, moreover, is toward decisions of a distinctly liberal sort in areas like the death penalty and gay rights. "What we have had in the last 20 or 30 years," Professor Fried said, "is an enormous coup d'état on the part of judiciaries everywhere — the European Court of Human Rights, Canada, South Africa, Israel." In terms of judicial activism, he said, "they've lapped us."

American Foundations

The rightward shift of the Supreme Court may partly account for its diminished influence. Twenty years ago, said Anthony Lester, a British barrister, the landmark decisions of the court

were "studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C."

That is partly because the foundational legal documents of many of the world's leading democracies are of quite recent vintage. The Indian Constitution was adopted in 1949, the Canadian Charter of Rights and Freedoms in 1982, the New Zealand Bill of Rights in 1990 and the South African Constitution in 1996. All drew on American constitutional principles.

Particularly at first, courts in those nations relied on the constitutional jurisprudence of the United States Supreme Court, both because it was relevant and because it was the essentially the only game in town. But as constitutional courts around the world developed their own bodies of precedent and started an international judicial conversation, American influence has dropped.

Judge Guido Calabresi of the federal appeals court in New York, a former dean of Yale Law School, has advocated continued participation in that international judicial conversation.

"Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice," he wrote in a 1995 concurrence that cited the German and Italian constitutional courts.

"These countries are our 'constitutional offspring,' " Judge Calabresi wrote, "and how they have dealt with problems analogous to ours can be very useful to us when we face difficult constitutional issues. Wise parents do not hesitate to learn from their children." (Judge Calabresi is Professor Calabresi's uncle.)

The openness of some legal systems to foreign law is reflected in their constitutions. The South African Constitution, for instance, says that courts interpreting its bill of rights "must consider international law" and "may consider foreign law." The constitutions of India and Spain have similar provisions.

Many legal scholars singled out the Canadian Supreme Court and the Constitutional Court of South Africa as increasingly influential.

"In part, their influence may spring from the simple fact they are not American," Dean Slaughter wrote in a 2005 essay, "which renders their reasoning more politically palatable to domestic audience in an era of extraordinary U.S. military, political, economic and cultural power and accompanying resentments."

Frederick Schauer, a law professor at the University of Virginia, wrote in a 2000 essay that the Canadian Supreme Court had been particularly influential because "Canada, unlike the United States, is seen as reflecting an emerging international consensus rather than existing as an outlier."

In New Zealand, for instance, Canadian decisions were cited far more often than those of any other nation from 1990 to 2006 in civil rights cases, according to a recent study in The Otago Law Review in Dunedin, New Zealand.

"As Canada's judges are, by most accounts, the most judicially activist in the common-law world — the most willing to second-guess the decisions of the elected legislatures — reliance on Canadian precedents will worry some and delight others," the study's authors wrote.

American precedents were cited about half as often as Canadian ones. “It is surprising,” the authors wrote, “that American cases are not cited more often, since the United States Bill of Rights precedents can be found on just about any rights issue that comes up.”

--- Argentina Answer

Judicial reform fails --- empirical example

Mander 06 (Feb 21, 2006, Benedict Mander is Southern Cone correspondent for the Financial Times, “Argentina move 'will undermine the judiciary',” The Financial Times, http://www.laits.utexas.edu/lawdem/unit07/index.html)

Argentina's lower house of Congress is expected to pass on Wednesday key reforms to the judicial council that critics fear will "seriously undermine" the independence of the judiciary and fail to promote the appointment of good judges.

Already approved by the Senate, the proposed reforms to the judicial council, which is responsible for the appointment and dismissal of judges, will reduce its size from 20 to 13 members, with the intention of enhancing its efficiency and transparency.

But the relative weighting of political representatives on the council will be increased significantly, falling from nine to seven members, while independent members; represented by judges, lawyers and academics; will fall from 11 to six.

"The government will end up with a remarkable power of veto, which is very serious indeed. The council will become pointless," said Daniel Sabsay, a constitutional lawyer, explaining that five of the seven political representatives would be from the ruling party.

With a two-thirds majority required to approve appointments and dismissals, the government will effectively be able to block decisions with which it disagrees. "**There are serious risks for the independence of the judiciary**, which is absolutely shameful," Mr Sabsay said. Opponents of the reforms also worry they will fail to promote the necessary conditions to attract the best applicants. This is one of the few issues to unify what has otherwise been a deeply fragmented opposition, which political analysts say has little chance of defeating President Néstor Kirchner in the elections in 2007; so long as the economy remains healthy until then.

Agustín Rossi, the president of Mr Kirchner's party, Frente para la Victoria, said: "We are convinced that this is just an attempt by the opposition to stigmatise the government."

He argues that criticisms from lawyers and academics are self-interested and designed to preserve their own influence.

Mr Rossi points to reforms made shortly after Mr Kirchner became president which overhauled the mechanism for selecting the Supreme Court's judges, placing limits on the president's power while giving way to a more participatory selection process.

But non-partisan groups such as New York-based Human Rights Watch have also criticised this list of reforms.

In an open letter to Mr Kirchner, the organisation said the reforms would "jeopardise the constitutional principles on which the council is based and seriously undermine the progress that Argentina has made under this government in consolidating judicial independence and the rule of law".

Ricardo Gil Lavedra, a lawyer and former justice minister, said: "Argentina maintains a façade of the state of law but in practice there is a great disequilibrium." Against a comfortable majority in the Senate, the judiciary is an important check on the executive's power, he argues.

Mr Gil Lavedra is concerned about what he sees as the president's increasingly authoritarian style, made possible by the popularity he has gained from Argentina's impressive recovery since its debt crisis four years ago. Mr Kirchner has never held a cabinet meeting. "He is his own economy minister, his own foreign minister," Mr Gil Lavedra said.

Observers say the independence of institutions in general; not just the judiciary; is weakening, with the media and the central bank often cited as examples. "Kirchner is trying to take control [by himself] and he has been very successful," said Ricardo López Murphy, one of the main opposition candidates and leader of the Recrear party, who came third in the 2003 presidential election.

--- States Secrets Privilege Answers

Government secrets are here to stay

--can't change bureaucracies

--double government

--American people think of the political system wrong

Smith '14 --- contributing writer citing Tuft's University Michael Glennon (Jordan Michael, "Vote all you want. The secret government won't change," The Boston Globe, 10/19/14, https://www.bostonglobe.com/ideas/2014/10/18/vote-all-you-want-the-secret-government-won-change/jVSkXrENQlu8vNcBfMn9sL/story.html)//Mnush

THE VOTERS WHO put Barack Obama in office expected some big changes. From the NSA's warrantless wiretapping to Guantanamo Bay to the Patriot Act, candidate Obama was a defender of civil liberties and privacy, promising a dramatically different approach from his predecessor. But six years into his administration, the Obama version of national security looks almost indistinguishable from the one he inherited. Guantanamo Bay remains open. The NSA has, if anything, become more aggressive in monitoring Americans. Drone strikes have escalated. Most recently it was reported that the same president who won a Nobel Prize in part for promoting nuclear disarmament is spending up to $1 trillion modernizing and revitalizing America's nuclear weapons. Why did the face in the Oval Office change but the policies remain the same? Critics tend to focus on Obama himself, a leader who perhaps has shifted with politics to take a harder line. But Tufts University political scientist Michael J. Glennon has a more pessimistic answer: Obama couldn't have changed policies much even if he tried. **Though it's a bedrock American principle that citizens can steer their own government by electing new officials, Glennon suggests that in practice, much of our government no longer works that way.** In a new book, "National Security and Double Government," he catalogs the ways that the defense and national security apparatus is effectively self-governing, with virtually no accountability, transparency, or checks and balances of any kind. He uses the term "double government": There's the one we elect, and then there's the one behind it, steering huge swaths of policy almost unchecked. Elected officials end up serving as mere cover for the real decisions made by the bureaucracy. Glennon cites the example of Obama and his team being shocked and angry to discover upon taking office that the military gave them

only two options for the war in Afghanistan: The United States could add more troops, or the United States could add a lot more troops. Hemmed in, Obama added 30,000 more troops. (Advertisement omitted) Glennon's critique sounds like an outsider's take, even a radical one. In fact, he is the quintessential insider: He was legal counsel to the Senate Foreign Relations Committee and a consultant to various congressional committees, as well as to the State Department. "National Security and Double Government" comes favorably blurbed by former members of the Defense Department, State Department, White House, and even the CIA. And he's not a conspiracy theorist: Rather, he sees the problem as one of "smart, hard-working, public-spirited people acting in good faith who are responding to systemic incentives"—without any meaningful oversight to rein them in. How exactly has double government taken hold? And what can be done about it? Glennon spoke with Ideas from his office at Tufts' Fletcher School of Law and Diplomacy. This interview has been condensed and edited. IDEAS: Where does the term "double government" come from? GLENNON:It comes from Walter Bagehot's famous theory, unveiled in the 1860s. Bagehot was the scholar who presided over the birth of the Economist magazine—they still have a column named after him. Bagehot tried to explain in his book "The English Constitution" how the British government worked. He suggested that there are two sets of institutions. There are the "dignified institutions," the monarchy and the House of Lords, which people erroneously believed ran the government. But he suggested that there was in reality a second set of institutions, which he referred to as the "efficient institutions," that actually set governmental policy. And those were the House of Commons, the prime minister, and the British cabinet. IDEAS: What evidence exists for saying America has a double government? GLENNON:I was curious why a president such as Barack Obama would embrace the very same national security and counterterrorism policies that he campaigned eloquently against. Why would that president continue those same policies in case after case after case? I initially wrote it based on my own experience and personal knowledge and conversations with dozens of individuals in the military, law enforcement, and intelligence agencies of our government, as well as, of course, officeholders on Capitol Hill and in the courts. And the documented evidence in the book is substantial—there are 800 footnotes in the book. IDEAS: Why would policy makers hand over the national-security keys to unelected officials? GLENNON: It hasn't been a conscious decision....Members of Congress are generalists and need to defer to experts within the national security realm, as elsewhere. They are particularly concerned about being caught out on a limb having made a wrong judgment about national security and tend, therefore, to defer to experts, who tend to exaggerate threats. The courts similarly tend to defer to the expertise of the network that defines national security policy. **The presidency itself is not a top-down institution, as many people in the public believe, headed by a president who gives orders and causes the bureaucracy to click its heels and salute.** National security policy actually bubbles up from within the bureaucracy. Many of the more controversial policies, from the mining of Nicaragua's harbors to the NSA surveillance program, originated within the bureaucracy. John Kerry was not exaggerating when he said that some of those programs are "on autopilot." IDEAS: Isn't this just another way of saying that big bureaucracies are difficult to change? GLENNON: It's much more serious than that. These particular bureaucracies don't set truck widths or determine railroad freight rates. They make nerve-center security decisions that in a democracy can be irreversible, that can close down the marketplace of ideas, and can result in some very dire consequences. IDEAS: Couldn't Obama's national-security decisions just result from the difference in vantage point between being a campaigner and being the commander-in-chief, responsible for 320 million lives? GLENNON: There is an element of what you described. There is not only one explanation or one cause for the amazing continuity of American national security policy. But obviously there is something else going on when policy after policy after policy all continue virtually the same way that they were in the George W. Bush administration. IDEAS: This isn't how we're taught to think of the American political system. GLENNON: I think the American people are deluded, as Bagehot explained about the British population, that the institutions that provide the public face actually set American national security policy. They believe that when they vote for a president or member of Congress or succeed in bringing a case before the courts, that policy is going to change. Now, there are many counter-examples in which these branches do affect policy, as Bagehot predicted there would be. But the larger picture is still true—policy by and large in the national security realm is made by the concealed institutions. IDEAS: Do we have any hope of fixing the problem? GLENNON: The ultimate problem is the pervasive political ignorance on the part of the American people. And indifference to the threat that is emerging from these concealed institutions. That is where the energy for reform has to come from: the American people. Not from government. Government is very much the problem here. The people have to take the bull by the horns. And that's a very difficult thing to do, because the ignorance is in many ways rational. There is very little profit to be had in learning about, and being active about, problems that you can't affect, policies that you can't change.

Solvency

Circumvention

FBI circumvents the law —they'll punish whistleblowers and be deceptive regardless of policy.
*we don't endorse ableist language

ACLU, 13 (September 2013, "UNLEASHED AND UNACCOUNTABLE; The FBI's Unchecked Abuse of Authority," https://www.aclu.org/sites/default/files/assets/unleashed-and-unaccountable-fbi-report.pdf)//CB

B. Suppressing Government Whistleblowers

The FBI has a notorious record of retaliating against FBI employees who report misconduct or abuse in the FBI and has used aggressive leak investigations to suppress other government whistleblowers.

Congress exempted the FBI from the requirements of the Whistleblower Protection Act of 1989 and instead required the Justice Department to establish an internal system to protect FBI employees who report waste, fraud, abuse, and illegality. Still, FBI Director Robert Mueller repeatedly vowed to protect Bureau whistleblowers:

I issued a memorandum on November 7th [2001] reaffirming the protections that are afforded to whistleblowers in which I indicated I will not tolerate reprisals or intimidation by any Bureau employee against those who make protected disclosures, nor will I tolerate attempts to prevent employees from making such disclosures.180

Yet court cases and investigations by the Justice Department Office of Professional Responsibility and Inspector General have repeatedly found that FBI officials continue to retaliate against FBI employees who publicly report internal misconduct, including Michael German,181 Sibel Edmonds,182 Jane Turner,183 Robert Wright,184 John Roberts,185 and Bassem Youssef.186 Other FBI whistleblowers choose to suffer retaliation in silence. Special Agent Chad Joy courageously blew the whistle on a senior FBI agent's serious misconduct during the investigation and prosecution of Alaska Sen. Ted Stevens, which resulted in the trial judge overturning the conviction against him, but only after the senator had lost re-election.187 Special Agent Joy was publicly criticized by his then-retired supervisor, subjected to a retaliatory investigation, and then taken off criminal cases.188 Joy resigned and no longer works at the FBI, while the FBI agent responsible for the misconduct in the Stevens' case continues to be assigned high-profile investigations—a clear sign that the FBI culture continues to protect agents involved in misconduct more than those who report it.189

These high-profile cases of whistleblower retaliation discourage other FBI personnel from coming forward. A 2009 Inspector General report found that 28 percent of non-supervisory FBI employees and 22 percent of FBI supervisors at the GS-14 and GS-15 levels "never" report misconduct they see or hear about on the job.190 That such a high percentage of officials in the government's premiere law enforcement agency refuse to report internal misconduct is shocking and dangerous and perpetuates the risk that Americans like Sen. Stevens will continue to be victimized by overzealous investigations and prosecutions.

The FBI has also been involved in suppressing other government whistleblowers through inappropriately aggressive leak investigations. For example, when the U.S. media reported in 2005 that the National Security Agency (NSA) was spying on Americans' communications without warrants in violation of the Foreign Intelligence Surveillance Act, the FBI didn't launch an investigation to enforce the law's criminal provisions. It instead went after the whistleblowers, treating leaks to the American public about government malfeasance as espionage.191 After more than a year of aggressive investigation and interviews, armed FBI agents conducted coordinated raids on the homes of four former NSA and Justice Department officials and a House Intelligence Committee staffer, treating them as if they were dangerous Mafiosi instead of dedicated federal employees who held the government's highest security clearances. William Binney, who served more than 30 years in the NSA, described an FBI agent pointing a gun at his head as he stepped naked from the shower.192 The only prosecution, alleging Espionage Act violations against the NSA's Thomas Drake, collapsed at trial in 2011, and the government's methods earned a stern rebuke from Judge Richard D. Bennett:

I don't think that deterrence should include an American citizen waiting two and a half years after their home is searched to find out if they're going to be indicted or not. I find that unconscionable. … It was one of the most fundamental things in the Bill of Rights that this country was not to be exposed to people knocking on the door with government authority and coming into their homes. And when it happens, it should be resolved pretty quickly, and it sure as heck shouldn't take two and a half years before someone's charged after that event.193

The deterrence effect from such enforcement activity isn't felt just by the person ultimately charged, however, or even those searched but never charged. The FBI's aggressive investigations of whistleblowers send a clear message to other federal employees that reporting government wrongdoing will risk your career, your financial future, and possibly your freedom. And more FBI leak investigations are resulting in criminal prosecutions than ever before. The Obama administration has prosecuted more government employees for leaking information to media organizations than all other previous administrations combined, often charging them with Espionage Act violations and exposing them to draconian penalties.194 Though leaks of classified information are a common occurrence in Washington, almost invariably these leak prosecutions have targeted federal employees who exposed government wrongdoing or criticized government policy.

FBI circumvents the AG guidelines

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

A. Attorney General Guidelines The Attorney General's Guidelines on FBI Confidential Human Sources n157 ("Guidelines"), issued in 2006 by the Department of Justice, n158 **are agency guidelines, not regulations**, and as such have no binding legal effect. n159 [*259] Much of the problem of FBI informant misuse stems from this fact. The Guidelines outline the rules the FBI should follow in undercover investigations involving informants, which include documenting new informants and recording agreements made. n160 The Guidelines are also subject to review and modification by the Attorney General in accordance with federal laws, and are afforded great deference by the courts. n161 The major problems with the Guidelines, however, are that they lack consequences, are not subject to judicial review, and are not followed by agents. n162 While the Guidelines may have internal consequences n163 for FBI agents who violate them, they

have no meaningful effect beyond internal regulation and cannot be enforced by the public via judicial review. n164 Judicial review for violations only occurs when criminal prosecutions reveal the FBI's activities in the investigation. n165 However, the informants in these cases typically remain confidential, and any inquiry into their actions does not extend beyond the handling agent's conduct and the recruitment methods used. n166 Evidence shows that in many cases, **FBI agents fail to follow the Guidelines when recruiting and handling informants**. A 2005 study conducted by the Department of Justice Office of the Inspector General found that the FBI did not provide enough support to agents to properly follow the pre-2006 Attorney General Guidelines Regarding the Use of Confidential Informants. n167 In fact, **noncompliance** with the guidelines was a problem in **87 percent of the cases** the Inspector General reviewed. In particular, agents failed to properly review the suitability of potential informants, properly document informants' illegal activities, and notify informants of their limitations. n168 Given the high levels of noncompliance and agents' nearly unlimited discretion in extending immigration rewards, agent abuse is likely also high.

No Solvency – Pooling

Congressional oversight fails ---- different executive agencies can "pool" together resources in order to dodge restraints put on only one agency

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B. Congress

Legal and political theory generally regards Congress as the designer-in-chief of the administrative state. Congress generates administrative capacity and supervises the work of administration, including through agency design. Pooling qualifies this narrative. By bridging a fragmentary bureaucracy, the executive can generate capacity that would not otherwise exist. Pooling thus becomes a substitute, concededly imperfect, for capacity building through legislation. Pooling also challenges a central analytic claim--that Congress controls future agency outputs through legislation designing the agency's structure and process. Pooling reveals a shape-shifting bureaucracy, reconfiguring its own organizational and procedural boundaries from within.

1. Pooling Generates Capacity Without Congress. -- The executive's resort to administration to effect policy change, particularly where legislative achievement becomes less viable, is a dynamic well trodden in the administrative law scholarship. n219That literature has focused on centralization tools like presidential directives to the agencies to undertake (or to decline to take) particular administrative action, and regulatory review by the White House. n220

[*256] Part of what makes pooling distinctive, however, is the executive's ability to generate power of administration not otherwise available to any single administrative actor. To be sure, at the margins, the scope of plausible authority each agency can exercise is pliable. Presidential directives may energize a given agency's mission, and legal interpretation may press the bounds of what is permissible. n221 But the synergistic potential of pooling is different in degree, if not in kind.

The joint efforts by the FCC and the federal agencies constituting Team Telecom, for instance, enable the executive to augment its law enforcement and surveillance capabilities. The

requirements that Team Telecom imposes through the Network Security Agreements effectively regulate the cable carriers. But while legal leverage is supplied by the FCC's licensing authority, Team Telecom's effective power to so regulate the carriers is not rooted in any legislative scheme. n222

Pooling's ability to create regulatory space is illuminated by comparing Team Telecom's effective jurisdiction to the formal jurisdiction that the same agencies have through participation in another structure that has been codified by Congress--the Committee on Foreign Investment in the United States (CFIUS). Congress has authorized CFIUS to review proposed foreign acquisitions that could result in the transfer of control of a U.S. business to a foreign entity in order to determine the effects of such a transaction on national security. n223 The members of Team Telecom--the DoD, the DoJ, and the DHS--are also members of CFIUS (though CFIUS includes additional agencies as well). n224 Congress has authorized CFIUS to enter into "mitigation agreements," pursuant to which the acquirer agrees to certain conditions to mitigate national security concerns. n225 But CFIUS lacks jurisdiction over so-called greenfield investments (or startups), where there is no transfer of control over an [*257] existing U.S. business. n226 And CFIUS's authority to require mitigation conditions is limited to threats to national security. n227

Team Telecom's effective power, by contrast, stems not from CFIUS but from the FCC's authority to review and grant licenses in the "public interest" under the Communications Act. n228 Team Telecom reviews greenfield investments in addition to transfers of control, n229 and the security agreements it negotiates can consider aspects of public safety beyond national security. n230 Team Telecom's effective "jurisdiction," then, is distinct from CFIUS, the closest statutory analog. n231

Pooling thus enables the executive to create capacity without Congress. Pooling also poses challenges for core tools through which Congress superintends the administrative state.

2. Pooling Is a Mechanism of Bureaucratic Drift. -- Administrative design theory owes its current incarnation in large part to positive political theory. That theory conceptualizes Congress's delegation of authority to agencies as a principal--agent problem: How can Congress (the principal) bring its agent (the agency) into line with its policy preferences? n232 This problem implicates two types of uncertainty--what theorists have termed bureaucratic drift and coalitional drift. Bureaucratic drift is the difference between the policy preferences of Congress and [*258] the policy preferences of the agency. n233 Coalitional drift is the difference between the policy preferences of the enacting Congress and the policy preferences of a future Congress.n234

Pooling is a tool through which the executive can achieve policy objectives distinct from those Congress set out to achieve in the initial allocation of power. It can facilitate bureaucratic drift. Agencies can use resources designed for a particular purpose to achieve a different policy objective.

As with other mechanisms of bureaucratic drift, Congress can still respond to pooling, including to ratify or prohibit it. For example, Congress embraced the DHS--NSA collaboration in the cybersecurity context. In 2012, Congress included a provision in the National Defense Authorization Act to mandate "interdepartmental collaboration" between the DHS and NSA on cybersecurity. n235 In introducing the amendment, Senator John McCain indicated that it was intended to codify the 2010 cybersecurity memorandum of agreement between the two agencies. n236 Congress also can terminate pooling after it has occurred (when pooling is visible

to Congress). But the status quo has been changed. And Congress will now need to overcome its own collective action hurdles to alter the executive's design. n237

In part because Congress's abinlity to correct bureaucratic drift after it occurs is often quite difficult, theorists have looked for ways in which [*259] Congress can exercise ex ante control over administration. Here, again, pooling complicates a central narrative.

An influential argument in administrative law theory is that Congress exercises ex ante control over the bureaucracy through administrative design. The claim was initially advanced by political scientists Matthew McCubbins, Roger Noll, and Barry Weingast ("McNollgast"), n238 and it has been refined by others. n239 Through a mix of structural and procedural controls enacted in legislation, the argument goes, Congress ameliorates bureaucratic drift. Administrative design injects the interest groups that formed the enacting coalition into the administrative process, thereby enabling those interest groups to influence the agency's policy outputs and to alert Congress when issues warranting its oversight arise. n240 As McNollgast explains, "By structuring who gets to make what decisions when, as well as by establishing the process by which those decisions are made, the details of enabling legislation can stack the deck in an agency's decision-making." n241

Pooling complicates this account. It suggests that at least some of the action occurs through joint structures that bridge those initial agency [*260] design choices. Pooling, in effect, can alter who makes what decisions when, and through what process. It calls into question the stickiness of those initial structural bargains.

a. Overcoming Procedural Constraints. -- Congress uses a variety of design tools, including temporal constraints, to control agencies through legislation. n242 **An agency facing such limits on its delegated authority, however, can in effect circumvent those statutory constraints by pooling with another agency that Congress has not subjected to the same limitations.**

For example, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), Congress has delegated to the DoJ the authority to review certain mergers before they occur to ensure compliance with antitrust laws. n243 But the HSR Act establishes a strict timetable for the Department's review. The DoJ has an initial thirty-day period to conduct its review, n244 which the agency may extend for an additional thirty days when additional information is requested from the companies. n245After this waiting period expires, the companies are free to consummate their proposed merger unless the government files suit in district court and seeks a preliminary injunction. n246 The HSR Act's stringent deadlines address congressional concern that "protracted delays . . . might effectively 'kill' most mergers." n247

When reviewing potential telecommunications mergers, however, the DoJ is able to work around the HSR Act deadlines and the obligation to seek a preliminary injunction in court by pooling with the FCC. The FCC reviews proposed mergers pursuant to its licensing authority under the Communications Act of 1934. n248 Unlike the DoJ's review under the HSR Act, the FCC confronts no statutory deadlines for its premerger review under the Communications Act. As a matter of policy, the FCC has adopted an aspirational "benchmark" of 180 days from public notice to [*261] complete its review. n249 But it has made clear that even this timeline is flexible and that the Commission may depart from it. n250

There is a trend toward greater collaboration between the DoJ and the FCC in reviewing proposed telecommunications mergers. n251 The agencies' joint efforts, in practice, enable the DoJ to work around the stringent procedural constraints that the statutory scheme imposes. n252

b. Diversifying Interest Groups. -- Another mechanism through which Congress can curb bureaucratic drift is the organizational design of the agency. n253 That initial design choice, shows Jonathan Macey, has the effect of "perpetuat[ing] the power and legitimacy of certain groups and undermin[ing] the power and legitimacy of others." n254 By choosing winners and losers upfront through the agency's organizational design, Congress "hardwire[s]" into the agency structure the legislature's policy preferences. n255

Consider the congressional design choice to create a single-industry agency, beholden to a single interest group, rather than a multi-industry agency. Congress's decision to create the single-industry agency, Macey [*262] argues, bolsters Congress's control over the agency's policy outputs. n256 The single-industry design choice augments that particular interest group's access to the agency, and it shapes the type of expertise that will be relevant to the agency's mission--expertise that the interest group itself possesses. n257 By empowering a particular interest group, Congress has hardwired certain preferences into the design of the agency.

Through pooling, however, the executive can convert a single-industry regulatory space into a multi-industry--or multi-interest group--regulatory space. The joint structure's preferences will look different from those of the single agency acting alone. Pooling thus enables the executive to work around Congress's initial structural hardwiring.

The EPA--NHTSA joint rulemaking illustrates how pooling can diversify the interest groups influencing a regulatory task, as well as how pooling can overcome other constraints on expertise building that Congress imposes through legislation. The joint rulemaking enabled the EPA to exercise influence over NHTSA, n258 an agency with a very different, and in some respects historically incapacitating, relationship to the auto industry. n259 Coordination in any form might diversify the operative interest groups. n260 But pooling can be particularly effective at altering the impact of particular interest groups as compared, for instance, to OIRA review.

Pooling can affect more of the lifecycle of agency policymaking than centralization tools like OIRA have the practical ability to influence, and pooling can be accompanied by institutional changes inside the agencies that deepen collaboration. Both of these dimensions are evident in the EPA--NHTSA joint rulemaking. The EPA and NHTSA collaborated on a variety of major tasks including syncing up the timing of "key milestones [*263] of each rulemaking." n261 And the two agencies formed a number of joint structures to support the pooled effort, including "joint technical teams," which drove the effects of coordination deep into the two agencies' bureaucratic cores. n262 In this sense, pooling is able to affect some of the more subtle dynamics of organizational design that Macey identified. For example, "hardwiring" turns in part on the makeup of the experts populating the regulatory space, which Macey emphasizes are often drawn from the regulated industry. n263

Pooling in the EPA--NHTSA example also enabled the executive to overcome a specific statutory impediment to NHTSA's own expertise building. While Congress had curbed NHTSA's ability to build expertise through a multiyear appropriations restriction, the joint structure enabled NHTSA to "borrow" that expertise from the EPA after the ban was lifted. n264

Pooling thus adds complexity to a central causal claim in administrative law theory: that Congress exercises control over the agency's ongoing policy outputs through agency design. It illuminates an assumption implicit in that theory--the stability of the initial structural bargain as a matter of actual, or effective, administrative decisionmaking. I do not want to overstate the claim. To be sure, initial design has effects on the agency's policymaking. But pooling suggests that the reliance the existing account places on ex ante design choice might be overdrawn. n265

Pooling undercuts oversight

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3. Pooling Can Diminish the Effectiveness of Congress's Committee Oversight Structures. -- Pooling also can muddle ongoing congressional oversight of administrative decisionmaking. **It can obscure which administrative actor is responsible for a given course of conduct**. It can mask the true mover behind an administrative decision. And it can diminish Congress's ability to exercise effective oversight to the extent that pooled structures bridge Congress's own oversight committee structures.

For example, the intelligence oversight committees in Congress differ from the armed services oversight committees, and the executive's reporting requirements with respect to intelligence collection and military action are distinct. Pooling arrangements combining intelligence and military authorities--that is, the Title 10--Title 50 joint structures--have [*264] created confusion, if not obfuscation, regarding congressional oversight. n266

Indeed, the House Permanent Select Committee on Intelligence has publicly expressed concerns that certain intelligence activities are not being reported to it and to the Senate Select Committee on Intelligence because they are being aggressively categorized as military activity instead. n267 Those activities also are slipping through gaps in the oversight practices of the Senate and House Armed Services Committees because the executive's notification obligations to those committees were designed with very different considerations in mind. n268

4. Pooling Circumvents Some of Congress's Funding-Related Constraints. -- A final tool through which Congress exercises control over executive action is funding. Congress can discipline specific pooling arrangements through its funding decisions. Congress can choose to defund a particular program or agency or to prohibit a particular interagency effort, including as a mechanism to penalize pooling. n269

But Congress also structures executive design at a more systematic level through appropriations law, and pooling poses challenges to this more systematic form of congressional control.

Pooling allows the executive to work around constrains in the Economy Act

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b. The Economy Act. -- Through pooling, the executive also can work around some of the constraints that Congress has imposed under the Economy Act. In 1932, Congress passed legislation authorizing agencies to contract with one another for their services or materials. n280 The Act, as amended, authorizes "[t]he head of an agency or major organizational unit within an agency" to "place an order with a major organizational unit within the same agency or another agency for goods or services" where certain conditions are met. n281 The Act was designed to address intraexecutive outsourcing, and so its constraints generally focus on the transfer of funds or legal authority from one agency to another. n282

There are anticircumvention ideas driving interpretations of the Economy Act by the Comptroller General. For example, **an outsourcing agency cannot use an Economy Act agreement to fund work that it would not itself be authorized to undertake**. n283Nor can the outsourcing agency obtain under the Economy Act services from another agency that its own enabling statute prohibits. n284

[*267] Those constraints do not easily translate to pooling, however. There is no transfer of authority with pooling. And the aggregation of authorities that pooling achieves, sometimes formally and sometimes informally, is not clearly governed by the Economy Act.

No Solvency – Immigrant Informants

Plan can't solve – FBI targets non-US informants

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

Introduction In 2004, the FBI approached Imam Foad Farahi, a cleric at a mosque in South Florida, and promised him lawful permanent resident status n1 in return for information on members of his South Florida Muslim community. n2 Farahi had entered the United States on a student visa that had since expired, and was at the time applying for political asylum. n3 When Farahi refused the FBI's offer and told the agents that he had no information beyond his mere acquaintance with the individuals sought by the agents, the FBI agents threatened to deport Farahi to Iran and charge him with providing material support to terrorism unless he cooperated by acting as an informant. n4 Because the FBI's post-9/11 establishment of a preventative stance towards terrorism n5 has increased the need for intelligence, n6 the agency has [*237] turned to the **increased use of immigration law** and residence status to recruit more confidential informants. n7 Although the FBI does not comment on its informant recruitment methods, n8 numerous stories similar to Farahi's have been reported since 9/11. n9 In fact, allegations of the FBI's **aggressive** use of past [*238] violations of immigration laws to pressure individuals whom the agency believes may have terrorism knowledge have repeatedly surfaced. n10 The Informants, a yearlong investigation into the FBI's use of informants, led by Trevor Aaronson and the University of California at Berkeley's Reporting Program in conjunction with Mother Jones, details the FBI's expanded use of informants in terrorism investigations. n11 Of the approximately five hundred federal terrorism prosecutions conducted since 9/11, about half used an informant, n12 and forty-nine of them were the result of work done by agent provocateurs. n13 Aaronson's investigation also shed light on the FBI's use of immigration law and the threat of deportation to incentivize informants to cooperate. n14 Aaronson explains, A typical scenario will play out like this: An FBI agent trying to get someone to cooperate will look for evidence that the person has immigration troubles. If they do, he can ask [Immigration and Customs Enforcement

(ICE)] to begin or expedite deportation proceedings. **If the immigrant then chooses to cooperate, the FBI will tell the court that he is a valuable asset, averting deportation**. n15

The abundance of fabricated info from immigrant informants turns case – encourages ethnic profiling, chills free speech, and wastes resources

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

[*239] Using the threat of immigration consequences like deportation to produce terrorism intelligence presents novel problems for the intelligence gathering process and the informants. When individuals are pressured into becoming informants by the threat of deportation, which may remove them from their family and all sources of support, the decision essentially becomes a Hobson's choice. n16 Informants recruited in this manner who also lack legitimate ties to foreign terrorist organizations n17 have an enormous incentive to fabricate information to fulfill their end of the agreement and avoid deportation. n18 Attorney Stephen Downs of Project SALAM explained, Community life is shattered as the government often forces Muslim immigrants to spy on their own communities or give false testimony with the threat that the Muslim's immigration status will be "revised" if the Muslims do not cooperate. Such practices generate fear and alienation in the Muslim community and diminish our security rather than enhance it. n19 As Downs notes, the intelligence these informants provide can be unreliable, n20 because these individuals may feel they must offer up something to the government to avoid being removed from their families, jobs, and lives. **The threat of false intelligence is grave.** In addition to the possibility of entrapment n21 by agent provocateurs, false intelligence may encourage ethnic and religious profiling of Muslim and Middle Eastern communities, n22 **chill free speech**, n23 and **waste finite intelligence resources**. Recruitment through [*240] immigration law also affords less protection to informants than recruitment done by offering monetary rewards or reductions in sentencing. n24 For example, unlike criminal offenses, there is no statute of limitations governing civil penalties like deportation, removal, or exclusion orders, which means that **the FBI can use immigration violations to leverage cooperation** from out-of-status individuals who have been in the country for years. Moreover, unlike an informant who is promised a sentence reduction or lessened charges and who can enforce his or her bargain with the government through plea bargaining, an informant promised immigration benefits has no way of enforcing these promises. n25 Furthermore, the Sixth Amendment's guarantee of counsel n26 does not apply to immigration violations. n27 Finally, according to some reported cases, the government has failed to reward informants with the promised immigration benefits after receiving their cooperation. n28

Immigrant informants perpetuate ethnic profiling

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

B. Mosque Surveillance Encourages Religious and Ethnic Profiling In addition to eroding the First Amendment's free speech rights of Muslims and Middle Easterners, the FBI's informant surveillance tactics also inappropriately target these religious and ethnic groups. Most of the organizations designated as Foreign Terrorist Organizations by the State Department are Muslim or Arab groups. n89 Many post-9/11 policies, like the extensive detention of Muslims and Middle Easterners, indicate that the federal government views Muslims and Middle Eastern immigrants as potential terrorists. n90 **Popular perception of Muslims has moved in the same direction**, with huge opposition, for example, to the construction of an Islamic community center - Park 51 - near the site of the World Trade Center in New York. n91 Other examples include state laws banning the use of Shari'ah law in judicial decisions n92 and Islamophobia n93 rising in the United States n94 and abroad. n95 [*250] By sending immigrant informants into mosques and

religious and ethnic communities with little more than a vague directive to find terrorists, the **FBI perpetuates ethnic profiling and the conflation of Islam and terrorism**. In recruiting terrorism informants from the immigrant population, the FBI puts an ethnic and religious face on terrorism, and perpetuates the popular perception of what terrorists look like. Sending these informants into mosques and immigrant communities greatly increases the chances that alleged suspects fit the ethnic and religious stereotypes of terrorists. Put differently, if an informant is assigned to surveil a mosque, the chances of the informant bringing back a non-Muslim or non-Middle Eastern suspect are low. This surveillance policy becomes a **vicious cycle**. The FBI recruits immigrant individuals from suspect communities to become informants, pressures them into producing terrorism suspects that fit the popular perception of what terrorists are like, and then prosecutes these suspected terrorists. All this reinforces the public conflation of immigrants, Muslims, Middle Easterners, and terrorists. Ethnic and religious profiling further alienates Muslim and Middle Eastern communities, and deepens their mistrust for government. n96 Additionally, by predisposing many Americans to view Muslims, immigrants, and Middle Easterners as potential terrorist threats, **ethnic and religious profiling may also bias juries in terrorism prosecutions.** n97 Although suspects often claim entrapment as a defense, after 9/11 the entrapment defense has never been successfully used in terrorism cases. n98 In fact, many, if not most, terrorism cases never reach the jury because the chances of successfully defending against terrorism charges after 9/11 are almost nonexistent. n99 Popular stereotypes concerning Muslims and Middle Easterners play a role in this. Although the use of immigration law in recruiting informants is only one of many factors contributing to this harmful cycle, the use of coercive tactics like immigration law to recruit informants creates a [*251] higher risk of unfounded terrorism prosecutions against innocent individuals who do not pose a risk. Consequently, this fuels the public perception that a stereotypical terrorist is a Middle Easterner or Muslim.

Judicial Action Fails

Courts misunderstand how police surveillance is conducted and can't act effectively without future legislation

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[*24] II. THE LAW OF POLICE SURVEILLANCE Traditionally, courts have shied away from regulating police surveillance in public spaces. This is because the courts have operated under a set of jurisprudential assumptions of police surveillance. These jurisprudential assumptions were reasonable in the past because of the limited technological efficiency of previous surveillance technologies. In Jones, the Supreme Court had the opportunity to confront these jurisprudential assumptions in light of modern technology. A majority of the justices indicated that these jurisprudential assumptions were increasingly unsupportable in today's digitally efficient world of policing. n118 But the Court did not alter these doctrinal assumptions in any way, nor did they offer much indication on how they may alter these assumptions in the future. Thus, after the Jones decision, the law of police surveillance today is as incoherent as ever. I have previously argued that the digitally efficient investigative state does not run afoul of the Fourth Amendment, based on the presence of these jurisprudential assumptions, n119 but dicta in the concurrences of the Jones case imply that these jurisprudential assumptions may not exist for much longer. Even so, there is no clear indication how the Court could establish a default rule that both narrowly limits some uses of digitally efficient technologies without adversely affecting other non-invasive, legitimate uses. In this section, I evaluate the doctrinal basis for the traditional jurisprudential assumptions about police surveillance. I then spend considerable time analyzing the dicta in the Jones case to predict how the Court may respond to these technologies in the future. I conclude that, while the Court will likely make some effort to rein in the digitally efficient investigative state in the future, any regulation will be limited in capacity. The regulation will almost certainly rely upon an often-ineffective enforcement tool like the exclusionary rule. Thus, **even if the judiciary is institutionally capable of controlling the digitally efficient investigative state, the legislature must also take a proactive role in any future regulation**.

Judicial oversight fails --- non enforceable, extremely high standards, and executive privilege

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1. Judicial Intervention

The Church Committee, reflecting on the Keith decision, emphasized the importance of judicial intervention in the national security arena when it reminded the public that warrantless wiretapping "had been permitted by successive presidents for more than a quarter of a century without 'guidance from the Congress or a definitive decision of the Courts.'" n308 Unfortunately, there are three barriers to judicial intervention that facilitate shadow administrative constitutionalism in the national security arena: the lack of judicially enforceable rights, the standing hurdle, and the growth of executive privilege.

a. Judicially Enforceable Rights

By the time the Civiletti Guidelines were issued in 1980, the DOJ made eminently clear that the Attorney General Guidelines were "solely for the purpose of internal Department of Justice guidance" n309 and would otherwise be legally binding. Specifically, the Guidelines made clear that "[t]hey are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any manner, civil or criminal." n310 Such rights-limiting language prevents any injured party from using the governing document of the FBI to enforce the self-imposed limitations on the Bureau's power.

[*129] b. The Standing Hurdle

The lack of judicially enforceable rights is not, however, the only problem. Those who might bring a First Amendment claim based on the surveillance authorized by the Attorney General Guidelines face immense difficulty simply getting into court. n311One of the primary problems with surveillance is that it has the power to coerce people into self-censorship--or chilled speech. This makes surveillance, fundamentally, a First Amendment issue and a prime subject for constitutional litigation. As our communications are increasingly subject to the prying eyes of the government, our ability to speak freely is directly curtailed. However, after the Supreme Court's decision in Laird v. Tatum, litigants suing under the First Amendment theory of chilled speech are subject to a high standing bar that, more often than not, prevents them from having their case heard at all.

The first mention of the term "chill" in Supreme Court jurisprudence occurred in 1952 in Wieman v. Updegraff, a case overturning an Oklahoma law that required all state employees to take a loyalty oath denying all affiliation, direct and indirect, with "any foreign political agency, party, organization or Government, or with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization." n312 In an important concurrence, Justice Frankfurter argued that the loyalty oath had "an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice." n313 From that time to when the term "chilling effect" was first used in Dombrowski v. Pfister n314 thirteen years later, Professor Frederick Schauer argues

that [*130] the term evolved from an "emotive argument into a major substantive component of first amendment [sic] adjudication." n315

However, after Laird v. Tatum, litigating on the basis of chilling effects has become difficult. Tatum requires litigants to first prove that the surveillance in question led to a cognizable harm before they will be granted standing and further held that "the mere existence . . . of a governmental investigative and data-gathering activity that is alleged to be broader in scope than is reasonably necessary for the accomplishment of a valid governmental purpose" was simply not a cognizable harm. n316

As a result of Tatum, before an individual can bring a First Amendment claim against FBI based on the authorizations of the Attorney General Guidelines, she must first prove that she has been harmed by the often-secret surveillance. n317 Because of the difficulty of first affirmatively identifying that one is the subject of government surveillance in order to allege a cognizable harm under the law, such litigation has been made increasingly unlikely under Tatum.

For example, in 2005, The New York Times exposed the President's Surveillance Program (PSP), a program developed after 9/11 that secretly authorized the NSA to intercept "the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible 'dirty numbers' linked to Al Qaeda." n318 "Additionally, the NSA told Congress that privileged communications, such as those between an attorney and her client, would not be 'categorically excluded' from interception." n319

This discovery led prominent civil rights organizations, including the American Civil Liberties Union (ACLU), to file [*131] lawsuits against the government arguing that their speech was chilled because their communications were likely targets of the surveillance program. n320 The ACLU filed on behalf of itself and a group of journalists, scholars, and other organizations that regularly communicate with likely targets of the PSP. n321 Importantly, none of the plaintiffs had evidence that they were in fact the subject of NSA surveillance. n322 This was a fact that only the government knew and would not disclose. The Supreme Court held that, without this information, the plaintiffs lacked standing to pursue their case. n323

The standing barrier created by Tatum is especially problematic given the nature of surveillance today. Surveillance today no longer presents viable Fourth Amendment claims because so much of our most personal information is mediated through third parties, and the third-party doctrine limits the extent of Fourth Amendment protections. n324 While Justice Sotomayor's concurrence in United States v. Jones provides some indication that this doctrine may be up [*132] for reconsideration by the Supreme Court, n325 until that time, the Fourth Amendment no longer provides a powerful source of legal recourse against the growth of surveillance authority. As a result, now, more than ever, the chilling effects doctrine must be revived in order to provide a First Amendment backstop to the growing problem of government surveillance.

c. Executive Privilege

As Professor Heidi Kitrosser describes, "A claim of executive privilege is generally a claim by the President of a constitutional right to withhold information." n326 It is a claim whose authority lies not in the text of the Constitution or of any specific law, but rather in the "notion that some information requests effectively infringe on the President's Article II powers, threatening his ability to receive candid advice or to protect national security." n327

Executive privilege as a means of obfuscation facilitates shadow administrative constitutionalism by preventing judicial oversight. Professor Jack Balkin first made this claim nearly ten years ago when he argued that, increasingly we exclude more and more executive action from judicial review on the twin grounds of secrecy and efficiency. . . . [A]n independent judiciary plays an important role in making sure that zealous officials do not overreach. If the executive seeks greater efficiency, this requires a corresponding duty of greater disclosure before the fact and reporting after the fact to determine whether its surveillance programs are targeting the right people or are being abused. n328

The courts have not taken heed to his warning.

In the wake of the disclosure of the PSP, there was one case that survived the extremely high standing bar set in Tatum. In Al-Haramain Islamic Foundation v. Bush, an Islamic charity based in Oregon discovered that the government inadvertently sent them classified documents demonstrating that their communications were [*133] subject to warrantless surveillance. n329 With proof that they were in fact subject to surveillance, Al-Haramain proceeded to court. However, the government argued that the state-secrets privilege prevented the introduction of the classified documents and permitted the government to avoid acknowledging the existence of the surveillance program. n330 Despite the fact that the classified information had already been disclosed (and in seemingly direct conflict with the government's otherwise settled third-party doctrine), the Ninth Circuit agreed with the government's position. n331

The doctrinal barriers that prevent judicial intervention are significantly harder to overcome than the failures that stymie intrabranch checks and balances. This is in no small part due to the doctrine of stare decisis and the value of having binding precedent. Even judges who recognize the problems with the current system and wish to reassert their role in determining both small-"c" and ultimately large-"C" constitutional meaning cannot. Judge Colleen McMahon expressed her frustration with the state-secrets privilege in a court opinion, saying, "I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for its conclusion a secret." n332 As a result, without a major shift in the doctrine, the judiciary will be limited in its ability to provide useful oversight.

Rushin admits that judicial action alone won’t solve

Rushin, 11 --- PhD student at the University of California, Berkeley, Jurisprudence and Social Policy Program (Fall 2011, Stephen, University of Illinois Journal of Law, Technology & Policy, “THE JUDICIAL RESPONSE TO MASS POLICE SURVEILLANCE,” 2011 U. Ill. J.L. Tech. & Pol'y 281, Lexis,)//Mnush

VI. Conclusion Neither judicial responses nor "legislative rulemaking is ...a panacea." n376 Even if the judiciary successfully recognizes a remedy similar to that discussed in this Article, the legislatures must play a critical role in developing more nuanced and specific enactments to implement this constitutional floor. The potential harms of the digitally efficient investigative state are real. There is legitimate concern that the broad and integrated use of these technologies can create a mass surveillance state. Central to this debate is the proper role of the judiciary in regulating policy activity. Courts have previously relied upon an often fragile dichotomy between technologies that merely improve police efficiency and those that offer officers a new,

extrasensory ability. For the first time, the judiciary may be forced to limit the efficiency of law enforcement technologies. Implicit in this action will be the recognition that sometimes improvements in efficiency can be, quite simply, so efficient as to be unconstitutionally harmful. Unregulated efficiency can facilitate police wrongdoing, discrimination, and calumniate political dissenters. Unregulated efficiency in policing technology undermines central protections and tenants of a democratic state. The relationship between efficiency of criminal investigations and privacy rights will be a new frontier for the courts in the coming decades. The courts should forcefully, but prudently, protect against the unregulated efficiency of emerging investigative and surveillance technologies. The judicial response offered in this Article would be but one more example of the courts exercising their proper role as a limited but effective policymakers.

Congress Overrides Courts

The courts fail – Congress can just override decisions.

Bayoumi 12 – Associate Professor of English at Brooklyn College, City University of New York, with a Ph.D. in English and Comparative Literature from Columbia (Moustafa Bayoumi, The Nation, "Fear and Loathing of Islam," June 14 2012, http://www.thenation.com/article/168383/fear-and-loathing-islam, *fc)

There is a real danger **that the same tools that enable today's Islamophobia will continue to migrate and expand with little or no public outcry.** The FBI deploys a strategy of sting operations against Occupy protesters that is eerily familiar to American Muslims, to little outrage. The president enacts a law that allows for the indefinite detention of American citizens, and **after a federal judge strikes it down as unconstitutional, Congress rushes in two days later to try to keep it on the books.** American citizens can be assassinated by presidential decree, making a mockery of due process. Forget the Muslims. This mission creep is as good a reason as any to pay attention to Islamophobia today—because when the ordinary affairs of the United States include such actions, the stakes are nothing less than extraordinary.

Disadvantages

Politics Links

The reduction of domestic surveillance is extremely unpopular in congress-empirical congressional actions and terror rhetoric

Harris, 10 --- Professor of Law, University of Pittsburgh School of Law (David, New York University Review of Law & Social Change, "LAW ENFORCEMENT AND INTELLIGENCE GATHERING IN MUSLIM AND IMMIGRANT COMMUNITIES AFTER 9/11," 34 N.Y.U. Rev. L. & Soc. Change 123, Lexis)//Jmoney

While legislation at either the federal or state level could impose judicial supervision requirements and legal standards on the use of informants, the enactment of such legislation seems as unlikely in the current political climate as a reversal of the Hoffa and White cases by the Supreme Court. In 2006, Congress reauthorized the expiring provisions of the Patriot Act n219 with few changes, despite strong opposition. n220 In the fall [*173] of 2006, Congress passed the Military Commissions Act, n221 which, among other things, withdrew the possibility of using the writ of habeas corpus in cases arising from detention at Guantanamo Bay, Cuba. n222 In addition, the summer of 2007 saw the enactment of legislation that provided additional procedures for the National Security Agency to acquire foreign intelligence through a warrantless wiretapping program. n223 The state laws regulating the use of informants, discussed above, were passed many years ago, n224 and, in more recent years, states have leaned in the other direction, passing their own "Patriot Acts." n225 In all, **statutory restraints on the use of informants seem unlikely in today's political climate because a political opponent could easily accuse a legislator advocating such restraints as being soft on terrorism or handcuffing our police and national security forces**.

Plan would require massive political capital

Dalal 14 --- JD Yale Law School, BS University of Pennsylvania (Anjali S, Michigan State Law Review, "SHADOW ADMINISTRATIVE CONSTITUTIONALISM AND THE CREATION OF SURVEILLANCE CULTURE", 2014 Mich. St. L. Rev. 59, Lexis)//Jmoney

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

Terrorism DA Links

Community mapping is crucial to counter domestic terrorism

Blumenfeld 13 – researcher with the Middle East Forum and with the U.S. Department of Justice (Teri, Middle East Quarterly, "Denying Islam's Role in Terror: Problems in the FBI", Spring 2013, http://www.meforum.org/meq/pdfs/3478.pdf, //11)

The fact that such lapses and "failures of intelligence" continue to plague U.S. security agencies is in itself an abysmal failure. The continuing denial of Islamism as motivator in countless plots on American soil is **indisputable**. If Islamic radicalization and its deadly impact continue to be overlooked in favor of privacy protection and misconceived notions of religious freedom, and if these policies remain intact in intelligence protocols, such **tragedies** as the Fort Hood massacre are **likely to recur**. Islamists often raise the specter of "Islamophobia" whenever any legitimate question about or criticism of Islam is broached. But real Islamophobia stalks the corridors of Washington and other Western capitols: **The fear of upsetting Muslims of any stripe is so rampant that the security of the American citizenry has been compromised.**

Surveilling domestic Muslims enables us to counter the jihadist threat

Groenig 14 – reporter for One News Now, cites former FBI agent Guandolo who created and implemented the FBI's first Counterterrorism Training/Education Program (Chad, One News Now, "Former FBI says only way to defeat Islam is to crush it", 7/15/14, http://www.onenewsnow.com/national-security/2014/08/15/former-fbi-says-only-way-to-defeat-islam-is-to-crush-it, //11)

A terrorism expert says it is time for the western world to stop political correctness and engage in an **all-out effort** to crush radical Islam. John Guandolo is a former FBI agent who created and implemented the FBI's first Counterterrorism Training/Education Program. He is co-author of Sharia - The Threat to America. Guandolo says the western world needs to recognize that radical Islam is **a threat that is not going away**, and no amount of wishing it away or talking to it or negotiating with it is going to stop it. "What stopped the Nazis was we killed and crushed them on the field of battle," he says. "What stopped the Communists is we did the same thing on the fields of battle in places where the Soviet Communists were supporting actual warfare." And Guandolo says that's what's going to end the war against the jihadists. "We need to **find the Islamic movement anywhere it is**, including in the United States, and crush it and defeat it now," he tells OneNewsNow. "Because every month that has gone by for the last thirteen years they get stronger, better organized, better funded and more militarily capable."

State Secrets Good DA

1nc State Secrets Privilege DA

State secrets privilege is good --- protects against lawsuits that would challenge drone police
Rosen 11 --- Professor of Law and Director (Richard D, Center for Military Law and Policy, Texas Tech University School of Law, "PART III: ARTICLE: DRONES AND THE U.S. COURTS", 2011, 37 Wm. Mitchell L. Rev. 5280, lexis)//Mnush

V. **State Secrets: The Death Knell of Drone Cases**

Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a quick end. n93 Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets. n94 Once the privilege is properly invoked and a court is satisfied that release would pose a reasonable danger to secrets of state, "even the most compelling necessity cannot overcome the claim of privilege." n95

Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case, n96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets, n97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing [*5293] protected secrets. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, **lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed.**

Lawsuits will release vital intelligence about drones – that undermines tech leadership
Murphy and Radsan 9 --- AT&T Prof. of Law @ Texas Tech University, Professor @ William Mitchell College of Law (Richard and Afsheen, "ARTICLE: DUE PROCESS AND TARGETED KILLING OF TERRORISTS", November, 32 Cardozo L. Rev. 405, lexis)//Mnush

In defense of this anomaly, there are obvious policy reasons for not allowing Bivens-style claims against American officials for targeted killings wherever they occur in the world. Among them, we do not want federal courts damaging national security through excessive, misdirected second-guessing of executive judgments; nor do we want [*442] **the litigation process to reveal information that national security requires to be kept secret.** In Arar v. Ashcroft, a divided panel of the Second Circuit cited these "special factors" to disallow a plaintiff from bringing a Bivens claim against officials he alleged subjected him to extraordinary rendition. n209

But as the dissenting judge in Arar noted, these special factors lose much of their force once one acknowledges that a Bivens-style action needs to overcome formidable hurdles of fact and law. n210 As to practical hurdles, most people left alive by a Predator strike or other targeted killing

would not turn to American courts for relief. Some would not sue because they are, in fact, the enemy - Osama bin Laden is not going to hire an American lawyer. n211 Others would not sue because doing so is beyond their means - a villager from the mountains of Afghanistan is not likely to hire an American lawyer either.

As to legal hurdles, Boumediene itself poses a high one to lawsuits by non-U.S. citizens for overseas attacks. Here we may seem to contradict our earlier insistence that Boumediene presupposes some form of constitutional protection worldwide for everyone. n212 Yet Boumediene shows that the requirement of judicial process depends on a pragmatic analysis. n213 As part of its balancing, Boumediene made clear that courts should favor the interests of American citizens and of others with strong connections to the United States. n214 Although the Boumediene petitioners lacked the preference in favor of citizens, they persuaded a slim majority of the Court to extend constitutional habeas to non-resident aliens detained at Guantanamo. This result, however, took place under exceptional circumstances: among them, Guantanamo is de facto United States territory; n215 the executive had held detainees [*443] there for years and claimed authority to do so indefinitely; and the Supreme Court doubted the fairness and accuracy of the CSRTs. n216 Absent such circumstances, Boumediene leaves courts to follow their habit of deferring to the executive on national security. For targeted killing, that may mean cutting off non-citizens from American courts.

The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security. n217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence. n218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods. n219

In addition, the doctrine of qualified immunity requires dismissal of actions against officials if a court determines they reasonably believed they were acting within the scope of their legal authority. n220 Defendants would satisfy this requirement so long as they reasonably [*444] claimed they had authority under the laws of war (assuming their applicability). These standards are hazy, and a court applying them would tend to defer to the executive on matters of military judgment. n221

In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive. n222 This view parallels Justice Thomas's that courts should not second-guess executive judgments as to who is an enemy combatant. n223 Contrary to Justice Thomas's view, the potency of the government's threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct - for example, killing an unarmed Jose Padilla at O'Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.

In terms of a Mathews balancing, the question becomes whether the benefits of Bivens actions on targeted killings of terrorists outweigh the harms. The potential harm is to the CIA's sources and methods on the Predator program. Lawsuits might harm national security by forcing the disclosure of sensitive information. The states-secrets privilege should block this result, however.

Lawsuits might also harm national security by causing executive officials to become risk-averse about actions needed to counter terrorist activities. Qualified immunity, however, should ensure that liability exists only where an official lacks any justification for his action. On the benefit side, allowing lawsuits to proceed would, in truly exceptional cases, serve the private interest of the plaintiff in seeking compensation and, perhaps more to the point given the incommensurability of death and money, would provide accountability. Still more important, all people have an interest in casting light on the government's use of the power to kill in a world-wide war in which combatants and targets are not easily identified.

Unmanned vehicle tech leadership is key to naval power all around the world

Berkowitz '14 --- independent national security and intelligence analyst and author (Bruce, "Sea Power in the Robotic Age," Issues in Science and Technology, winter 2014, http://issues.org/30-2/bruce-2/)//Mnush

Note* - UMS = unmanned maritime system

The U.S. Navy's recent interest in UMSs is partly tied to the "strategic pivot." Officials believe that U.S. military forces will more likely be used in the Pacific and Indian Oceans, rather than in Central Asia, the Middle East, and Europe. This presents the Navy with new challenges.

One is distance. Operating in Asia takes personnel further from home, stretches logistics, demands greater operating range from ships, and so on. Also, potential hot spots in Asia are highly dispersed. Looking north to south, they include the resource-rich Arctic (Russia is making new territorial claims); Korea (Pyongyang, along with its traditional invasion, submarine, and artillery threat to South Korea, has added a nuclear missile threat to nations throughout the region); the perennial Taiwan Strait flashpoint; ocean claims by China against Japan, the Philippines, and Vietnam; military and pirate threats to Indian Ocean sea lanes; and so on. The result is greater demand for a U.S. presence over a much larger, more distant area.

As the saying goes, even the best warship cannot be in two places at the same time. But **under current plans the Navy will shrink, not grow.** The five-year budget the Navy proposed to Congress in 2013 cut $58 billion from its FY 2012-13 proposal. Current plans will leave the Navy's budget essentially flat at $152-156 billion annually through FY 2018-19. Few experts believe the Navy will top 300 surface ships during the next decade; some think it may have fewer than 250. By comparison, at the Cold War's end it had almost 560 ships.

Sea-based robots cannot fill the gap completely, but they can fill important missions and add new capabilities to confound potential adversaries. Some scenarios discussed include:

• Counter-mine warfare. Mines are a particular concern for the Strait of Hormuz and Strait of Malacca. As noted, mine clearing has been a primary mission of UMSs. Robotic systems can often clear a larger area faster and usually more safely than older methods. Countermine UMSs could be kept on station in such hotspots and also to serve as a deterrent.

• Anti-submarine warfare. Countries such as Iran and China are deploying new submarines that many Western analysts believe could threaten maritime trade or prevent the United States from delivering supplies and reinforcements to its regional allies in wartime. **UMSs could assume part of the mission of detecting, tracking, and following them, partly offsetting the Navy's shrinking submarine fleet.**

• Information operations. Because UUSs are usually quieter than submarines, it is straightforward to equip them to mimic the sounds of their manned counterparts. Again, this capability could help as the U.S. submarine force is stretched thin. Such "spoofing" complicates targeting for an adversary in wartime, and its ability to develop reliable signatures and databases of U.S. forces before a conflict begins.

• Strike warfare and area denial. It would be possible to adapt short- and medium-range precision-guided missiles to UMSs, just as missiles were added to unmanned aerial vehicles (UAVs) such as Predator and Reaper. In one scenario, the Navy could position armed UUSs close to a potential hotspot such as North Korea or the Taiwan Strait. During a crisis some might be surfaced as a "show of force," and then the weapons would be concealed to serve as a deterrent. UUSs could also attack enemy ships in port or en route. They could provide greater endurance than manned vessels for remaining on station, and greater ability than traditional torpedoes or mines to adapt to changing conditions.

•Infiltration and payload emplacement. Prior to amphibious operations in World War II, Navy frogman surveyed approaches, emplaced demolitions to destroy enemy defenses, and planted navigation beacons to guide forces to their targets. SEALs perform similar activities today. UMSs could allow them to work from a greater distance.

• Infrastructure inspection and servicing. The Navy maintains an extensive underwater infrastructure for command, control, and communications. UMSs could be used to maintain this infrastructure, much as the oil exploration industry uses them today to service offshore rigs.

• Harbor policing. **The Navy has performed this function in operations overseas and as part of its force protection responsibilities at home. They could use UMSs to detect intruders and inspect vessels, as could the Coast Guard, Customs and Border Protection, and local police.**

• Ad-hoc sensor and communication networks. Today when U.S. forces go to war, one of their first tasks is to establish "tactical intranets" to move information among units. UMSs offer a means to establish such networks quickly in a combat zone offshore or at sea, using a combination of radio frequency, acoustic, and pre-laid fiber optic links.

• Environmental monitoring and oceanography. UMSs can be used to determine conditions in littorals just before a military operation and collect information on ocean conditions for long-term planning and research.

Naval power puts a cap on conflict and solves every impact

NLUS, 12 – a nonprofit organization dedicated to educating our citizens about the importance of sea power to U.S. national security and supporting the men and women of the U.S. Navy, Marine Corps, Coast Guard and U.S.-flag Merchant Marine and their families (Navy League of the United States, "Maritime Primacy & Economic Prosperity: Maritime Policy 2012-13", Navy League of the United States, 1/21/2012, http://www.navyleague.org/files/legislative_affairs/maritime_policy20122013.pdf)

Global engagement is critical to the U.S. economy, world trade and the protection of democratic freedoms that so many take for granted. The guarantors of these vital elements are hulls in the water, embarked forward amphibious forces and aircraft overhead. The Navy League of the United States' Maritime Policy for 2012-13 provides recommendations for strategy, policy and the allocation of national resources in support of our sea services and essential to the successful execution of their core

missions. We live in a time of complex challenges — terrorism, political and economic turmoil, extremism, conflicts over environmental resources, manmade and natural disasters — and potential flash points exist around the globe. **It is** the **persistent** forward **presence and engagement of maritime forces that keep these flash points in check, prevent conflict and crisis escalation**, and allow the smooth flow of goods in a global economy. The United States has fought multiple wars and sacrificed much to ensure un challenged access to sea lanes and secure the global commerce upon which the U.S. economy depends. The "persistent naval presence" provided by our forward-deployed Navy and Marine Corps ships, aircraft, Sailors and Marines is the guarantor of that hard-won maritime security and the critical deterrent against those who might seek to undermine that security. Maintaining naval forces that can sustain our national commitment to global maritime security and dissuade transnational aggression in the future must be a national imperative.

2nc Links

The privilege applies to drones

Sinnar 13 --- Assistant Professor of Law at Stanford (Shirin, "Protecting Rights from Within? Inspectors General and National Security Oversight", May, 65 Stan. L. Rev. 1027, lexis)//Mnush

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, **courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets** or institutional competence. n1 These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

Empirics prove – state secrets have hidden the drone program

Bazzle 12 --- J.D. Georgetown University Law Center (Tom, "Shutting the Courthouse Doors: Invoking the State Secrets Privilege to Thwart Judicial Review in the Age of Terror", 2012, 23 Geo. Mason U. Civ. Rts. L.J. 29, lexis)//Mnush

C. A New Frontier: The Obama Administration's Invocation of State Secrets to Prevent Judicial Oversight of Its Plan to Target and Kill Anwar al-Aulaqi The American-born Yemeni cleric Anwar al-Aulaqi was perhaps the most notorious member of the Obama Administration's controversial "targeted killing" list, n171 a classified but widely-known-to-exist list of alleged terrorists identified by intelligence agencies for targeted killing by U.S. forces and the government's growing arsenal of unmanned drones. n172 As a propagandist of the Al Qaeda in the Arabian Peninsula (AQAP), al-Aulaqi's incendiary statements and alleged involvement in recently foiled terrorist plots n173 led the Obama Administration to conclude that he posed such a

sufficient threat to U.S. security to justify the unprecedented step of targeting him for capture or killing. n174 Despite outcries from across the political spectrum [*56] that targeting a U.S. citizen for assassination without first charging him and convicting him of a crime amounted to an unconscionable violation of due process rights, n175 the Obama Administration continued undeterred in its search for al-Aulaqi. This pursuit ended on September 30, 2011, when an American drone strike in Yemen killed al-Aulaqi and several others, including an American citizen of Pakistani origin that had edited Al Qaeda's online jihadist magazine. n176 Prior to al-Aulaqi's killing, his father, Nasser al-Aulaqi - represented by the ACLU and Center for Constitutional Rights (CCR) - filed a claim in the District Court for the District of Columbia to enjoin his assassination, and in response, the Obama Administration invoked the **state secrets privilege**. n177 Al-Aulaqi charged that the authority contemplated by the Obama Administration is far broader than what the Constitution and international law allow. n178 According to al-Aulaqi, outside of armed conflict, both the Constitution and international law prohibit targeted killing except as a last resort to protect against concrete, specific, and imminent threats of death or serious physical injury. n179 Al-Aulaqi further argued that an extrajudicial policy, under which names are added to CIA and military "kill lists" for a period of months, through a secret executive process, is plainly limited to imminent threats. n180

Revealing secrets could threaten national security

Conan and Abramson ’06 --- Host and Reporter (Neil and Larry, “Invoking the State Secrets Privilege,” npr, June 19, 2006, http://www.npr.org/templates/story/story.php?storyId=5495919)//Mnush

ABRAMSON: Right and - but **let's give the government their due**. If you are asked to disclose how you target members of a terrorist group in order to allow litigation to go forward, **you're basically giving away the keys to the store. You're telling people how to avoid surveillance.** And the same thing goes for some of these employment discrimination cases. They did possibly threaten a lot of sensitive information that would have jeopardized, perhaps, the lives of people working undercover.

So it's very difficult for them - for the government to explain in public why they're trying to keep something secret, because, you know, it's a secret. And that's the nature of it, and they can't jeopardize somebody's life in order to allow a civil proceeding to go ahead.

Government keeps secrets to maintain national security

Wencker ’13 --- attorney representing local and small governments (Chris, “Why does the government keep secrets from us?” Law Office of Christopher Wencker P.L.C, http://www.wenckerlaw.com/governmental-perspective-blog/why-does-the-government-keep-secrets-from-us)//Mnush

The ongoing saga of Edward Snowden and his legal troubles in the wake of his disclosure of classified information has generated lively discussion about the role of government surveillance in creating security for our society. Many people are debating whether or not the government should be keeping secrets about its surveillance activities. I recently heard an interview on the radio in which the guest explained that, in his opinion, secret security systems were ineffective, because they are not improved by being subjected to scrutiny and constant testing. While this may be a valid point for computer firewalls and the like, **I think this misunderstands the justification for government secrecy in some programs. The purpose of**

keeping information from general dissemination is -- or at least should be -- to prevent the information from benefiting those who would do harm to society. For example, if the police are aware that organized criminals are using a particular location to discuss their murder plans, and they can plant a listening device in that location, allowing the general public to know about the device will defeat its purpose. The criminals will simply find another, more private, location to hatch their plan. In situations such as this, **secrecy is key**. Secrecy is a problem, on the other hand, when it is used to prevent the public from uncovering illegal activity. Unfortunately, many people assume that information is kept secret for the latter reason, when in actuality it is for the former. Please keep this in mind when seeking information from the government. For the most part, the people working in these areas are genuinely motivated by a desire to help their fellow citizens, by stopping those who would seek to harm us. This includes most police officers and intelligence professionals. They generally have no interest in your personal discussions about what to make for dinner, and would rather focus on discussions about criminal activity. If you request documents about a particular government program and are denied because the information is classified, do not assume that the program is targeting you.

Unmanned Vehicle Tech Leadership Key to Naval Power

Unmanned vehicle tech leadership is key to naval power

Landay et al. 4 (William E. Landay III – RDML (Rear Admiral), USN, Concurring with the following: Michael A. LeFever, RDML, USN Raymond A. Spicer, RDML, USN Roseanne M. Levitre, RDML, USN Steven J. Toma szeski, RADM, USN, Oceanographer of the Navy, Approved by Joseph A. Walsh and Roger M. Smith of US Navy, "The Navy Unmanned Undersea Vehicle (UUV) Master Plan", 11/9, http://www.navy.mil/navydata/technology/uuvmp.pdf)

The Vision for UUVs and the Objective of the UUV Master Plan Today our naval forces enjoy **maritime superiority** around the world and find themselves at a **strategic inflection point** during which future capabilities must be pondered with **creativity** and **innovation** . **Change must be embraced** and made an ally in order to take advantage of emerging technologies, concepts, and doctrine; thereby preserving the nation's **global leadership**. Sea Power 21 has additionally **specified unmanned vehicles** as force multipliers and risk reduction agents for the Navy of the future. Transformation applies to what we buy as well as how we buy and operate it–all while competing with other shifting national investment priorities. The growing use of unmanned systems– air, surface, ground, and underwater is continually demonstrating new possibilities. While admittedly futuristic in vision , one can conceive of scenarios where UUVs sense, track, identify, target, and destroy an enemy–all autonomously and tie in with the full net-centric battlespace. UUV systems will provide a **key undersea component** f o r FORCEnet, contributing to an integrated picture of the battlespace. Even though today's planners, operators, and technologists cannot accurately forecast the key applications for U UVs in the year 2050, this plan provides a roadmap to move toward that vision. Pursuit of this plan's updated recommendations beginning in the year 2004, will place increasingly large numbers of UUVs in the hands of warfighters. Thus, xvii UUV Master Plan UUVs can begin addressing near-term needs while im proving understanding of mid- to far-term possibilities. Even the most futuristic applications can evolve in a confident, cost-effective manner. This confidence is based on several factor s: the Sea Power 21 Sub-Pillar capabilities identified he readdress a broad ran g e of user needs; critical technologies are identified that will enable tomorrow's more complex applications; and key principles and best practices are recommended that p r o v ide for a logical, flexible, and affordable development effort.

Navy Prevents Great Power War

Strong navy is key to prevent great power – deterrence

Eaglen 11 (Mackenzie, Heritage Foundation Research Fellow for National Security Studies, Allison Center for Foreign Policy Studies, May, 16, 2011, "Thinking about a Day without Sea Power: Implications for U.S. Defense Policy", http://www.heritage.org/research/reports/2011/05/thinking-about-a-day-without-sea-power-implications-for-us-defense-policy)

Under a scenario of dramatically **reduced naval power**, the United States would **cease to be active** in any international alliances. While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today's levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. **China's** claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively turning the region into a "Chinese lake." China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. **Korea**, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. **Japan** is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan's historical animus remains strong. China's entente with Russia leaves the Eurasian landmass **dominated by Russia** looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other's sphere. Worldwide, **trade** in foodstuffs **collapses**. Expanding populations in the Middle East **increase pressure** on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia's claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran's orbit. Russia supplies Iran with a steady flow of military technology and **nuclear** industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the "protection" provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq **attacks Israel**. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive "refugee" camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance **is shattered**. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America's retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity.

Strong navy key to allied response- creates a super-deterrent

Lyons, 13 -- retired Navy admiral

[James, commander in chief of the U.S. Pacific Fleet and senior U.S. military representative to the United Nations, "Where are the carriers?" Washington Times, 1-15-13, l/n, accessed 1-22-13]

To keep pressure on and **raise the level of deterrence**, movement of naval forces, particularly carrier strike groups, must remain unpredictable. In a deteriorating crisis situation, our Navy gains maximum

impact by moving the carrier strike group into the crisis area. That sends a **special signal** of our intent to respond to our potential enemies and to our allies as well. Such a signal has a telling effect on our regional allies and encourages them to **employ their** air force and naval **assets in a coordinated manner**, which certainly should **raise the deterrent equation**.

Naval Power Key to the Economy

Naval power collapse kills the economy and trade

Eaglen 11 (Mackenzie, Heritage Foundation Research Fellow for National Security Studies, Allison Center for Foreign Policy Studies, May, 16, 2011, "Thinking about a Day without Sea Power: Implications for U.S. Defense Policy", http://www.heritage.org/research/reports/2011/05/thinking-about-a-day-without-sea-power-implications-for-us-defense-policy, 2/16/13, atl)

If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world's oceans as a "great highway…a wide common," underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil. Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a "new normal" with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the "fracking" (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. More than half of the world's oil is transported by sea. "From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%."[13] In 2010, "$40 billion dollars [sic] worth of oil passes through the world's geographic 'chokepoints' on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables."[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world's seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16] As of 2008, "U.S. ports move 99 percent of the nation's overseas cargo, handle more than 2.5 billion tons of trade annually, and move $5.5 billion worth of goods in and out every day." Further, "approximately 95 percent of U.S. military forces and supplies that are sent overseas, including those for Operations Iraqi Freedom and Enduring Freedom, pass through U.S. ports."[17]

Naval power key to the global economy

Conway, Roughead, and Allen, 07- *General of U.S. Marine Corps and Commandant of the Marine Corps, **Admiral of U.S. Navy and Chief of Naval Operations, ***Admiral of U.S. Coast Guard and Commandant of the Coast Guard (*James Conway, **Gary Roughead, ***Thad Allen, "A Cooperative Strategy for 21st Century Seapower", Department of the Navy, United States Marine Corps, United States Coast Guard, http://www.navy.mil/maritime/MaritimeStrategy.pdf, KONTOPOULOS)

The world economy is tightly interconnected. Over the past four decades, total sea borne trade has more than quadrupled: 90% of world trade and two-thirds of its petroleum are transported by sea. The sea-lanes and supporting shore infrastructure are the lifelines of the modern global economy, visible and vulnerable symbols of the modern distribution system that relies on free transit through increasingly urbanized littoral regions. Expansion of the global system has increased the prosperity of many nations. Yet their continued growth may create increasing competition for resources and capital with other economic powers, transnational corporations and international organizations. Heightened popular expectations and increased competition for resources, coupled with scarcity, may encourage nations to exert wider claims of sovereignty over greater expanses of ocean, waterways, and natural resources—potentially resulting in conflict.

Secrecy Key to U.S. Nuclear Deterrent

Secrecy is key to the US nuclear deterrent

Green 97 (Tracey – Associate with McNair Law Firm, J.D. – University of South Carolina, "Providing for the Common Defense versus Promoting the General Welfare: the Conflicts Between National Security and National Environmental Policy", South Carolina Environmental Law Journal, Fall, 6 S.C Envtl. L.J. 137, lexis)

The deployment of **nuclear weapons**, however, is a DoD action for which **secrecy is crucial** and, thus, **is classified** by Executive Order. n59 According to the American policy of deterrence through mutually assured destruction (MAD), nuclear weapons are essential to **an effective deterrent**. n60 If DoD disclosed the location of these weapons, disclosure would reduce or **destroy the deterrent**. An adversary could destroy all nuclear weapons with an initial strike, leaving the country **exposed** to nuclear terror. n61 Additionally, terrorists would know where to strike to obtain material for nuclear blackmail. In short, secrecy regarding nuclear weapons has **enormous implications** for national security. While the armed services must consider the environmental effects of maintaining nuclear weapons, they cannot release any information regarding the storage of these weapons.

Escalates to global nuclear war

Caves 10 (John P. Jr., Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction – National Defense University, "Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent", Strategic Forum, No. 252, http://www.ndu.edu/inss/docUploaded/SF%20252_John%20Caves.pdf)

Perceptions of a compromised U.S. **nuclear deterrent** as described above would have profound policy implications, particularly if they emerge at a time when a nuclear-armed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to

enhance its regional and global clout.

- A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante.

- The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position.

- Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years.

- Important U.S. interests could be compromised or abandoned, or a **major war could occur** as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to **state-on-state employment of** weapons of mass destruction (**WMD**) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict.

Kritiks – Top Level

CVE / Terrorism Links

Conceptions of the radicalization of Islam ignores the complexity of violence and posits an ethnicity as coterminous with terrorist. Counter-radicalization strategies skew our perceptions of Islam by exaggerating the threat of terror

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B. Radicalization, Counterradicalization, and National Security n183 Like broken windows theory, radicalization theory has been highly contested and yet broadly influential in shaping contemporary policing. While U.S. government accounts take for granted a problem with radicalization that warrants government intervention, the literatures of governments, academics, experts, and civil society stakeholders around the world express profound disagreement over the meaning of radicalization, and the nature and extent of threat embodied by Muslims. n184 Radicalization discourse purports to predict future terrorism, drawing from studies of prior terrorist acts to identify trends and details that will aid in identifying future terrorists. In so doing, radicalization redefines and expands the legitimate scope of government concern from terrorism - a question of political violence, of crime, even of war crime - to radicalization - a question of religious and political cultures and beliefs. Before moving further into the problems inherent in overlaying radicalization theory onto community engagement, it is worth exploring the similarities and differences between the work of radicalization theory and broken windows theory. The primary similarities are threefold. First, both radicalization and broken windows are **preventative theories of crime control**, calling for **prophylactic state action against noncriminal behavior.** Second, while both theories appear concerned with disorder or radicalization in the abstract, their practical effect is to **bring considerable scrutiny to communities already marginalized by virtue of race and religion**. As a practical matter, broken windows theory foregrounds race and inequality as instigators or signs of disorder. n185 Counterradicalization and CVE, in practice and in theory, are almost exclusively focused on Muslims. n186 Moreover, when manifest in community policing and community engagement approaches, the theories work to cultivate partnerships with community members in order to increase the legitimacy and reach of law enforcement into the subject communities. Third, in addition to shaping community policing/engagement [*877] approaches, both theories have had great influence on the broader field of policing tactics in the relevant communities (and beyond). There are at least two important differences. In terms of (contested) causal claims, broken windows theory focuses on physical signs of disorder as signals of deteriorating social order, whereas radicalization emphasizes ideological currents of disorder as motivators for acts of terrorism. **Radicalization's concern is predicated on a false belief in the teleological character of Islam** - that if Muslims communities witness conservative religious practice and critical politics, they will view such currents as acceptable and gravitate toward radicalism, thereby producing more terrorists. Second, the theories arguably have propelled different types of police action. Whereas broken windows theory leads to aggressive enforcement against misdemeanor and minor crimes, counterradicalization produces increased surveillance. n187 This distinction has its limits, since broken windows policing serves an intelligence-gathering function, and counter-radicalization shapes prosecutorial priorities. But while both theories expand the role of the state and the blueprint of policing, their mechanics are distinct. To be clear, I'm less concerned with anaologies between the causal mechanics of the theories, and more concerned with how the theories construct the categories of the disorderly and the radical, and the implications those constructions have for policing and the subject communities. 1. Blurring Dissent and Difference With Violence Even aside from the disproportionate focus on politically motivated violence by Muslims in terrorism studies, there are key definitional problems with radicalization discourse. Most fundamentally, **the terms radicalization and extremism are used sloppily** and with **unclear meaning**, with a causal connection assumed between radical ideas and committing acts of terrorism. n188 [*878] Empirical research "has emphatically and repeatedly concluded" that there is no single terrorist profile and no obvious markers for the process by

which someone becomes a terrorist. n189 The process by which people embrace violence is not linear but complex. n190 Importantly, studies of so-called homegrown terrorism also reject the ideas that Islam and terrorism are linked, or that observing the Muslim faith constitutes a step toward violence. n191 Nor is there data to suggest that Muslims are becoming more radical in their views, let alone more violent. n192 National security prosecutions in the headlines provide a skewed sense of the threat; the vast majority of those prosecutions do not charge defendants with any violent crime, or with any intent to commit violent crime, but instead with material support for terrorism - a very broad concept typically far removed from violence. n193 Despite their continued hold on law enforcement, the NYPD and FBI reports are transparent **paper tigers** - now **deconstructed many times over**. n194 The stages and factors of radicalization are internally **inconsistent and vague** enough to justify surveillance of any person who identifies as Muslim, or is linked with Muslim religious or political community. Consider, for example, that the NYPD [*879] report marks as "radicalization incubators" "cafes, cab driver hangouts, flophouses, prisons, student associations, nongovernmental organizations, hookah (water pipe) bars, butcher shops and book stores": mostly locations where Muslims or those from Muslim-majority countries are likely to spend their time, whether for religious, political, or sentimental reasons. n195 The reports offer **little to no data** in support of their ambitious conclusions, with the **lack of substantiation reflecting** and reconstituting the marginalization and stigmatization of American Muslims. The data on which the reports rely include national security prosecutions involving questionable tactics by law enforcement: constructing the plot, providing the means, and incentivizing the conduct. In other words, the data results in part from cases in which the FBI created or molded the behavior it then purported to model. n196 In other cases, the defendants never committed a violent act, confounding the link between their behavior and a willingness to commit terrorist acts. n197 Overall, there remains no trustworthy empirical account of radicalization that suggests the idea has explanatory or predictive power. n198

Counter-radicalization normalizes a system of suspicion that portrays all Muslims as terrorists – Muslim identity becomes synonymous with state resistance and anti-Americanism, which causes violence against those who aren't "American" enough

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[*883] The political vector marks your relationship to the project of American statecraft vis a vis your concern and commune with other Muslims. The ideological questions are awash in a loyalty calculus, focused on whether you foreground concern with Muslim community and Muslim suffering at home and abroad, or the imperatives of the U.S. government in effectuating its policies. Implicit here is the idea that such concern is compatible with American identity only to the extent that it comes second or does not compete with U.S. government interests. n212 The activity dimensions focus on Muslim engagement with political issues vis a vis other Muslims and the U.S. government. Does this person or community protest U.S. foreign or national security policy? Does this person or community comply with requests to inform on the local mosque when asked by the FBI to do so? The radicalization and counterradicalization discourses have clear implications for the meaning of good citizenship on the part of American Muslims: To be a good citizen is to have a compliant relationship with the state, rather than to relate from an oppositional or contesting stance. Are you with us or against us? n213 remains the question. If radicalization creates ideological force for the idea that the state should monitor Muslims, and radical Muslims in particular, then counterradicalization initiatives operationalize the distinction, offering American Muslims an opening to perform their Americanness by partnering with the government. n214 The distinction emerges not simply from how Muslims signal their identity or allegiance with regard to Muslim religious practices or other Muslims. The distinction between the radical and American Muslim emerges in part from how Muslims relate to U.S. statecraft or U.S. government initiatives. [*884] Counterradicalization creates friction between loyalty to the U.S. project and practices of Muslim identity. In particular, the Muslim concept of the ummah, or global Muslim community, comes into conflict with counterradicalization commitments. Resistance to, or criticism of, American foreign policy in Muslim lands is a factor of radicalization. n215 So is concern for Muslim casualties abroad, or discrimination against Muslims in the United States. n216 Traveling abroad to Muslim countries, even for

hyphenated second-generation Americans visiting family, suggests suspicious connection. n217 In classifying Muslims who attend mosque, who travel or send money abroad, or who oppose the U.S. drone policy in Yemen and Pakistan, as within the process of radicalization toward terrorism, the theory marks individuals and geographies as sufficiently different to be outside the protections of the state, transforming them into legitimate objects of state scrutiny. n218 Radical Muslims become the lawless out-of-place subjects deserving of little protection. n219 Counterradicalization cleaves Muslim from American identities in another way, equating cooperation with the state with Americanness and loyalty, and **dissent with Muslimness, radicalization, and terrorism**. Efforts at partnering with Muslim communities in counterradicalization efforts create opportunities for American Muslims to signal their allegiance. Like the "regulars" and the "lawful" in the broken windows account, those considered American Muslims are partners in counterradicalization - they stand for the state's values, will cooperate with the police in their efforts to monitor and influence coreligionists, and will step down in the face of conflict. By exercising a right of refusal to cooperate with the state, the American Muslim moves toward radicalism, the radical emerging in response to the state's policing. [*885] b. Creating the Terms of Racial Obedience Radicalization and counterradicalization place identity pressures on American Muslims in their interactions with each other, the public, and the state. n220 To cooperate - no matter the substance of law enforcement's demand and expectation - is to validate one's American identity. To refuse or to dissent is to express radicalism, or at least openness to it. n221 Radicalization policing creates the "racial obedience toward, and fear of, the police," manifested in "particular kinds of performances .... to signal acquiescence and respectability." n222 Of course this **racialized pressure emerges from a larger social context** - people of color are subject to more frequent and more severe police scrutiny, and they are fearful that refusing the police will stoke racial animosity or race-based suspicion and aggravate an already bad situation. n223 Immigrants in particular are less likely to know their rights. In all these contexts, accountability is minimal, so the police "have an **incentive to exploit vulnerabilities**." n224 Radicalization theory has created a post-9/11 reality in which Muslims "are more vulnerable to compliance requests, more likely to comply, and have to give up more privacy to do so." n225 Radicalization-informed policing produces a **loyalty discourse** in which there are "good" and "bad" Muslims, and thereby "**entrenches the idea of [Muslimness] as a crime of identity**," n226 "encourages group surveillance," and incentivizes Muslims "to be available for, indeed advocate for, white [*886] racial inspection of [Muslimness]." n227 As with the politics of respectability in Black communities, this approach does not protect the "good" Muslims but, instead, renders all Muslims "vulnerable to racial profiling." n228 Indeed, radicalization creates **geographies of suspicion**. While the geography of broken windows theory was effectively one of class and race - hoisting the specter of the poor Black neighborhood - the sphere of radicalization is religious and cultural (though of course inflected by race and class as well). n229 In large metropolitan centers, there are certainly physically contiguous neighborhoods where Muslims of similar racial or class backgrounds reside. In the rest of the country, however, Muslims of different classes, races, nationalities, and linguistic and ethnic groups are more dispersed. In these places, government surveillance creates a different kind of geography out of the places where Muslims gather: the mosque, the halal butcher, or the Indian or Somali grocery store. And visiting these places makes you vulnerable to police scrutiny. n230 Beyond the policing practices themselves, there is the realm of public discourse and debate in which Muslims make their choices. The most public and theatrical government initiative drawing attention to radicalization occurred with Peter King's first in a series of hearings before the House Homeland Security Committee in 2011 and 2012, meant to address "a crisis of radicalization to violence ... within the Muslim-American community" n231 [*887] and a refusal by Muslims to cooperate. n232 Those called by King as representatives of Muslim communities testified that American Muslims were ignoring concerns with radicalization and could do more to cooperate. n233 The witnesses lampooned a number of mainstream and prominent American Muslim advocacy organizations - Muslim Advocates, the Council on American Islamic Relations, and the Muslim Public Affairs Council, all of which have met regularly with federal, state, and local city officials - for undermining Muslim cooperation with law enforcement efforts. The organizations and other community leaders came under fire especially for their recent initiatives counseling community members to retain a lawyer before dealing with the FBI. n234

Counter-radicalization of terrorism is shrouded in a politics of anti-knowledge and exaggeration of threat – silences the Muslim community and pathologizes social problems

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c. Racializing Ideology In addition to shaping modes of political engagement with the state, radicalization discourse and counterradicalization practice affect the parameters of religious and political conversations and contestation by rendering certain viewpoints or topics as off limits. n239 Of course it is not just the existence of the discourse at work here - it is the recurring and regularized interactions with police that serve as constant reminders of the stakes for American Muslims. Much of terrorism and radicalization discourses are enshrouded in a politics of "**anti-knowledge**." n240 Terrorism studies tend to "reduce complex social, historical, and political dynamics." n241 Chief among the "constraints shaping what can be said about terrorism" is "**denial of the possibility of rational causes**, and the attribution of terrorism to pure evil." n242 The mainstream narrative "implies that, once an individual has adopted an extremist religious ideology, terrorism will result, irrespective of political context or any calculation on the part of any organisation or social movement." n243 Similarly, radicalization and violent extremism discourse displaces any attention on political context with a focus on theological and psychological factors that supposedly foment radicalization. n244 [*889] Radicalization theory marks certain topics or viewpoints as beyond the pale by suggesting that they are un-American or likely to draw government scrutiny. n245 As a result, radicalization discourse puts pressure on the contours of conversation among Muslim communities about the public issues of our times to which many American Muslims are particularly attuned. n246 American Muslims are thus **less likely to vocalize concerns** about the exercise of American war power in Iraq, Afghanistan, Pakistan, Somalia, Yemen, and so on. n247 The absence of Muslim voices on these issues is particularly notable given how much of contemporary U.S. foreign policy is focused on Muslim populations. Equally important, the space for religious debate - on questions such as the meaning of "jihad" or different modes of interpretation - in mosques and other Muslim community space has also **shrunk and warped**. n248 "Since 9/11, mosque leaders have been under pressure to eject anyone expressing radical views, rather than engaging with them and seeking to challenge their religious interpretation, address their political frustrations, or meet their emotional needs." n249 Moreover, radicalization discourse may serve to **pathologize complex social problems**, **displace focus** from the role of government activity in creating those problems, and place the burden of solving them on already marginalized communities. Broken windows theory could be criticized along the same lines: The underlying roots of ordinary crime - poverty, joblessness, mass incarceration, disenfranchisement - disappear under the discourse of "disorder." In the context of national security, the complicated political historical terrain between the U.S. government and Muslim communities within the United States on the one hand, and the United States, Muslim-majority countries, and international terrorist groups on the other, disappears under the discourse of radicalization and the terrorist Other.

"Radicalized" Muslim Links

The construction of radicalized Muslim identity allows the surveillance apparatus to subordinate Muslims as an object of policing – this creates anxiety in society when everyday acts become potential terrorist threats, which creates racist stereotypes

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2. Racializing Muslims Under the guise of predicting future terrorism, radicalization provides a guide for government activity. In so doing, it redefines and expands the relevant field of state concern: from

terrorism to radicalization in Muslim communities. Marking religious and political activities as the indicators of radicalization, the discourse links religious and political practices in Muslim communities with the likelihood of terrorism - inviting state scrutiny into the halls of Muslim communities, and changing the terms of engagement with the state for Muslims. The theory creates the Muslim, her religious and political habits, as an **object of policing**. [*880] The theory is **racially productive**, n199 contributing to the racialization of American Muslims. n200 I use the term racialization knowing that it imperfectly describes the shape and nature of the stigma that has attached to American Muslim communities after 9/11, not least because African Americans make up a considerable portion of the Muslim population in the United States. American Muslims are unique in their diversity, varying by race, language, ethnicity, nationality, and class. Still, racialization best approximates the process by which a diverse group of people become lumped together by stigma, stereotype, and fear, all of which draw from a range of physical attributes and signifiers, mobilized by law, as a **method of control and subordination**. As with other subordinated and racialized groups (for example, Blacks, Latinos, Native Americans), there are for example, physical attributes associated with Muslim identity, from skin color to facial hair to garb. n201 By focusing on the post-9/11 era, I do not mean to minimize the reality that Muslims were racialized before 9/11, or that a significant portion of American Muslim communities are African American and have long been central to the story of race in America. While crime is the primary lens through which African Americans figure in the American imaginary, terrorism is the lens through which Muslims appear. African American and Muslim identities are carved by and in opposition to particularized types of suspicion. So the politics of respectability of each group is distinct - with the pressure on African Americans to disavow and respond to Black-on-Black crime, and for American Muslims to disavow and respond to terrorism. [*881] a. Creating Muslim Suspects The categories of "law-abiding" and "lawless," n202 "radical" and "moderate," are both overinclusive and indeterminate, n203 depending entirely for their meaning on police deployment and creating deep vulnerability for Muslim communities. n204 Muslims are forced to carry the stigma borne of such intense scrutiny and are powerless to escape it, given that both playing up and minimizing Muslim identity can be seen as potentially suspicious. n205 Evidence suggests, however, that Muslims have changed their behaviors in response to the reality and perception of extensive surveillance. For example, individuals report signaling their Muslimness less openly, by praying at home rather than at the mosque, avoiding political conversation in mosques and other Muslim-specific spaces, or reducing donations to Muslim organizations. Similarly, mosques may ask speakers to avoid political content, including criticism of U.S. foreign policy. n206 Radicalization discourse **crystallizes the Muslim as a figure of legitimate police scrutiny**. n207 As Harcourt observed in the context of broken windows theory, "the theory of deterrence and punishment focuses on the disorderly person rather than the criminal act, and thereby facilitates a policy of control, relocation, and exclusion of the disorderly"; "the category of the disorderly is the product, in part, [*882] of the [policing] itself." n208 Broken windows theory does its work in a two-step dialectic: It shifts the object of policing from crime to the out-of-place person, and in so doing, constructs the out-of-place person as someone who needs to be surveilled and controlled by the state. Similarly, radicalization theory and policing shift law enforcement's attention from actual plans to commit a terrorist crime to Muslim religious and political activity by literally marking observance of Muslim religious practice, or expressions of political solidarity with other Muslims, as within its causal framework. The radical Muslim, by virtue of noncriminal behavior - attending a halaqa (religious study group), visiting family in Pakistan, growing a beard, or paying off a mortgage n209 - embodies the potential threat of terrorism, and in so doing becomes a legitimate object of policing even when engaging in **wholly noncriminal (now suspicious) behavior**. "Politicization," "becoming involved in social activism and community issues," and "watching jihadi videos ... that highlight atrocities committed against Muslims" bring you within the third stage. It is not until the fourth stage that the theory concerns itself with any intent to undertake a criminal act. In other words, you could be three-fourths radicalized - a nearly full blown threat, one would imagine - and have yet to form any concrete thoughts of committing any crime. You might have radical beliefs, but no intent to commit a violent crime. The conservative Muslim, rolling up his pant sleeve in accord with a certain religious practice, or attending the Friday sermon criticizing U.S. foreign policy, embodies this disorder, and the potential for a much larger threat. The religious and political vectors of radicalization theory work in different, if intersecting, ways; both vectors reflect concerns with the ideas and activities of Muslim communities. The religious vector marks basic observant behavior and conservative modes of Muslim religious practice as radical, and therefore worthy of suspicion. "Giving up cigarettes, drinking, [and] gambling," for example, or "wearing traditional Islamic clothing" are markers of radicalization. n210 It matters both what type of Islam you believe in and what you practice: whether your actions (do you follow to a tee the hadith of the Prophet Muhammad?) or level of devotion and study (do you regularly attend a halaqa?) adhere to more conservative modes of practice. The "more Muslim" you are in the religious sense, the more radical, and the more potentially threatening you appear to be. n211

Community Engagement Links

The federal nature of community engagement subjects the Muslim community to domination by the state – degrades our democratic credibility

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[*890] III. Community Engagement's Coercion While community engagement aims to build relationships with Muslim communities, to gain trust and enhance communication, it also functions as a technique of policing radicalization, encouraging all-encompassing surveillance of Muslim communities and working to **cultivate in Muslims a suspicion of coreligionists' religiosity and politicization**. n250 Community engagement becomes yet another pressure point at which Muslims must participate in surveillance or else suggest disloyalty to the American project. Given its anchoring in counterradicalization, the order that community engagement seeks to impose draws from ideas about the proper ways to practice Islam in America, the right balance between religious and secular life, and a demand for a certain form of political assimilation. n251 It closes, or at least narrows, possibilities for meaningful contestation and collaboration, while obscuring, and even reinforcing, the power differential between Muslim communities and law enforcement. The space between how community engagement appears - as a democracy-or inclusion-enhancing venture - and the work it actually does to reinforce coercive policing is what this Part explores. Throughout the foregoing discussion, I have emphasized the dangers associated with law enforcement's community engagement efforts - in particular how counterradicalization and community engagement work to cultivate pro-law-enforcement attitudes and affectations, such that Muslims open up their communities in various ways for government inspection and regulation. In so emphasizing, I do not mean to disparage civic engagement, which is no doubt constitutive of democracy. The quality of civic engagement has to matter, though, if the end is **democracy** of any meaningfully participatory or accountable variety, and if the goal is to bring outsider communities into the fold. I am not convinced that encouraging marginalized citizens' interactions with their government is constructive of democracy when it is achieved through coercive means - which do not allow for contestation of terms or meaningful input, and instead provide pressure on communities to participate in the very policing tactics that create the gulf in trust that propels the need for forays into trust building. When this participation and consent are shaped by a pressure to perform [*891] Americanness and to dispel racialized assumptions about loyalty and allegiance, the coercion raises acute **equality and antisubordination concerns.** The federal government has an interest in community engagement apart from democracy: national security. Through the surveillance and acculturation of communities marked as vulnerable to anti-American persuasion, the government hopes to prevent attacks on its (non-Muslim) citizens. But while a fear of Muslims or so-called Islamic terrorism fuels the push for community engagement, the data does not substantiate the extent of the concerns. When one considers the size of the global Muslim population, or even simply the American Muslim population, the few acts of terrorism committed by Muslims in the United States are infinitesimal, including as compared to other threats. n252 The bloated concern with terrorism seems to be motivated more by politics than by facts. Community policing generates its moral authority by tapping into the ideas of community support and democratic legitimacy, but the slippery quality of the term community, and the terrain of inequality that gives rise to the push for such programs, provokes two nested concerns. First, community engagement programs are largely **top down**, with federal **government prerogatives imposed** on Muslim communities. Community engagement creates the aesthetics of democracy and inclusion without necessarily reflecting any substantive commitments to those values. Concretely, the police may select partners that ratify preexisting police practices, n253 or pursue community engagement primarily as another entry point for surveillance and norms molding, as opposed to a source of accountability or contestation. The appearance of collaboration, without any real possibility of significant contestation, may **undermine rather than bolster democracy**, augmenting the **coercive power of the state**. Moreover, to the extent community engagement draws on racialized pressures on Muslims to perform their Americanness, and disavow their Muslimness, as a way to prove their American bona fides, the police partnerships exacerbate autonomy, equality, and subordination concerns implicated in the broader regime of policing radicalization. Second, the police partnerships may exacerbate hierarchies within Muslim communities. [*892] Police partnerships may have distributive effects internal to the community, such that the elite may be further empowered over the marginalized - even as they themselves are subject to coercive state power. If the inclusive and democratic work of community

engagement is questionable, and the fear of Muslims outsized, we must be suspect of the heightened push for community engagement with Muslim communities. My primary concern here is to test or problematize the democratic claims of this tactic. n254 A. A Top-Down Approach If we are to take the democracy and inclusion claims of community engagement seriously, we should expect that communities are able to "exert meaningful influence" n255 or have a determinative role in setting policing "goals, priorities, and strategies." n256 If community engagement does not provide opportunities for meaningful or determinative input but rather facilitates involvement only to the extent that participants lend support to preexisting law enforcement priorities, then its **claim to democratic legitimacy should be questioned.** There is strong reason to question the democratic claims of community engagement. As with community policing in the ordinary criminal context, a basic tenet of community engagement is that there is value for Muslim communities and law enforcement in cultivating channels of communication. The emphasis in official government statements is on relationship and trust building, inclusion, and democracy. But community engagement efforts, steeped in counterradicalization, play **important norms-molding and intelligence-gathering functions**, raising important questions about the implicit claims to democracy enhancement on which the efforts rely. Moreover, whereas building trust and relationships is based generally on the idea of two-way obligations, in reality the government has done little to address the fundamental root of distrust - which starts with the overly broad and punitive approach to policing entire Muslim communities. n257 Interacting with Muslim communities, law enforcement's prevailing focus is national security, [*893] foregrounding threat potential in government's interactions with Muslim communities. n258

AT: Community Policing is Net Better / More Democratic

Community policing does not allow American Muslims to reset priorities – they just ratify law enforcement's work

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Above and beyond the concerns with community engagement serving as a cover for surveillance and norms molding, the federal government has repeatedly signaled **little room** for American Muslim communities to play a determinative role in setting priorities. Community engagement provides opportunities for American Muslims to **partake in and ratify** law enforcement's work. In a community engagement push by federal law enforcement with Minnesota's Somali communities, for example, "[an] FBI private acknowledged, there was no possibility of the community [having] influenced how the investigations were carried out." n259 To the contrary, the aims were more **one-sided**: to "correct what its agents called "misperceptions' ... such as that suspects in Somalia might be imprisoned without trial or targeted for drone killings (such community fears were consistent with official US policy ...)" and "to encourage community leaders to pass information to federal agents about young people." n260 While there might be space to raise concerns with the government, there is little reason to suggest any real possibility for meaningful or determinative input. n261 The detachment of community engagement from its claim to democratic authority starts at the foundational level. Community policing's historical aim has been to reduce crime in an inner city or even a particular neighborhood. The subject community could in some sense be imagined to be working with the police to enhance its own welfare. Central to proponents' arguments for community policing has been the idea that African American communities suffer from underenforcement by police and need more policing to rid their communities of [*894] crime. n262 In its national security manifestation, however, community engagement's aim is to secure the state. **Muslims are made responsible** not for their own condition but for the welfare of the entire nation - and for protecting the nation against terrorists. It is a "particularized responsibility [for the welfare of the nation] ... not shared by other groups." n263 The assignment of responsibility should trouble us for a number of reasons, including basic American proscriptions against guilt by association and racial and religious profiling. Muslim communities had not identified radicalization or violent extremism as an issue of concern

before the government's framing of radicalization and violent extremism as a national priority. n264 By and large, Muslim communities and advocacy groups have not only objected to the radicalization framework and the assertion of growing radicalization in Muslim communities, n265 but have also insisted that they are cooperating with law enforcement efforts. n266 Community engagement - in its current manifestation, grounded in counterradicalization and CVE - has, in some sense, been foisted on Muslim communities. n267 [*895] The federal nature of the underlying concern also undercuts community engagement's democratic potential. Federal law enforcement entities, national in scope and in responsibility, take the lead in community engagement efforts, whereas local police embody community policing as originally conceived. Even in the community policing context, critics worried that more marginalized communities or more marginalized segments of communities - the ones most in need of protection from abusive, unaccountable policing - would be unable to exert enough power to contest or hold police accountable. In the federal context, not to mention the politically charged realm of national security, the concern is even more acute. The idea that marginalized, dispersed, and diverse Muslim communities could hold accountable the federal government or federal law enforcement on national security issues is dubious. **If Muslims had the political power to hold the police accountable, community engagement programs would not be necessary from a democracy or inclusion perspective to begin with.**

Community engagement appears more benign but it is still a form of racialized policing

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*** Government officials tout these community engagement efforts as the pinnacle of good governance, providing Muslim communities with opportunities to educate and hold the government accountable, and providing the government with the chance to learn from Muslim communities. n147 Indeed, community engagement initiatives may seem preferable to, or at least less coercive than, other forms of policing. One might argue that the overt nature of community engagement efforts obviates any concern about coercion or consent. Communities of color - overpoliced as they are - must know that their interactions with the police are recorded and shared. (The FBI thinks otherwise: The recently released 2009 FBI Policy Directive on community engagement asserts that "members of the public contacted through a community outreach activity generally do not have an expectation that information about them will be maintained in an FBI file or database." n148) How can communities later complain that they are under watch, even as they exchange pleasantries at a mosque outreach event with the local FBI agent? **This is to miss, however, a larger set of normative concerns about the dialectic between the exercise of police power and the ways it restricts the options available to communities of color.** The remainder of this Article attempts to unpack these concerns. II. Disorder and Racialization Community policing's elasticity has been integral to its currency and longevity. An approach by local police in the 1970s and 1980s to working with poor, urban Black communities in response to ordinary crime and historical distrust [*869] has proved sufficiently flexible to be put to use in service of the post-9/11 paradigm. Federal law enforcement has adopted community-policing-like tactics nationwide with Muslim communities in response to national security concerns, deploying the vocabulary and aspirations of community policing. n149 While community engagement is regularly invoked in the same breath, or included in the same conceptual universe, as community policing, unnamed is the dynamic between counterradicalization/CVE and broken windows theory. At first blush, there is an obvious parallelism: Counterradicalization defines the contours of community engagement as broken windows often shaped practices of community policing. Both counterradicalization and broken windows theories are preventative theories of crime control laid atop efforts at bettering relationships between marginalized communities and law enforcement. n150 Both theories also motivate traditional policing tactics and approaches beyond those that claim as their central normative force partnerships with the community. Yet there are important theoretical and material distinctions between broken windows and counterradicalization, and between community policing and community engagement. In focusing on the critiques of community policing inflected by broken windows theory, I do not mean to suggest that all community policing is defined by broken windows theory, or that order maintenance (which is more directly linked to broken windows, in theory as well as practice) follows from community policing. n151 Community policing and broken windows theory can certainly be [*870] decoupled: n152 Community policing's center of gravity is in communication and collaboration with local communities, while broken windows theory centers police discretion to pursue disorder and minor crimes. n153 In practice - and in particular in the 1980s and 1990s - the divide has

proven more illusory. n154 When community policing and broken windows theory have been linked in practice and in study, the combination provides an important lens through which to see the problems that emerge when a theory of crime control that attaches predictive authority to social markers of difference shapes police communication with marginalized communities. The literature examining community policing shaped by broken windows theory provides insights on similar problems that emerge when community engagement is shaped by counterradicalization.

AT: Community Policing is Cooperative

Community policing is not cooperative – they ignore the continued power imbalance not predetermined by the more powerful police prerogatives

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A. Community Policing, Broken Windows, Ordinary Crime n155 The basic intuition behind community policing is that increased communication and collaboration between police and communities will benefit both parties and cultivate a stronger ethos of civic engagement in marginalized communities - those with less social power and socioeconomic standing. n156 The precise causal mechanics of this process, however, are far from clear. n157 While the literature takes as a starting point the poor relationships between law enforcement and marginalized communities, it generally fails to meaningfully engage the question of how community policing practices should account for the power differential between police and those communities, instead **assuming** that the communication will itself have a democracy-enhancing function. n158 Proponents advocate for more interaction and flexibility, but provide **little guidance** on how to ensure that communication and police action is not predetermined by the more powerful police prerogative. n159 [*872] Beyond its basic orientation toward communication, **the theory and practices of community policing are muddled.** n160 Reading the literature, one encounters an avalanche of terminology: preventive policing, n161 problem-oriented policing, neighborhood policing, hot spots policing, third-party policing, order-maintenance policing, zero-tolerance policing, quality-of-life policing, broken windows theory, social norms theory, intelligence-led policing, and so on. n162 These concepts represent an evolving spectrum of approaches to policing. n163 Often [*873] these concepts fill in the vagaries of or complement one on another, but they also **clash and confuse**; where one set of practices ends and the other begins is often unclear and subject to debate. n164 Broken windows theory defines much community policing in the context of ordinary crime - one could even argue that it is a central spoke in contemporary preventive policing concepts. For purposes of this Article, a basic account of the theory's adaptation to policing should suffice. In 1969, in a famous psychology experiment, two cars were left in two very different neighborhoods without license plates, and with hoods open: one in wealthy Palo Alto, and one in a poor neighborhood in the Bronx. n165 The Bronx car was quickly stripped of its valuables. The Palo Alto car went untouched - until the study's progenitor publicly smashed in the windows, precipitating others to codemolish and rob the car. n166 In 1982, social scientists George L. Kelling and James Q. Wilson announced their broken windows theory in The Atlantic, parlaying the psychology experiment into a theory of crime control: They argued that outward signs of "disorder" invite law-breaking criminality by signaling to would-be criminals that the geography's inhabitants lack effective practices of social cohesion and control. n167 If the police can fix the visible signs of disorder (broken windows), the argument goes, they can reduce serious criminal activity. The translation from psychology experiment to preventive policing theory n168 was not the only translation at work, however. Kelling and Wilson also forwarded broken windows as a theory to motivate collaboration between police and the policed. n169 The Atlantic story featured a 1970s foot patrol initiative in which [*874] foot patrol worked with the "regulars" or "decent folk" to protect them from "disorderly people" - "disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed." n170 In the legal academy, social norm theorists n171 championed community policing efforts inflected by broken windows theory. n172 Community policing was framed as a powerful tool for the government to address the legitimacy deficit in African American communities, wherein relationships with police were defined by **histories of distrust and police violence**. n173 But community policing also [*875] had its critics, n174 many of whom pointed to how broken windows theory - even in a community policing guise - had shifted the focus of policing from criminal conduct to "disorder." Broken windows theory assumed dichotomies between "order and disorder," "insider and outsider," and the "law-abiding and lawless;" n175 assumed these categories were stable and observable; and then privileged order, insiders, and the law abiding over their counterparts. n176 The meanings of disorder, outsiders, and lawlessness were left to police discretion, assuming the police would not inevitably

draw from preexisting terrains of difference, and particularly the anti-Black racial text linking Blackness and criminality, in making these distinctions. n177 Indeed, more recent work has contested broken windows theory's assumption that the "perception of disorder is governed by actual, observed levels of disorder." n178 Instead, "racial and immigrant concentration proved more powerful predictors of perceived disorder than did carefully observed disorder." n179 Broken windows theory, in its construction of the disorderly, the lawless, and the outsider as legitimate subjects of policing, rendered already vulnerable individuals as even more vulnerable to policing. n180 Critics also pointed out that there was **no empirical evidence** to suggest that policing order decreased crime n181 or increased civic engagement. n182

Community based model won't improve overall law enforcement – will still serve to marginalize and radicalize Muslim communities

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Certainly there are strong normative reasons, including those that motivate this Article, to expect and demand that law enforcement account for the realities of marginalized communities. But we cannot expect that dialogue will necessarily lead to accountability, meaningful contestation, or realignment of police approaches in marginalized communities. After all, **law enforcement is itself a significant vehicle for marginalization and racialization in the United States**. It is reasonable to question whether community policing - or policing at all - can be expected to be the vehicle for the change we are seeking. The problem and the solution may be entirely mismatched.

AT: Defer to Government Evidence

Don't evaluate their evidence – government reports are overblown and biased

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Within the broader framework of community engagement, federal, state, and local law enforcement have stepped up efforts to establish channels of communication with Muslim communities. While on the surface these efforts are necessarily less secretive than other national security law enforcement efforts - indeed their basic function is partly aesthetic - the concrete data on these efforts is **scattered** and **incomplete**. n113 Government accounts are **papered in promotional language**, and community accounts are few and far between. n114 Given limited information on what these efforts entail, the parameters in which they function, n115 the absence of a central repository for information, and [*863] the fast pace of growth of such efforts, the descriptions below are necessarily limited. n116

Terrorism Kritik

Problem Solution Link

The aff's overidentification with problem-solving political approaches legitimizes the state's short-term terroristic methods by framing them as the necessary and logical solution to the 'terrorist threat' – ignoring social and historical context, this reestablishes terrorists as the 'other' and means that the aff can't solve its impacts.

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However, if we consider the typical characteristics of a 'problemsolving' or 'traditional' approach,37 we find that many of these both dominate 'terrorism research' (including many of the contributions of Silke's 'one-timers')38 and can be directly linked to the shortcomings witnessed in this research. In its most 'uncritical' manifestation – and it must be emphasised that few scholars are wholly uncritical in a Coxian sense – **a 'problem-solving' approach does not question its framework of reference, its categories, its origins or the power relations that enable the production of these categories.**39 It is statecentric, takes security to mean the security of the state rather than that of human beings, on the assumption that the former implies the latter, and sees security in narrow military or law-and-order terms, as opposed to the wider conception of human security, as for instance developed by critical security studies.40 It is ahistorical and ignores social and historical contexts; if it did not, it would have to account for the historical trajectory of the state, which would undermine the state's claim to being uniquely legitimate. **The problem-solving approach is positivist and objectivist, and seeks to explain the 'terrorist other' from within state-centric paradigms rather than to understand the 'other' inter-subjectively using interpretative or ethnographic methods.** It divides the world sharply into dichotomies (for instance, between the legitimate and 'good' state, and the illegitimate and 'evil' 'terrorists'). It posits assumptions based on these dichotomies, often without adequately exploring whether these assumptions are borne out in practice. It sees interests as fixed, and it regards those opposed to the status quo as the problem, without considering whether the status quo is part of the problem and transformation of both sides is necessary for its solution.

Not only can many of these characteristics be found in more or less diluted form in 'terrorism research'41 – a legacy of the field's origins as a sub-field within 'traditional' security and strategic studies – but these 'problem-solving' characteristics can also be shown to contribute directly to its observed shortcomings. The reported lack of primary data, the dearth of interviews with 'terrorists' and the field's typical unwillingness to 'engage subjectively with [the terrorist's] motives',42 is in part **fuelled by the field's over-identification with the state, and by the adoption of dichotomies that depict 'terrorism' as 'an unredeemable atrocity like no other'**, that can only be approached 'with a heavy dose of moral indignation', although other factors, such as security concerns, play a role too.43 Talking with 'terrorists' thus becomes taboo, unless it is done in the context of interrogation.44

Such a framework also makes it difficult to enquire whether the state has used 'terroristic' methods. If the state is the primary referent, securing its security the main focus and its hegemonic ideology the accepted framework of analysis, 'terrorism', particularly if defined in sharp dichotomies between legitimate and illegitimate, can only be logically perpetrated by insurgents against the state, **not by state actors themselves.** State actors are engaged in counterterrorism, which is logically depicted as legitimate, or at least, 'justifiable' given the 'terrorist threat' and the field's focus on shortterm 'problem-solving'. Where 'traditional terrorism studies' do focus on state terrorism, it is in the context of the 'other': the authoritarian or totalitarian state that is the nemesis if not the actual 'enemy' of the liberal democratic state.45

Alt Solves

A critical approach solves best – broader analysis of terrorism would break down dichotomies and open up new approaches to address terrorism.

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A 'critical' approach would enable scholars to analyse how 'terrorism' discourse is used to discredit oppositional groups and justify state policies, and what structures underpin its production.62 It would encourage research into how discourse is used by oppositional groups to discredit state elites, and what structures make such discourse possible.63 It would facilitate research to move beyond paradigms that a priori seek the eradication of violent nonstate actors through military action and contemplate the need for political solutions and in particular political transformation, for instance, by drawing on the insights from conflict transformation studies.64 It would enable scholars to move from paradigms where the non-state actor is a priori considered to be the problem, to one where, a priori, all sides are assumed to be part of both the problem and the solution.

Methodologically, it would encourage researchers to engage with their 'research subjects' at a human level with the purpose of, in the words of Sara Roy (a scholar outside 'terrorism studies'), 'humanizing the other'.65 It would facilitate the adoption of ethnographic methodologies, of considering interviews as a pivotal source, and of living among the communities from where oppositional groups stem.66 It would encourage scholars to break down us–them dichotomies and wrestle with Richardson's observation that:

When I consider a terrorist atrocity I do not think of the perpetrators as evil monsters but rather I think about the terrorists I have met, and the people I have known who have joined terrorist groups . . . I grapple with how a young idealist can believe that in murdering innocent people he or she is battling injustice and fighting for a fairer world. I think, as the Protestant martyr John Bradford said 500 years ago, 'There but for the grace of God, go I.'67

Such an approach would enable a shift from a limited focus on 'terroristic' violence (however defined) to one also encompassing both 'non-terroristic' violence and 'non-violent' behaviour, although the boundary between these two categories depends on the definition of 'violence' and 'non-violent'. This would mean taking into account 'non-terroristic' violence such as guerrilla

tactics,68 enforced recruitment of child soldiers, executions, torture, house demolitions, and 'collateral damage', as well as 'non-violent' acts, such as 'structural violence', economic strangulation, imprisonment, charitable aid (and not just in relation to 'terrorist funding'), education, limiting freedom of speech or marginalizing alternative lifestyles.69 Without such a widening of the agenda, key aspects of the conflict would be missed. One cannot understand the Italian Red Brigades without analysing the wider left-wing movement of the 1960s and 1970s, and the behaviour of the Italian state towards it. Similarly, one cannot understand Hamas without analysing its relationship with its wider constituency, or the impact of Israeli occupation and settlement practices (including 'structural violence') on that constituency. 70 **Such a widening of the agenda, moreover, would deny 'terrorism' the capacity to portray itself as somehow exceptional, and thus exceptionally frightening, rather than as one form of violence among many.** It would also deny it the capacity to isolate itself from its wider social context, enabling researchers to engage cognate theories such as democratization theory, which concern themselves with broader trends, of which violence is but one aspect.

A critical approach is a necessary prerequisite to overcome shortcomings of current political approaches to terrorism.

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SINCE 9/11, STUDIES ON THE PHENOMENON OF 'TERRORISM' HAVE mushroomed.2 On entering almost any bookshop, one is overwhelmed by the number of books discussing the war on terror, 'Islamic terrorism' or 'terrorism' more generally. Conference papers on 'terrorism' abound and interest in issues related to 'terrorism' has increased dramatically among scholars in cognate disciplines; degree programmes have been set up;3 funding opportunities have increased. And yet, as recent reviews of the field have shown,4 core epistemological, methodological and political-normative problems persist, ranging from lack of conceptual clarity and theoretical sterility to political bias and a continuing dearth of primary research data.

A number of reasons have been cited for this state of affairs, which will shortly be detailed. But two reasons are often overlooked: the predominance of 'problem-solving' approaches in the study of 'terrorism', which accounts for many of the observed methodological and conceptual shortcomings of 'terrorism research'; and the dispersed nature of much of the more rigorous, critical and conceptually innovative research on 'terrorism' that is published outside the core journals of 'terrorism studies' and thus often fails either to reinvigorate, or to learn from, 'terrorism studies'. It is the argument of this article that a 'critical turn'5 in the field of 'terrorism studies'6 is necessary to reverse these two trends, and that this turn must be conceived in such a way as to **maximize the field's inclusiveness and, importantly, its policy relevance.7**

AT: State Good

Quick, state-centric solutions to terrorism can't solve – a lack of historical and critical reflection means that the aff just reentrenches negative assumptions of 'religious terrorism' and reproduces threats.

Gunning, 7 – Director of the Durham Global Security Institute for Defense, Development and Diplomacy in the School of Government and International Affairs, with a PhD in Middle Eastern and Islamic Studies (Jeroen Gunning, *Government and Opposition*, Vol. 42, No. 3, "A Case for Critical Terrorism Studies?", Summer 2007, **fc*)

The observed disregard for historical context and wider sociopolitical dynamics46 can similarly be traced to the ahistorical propensity of 'problem-solving' approaches and their state-centric understanding of security. The typical focus is thus on violent acts against the state, and the immediate 'terrorist' campaign, not on how these acts relate to a wider constituency and its perception of human security, history and the state, or what role the evolution of the state has played in creating the conditions for oppositional violence.47

The lack of critical and theoretical **reflection**48 **can be linked to the 'problem-solving' tendency to be short-termist and practical,** and to deal in fixed categories and dichotomies that **privilege the state** and its dominant ideological values. From such a standpoint, scholars would not readily explore how 'terrorism' discourse is produced and how it is used to marginalize alternative conceptions, discredit oppositional groups, and legitimize counter-terrorism policies that transgress international law.49 Nor would they be particularly likely to consider how the development of the modern state or the international system might have contributed to the evolution of 'terrorism', or how theories of the state and the international system can help illuminate the 'terrorism' phenomenon. Drawing on cognate theories more broadly is similarly discouraged since 'terrorism' is framed as an exceptional threat, unique and in urgent need of a practical solution.50

The state-centricity, inflexibility and dichotomous nature of such a framework also makes it easier to recycle unproven assumptions, such as the notion that 'religious terrorism' is not concerned with constituencies and knows no tactical constraints against killing 'infidels', 51 without having to test these assumptions empirically across different samples. It thus becomes possible to argue, for instance, that negotiating with 'terrorists' encourages further 'terrorism' without need for empirical proof – a point already observed by Martha Crenshaw in 198352 – or to insist that 'terrorists' inherently lack legitimacy without reflection on whether the state lacks legitimacy in the experience of those who support the 'terrorists'.53 The combined result of these tendencies is often a **less than critical support** (whether tacit or explicit) **for coercive counterterrorism policy** without adequate analysis of **how this policy contributes to the reproduction of the very terrorist threat it seeks to eradicate.**

State Bar CP

1nc Bar Association CP

Counterplan text: The American Bar Association should issue and enforce the following rule:

No prosecuting attorney shall supervise, advise, or otherwise take part in a criminal investigation that involves the surveillance or infiltration of a religious organization, unless specific and articulable facts provide a basis for suspecting criminal activity by the organization or one of its members.

State bars solve best – they have the expertise to establish uniform rules and prevent unwarranted surveillance.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

D. Regulation in State Bars' Ethical Codes

While not ideal, this final alternative may offer the greatest promise. State bars could modify their codes of ethics to incorporate a requirement that prosecutors may not take part in the surveillance or infiltration of religious organizations absent a particularized suspicion that a member of the organization is breaking the law. Some scholars support a greater reliance on state bars to set ethical standards for prosecutors, n318 although no scholar has addressed the precise topic considered here.

The first issue to consider is whether state bar associations have sufficient expertise to promulgate such rules. n319 Congress appears to have answered this question by deferring to state bars as the regulators of federal prosecutors' ethics. n320 Most state bars have already **adopted a limited set of ethical rules for prosecutors.** n321 State bars have a unique advantage in that they bring a **range of viewpoints** to the table - not simply those of prosecutors, but also of defense attorneys. State bars also include both federal and state practitioners. Officials in state bars are not elected by the public at large, and are **less likely to be susceptible to the political pressures** that influence legislative debates over criminal justice matters. Moreover, the rules adopted by a particular state's bar association must be approved by that state's supreme court before they take effect, and this overlay of judicial approval provides an **assurance that state bars will not abuse their power as regulators.** For all of these reasons, **state bars are in a unique position to formulate ethical rules for prosecutors.**

State bars are probably more willing than legislatures, courts, or law enforcement agencies to impose limits on investigations of religious organizations. Indeed, defense attorneys generally outnumber prosecutors in bar associations. n322 The bars have already taken significant steps in [*1270] limiting the power of prosecutors. Examples include rules against serving grand jury subpoenas on defense attorneys, rules against publicly divulging details of a case in advance of trial, and rules directing attorneys not to make contact with represented persons. n323

State bar associations could prove to be surprisingly effective in enacting a comprehensive, uniform regulatory scheme for prosecutors and, indirectly, for law enforcement officers. While the full development of this argument must await the next section, it is important at this juncture to dispel the myth that a state-based regulatory system cannot achieve uniformity throughout the nation. n324 The fact is that states are now closer than ever to aligning their ethical rules in virtually all respects. n325 The A.B.A.'s blueprint, the Model Rules of Professional Conduct, has now won approval in forty-four states. n326 Each of theses states has adopted a version of Model Rule 3.8, which is the A.B.A.'s rule governing prosecutorial ethics (although some jurisdictions have labeled this rule differently). n327 The near unanimous adoption of the Model Rules suggests that state bar associations [*1271] would be capable of **enacting uniform rules that limit prosecutors' participation in the infiltration and surveillance of religious groups.**

V. The Case for Revising State Bars' Ethical Codes

I propose that a new rule be added to the states' ethical codes for lawyers. In the forty-four states that follow the template of the A.B.A. Model Rules of Professional Conduct, the new rule would appear as a subsection of Rule 3.8, which regulates the conduct of prosecuting attorneys. The new rule would provide as follows: "**No prosecuting attorney shall supervise, advise, or otherwise take part in a criminal investigation that involves the surveillance or infiltration of a religious organization, unless specific and articulable facts provide a basis for suspecting criminal activity by the organization or one of its members**."

In evaluating whether such a rule would be desirable, four questions arise. First, would this rule actually have an effect on the conduct of police agencies? Second, is it appropriate for states' ethical codes to prescribe very specific duties for prosecutors? Third, could states' ethical codes affect the conduct of federal prosecutors? Fourth, would my proposal hinder investigations of terrorism? I will address each of these questions in turn.

2nc Solvency

Bar Association rules impose ethical guidelines on lawyers that prohibit racial or religious discrimination.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

4. Unique Ethical Concerns for Lawyers

Additionally, prosecutors who take part in the surveillance and infiltration of religious organizations may violate their ethical duties under various codes of professional conduct. Two categories of ethical rules come into play: the rules imposing vicarious liability on prosecutors for the actions of law enforcement agents and the rules prohibiting prosecutors from discriminating on the basis of religion.

The A.B.A. Model Rules of Professional Conduct include provisions imposing vicarious liability on lawyers for the conduct of non-lawyers. Pursuant to Rules 5.3 and 8.4 of the A.B.A. Model Rules, a lawyer is accountable for the conduct of a non-lawyer if the lawyer has directed, assisted,

induced, or ratified that conduct. n261 In fact, Alabama is the only state that has exempted prosecutors from vicarious liability for the conduct of law enforcement officers. n262 In addition to the overarching standards of [*1257] vicarious liability set forth in A.B.A. Model Rules 5.3 and 8.4, there are some rules that apply the same principles in particular contexts. n263

Because prosecutors and law enforcement agents work closely together in the investigative phase, n264 prosecutors could theoretically become entangled in liability for the conduct of the officers. This vicarious liability could arise even where the officer, if acting alone, would not be subject to any discipline. The key question is whether the prosecutor has utilized the officer to do that which the prosecutor cannot himself do.

The **ethical rules make clear that lawyers cannot take part in discriminating on the basis of religion.** For example, Rule 8.4(d) provides that a lawyer shall not "engage in conduct that is prejudicial to the administration of justice ... ." n265 The commentary indicates that a lawyer violates Rule 8.4(d) when the lawyer "knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status," if "such actions are prejudicial to the administration of justice." n266 Some states' ethical codes have gone even further than the A.B.A. template in emphasizing the need for prosecutors to avoid prejudice based on religion. n267 The A.B.A. Code of Judicial Conduct directs judges to prevent all lawyers from expressing religious prejudice in the courtroom. n268

Even stronger language appears in other bodies of rules that apply specifically to prosecutors. For example, the A.B.A. Standards Relating to [*1258] the Administration of Criminal Justice, n269 which include a section entitled "The Prosecution Function," strongly prohibit discrimination based on religion. Standard 3-3.1, entitled "Investigative Function of Prosecutor," provides in subsection (b) that "[a] prosecutor should not invidiously discriminate against or in favor of any person on the basis of race, religion, sex, sexual preference, or ethnicity in exercising discretion to investigate or to prosecute." n270 The American Trial Lawyers Association's Code of Conduct also provides that "in exercising discretion to investigate," a prosecutor "shall not show favoritism for, or invidiously discriminate against, one person among others similarly situated." n271

Ethical rules prohibiting religious discrimination by lawyers are reinforced by other requirements for lawyers' conduct in the courtroom. For example, Rule 610 of the Federal Rules of Evidence prohibits lawyers from impeaching witnesses based on their religious views. n272 Also, lawyers in many jurisdictions are prohibited from striking prospective jurors because of their religious beliefs. n273

The F.B.I.'s current policy of counting mosques throughout the United States and conducting surveillance and infiltration of mosques without any specific suspicion arguably involves discrimination based on religion. Indeed, in the new investigative guidelines, the Department of Justice has reserved the right for the F.B.I. to infiltrate mosques even when there is no basis for suspicion other than the mere fact that the subjects under investigation are Muslim. **A prosecutor who directs such an investigation, or who ratifies it by presenting charges based on information developed in the investigation, has arguably violated the ethical rules against prejudice** - either directly or indirectly through the doctrine of vicarious liability.

2nc Net Benefit --- Avoids Backlash

Solves the case – avoids backlash that would implicate Congress or Courts

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

In Part III, I will consider the alternative means for reinstating the suspicion requirement in investigations of religious organizations. I will focus on four options: (1) statutory regulation; (2) judicial regulation; (3) internal regulation by law enforcement agencies; and (4) regulation through states' ethical codes for lawyers. I will ask a series of questions to evaluate whether each institution is well suited for the task. Does the institution have sufficient expertise to promulgate rules for the investigative activities of prosecutors and law enforcement agents? Could the institution establish an effective, uniform regulatory scheme? Is the institution willing to undertake such regulation? After considering the expertise, efficacy, and willingness of each institution, I conclude that **state bar associations are in the best position to revive the "reasonable suspicion" requirement** in the Levi Guidelines. Other institutions could affect this reform more easily if they chose to, but it is doubtful that Congress, the courts, or the Department of Justice would have the will to impose such limitations in the present climate. State bar associations - with a higher membership of criminal defense attorneys than prosecutors - **may be the only forums in which the advocates of reform could prevail**.

Part V will address possible objections to the proposal that state bars should regulate prosecutors' involvement in investigations of religious groups. Anticipating concerns about the efficacy of my proposal, I will explain that prosecutors increasingly serve as "gatekeepers" in proactive investigations. I will show that ethical constraints on prosecutors have a transitive effect in limiting the conduct of police under the prosecutors' supervision. I will cite the example of Oregon, where new ethical regulations for prosecutors effectively shut down certain categories of proactive [*1210] investigations by F.B.I. agents. Further, in response to scholars who criticize the micromanagement of prosecutorial ethics by state bars, I will argue that the bars have a legitimate role to play in the interstices left by other bodies of authority. I will show why the Supremacy Clause does not thwart state bars from regulating federal prosecutors. Finally, I will explain why my proposal would not hinder investigations of terrorist cells and would actually improve such investigations by fostering greater comity between the Muslim Community and law enforcement officials.

In sum, there is a good reason why three Republican and two Democratic administrations required a predicate of reasonable suspicion before authorizing the surveillance and infiltration of religious organizations by the F.B.I. Our religious freedom is too precious to sacrifice without at least a moment's reflection on the quantum of evidence supporting the need for an investigation.

2nc Solvency – Terrorism

Regulations are good for terrorism investigations – requiring suspicion ensures that the government doesn't encroach on Constitutional rights or gather extraneous data.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

D. Would New Ethical Rules Impede Investigations of Terrorism?

It is true that terrorists have sometimes congregated in mosques, n374 and my proposal would be ill-advised if it hindered law enforcement officers from investigating these terrorists. However, as explained below, the reinstatement of the "reasonable suspicion" standard in a new ethical rule would not significantly impede the detection of terrorist cells in the United States.

The F.B.I.'s experience with the Rahman investigation in the 1990s shows that **the suspicion requirement does not foreclose effective counterterrorism investigations.** Indeed, the investigators of Rahman - "encumbered" as they were by the suspicion requirement - achieved greater success than the F.B.I. has achieved during the one-year period since Attorney General Ashcroft deleted the suspicion requirement. n375 An official with the Department of Justice admitted to Congress in May 2003 that the [*1282] authority to infiltrate religious organizations without reasonable suspicion had not yet yielded a single lead that was valuable enough for the F.B.I. to write in a report. n376

Some might fear that my proposal could create confusion about what sort of group would qualify as a "religious organization" entitled to protection under the new ethical rule. How far from mainstream religious groups would the line be drawn? The task of defining religion is always a daunting one, but it is a bridge that we have crossed before when we determined the scope of the clergy-penitent privilege, n377 when we determined who has authority to conduct marriage, when we determined who may claim a religious basis for conscientious objector status, and when we determined which groups qualify for tax exemptions as religious institutions. Importing definitions from these other contexts would go a long way in clarifying which groups can qualify as "religious organizations" for purposes of the new ethical rule.

Even if we can agree on what constitutes a cognizable religion, how do we discern what constitutes a religious institution (e.g., a building) that police should avoid unless they have reasonable suspicion? For example, it is sometimes difficult to discern what is or is not a mosque. Not every mosque is located in a conspicuous building. Some are located in small non-descript commercial buildings or even homes. n378 However, those who worship in a [*1283] particular mosque or other religious facility should be given the discretion to decide how conspicuously they will label the facility. If they opt for a nondescript appearance, they run the risk that the F.B.I. would not accord the building the same privacy rights as an easily recognizable religious institution. Of course, the F.B.I. cannot be heard to complain about its inability to discern what is or is not a mosque when field offices were instructed to complete an inventory of every mosque in country at the start of 2003.

Another frequently voiced concern is that terrorists will utilize mosques as "havens" that are free from government surveillance. Many commentators have insisted that terrorists should not be able to hide behind the "shield" of religion. n379 This concern should not detain us long. In order to permit infiltration of a religious organization, my proposal would require only a minimum level of suspicion. In fact, under the Levi Guidelines, the F.B.I. could easily infiltrate a religious

organization simply by explaining a valid purpose for the infiltration. As James Dempsey told Congress in May 2003:

the old guidelines allowed F.B.I. agents to go into any mosque or religious or political meeting if there was reason to believe that criminal conduct was being discussed or planned there, and in fact, over the years the F.B.I. conducted terrorism investigations against a number of religious organizations and figures. n380

In other words, **if F.B.I. agents could ever think of a good reason to go to a religious service, they could go** - just as long as they did not target a particular organization for reasons such as religious profiling or the purposeful suppression of First Amendment rights. n381

In a speech at Stanford Law School, F.B.I. Director Robert Mueller asked a rhetorical question: "When, if ever, would it be appropriate to put leaders of Muslim mosques under surveillance? Are calls to kill Americans in [*1284] strident sermons a lawful exercise of free speech or something more ... ?" n382 Mueller's inquiries seemed calculated to suggest a justification for the F.B.I.'s new authority to infiltrate religious groups. Yet Mueller failed to mention that the F.B.I. could have monitored such speeches under the old F.B.I. guidelines because the speeches advocate lawbreaking and, ipso facto, give rise to a reasonable suspicion of criminal activity. n383 The investigation of Arizona churches - which by all accounts was based on a permissible factual predicate under the old investigative guidelines - was justified by church leaders' public pronouncements of their support for the Sanctuary Movement. Just as the old guidelines were not too constraining for the investigation of immigration offenses, they would not be too constraining for the investigation of terrorism. The small subset of mosques where leaders advocate criminal activity would not be immune from the F.B.I.'s surveillance under a new rule that reinstated the "reasonable suspicion" requirement.

2nc Solvency – Police

The counterplan solves best – constraining prosecutors inherently restricts police abilities to conduct unwarranted surveillance.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

A. The Efficacy of Regulating Lawyers Rather than Police

The notion that ethical rules for prosecutors could limit activity by the entire "team" of law enforcement agencies - including non-lawyers such as police officers - may seem fanciful on first impression. But in fact, prosecutors are so vital to the investigation of complex criminal cases that any ethical restrictions on prosecutors will have a substantial effect on police.

Especially in the federal system, prosecutors play a significant role in supervising proactive investigations. n328 As Professor Rory Little has noted, "public prosecutors in this country have become increasingly involved in the investigative stages of criminal matters during the twentieth century." n329 According to Professor Little, "prosecutors today are centrally involved in

proactive criminal investigations." n330 So great is the involvement of [*1272] prosecutors in the investigative phase that the Supreme Court has conferred immunity on prosecutors for their good-faith investigative decisions. n331

Consider the many ways in which prosecutors serve as gatekeepers in proactive investigations. Prosecutors must sign off on the use of certain investigative techniques so that officers will avoid the risk that evidence generated by such techniques will be suppressed in court. n332 Prosecutors must actually prepare requests for judicial approval of certain highly intrusive techniques such as pen registers, wiretaps, and mobile tracking devices ("bumper beepers"). n333 The involvement of prosecutors is necessary to present a search warrant to a judge, or to obtain a grand jury subpoena for testimony or records. n334 Prosecutors must generally prepare subpoenas for records, except in jurisdictions where police can use administrative subpoenas. The approval of prosecutors is usually necessary before investigative agents can offer leniency to co-conspirators as an enticement for cooperation. Police need the assistance of prosecutors in order to navigate the minefields of entrapment and selective prosecution. Sometimes police need guidance from prosecutors to determine whether a suspect under investigation has actually violated the law, and if so, whether the case fits the prosecutorial guidelines in a particular jurisdiction. Further, officers need to rely on prosecutors for advice about civil liability that may arise from the use of certain investigative techniques. n335 Perhaps the best testament to the ascendancy of prosecutors in the investigative phase is the fact that a former Assistant U.S. Attorney, Robert Mueller, is now the director of the F.B.I.

Among the various categories of criminal investigations, investigations of terrorism are particularly likely to require the close involvement of prosecutors. The criminal statutes at issue are novel, and police officers are usually less familiar with these statutes than with statutes in garden-variety cases involving drugs or violent crime. Terrorism investigations may necessitate the use of special investigative techniques requiring the assistance or approval of prosecutors, such as electronic surveillance and Foreign Intelligence Surveillance Act (FISA) warrants. Moreover, due to the [*1273] high profile and high stakes of terrorism investigations, police are particularly concerned not to run afoul of the law, and they will rely on the frequent advice of prosecutors to avoid any embarrassing mishaps.

Because officers are so highly dependent on the involvement of prosecutors in proactive investigations, it should come as no surprise that constraints on prosecutors often have the transitive effect of constraining the police officers involved in a particular investigation. The best example of this phenomenon is the recent experience of Oregon, where the state supreme court construed an ethical rule to prevent prosecutors from supervising undercover investigations. In the case In re Gatti, n336 the court interpreted DR 1-102(A)(4) of the Oregon Code of Professional Responsibility, which prohibits a lawyer from "engaging in conduct involving dishonesty, fraud, deceit or misrepresentation." n337 The court determined that this language prevented prosecutors from supervising investigations in which law enforcement officers posed as participants in criminal activity, such as drug users seeking to buy drugs from a target under investigation. n338 The Oregon State Bar eventually revised DR-102 to make clear that prosecutors could supervise such investigations, and the Oregon Supreme Court approved this change. n339 But in the meantime, for the two- [*1274] year period in which "the Gatti rule" remained in effect, proactive criminal investigations ground to a halt in Oregon. F.B.I. Agent Nancy Savage, the Special Agent in Charge of the F.B.I. office in Eugene, Oregon, commented on a national television broadcast that the Gatti rule had "shut down major undercover

operations" in Oregon. n340 In summary, as defense attorneys sometimes joke, the prosecutor is "the head of the snake" in proactive investigations: without the prosecutor, the investigation cannot proceed.

The foregoing provides cause to believe that law enforcement agents would reduce their suspicionless surveillance and infiltration of religious organizations if the ethical rules prohibited prosecutors from taking part in an investigation where such techniques were used, yet there is one other possibility that should be considered. What if the increased regulation of prosecutors actually drove a wedge between prosecutors and police? Perhaps prosecutors would become isolated from investigative decisions, so police would be free to pursue all the investigative options that would be available to them but for the prosecutors' supervision. Some scholars have expressed concern that any disparity in the regulation of prosecutors and police could create a rift between them, n341 leading police to strike out on their own without the benefit of prosecutors' advice and moderating influence. This possibility requires special consideration in the context of terrorism investigations because the Department of Justice has made clear that its top priority is the prevention of terrorism, rather than the prosecution of terrorism n342 - a change in emphasis that arguably could reduce the dependence of police on prosecutors.

There are reasons, however, to believe that the close cooperation between prosecutors and police would persist even if prosecutors are subject to stricter rules than police. First and foremost, police need prosecutors to unlock the door to the closet where the most valuable investigative tools are kept: wiretaps, FISA warrants, grand jury investigations, plea agreements offering leniency in exchange for cooperation, etc. The heightened importance of these tools in terrorism investigations offsets the fact that [*1275] officers are somewhat less beholden to prosecutors because the investigations rarely culminate in prosecutions.

The prosecutor is more than the superego to the police officer's id; **the prosecutor is an indispensable teammate in complex proactive investigations**. Stricter regulation of prosecutors will not cause the divorce of prosecutors and police - especially when the effect of that regulation is simply to impose the same "reasonable suspicion" requirement that federal agents have lived with for the last twenty-six years.

2nc Solvency – Specific Rules

The counterplan's specific rules are key – they allow comprehensive regulation to ensure compliance.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

A third view - adopted in the present Article - is that **the states' ethical codes should include specific rules regulating the interstices where other bodies of law do not extend.** Without such specific rules, state bars have little hope of asserting control over the conduct of the lawyers in their jurisdictions. Hortatory rules are difficult to enforce, n348 and rules that "backstop" other authority are usually of greater concern to the first authority than to the state bar. Specific rules are easier for practitioners to understand. Another advantage of specific rules is that they allow a

jurisdiction to establish a comprehensive, internal cohesive regulatory scheme. On the other hand, a code of ethics that includes specific regulations will take more time to draft, will cost more to administer, and will likely be more voluminous than a code that sorts forth general principles. In the end, the debate over specificity really boils down to a debate over efficacy. If the state bars are to be effective regulators, they need specific bright-line rules.

Nowhere is the need for specific rules more evident than in the state bars' regulation of prosecutors. The states have very few specific rules for prosecutors, n349 and this lack of specificity is one of the reasons why very few [*1277] disciplinary cases are brought against prosecutors. n350 A greater number of specific regulations for prosecutors would be salutary for a number of reasons. First, a particularized set of rules for prosecutors would embolden state disciplinary panels to exercise their authority over prosecutors. Presently the state bars find the regulation of prosecutors to be somewhat intimidating. The bars' disciplinary panels are daunted by the prospect of "prosecuting a prosecutor." It would be far easier for bar authorities to assume that function if the states' ethical rules for prosecutors were specific and lucid, leaving little dispute as to the propriety of the conduct at issue in a disciplinary proceeding. As Professor Bruce Green and Professor Fred Zacharias have noted, state bar associations are unlikely to discipline prosecutors "except in situations involving unambiguously wrongful conduct." n351 Similarly, the U.S. Department of Justice's Office of Professional Responsibility (OPR) - which disciplines federal prosecutors for violations of all applicable rules, including state bar rules - will have less difficulty applying states' ethical rules if these rules are specific rather than hortatory. n352

A second argument in favor of **specific rules** is that they **actually help prosecutors.** Many prosecutors supervise long-term, proactive investigations that will not come under public scrutiny for months, maybe years. Without bright-line ethical rules, these prosecutors cannot be certain how their conduct will be viewed when they finally unveil their cases after the defendants are arrested. The ethical responsibilities of prosecutors at the investigative stage are vital, but **self-policing is the only means of securing compliance at this stage. Bright-line rules increase the effectiveness of self-policing.**

One last justification for greater specificity in states' regulation of prosecutors is the **need to avoid disparity between the rules for federal and state prosecutors.** If the state bar plays only a minimal role in regulating the ethics of prosecutors practicing within its boundaries, then the federal and state prosecutors will be governed primarily by the internal strictures of their own agencies. These rules will probably differ in many ways, and these differences could invite the unseemly prospect of "ethics shopping" by law enforcement officers whose decision to pursue a prosecution in state or [*1278] federal court could depend in part on the ethical rules applicable to prosecutors in each system.

AT: State Rules Won’t Solve Federal Prosecutors

The mandates would of the counterplan will solve federal surveillance efforts --- federal prosecutors would not be able to evade it

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, “Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups,” April 2004, Lexis, **fc*)

C. A Chink in the Armor of the Supremacy Clause

Ordinarily the Supremacy Clause of the U.S. Constitution protects federal officials from regulation by the states. For example, the Supremacy Clause places F.B.I. agents beyond the reach of state and local laws limiting the surveillance powers of police. Earlier in 2003, when a defendant in a federal terrorism prosecution claimed that a federal agent had not complied with a state rule limiting surveillance of churches, the Assistant U.S. Attorney quickly brushed aside the argument by invoking the Supremacy Clause. n357

[*1279] Curiously, however, Congress has waived federal prosecutors' immunity from state regulation. The legislation that subjected federal prosecutors to states' ethical codes is known as the McDade Act of 1998. n358 This law provides that an attorney for the U.S. Department of Justice "shall be subject to the State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State." n359 Congress passed this legislation in response to concerns that federal prosecutors had abused their authority in investigating Representative Joseph McDade, who was tried and acquitted on charges of racketeering and bribery. n360

The proponents of the McDade Act made clear that they intended for states to take over the regulation of federal prosecutors' ethics. For example, Representative Tillie Fowler made the following statement on the House floor:

I see this as an issue of accountability. **Department of Justice attorneys should be required to abide by the same ethics rules as all other attorneys.** These attorneys should be held accountable to the same standards set by the State Supreme Court that granted each lawyer his or her license to practice law in that State. n361

Representative Steve Buyer presented a similar viewpoint: "Quite simply the issue before us is whether the government attorneys at the Department of Justice should abide by ethical rules that all other attorneys have to abide by, or can they make up their own standards of conduct?" n362 Congress emphatically answered this question, requiring the Department of Justice's attorneys to observe the ethical rules of every state in which they practice. n363

Despite this unequivocal expression of congressional intent, the **Department of Justice has attempted to evade certain state rules by challenging the rules under the Supremacy Clause.** For example, in United States v. Colorado Supreme Court, n364 the Tenth Circuit considered whether federal prosecutors must abide by Colorado's attorney-subpoena rule. The Tenth Circuit held that the resolution of this challenge would "turn[] on whether the rule is a rule of professional ethics clearly covered by the McDade Act, or a substantive or procedural rule that is inconsistent with [*1280] federal law." n365 The Tenth Circuit found that Colorado's attorney-subpoena rule fell within the former category. Therefore, the attorney-subpoena rule was "a rule of ethics applicable to federal prosecutors by the McDade Act." n366

One year later, the Department of Justice brought a similar challenge in United States v. Oregon State Bar. n367 The Department argued that federal prosecutors were not subject to a provision of the state ethics code that the state supreme court had construed to prohibit prosecutors from supervising deceptive undercover investigations. n368 The Justice Department claimed that such a rule conflicted with federal law, n369 but the bar's attorneys analogized the case to Colorado Supreme Court, suggesting that internal Justice Department guidelines authorizing deceptive

investigations do not preempt state regulation on this issue. n370 The District Court avoided a decision on this issue for over a year because the state bar decided to revise the rule in question. Observers thought that the Justice Department's position must have been weak because otherwise the court would have granted the Department's motion for summary judgment instead of postponing a decision for over a year.

The rule proposed in this Article would also fall within the scope of the McDade Act. There is no on-point federal statute or regulation that would conflict with a state ethical rule prohibiting prosecutors from directing surveillance and infiltration of religious organizations absent reasonable [*1281] suspicion. n371 The mere fact that such suspicionless investigations are not prohibited in the federal system is a far cry from preemption. For instance, attorney subpoenas are not prohibited in the federal system, but federal prosecutors are still subject to state ethical rules that limit the use of these subpoenas. n372 In an analogous context, while the federal regulations promulgated under the Sarbanes-Oxley Act permit attorneys to disclose clients' confidences in some circumstances, the attorneys are nonetheless subject to state ethical rules that prohibit such disclosures. n373 In sum, an activity permitted under federal law is not necessarily off-limits to regulation in states' ethical codes - especially where, as here, Congress has declared its intention to subject federal prosecutors to the states' ethical regulation.

AT: Congress Solves

Congress fails – lacks expertise and links to politics.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

A. Statutory Regulation

Conceivably, Congress or state legislatures could impose a "particularized suspicion" requirement akin to the test set forth in the Levi Guidelines. n290 Indeed, some state legislatures have already enacted statutes along these lines. n291 Several commentators have expressed enthusiasm for an increased legislative role in the regulation of prosecutors n292 and law [*1263] enforcement agencies, n293 yet such a strategy is also subject to criticism on a number of grounds.

First, the expertise of the legislative branch is not ideal for this undertaking. Among the alternative regulators considered here - the legislative branch, the courts, the Department of Justice, and state bars - the legislative branch is the only institution in which non-lawyers outnumber lawyers. Perhaps for this reason, Congress has usually refrained from assuming much responsibility in the regulation of prosecutors and law enforcement agencies. n294 Congress declined to enact a legislative charter for the F.B.I., and Congress deferred to the Department of Justice to formulate its investigative guidelines internally. n295 Congress also declined to prescribe ethical standards for federal prosecutors, determining instead that prosecutors should be subject to the ethical rules in state bar codes. n296 This history suggests that Congress acknowledges its own **limited expertise in setting parameters for federal criminal investigations.** n297

Second, it is unclear whether the legislative branch has the will to restrict the authority of prosecutors and law enforcement agents. Very few in Congress have shown the political fortitude to question the [*1264] counterterrorism campaign. Proposals to amend the USA PATRIOT Act have not attracted many co-sponsors. n298 While the cause of religious freedom is popular on both sides of the aisle, n299 this instinct is offset by the general tendency among legislators to side with the prosecution rather than the accused. n300 Even if these two considerations were close to equipoise, the tiebreaker may be the loyalty commanded by President Bush in the current Congress. It is highly unlikely that a congress controlled by the president's own party would seek to rein in (and thereby embarrass) an executive agency with a presidential election looming in 2004.

Third, the efficacy of legislative regulation may be somewhat limited. **Congress and state legislatures have only limited resources available for proactive oversight,** and the normal means of ensuring compliance with their laws (i.e., litigation brought by the federal or state departments of justice) would be **of little avail when these agencies are themselves the subjects of the regulation in question.** Another important limitation is the inability of Congress to regulate the state criminal justice system, n301 and the [*1265] inability of state legislatures to regulate the federal criminal justice system. n302 It is likely that an undesirable patchwork n303 could result from legislative regulation - especially given the varying willingness of legislative bodies to constrain the authority of law enforcement agencies.

AT: Courts Solve

Courts can't solve – they're biased, reluctant to play a regulatory role, and usually conduct haphazard regulation.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

B. Judicial Regulation

Some scholars favor an increase in judicial regulation of prosecutors and law enforcement officials. n304 There are three possible means through which the judicial system could limit the surveillance and infiltration of religious organizations. First, the courts could suppress evidence seized through such investigations. Second, the courts could grant injunctive or declaratory relief prohibiting such investigations proactively. Third, the courts could simply prescribe standards for prosecutors or law enforcement officers that appear before them; the power to regulate in this manner might arise from the courts' inherent supervisory power, or from a delegation of power by Congress. n305

The expertise of the judiciary in dealing with these issues is unquestionably superior to the expertise of the legislative branch, and is likely superior to the expertise of state bar associations as well. Judges' day-to-day involvement in the criminal justice system gives them a unique [*1266] vantage point from which to observe, and perhaps also to regulate, the conduct of prosecutors and law enforcement agents. Furthermore, the life tenure of federal judges makes them immune to political pressure (except those who seek appointment to a higher court), yet **the**

risk of bias does not disappear if the judiciary takes over responsibility for prescribing the rules for prosecutors and law enforcement personnel. In fact, the very reason for judges' expertise - their immersion in the day-to-day adjudication of criminal cases - also creates the potential that courts might **craft rules that favor the courts' interests in this system**. n306

Would courts be willing to take on a greater role in regulating prosecutors and law enforcement personnel? **Federal courts have busy dockets and finite resources.** State courts are even more burdened. When presented with an opportunity to play a proactive regulatory role in the criminal justice system, some courts have declined to do so. In particular, federal courts have been **wary of involving themselves in the affairs of state and local police departments.** Despite - or perhaps because of - a few highly publicized examples in New York City and Chicago, the federal courts appear to be reluctant to set standards for local law enforcement agencies. In Rizzo v. Goode, the Supreme Court vacated a federal district court's order prescribing steps for the Philadelphia Police Department to remediate abusive practices. n307 Among other reasons for this ruling, the Supreme Court argued that a federal court should not intervene deeply in the internal affairs of a local agency, especially one concerned with law enforcement. n308

The efficacy of judicial regulation is the biggest stumbling block for this alternative. When courts take a passive approach to regulating the conduct of prosecutors and police - i.e., when courts simply wait to adjudicate suppression motions and civil lawsuits that litigants might present - **the regulatory scheme takes a long time to emerge, and its coverage is more haphazard than uniform.** Another problem is that because many of the arguments against the expanded surveillance of religious groups are not constitutionally cognizable, n309 courts will rarely be able to grant the relief sought by petitioners. Finally, the recent relaxation of the restrictions imposed by the consent decrees in Handschu and Alliance to End Repression indicates that judicial regulation is more malleable than some civil libertarians would prefer.

AT: DoJ Solves

The Department of Justice fails – self-determination means that regulatory government agencies would prioritize personal interests.

Lininger, 4 – Assistant Professor at the University of Oregon School of Law (Tom Lininger, 89 Iowa L. Rev. 1201, "Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups," April 2004, Lexis, **fc*)

C. Internal Regulation by Law Enforcement Agencies

Some commentators believe that the Department of Justice and other law enforcement agencies should have the primary responsibility for regulating the conduct of their employees. n310 According to this view, no regulatory authority is better suited to determine the proper requirements for prosecutorial and investigative activities (including infiltration of religious groups) than the agencies that conduct these activities.

There can be little question that law enforcement agencies have the requisite expertise to formulate such rules. Professor Roberta K. Flowers argues that the Department of Justice is better qualified than any other institution to play this role, n311 due in part to the Department's unique familiarity with the prosecutorial and investigative functions, and due to the Department's access

to fast-breaking information about the latest exigencies in investigating terrorism. The very reason for this expertise, however, is the Department's direct stake in the matters to be regulated. That **self-interest could lead (and arguably has led) to a regulatory regime that favors the Department's interests over competing concerns such as the protection of civil liberties.** Professor Fred Zacharias and Professor Rory Little fear that the Department's institutional interests could compromise its objectivity as a regulator of prosecutorial ethics. n312 Granting the Attorney General exclusive authority to regulate the ethics of federal prosecutors is tantamount to allowing "the fox to guard the hen house." n313

Would autonomous law enforcement agencies be willing to ratchet up their own internal regulations? On the federal level, it seems unlikely that Attorney General Ashcroft would reinstate a suspicion requirement that he has so ardently opposed for the last year. On the local level, police departments seem even less fond of red tape than their federal counterparts. Vesting law enforcement agencies with **self-determination may actually remove any incentive they have for self-regulation.** In the past, they have proposed additional self-regulation in order to avert the risk of more drastic [*1268] regulation by other bodies, not because the law enforcement agencies have actually sought greater regulation in the first place.

The last problem with exclusive reliance on an internal regulatory scheme is the limited efficacy of such a system. Internal guidelines for prosecutors and law enforcement agents generally are not enforceable by outsiders - and certainly not by criminal defendants who might seek to invoke these provisions as protection of the defendants' rights. Since 1983, the Justice Department's investigative guidelines have included language making clear that they are not enforceable in court, n314 and they are not grounded in law that is itself enforceable. n315 Also, the United States Attorney's Manual is not enforceable in court. n316 Even if these bodies of law were somehow enforceable, they might **prove evanescent.** In most instances, internal regulations can be changed overnight with the stroke of a pen by a single official. n317 In fact, that is precisely what happened when Attorney General Ashcroft promulgated the new set of investigative guidelines in May 2002. Thus, there appears to be a number of strong reasons why the internal regulations of law enforcement agencies do not provide the best vehicle to reinstate the "reasonable suspicion" rule for infiltration of religious organizations.

S-6 Visas CP

1nc S-6 Visas CP

Text: the United States federal government should revise the S-6 visa requirements to

--increase the number of available visas

--protect the informants' civil liberties

--abolish the danger of retaliation

--abolish the requirement than an informant be eligible for a monetary reward

These revisions should require that the informants possess critical intelligence prior to agreeing to inform.

Counterplan solves – encourages cooperation and increases the quality of information

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

With **fewer bargaining options, less protection, and potentially more to lose** n29 than informants recruited through monetary incentives or promises of sentence reductions, there is greater incentive for informants "flipped" n30 via [*241] immigration violations to provide unreliable information. Furthermore, due to the latitude afforded to the executive branch in national security matters, there is a darker veil of secrecy shrouding measures for recruiting terrorism informants than for other types of informants. n31 **Immigration status offers a valuable way for the FBI to elicit cooperation and collect intelligence from individuals who otherwise would not be forthcoming.** However, this method for collecting intelligence can prove counterproductive when indiscriminately applied to situations where the informants lack useful connections to terrorist groups. Decreased intelligence benefits, lack of protection for informants, and increased ethnic and religious profiling suggest that changes to how the FBI recruits terrorism informants with immigration threats and rewards are needed. While the FBI appears to recruit most terrorism informants through informal means, an existing visa program already formally offers immigration benefits to informants in exchange for their cooperation with terrorism investigations. As part of the Violent Crime Control and Law Enforcement Act of 1994, n32 Congress specifically designed the S-6 visa to attract and reward immigrants who were willing to cooperate by giving terrorism intelligence. n33 However, given the small number of S-6 visas issued, the program likely fails to meet the FBI's intelligence recruitment needs. The fifty allotted S-6 visas per year n34 do not match up with the number of informants (fifteen thousand) used by the FBI. n35 In order to qualify for the S-6 visa, an informant must also meet the eligibility requirements of the Department of Justice's Rewards for Justice Program, a separate program designed to elicit and monetarily reward terrorism intelligence. n36 Lastly, access to the S-6 visa is further restricted by the requirement that the informant be subject to danger if he or she is returned to his or her home country. n37 Since the FBI has long used immigration law as an incentive to compel terrorism informants to act, it has little motivation to use a rewards program that presents additional barriers. The stringent eligibility requirements to obtain an S-6 visa explain its ongoing underuse. n38 [*242] This Comment proposes the S-6 visa requirements should be modified in a way that **encourages trust and cooperation** from informants by allowing informants to enforce their bargains with the FBI. A legislative overhaul that emphasizes pre-existing ties to terrorist organizations, increases the number of available visas, and lowers the barriers to the S-6 visa's use would produce more reliable and actionable intelligence, and **provide greater protection for the informants' civil liberties** and free speech. Congressional oversight of the FBI's use of S-6 visas would also provide

a **valuable check on the FBI's largely unlimited control** over terrorism informants. Part I examines the differences between the FBI's historical use of informants in investigating crimes such as drug smuggling and prostitution and the FBI's current use of informants investigating terrorism. Part II discusses how the use of immigration law to recruit informants, as well as the presence of informants in Muslim and Middle Eastern communities, chills free speech and encourages religious and ethnic profiling. Part II also addresses how the FBI's use of immigration law to recruit terrorism informants heightens the risk of false intelligence and increases the possibility of entrapment and prosecution of individuals who do not pose a true threat. Part III looks at limitations of the FBI's recruitment and use of informants, and analyzes the failure to protect informants from abuse by handlers and constrain the FBI's actions. Part IV explains the S-6 visa requirements and advises increasing the congressional allotment of S-6 visas and modifying the eligibility requirements to improve their efficacy in terrorism investigations. Finally, Part V concludes that a modified S-6 visa program will result in better relationships between law enforcement and the Muslim and Middle Eastern communities, less encroachment on civil rights, and ultimately, more effective counterterrorism investigations and prosecutions. I. Background: Traditional Informant Use Versus Modern Use in Terrorism Investigations Despite the FBI's long history of problematic relationships with informants, n39 both Congress and the Department of Justice - the FBI's parent agency - provide very little oversight of FBI informants. The lack of transparency, control, and accountability give the FBI almost unlimited power over how it recruits, handles, and rewards informants. n40 In particular, because of the greater secrecy afforded to national security investigations, the use of terrorism informants presents unique problems not present in traditional, nonterrorism use of informants. [*243] The use of informants in terrorism investigations differs in several ways from their use in the investigation of domestic crimes like smuggling, prostitution, and financial impropriety. Although the FBI has been using informants to conduct investigations since the agency's inception, n41 informants were traditionally used to investigate "victimless" crimes such as white-collar crimes n42 and crimes dealing with prostitution, drugs, and corruption. n43 Informants proved especially useful in those cases because all parties to the crime were usually guilty and not likely to inform authorities, making it difficult for law enforcement agents to discover the crime on their own. n44 Consequently, because individuals already part of the criminal organization or conspiracy had the trust and confidence of the organization and could provide the most useful information to law enforcement over a longer period of time, the FBI has generally recruited informants in these investigations from the inside. The FBI's "Top Echelon" informant program, for example, sought to recruit high-ranking members of the mafia as informants. n45 Notably, however, even the FBI's traditional method of recruiting informants from within the criminal organizations resulted in false intelligence and botched cases. n46 While there are no detailed studies on the differences between terrorism informants and traditional informants because the FBI keeps most of this information confidential, n47 broad observations can still be made. First, the FBI's preventative stance on terrorism has significantly increased reliance on informants' intelligence. n48 After 9/11, the FBI drastically expanded the use of [*244] informants n49 from around 1,500 in 1975 n50 to an estimated 15,000 today. n51 Informants have become the number one tool for preventing terrorist acts. n52 Second, law enforcement dealings with terrorism informants receive greater deference from courts and other limiting actors because terrorism is considered a national security matter instead of simply a domestic law enforcement matter. n53 The executive branch has greater control over national security and foreign intelligence matters than over domestic law enforcement, an area traditionally reserved to the states. n54 Thus, the post-9/11 characterization of terrorism as a national security matter results in courts affording more leeway to terrorism investigations than domestic criminal investigations. n55 In other words, the federal government is afforded more secrecy in matters of national security. n56 Hence, because the government can invoke national security concerns to keep information about the informant and handler privileged, there is less regulation governing the recruitment and handling of terrorism informants than traditional criminal informants. n57 [*245] Third, while false and inaccurate intelligence has generally been a problem with informants, n58 recent terrorism investigations raise the question of whether the alleged terrorist crimes would have occurred without law enforcement instigating the terrorist activities. n59 Informants in these cases aggressively instigated the defendants' participation in the plot. n60 Recruiting informants who lack ties to terrorist organizations may be at the root of this problem, because they lack predetermined targets known to be involved in terrorist groups. n61 Without these targets, informants under pressure to avoid deportation or other immigration consequences, for example, are more likely to produce false information. n62 Further complicating this issue, the government has suffered from credibility problems in terrorism investigations for not always fulfilling the promises made to informants. n63 One FBI informant, a Yemeni citizen named Mohamed Alanssi, set himself on fire in front of the White House after alleging that the FBI had broken numerous promises to him. n64 Governmental credibility is critical to maintaining a relationship of trust between law enforcement and informants, and thereby facilitates the gathering of credible intelligence. Due to the vast number of terrorism informants today, the secrecy underlying the investigations, n65 and the potential for false intelligence, the recruitment and use of informants in terrorism investigations present unique problems to the FBI. Because of increased confidentiality surrounding national security issues, the government has the means and incentives to shield the true extent of its recruitment and use of terrorism informants from courts and the public. n66 To increase accountability and lessen the risk of abuse, more oversight over the FBI's dealings with terrorism informants is needed. Notably, some limits on the FBI's use of informants do exist. However, given the secrecy [*246] surrounding national security concerns, whether these limits apply in terrorism investigations remains unclear. II. Problems with Recruiting Informants Based on Immigrant Status The FBI's use of immigration rewards and threats to recruit informants undermines civil liberties and cooperation with Muslim, Middle Eastern, and other immigrant communities. n67 In general, the presence of informants in mosques and the surrounding community creates suspicion and distrust of law enforcement efforts, chilling free speech. That is, when community members know that informants are potentially monitoring their speech, community members are less likely to cooperate with law enforcement efforts. Furthermore, by sending informants into Muslim and Middle Eastern communities without specific targets to surveil, the FBI encourages ethnic and religious profiling and helps conflate Islam and terrorism in the public eye. Because informants recruited via immigration law possess less bargaining power and face potentially more serious consequences than those recruited via criminal law incentives, there is greater incentive for these informants to supply false information and accuse innocent individuals. Ethnic and religious profiling, combined with the indiscriminate surveillance carried out by informants, can entrap individuals who do not pose a threat. Entrapment wastes government resources and undermines public confidence in the justice system and law enforcement. Although the FBI's problematic surveillance of Muslim and Middle Eastern communities stems from the use of all types of informants and not merely those recruited with immigration promises, a modification to the use of immigration law in rewarding or coercing terrorism informants would provide a step toward producing more useful intelligence and reducing the risk of harm to innocent individuals. A. Mosque Surveillance Chills Free Speech In 2002, Attorney General John Ashcroft updated the Attorney General's FBI Guidelines, n68 and did away with restrictions on entering mosques and other places of worship. n69 The Guidelines read in pertinent part: "For the purpose of [*247] detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally." n70 Thus, FBI agents can now enter any mosque or attend any religious gathering without probable cause. Under the previous Guidelines, issued in 1979 by Attorney General Benjamin Civiletti, an agent could only conduct an investigation where "the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering the political or social goals ... through activities that involve force or violence and a violation of the criminal laws of the United States." n71 In the past, the FBI's Domestic Investigations and Operations Guide ("DIOG"), which provides guidance on implementing the Attorney General's Guidelines, allowed supervisory agents to delegate to inferior agents decisions concerning the surveillance of mosques and other religious gathering places. n72 Recently, however, restrictions have been slightly strengthened by requiring agents in charge of the field operations to approve surveillance. n73 Nevertheless, this change may not really improve matters, as numerous instances of mosque surveillance have already eroded Muslim communities' trust of law enforcement. n74 By placing informants in places of worship and cultural spaces, the FBI has chilled free speech and damaged the most reliable way of obtaining accurate terrorism intelligence from these communities. In a well-publicized and egregious case, an FBI informant named Craig Monteilh was assigned to surveil a mosque in Irvine, California. n75 The FBI instructed Monteilh, a convicted felon working as a paid informant, n76 to [*248] indiscriminately surveil worshippers at the mosque, without concentrating on a particular target or activity. n77 After congregants noticed Monteilh's inflammatory rhetoric and repeated talks about instigating terrorism, they reported him to the FBI. n78 The FBI failed to investigate further, and after the arrest of another suspected terrorist, Monteilh revealed his identity as an FBI informant. n79 This incensed the Islamic community, in part because an FBI Assistant Director had promised a year earlier that the agency would not surveil mosques. n80 In response, Islamic groups like the Council on American-Islamic Relations and the American Muslim Task Force on Civil Rights and Elections, which had previously cooperated with the FBI and urged community members to do the same, reversed course and stopped their outreach efforts to aid law enforcement. n81 In the end, Craig Monteilh's story is just one of many that demonstrate why Muslim communities have soured on helping the FBI locate suspicious people within their communities. n82 Although Monteilh was neither an immigrant nor was offered immigration incentives in return for intelligence, his story shows how the use of informants can potentially damage both law enforcement and immigrant communities. Monteilh's story also illustrates why many communities feel mosque surveillance infringes on their freedom of speech. Once a community becomes aware that FBI informants may be surveilling its mosques, the fear that informants will target them chills the free exchange and expression of ideas and speech. n83 Given the constitutional guarantees of the First Amendment, places of worship should be treated with utmost sensitivity by law enforcement, n84 as the self-editing that occurs when people know they are being watched curtails the free exchange of ideas. The very knowledge of potential surveillance may caution people against discussing their political and religious viewpoints for fear of being targeted by informants like Monteilh. Consequently, mosque attendance falls n85 and community cohesion suffers, thwarting the First Amendment's protection of free expression. Even those not harboring extreme viewpoints may be [*249] dissuaded from political speech for fear of misinterpretation. For example, after revelations of potential FBI surveillance surfaced at the Islamic Center of Irvine, congregant Omar Turbi attested, "It gives you a little bit of apprehension about who you trust ... . Makes you think twice about what you say; what if people misunderstand you?" n86 Similarly, the executive director of the Council on American-Islamic Relations in Anaheim stated, "Some average Muslims interested only in praying are avoiding mosques for fear of somehow being monitored or profiled ... . Everybody is afraid, and it is leading to an infringement of the free practice of our religion." n87 Although some states like Indiana, Pennsylvania, and Oregon have enacted laws prohibiting the surveillance of religious sites without reasonable suspicion, n88 it should not be necessary to rely on state laws to protect the integrity and values of the First Amendment. B. Mosque Surveillance Encourages Religious and Ethnic Profiling In addition to eroding the First Amendment's free speech rights of Muslims and Middle Easterners, the FBI's informant surveillance tactics also inappropriately target these religious and ethnic groups. Most of the organizations designated as Foreign Terrorist Organizations by the State Department are Muslim or Arab groups. n89 Many post-9/11 policies, like the extensive detention of Muslims and Middle Easterners, indicate that the federal government views Muslims and Middle Eastern immigrants as potential terrorists. n90 Popular perception of Muslims has moved in the same direction, with huge opposition, for example, to the construction of an Islamic community center - Park 51 - near the site of the World Trade Center in New York. n91 Other examples include state laws banning the use of Shari'ah law in judicial decisions n92 and Islamophobia n93 rising in the United States n94 and abroad. n95 [*250] By sending immigrant informants into mosques and religious and ethnic communities with little more than a vague directive to find terrorists, the FBI perpetuates ethnic profiling and the conflation of Islam and terrorism. In recruiting terrorism informants from the immigrant population, the FBI puts an ethnic and religious face on terrorism, and perpetuates the popular perception of what terrorists look like. Sending these informants into mosques and immigrant communities greatly increases the chances that alleged suspects fit the ethnic and religious stereotypes of terrorists. Put differently, if an informant is assigned to surveil a mosque, the chances of the informant bringing back a non-Muslim or non-Middle Eastern suspect are low. This surveillance policy becomes a vicious cycle. The FBI recruits immigrant individuals from suspect communities to become informants, pressures them into producing terrorism suspects that fit the popular perception of what terrorists are like, and then prosecutes these suspected terrorists. All this reinforces the public conflation of immigrants, Muslims, Middle Easterners, and terrorists. Ethnic and religious profiling further alienates Muslim and Middle Eastern communities, and deepens their mistrust for government. n96 Additionally, by predisposing many Americans to view Muslims, immigrants, and Middle Easterners as potential terrorist threats, ethnic and religious profiling may also bias juries in terrorism prosecutions. n97 Although suspects often claim entrapment as a defense, after 9/11 the entrapment defense has never been successfully used in terrorism cases. n98 In fact, many, if not most, terrorism cases never reach the jury because the chances of successfully defending against terrorism charges after 9/11 are almost nonexistent. n99 Popular stereotypes concerning Muslims and Middle Easterners play a role in this. Although the use of immigration law in recruiting informants is only one of many factors contributing to this harmful cycle, the use of coercive tactics like immigration law to recruit informants creates a [*251] higher risk of unfounded terrorism prosecutions against innocent individuals who do not pose a risk. Consequently, this fuels the public perception that a stereotypical terrorist is a Middle Easterner or Muslim. C. Terrorism Informants' Presence in Muslim and Middle Eastern Communities Damages Intelligence Efforts Many argue that tactics like recruiting informants through immigration law and surveilling mosques are necessary to prevent terrorist attacks, and that national security must be the nation's top priority, whatever the cost. These arguments fail to recognize that when informants lack a specific target and direction, the gathered intelligence does not necessarily enhance the nation's security. Instead, the FBI - with little concern for the actual gravity of the original threat posed by the suspect - creates an elaborate terrorism plot for the surveillance targets to participate in. n100 After 9/11, many individuals who showed no signs of violence or extremism prior to involvement with informants and government-created plots have been prosecuted under terrorism charges. n101 Until the informants provided the means, these individuals did not have the finances or the proper connections to conceive and carry out these terrorism plans. Although orchestrating these plots makes the FBI's preventative stance appear successful in the public eye, it diverts law enforcement resources from focusing on real targets. Moreover, Professor David A. Harris claims that "the unregulated use of informants in mosques and other religious and cultural settings can also do great damage because it poses the risk of cutting off our best possible source of intelligence: the voluntary, cooperative relationships that have developed between law enforcement and Muslim communities." n102 Having community members report suspicious information to the FBI may be a more effective way of obtaining reliable terrorism intelligence from these communities. n103 For example, in the few domestic terrorist prosecutions where a terrorist attack plan actually existed prior to informant involvement, community members who had noticed something amiss were the first to alert the FBI and identify the subjects. n104 In fact, since 9/11, community members have assisted law enforcement in stopping potential terrorism plots in a number of cases. n105 A [*252] recent example, the case of Umar Farouk Abdulmutallab, the "Underwear Bomber," shows that the attempted bombing could have been prevented had law enforcement heeded the warnings that Abdulmutallab's father gave the CIA at the U.S. embassy in Nigeria. n106 As the president of the San Francisco Board of Supervisors and former criminal prosecutor, David Chiu testified regarding the Arab, Middle Eastern, Muslim, and South Asian communities in San Francisco: "Without that level of cooperation, that level of trust, everything falls apart ... . Surveillance only serves to continue to drive wedges when cooperation is what is needed most." n107 Analogous to the way informants in mosques target vulnerable individuals despite these individuals' lack of connection to terrorist organizations or predilection for extremism, a 2011 study by the Migration Policy Institute demonstrates a similar phenomenon within other communities. n108 The 287(g) initiative, named after the section of the Immigration and Nationality Act that authorized it, allows ICE to enter into memorandums of agreement with state and local law enforcement agencies, empowering these agencies to directly enforce immigration laws. n109 However, the study found that half of the jurisdictions using 287(g) did not direct their enforcement efforts toward serious or violent offenders, n110 as the 287(g) initiative had originally envisioned. n111 Instead, these jurisdictions sought to deport as many offenders as possible regardless of the severity of the crime. n112 Study respondents "believe that 287(g) program activities affect the community in distinct and adverse ways, including by causing declines in Latino immigrant populations, [creating] avoid[ance of] public places by these populations, changing [] driving behavior, [creating] fear and mistrust of the police and other authorities, and reducing crime reporting." n113 These behaviors were more acute in jurisdictions with nontargeted enforcement, [*253] where any offense could constitute grounds for deportation. n114 Just as Latino immigrant communities became distrustful of law enforcement and withdrew from crime reporting when threatened with deportation, so did Muslim and Middle Eastern communities when threatened with FBI surveillance of communal spaces. As the study notes, "these operations can generate widespread distrust of police. Such distrust in turn prompts immigrants to change their behavior to avoid contact with police and other authorities." n115 In order to procure accurate intelligence from any community, a relationship of trust and respect between law enforcement and the community must exist. n116 However, from the mass arrest and detention of Muslims shortly after 9/11 n117 to the ongoing allegations of ethnic and religious profiling today, n118 the federal government has made serious errors in dealing with Muslim and Middle Eastern communities since 9/11. While the government recognizes that community policing n119 is the best way to obtain reliable intelligence, n120 the FBI is caught between two contradictory strategies and must choose between sending informants into mosques without reasonable suspicion, and gaining the trust and cooperation of Muslim and Middle Eastern communities. As one congregant in a surveilled mosque observed, "The FBI wants to treat the Muslim community as a partner while investigating us behind our backs ... . They can't have it both ways." n121 While it is unrealistic to think that the FBI will stop using informants in these communities, a more restrained use of informants based on reasonable suspicion of wrongdoing would mitigate perceived damages to community relations. Requiring the FBI to have preexisting reasonable suspicion would add credibility to the agency and alleviate some of the fear surrounding terrorism investigations involving informants. [*254] By virtue of their connections and daily interactions, those active in a particular community are in the best position to notice when others in the community act strangely. Unlike informants who may be new to the community and who other members may view with suspicion, well-established community members may already know what is going on in their community and can more accurately spot genuine threats. Notably, the argument that Muslims and Middle Easterners are in the best position to provide accurate intelligence on terrorist activities within their respective communities risks fueling the government's conflation of those communities with terrorism. n122 However, in analyzing how best to procure counterterrorism intelligence, it would be amiss not to recognize the FBI's and other law enforcement agencies' heavy focus on Muslim and Middle Eastern communities. This is largely due to most recognized foreign terrorist organizations being based out of the Middle East or having Islamic ties. n123 Law enforcement efforts, immigration law, surveillance policies, and pre-9/11 incidents like the 1993 attack on the World Trade Center have categorized the typical terrorist as male, Middle Eastern, and devoutly Muslim. n124 The reality is that even though recently immigrated Muslims and Middle Easterners have become synonymous with terrorism, terrorists come from various ethnicities, religions, and communities. n125 While acknowledging and attempting not to replicate that stereotype, this Comment seeks to recommend ways to improve the relationship between law enforcement and potential terrorism informants who typically belong to the same religion or ethnicity as those they surveil. The government's focus on Muslim and Middle Eastern communities as potential breeding grounds for terrorist groups also directs the focus of this Comment. However, this Comment resists the broad characterization of these communities as prone to extremism and violence. In fact, a recent statistical analysis of terrorism activity after 9/11 discredits the stereotype that Muslims and Middle Easterners account for most of the terrorism within the United States. n126 In total, the report found that U.S.-originated non-Muslims accounted for 107 post-9/11 plots while U.S.-originated Muslims accounted for 49. n127 Conversely, the report found that cooperation with Muslim communities helped prevent 40 percent of all Al-Qaeda plots after 9/11. n128 As the report notes, "[a] singular focus on Muslim terrorists is both bad for national security and civil society ... . Numerous studies and experts have stated that there is no reliable [*255] "terrorist profile."" n129 When compared to the actual threat posed by members of Muslim and Middle Eastern communities, then, the FBI's explicit target of Muslim and Middle Eastern communities is excessive. D. Indiscriminate Use of Informants Leads to Entrapment Entrapment is another problem arising from the broad use of terrorism informants. Since 9/11, many informants have been involved with cases where the government effectively created a terrorist plot and then pressured the defendant into agreeing to it. n130 As the Council on American-Islamic Relations stated in a 2009 report, informants "are paid and/or rewarded based on the amount of information they produce; therefore, these informants are inclined to exaggerate, instigate, and fabricate cases of a "terrorist' nature." n131 Many of the terrorist plots the FBI touts to the public as victories have been the result of informants pressuring vulnerable, young, or impressionable individuals who lacked ties to terrorist organizations or prior terrorist inclinations. n132 In United States v. Cromitie, n133 a striking case that illustrates the extent to which informants and their handlers can go in fabricating prosecutions, the defendant pled outrageous government conduct as a defense. n134 In contrast to an entrapment defense, claims of outrageous government conduct focus on government action rather than the defendant's. n135 Shahed Hussain, the informant in Cromitie, began working for the FBI in 2002 after facing deportation and criminal charges over a Department of Motor Vehicle scam he ran. For his work as an informant, Hussain was paid around $ 100,000. n136 Following Cromitie's conviction for conspiring to commit terrorist acts, Cromitie moved to dismiss the indictment based on the outrageous conduct of the government and, specifically, Hussain. n137 Before his arrest, Cromitie expressed to Hussain interest in joining a Pakistani terrorist group. In subsequent conversations with Hussain, however, Cromitie reacted negatively [*256] to suggestions of suicide bombing. n138 Further, in recorded conversations between Cromitie and Hussain, Cromitie at times sounded ambivalent about jihad and other times expressed violent sentiments. n139 However, "whenever Hussain asked Cromitie to act on those sentiments ... Cromitie did none of the above." n140 Hussain then escalated the pressure, promising Cromitie a BMW for carrying out a mission and offering him money for "doing jihad." n141 In addition to the pressure exerted on Cromitie to commit a crime, the FBI made other serious missteps while building its case against him. During the investigation, the FBI failed to corroborate Cromitie's alleged past crimes and ties to Afghanistan. n142 The court specifically noted: Before deciding that the defendants (particularly Cromitie, who was in their sights for nine months) presented any real danger, the Government appears to have done minimal due diligence, relying instead on reports from its Confidential Informant ... no one thought it necessary to check before offering a jihadist opportunity to a man who had no contact with any extremist groups and no history of anything other than drug crimes. n143 In fact, although FBI officials concluded during a meeting that Cromitie "was unlikely to commit an act without the support of the FBI source," officials nevertheless continued the investigation. n144 Even after Hussain realized that Cromitie's stories of visiting Afghanistan and committing crimes were false, he continued to offer Cromitie money in exchange for committing crimes, promising him up to $ 250,000 without authorization from the FBI. n145 After Cromitie lost his job at Wal-Mart and grew desperate for money, Hussain "leveraged that unfortunate situation to coax Cromitie to go forward with a jihadist plot. Cromitie protested that he did not want to be a martyr, but nonetheless agreed to go forward." n146 Cromitie helped recruit several lookouts, surveilled potential sites, and planted what he thought was a bomb. Cromitie was subsequently arrested. n147 The court described the government's involvement in this plot: As it turns out, the Government did absolutely everything that the defense predicted in its previous motion to dismiss the indictment. The Government indisputably "manufactured" the crimes of which defendants stand convicted. The Government invented all of the details of the scheme - many of them, such as the trip to Connecticut and the [*257] inclusion of Stewart AFB as a target, for specific legal purposes of which the defendants could not possibly have been aware ... . The Government selected the targets. The Government designed and built the phony ordnance that the defendants planted ... . The Government provided every item used in the plot ... . The Government funded the entire project. And the Government, through its agent, offered the defendants large sums of money, contingent on the participation in the heinous scheme. n148 Surprisingly, the court nevertheless concluded that the government's actions were neither outrageous nor shocking. n149 In fact, the court stated that it would have been negligent for the FBI not to investigate Cromitie after the statements he made regarding Jews, the United States, and Pakistan?despite these statements never becoming specific threats or incitements to action. n150 Even though the court did not find outrageous conduct, it nevertheless recognized that [Hussain, as the informant,] was the prime mover and instigator of all the criminal activity that occurred, right up until the last moments of the conspiracy, when he had to stop the car he was driving and "arm" the "explosive device" because the utterly inept Cromitie could not figure out how to do it. n151 Although "this court is not familiar with a case in which so many different tactics were used on a single individual ... Cromitie justified the Government's persistence when he proved to be ready and willing to commit terrorist acts." n152 Cromitie raises the question whether government action would ever rise to the level of outrageousness that the courts demand. In Cromitie, the court suggested that only duress, physical deprivation, or coercion by the government is prohibited when pursuing a potential prosecution. n153 Although Cromitie's sentiments toward Americans and Jews are neither admirable nor politically correct, the court strongly suggested that he never posed a real threat. n154 [*258] Nevertheless, despite its aggressive actions, the government received nothing more than a verbal slap on the wrist. n155 Stories like Cromitie's underscore Muslim and Middle Eastern communities' fears of informants. Community members realize that the chances of a successful defense against the government based on the tactics of an informant and the FBI are extremely low, regardless of the coerciveness of the methods used. III. Limitations on the FBI's Use of Informants Cromitie demonstrates that the FBI lacks substantial restraints on how it recruits and uses informants. Currently, there are four restrictions on how the FBI recruits informants: (1) internal FBI limitations, (2) constitutional limitations, (3) the entrapment defense and the outrageous government conduct doctrine, and (4) enforcement of nondeportation agreements in plea bargains. Because these limitations have neither curtailed the FBI's mismanagement of informants nor ensured a high degree of accuracy in information obtained, these restrictions have failed to protect both the public from terrorism and informants from abuse. n156 A. Attorney General Guidelines The Attorney General's Guidelines on FBI Confidential Human Sources n157 ("Guidelines"), issued in 2006 by the Department of Justice, n158 are agency guidelines, not regulations, and as such have no binding legal effect. n159 [*259] Much of the problem of FBI informant misuse stems from this fact. The Guidelines outline the rules the FBI should follow in undercover investigations involving informants, which include documenting new informants and recording agreements made. n160 The Guidelines are also subject to review and modification by the Attorney General in accordance with federal laws, and are afforded great deference by the courts. n161 The major problems with the Guidelines, however, are that they lack consequences, are not subject to judicial review, and are not followed by agents. n162 While the Guidelines may have internal consequences n163 for FBI agents who violate them, they have no meaningful effect beyond internal regulation and cannot be enforced by the public via judicial review. n164 Judicial review for violations only occurs when criminal prosecutions reveal the FBI's activities in the investigation. n165 However, the informants in these cases typically remain confidential, and any inquiry into their actions does not extend beyond the handling agent's conduct and the recruitment methods used. n166 Evidence shows that in many cases, FBI agents fail to follow the Guidelines when recruiting and handling informants. A 2005 study conducted by the Department of Justice Office of the Inspector General found that the FBI did not provide enough support to agents to properly follow the pre-2006 Attorney General Guidelines Regarding the Use of Confidential Informants. n167 In fact, noncompliance with the guidelines was a problem in 87 percent of the cases the Inspector General reviewed. In particular, agents failed to properly review the suitability of potential informants, properly document informants' illegal activities, and notify informants of their limitations. n168 Given the high levels of noncompliance and agents' nearly unlimited discretion in extending immigration rewards, agent abuse is likely also high. [*260] Immigration rewards appear only once in the Guidelines, yet this single reference exemplifies the impunity with which law enforcement procures informants. The Guidelines state that "no promises or commitments can be made, except by the United States Department of Homeland Security, regarding the alien status of any person or the right of any person to enter or remain in the United States." n169 The Guidelines also note that informants should receive this information if and when they have any issues regarding immigration status. n170 While acknowledging that FBI agents may only offer immigration benefits to informants pursuant to DHS's agreement, the Guidelines do not answer the questions raised by this arrangement. Unlike monetary rewards, for which the Guidelines establish a number of rules regarding proper payment procedures and conditions, n171 it is not clear under what circumstances immigration rewards must be documented and whether they are subject to conditions similar to those of monetary rewards. Their brief appearance in the Guidelines shows the FBI's recognition of immigration benefits as a method to elicit informant cooperation, but details on their use are nonexistent. This absence of information indicates that agents may possess vast discretion when using immigration rewards to recruit informants. It also indicates that executing these rewards is ultimately in the hands of DHS. B. Constitutional Limitations In theory, both the Fourth Amendment and the Due Process Clause of the Fifth Amendment restrict the FBI's use of informants in terrorism investigations. However, neither Amendment has actually limited the Agency's recruitment tactics when dealing with subjects facing immigration-related pressures to serve as informants. The Fourth Amendment's prohibition against unreasonable searches and seizures n172 does not offer any substantive restrictions on the FBI's use of informants in terrorist investigations. In criminal investigations where the Fourth Amendment does apply, it places few restrictions on the use of information gathered by informants. n173 To obtain a warrant based on intelligence gathered by an informant, the information must be reliable in establishing the requisite probable cause. n174 In matters of national security however, the search standard is less stringent than the probable cause standard [*261] used in criminal investigations. n175 In fact, the United States Supreme Court has never held that the Fourth Amendment applies to national security investigations. n176 In particular, the Foreign Intelligence Surveillance Act of 1978 (FISA) n177 shields federal agents from standard criminal warrant requirements when carrying out electronic surveillance and searches. The Foreign Intelligence Surveillance Court, a secret court n178 created by FISA to issue warrants in national security investigations, n179 only requires probable cause that "the target of the electronic surveillance is a foreign power or an agent of a foreign power." n180 Hence, because agents do not have to produce evidence of criminal activity before initiating electronic or physical surveillance, they are able to use informants more freely. n181 Under FISA, the Attorney General can also authorize surveillance for up to a year without court order. n182 Furthermore, in 1982, President Reagan's Executive Order No. 12,333 identified the FBI as the primary gatherer of domestic intelligence and held that the Attorney General holds the power to carry out warrantless searches and surveil agents of foreign powers. n183 Executive Order No. 12,333 essentially paved the way for the FBI's use of informants to conduct domestic surveillance of foreign agents, including members of foreign terrorist organizations, without [*262] adhering to the restrictions inherent in the use of informants in domestic criminal investigations. In domestic criminal investigations, agents are required by law to corroborate informants' intelligence and credibility before a warrant is issued. n184 However, under Executive Order No. 12,333, this corroboration is not required in terrorism investigations. n185 For informants facing deportation and immense pressure to cooperate, these lax warrant requirements remove an important check on the validity of their intelligence. The requirements also give the FBI more opportunities to abuse its power. Although no court has explicitly found Executive Order No. 12,333 constitutional, no court has found it unconstitutional and thus it remains good law. Indeed, the Northern District of Illinois found that FBI reliance on the Order in conducting physical searches for foreign intelligence gathering was reasonable. n186 The Due Process Clause of the Fifth Amendment has provided a way to avoid deportation to some informants facing deportation under the state-created danger doctrine. n187 The doctrine allows for recovery and injunctive relief for civil rights violations. It holds that "the government has a constitutional duty to protect a person against injuries inflicted by a third-party when it affirmatively places the person in a position of danger the person would not otherwise have faced." n188 To establish a successful claim under this doctrine, a valid relationship must have existed between the plaintiff and state; the state must have created the opportunity that ultimately harmed the plaintiff; the state must have acted in willful disregard for the plaintiff's safety; and the harm must have been foreseeable. n189 Notably, given its nearly exclusive use in domestic criminal cases, n190 the state-created danger doctrine has limited use for immigrant informants. The First and Third Circuits have declined to apply the danger doctrine in deportation cases because it intrudes on Congress's plenary power over immigration. n191 The Fifth and Ninth Circuits, however, have left the doctrine [*263] open for potential use by immigrant informants. n192 Nevertheless, even if the danger doctrine was applied in immigration cases, many of the terrorism informants in the United States lack ties to actual terrorist groups in or outside of the United States n193 and thus are not subject to threat of retaliation from actual terrorist groups if deported. Hence, the state-created danger doctrine may not help many terrorism informants avoid deportation. Additionally, the state-created danger theory only protects informants after recruitment, and provides no benefits to informants when negotiating the terms of their agreement with the FBI. While the knowledge that informants can later enforce their agreements may encourage more careful engagement with potential informants, ultimately bolstering informants' ability to vindicate their agreements with the government, the danger theory creates no incentive for the FBI to only recruit informants with established ties to terrorist organizations. In fact, because the danger doctrine is likely only useful when informants have preexisting ties to terrorist organizations, the doctrine may steer the FBI away from recruiting those with established ties because doing so would provide these informants with a way to enforce their agreements. Nevertheless, until courts actually extend the danger doctrine to deportation cases, the protective value of this theory is unknown. C. Entrapment Defense and Outrageous Government Conduct Doctrine The entrapment defense and the claim of outrageous government conduct are also possible sources of restriction on the FBI's use of informants. n194 These protect defendants who claim to lack the necessary predisposition for criminal activity but whom the government induced to commit criminal acts. n195 The test for entrapment used by most jurisdictions including the federal courts places the burden on defendants to show lack of predisposition to commit the alleged crimes. n196 The entrapment defense succeeds when "the criminal design originates with the officials of the Government, and they [*264] implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." n197 The mere provision of materials and opportunities by the government for the commission of a crime is not sufficient unless the government's action "actually implants the criminal design in the mind of the defendant." n198 In contrast, outrageous government conduct claims focus on government action. In United States v. Russell, the Supreme Court acknowledged that "we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." n199 Unlike entrapment, outrageous government conduct is not an affirmative defense. Rather, it seeks dismissal based on government violation of due process. n200 To prevail, an individual must show that the government's conduct offended "fundamental fairness" and shocked "the universal sense of justice." n201 A court has never found outrageous government conduct where defendants were predisposed to commit crimes by the acts of an informant. n202 The use of the entrapment or outrageous government conduct defense may raise questions about the behavior of the informant and the government agent's instructions to the informant. While the entrapment defense may allow a defendant to escape criminal liability, an examination of government relations with informants may call for public and political limitations on the FBI's dealings with informants. n203 Usually, because law enforcement values the secrecy of its dealings with informants, evidence about informant recruitment and handling only surfaces after egregious cases involving informants acting as agent provocateurs. n204 For example, in Cromitie, the defendant argued that the government entrapped and subjected him to outrageous conduct. n205 Although neither claim ultimately prevailed, Cromitie exposes how far the government may go to set up an individual for a crime, including offering a car and a quarter million dollars to participate in terrorist acts. n206 Cases like Cromitie do little to restrict the FBI's dealings with informants. If courts were more receptive to claims of entrapment and outrageous [*265] government conduct, law enforcement agencies would be threatened by the risk of exposure, which in turn might encourage them to curtail their aggressive tactics. Nevertheless, most terrorism investigations and cases involving terrorist defendants never go to trial, making Cromitie an unusual case. n207 In terrorism cases, defendants must overcome an unusually heavy burden because irrespective of the government's conduct or the defendant's vulnerability, committing or assisting in the commission of terrorist acts is always considered evidence of a predisposition to terrorism. n208 Cromitie demonstrates that even though courts acknowledge the government's outrageous conduct, courts may nevertheless find that a defendant's agreement to participate in terrorist acts demonstrates the necessary predisposition. n209 The fact that the FBI suffered no repercussions for aggressively recruiting Cromitie shows that entrapment and outrageous government conduct claims effectively do not restrain the FBI's use of aggressive terrorism informant recruitment tactics. D. Nondeportation Agreements in Plea Bargains Nondeportation agreements have also failed to effectively restrain the FBI's use of informants via immigration law. In the United States, most criminal cases are resolved by plea bargains. n210 Before the 1970s, plea bargaining was conducted in relative secrecy and deals between the parties were not recorded. n211 In the 1970s, the Supreme Court held that if prosecutors [*266] reneged on plea bargains, petitioners were entitled to specific performance, resentencing, or withdrawal of the guilty plea. n212 Traditionally, courts have treated nondeportation agreements and plea bargains as contracts. n213 Thus, when the prosecution does not follow through with the promised benefits of a plea agreement, defendants may enforce the agreement as though it were a contract. n214 Further, nondeportation agreements are similar to plea bargains in that the defendant agrees with the government to some detriment in exchange for a benefit. Due to these similarities, until the 1990s the Eighth and Ninth Circuits routinely enforced plea bargains when informants were promised immigration benefits in exchange for information. n215 In addition to the standard contract elements of offer, acceptance, and consideration, two additional elements must have been present in the agreement in order to establish an enforceable claim against the government. First, the government agent must have had "actual authority" to ensure government performance. n216 Second, agency principles must have been present in the agreement. Agency is present when one person, namely the agent, consensually acts on behalf of another - the principal. n217 Hence, an agreement entered into by the prosecutor, as the agent, creates a contract between the principal (the immigration official) and the third party (the informant). n218 Nevertheless, in 1996 the Department of Justice issued regulation 28 C.F.R. § 0.197 which stated that immigration officials could not be held responsible for prosecution-made plea agreements in criminal proceedings or investigations that involved immigration laws. n219 Further, in order for agreements to count under 28 C.F.R. § 0.197, there must be written authorization from DHS. Cases that have addressed 28 C.F.R. § 0.197 since its enactment have affirmed it. For instance, in Bao Tai Nian v. Holder, the Ninth Circuit affirmed [*267] petitioner's deportation and held that a letter from an Assistant United States Attorney presumably promising nondeportation had no bearing on the case because according to existing regulation, "absent written authorization from the Commissioner of the Immigration and Naturalization Service ("INS'), the INS shall not be bound by cooperation agreements that government agencies may reach with alien witnesses." n220 Similarly, in Frimpong v. Holder, petitioner alleged that a federal prosecutor had promised him relief from deportation in exchange for information against petitioner's coconspirators. n221 There, the court dismissed his argument because there was no evidence of written authorization from DHS for the agreement, as required by the regulation. n222 Effectively, unless authorized by DHS, an FBI offer of nondeportation as an incentive does not bind the FBI to performance. Considering the Guidelines, various constitutional limits, the entrapment defense, and the near complete unenforceability of nondeportation agreements, the FBI has great discretion and little potential liability when recruiting informants. Very little prevents the FBI from pursuing aggressive recruiting tactics like probing an individual's background for immigration violations and using these as ways to elicit cooperation. Once the informant cooperates, almost nothing prevents the FBI from disregarding the promise of immigration benefits. Today, nothing adequately restrains the FBI's recruitment practices, leaving informants particularly vulnerable to coercion and thus more likely to provide faulty information. IV. A Possible Solution: The S-6 Visa As it currently exists, the S-6 visa may be a way of controlling the FBI-informant relationship in cases involving promised immigration benefits. The S-6 visa rewards terrorism informants with legal permanent residency status. However, as discussed infra, in order for the S-6 visa to effectively restrain the FBI and produce useful intelligence, the S-6 visa needs to be modified. The examples discussed supra in Part II illustrate how the overbroad and indiscriminate use of informants, particularly those recruited with immigration threats or rewards, harms the acquisition of useful information, fails to identify and protect against legitimate threats, chills speech, and encourages ethnic and religious profiling. Immigration law offers less protection to informants than promises of leniency in criminal matters, thus increasing the potential for informants to produce faulty intelligence. Part III, supra, demonstrates that limitations on FBI dealings with informants are practically nonexistent. This Part proposes a revision to the S-6 visa that would help diminish the harmful effects discussed in Part II by increasing transparency and providing [*268] more procedure for FBI informant recruitment via immigration law. Specifically, providing immigrant informants with better bargaining power and ways to vindicate their agreements through the S-6 visa would alleviate some of the aforementioned harms. Although there have been few reports of the FBI abandoning immigration promises in counterterrorism investigations, n223 the FBI has repeatedly broken alleged immigration and monetary n224 promises made to informants in exchange for participation in drug investigations, n225 human trafficking investigations, n226 and pre-9/11 terrorism prosecutions. n227 Providing a more straightforward and transparent way for the FBI to offer immigration benefits to informants would help decrease informants' potential vulnerability and limit the FBI's power. With modifications, the S-6 visa could help resolve these problems. A. The Current S-6 Visa Requirements Established in 1994 as part of the Violent Crime Control and Law Enforcement Act, the S-6 visa, or "snitch visa," n228 rewards terrorism informants and their families with legal permanent residence. n229 More specifically, the Act allows the government to give a temporary (three-year) material witness visa to people with probative knowledge of criminal activity. n230 During this three-year stay, an S-6 visa recipient can apply for permanent resident status, or a "green card," which may subsequently permit the recipient to apply for citizenship. n231 S-6 visas are subject to a different allotment system than immigrant-type visas. n232 Specifically, Congress allots fifty S-6 visas each year, and unused visas cannot be carried forward. n233 Furthermore, respective family members who are also eligible to come to the United States do not count toward the [*269] allotment. n234 To qualify for the S-6 visa, however, those providing critical and reliable information necessary for the successful investigation or prosecution of terrorist organizations n235 must be in danger of retaliation in their home country, and qualify for a reward under the State Department's Rewards for Justice Program. n236 The State Department's Rewards for Justice program was established in 1984 under the Act to Combat International Terrorism. n237 At the discretion of the Attorney General, the Program provides rewards of up to $ 500,000 to "any individual who furnishes information leading to the arrest or conviction, in any country, of any individual or individuals for the commission of [or conspiracy to commit] an act of terrorism against a United States person or United States property." n238 Individuals cannot apply for the S-6 visa on their own behalf; only state or federal law enforcement agencies may apply on behalf of an individual. n239 Individuals eligible for immigration benefits under the S-6 visa program would generally be inadmissible in the United States or otherwise subject to deportation due to criminal or immigration status violations. n240 As part of the process, applicants must waive their rights to any deportation hearings and appeals should deportation proceedings occur n241 - further eroding their bargaining power - and must acknowledge that the S-6 visa is the sole authorization of their presence in the United States. n242 In turn, the United States Attorney with jurisdiction over the investigation that forms the basis for the request must certify that no promises regarding immigration benefits have been or will be made to applicants. n243 Furthermore, law enforcement agencies initiating the requests must provide affidavits, statements, or other evidence demonstrating applicants' cooperation, their grounds for exclusion, and the government's need for the terrorism intelligence. n244 Law enforcement agencies must then file this information with the Assistant Attorney General in the Criminal Division of the Department of Justice. n245 [*270] Upon reaching the Assistant Attorney General, the information is reviewed for accuracy and specific factors are weighed to determine eligibility for the S-6 visa. n246 When necessary, "representatives of the [Immigration and Naturalization] Service [(now the U.S. Citizenship and Immigration Services ("USCIS"))], Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, and the Department of State, and those representatives of other [law enforcement agencies], including state and federal courts designated by the Attorney General" are involved in the review process to determine which cases should receive priority. n247 Once the Attorney General approves the application and the Secretary of State certifies it, the application proceeds to the Immigration and Naturalization Services Commissioner (now the USCIS Director) n248 for final approval. n249 After notification is obtained from USCIS, the Assistant Attorney General may object to the decision within seven days, in which case the Deputy Attorney General makes a final decision. n250 Nevertheless, under no circumstances can law enforcement agencies and applicants appeal the decision. n251 During the time the informant works with the law enforcement agency, he or she must report to the agency on a quarterly basis, and the agency must report to the Assistant Attorney General in the Criminal Division. Finally, the Assistant Attorney General and the USCIS Director must together make an annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. Reports indicate that no S-6 visas were issued to terrorism informants between 1994 and 2006. n252 There is also no indication of how many S-6 visas, if any, were processed during this time. The lack of incentives for the FBI to apply for S-6 visas on behalf of informants may be responsible for this. That is, while the prospect of legal permanent residency may be tempting bait for the FBI to dangle in front of potential informants, the bureaucratic process involved in obtaining an S-6 visa is discouraging. n253 Hence, while the FBI may tout S-6 visas to potential informants, the use of coercive and unapproved [*271] threats of deportation is more likely to result in cooperation - with less time, effort, and oversight. Since informants waive their recourses in S-6 visa agreements, the FBI suffers no legal backlash when it fails to fulfill promises made to them. n254 Essentially, the potential benefits of using the S-6 visa are outweighed by the lengthy process involved, especially if the FBI can circumvent the process or break its promises. In the end, the FBI has no real reason to seek an S-6 visa for an informant. B. Proposed Modifications to the S-6 Visa Greater use of the S-6 visa would ensure judicial review of government practices by forcing the FBI to be more careful about following procedures in recruiting and dealing with informants. Changes to the S-6 visa program that provides material witness visas to informants with intelligence about terrorist activities could formalize the use of immigration rewards for terrorism intelligence in ways that would benefit the FBI and potential informants, and could help reduce the unnecessary and harmful surveillance of Muslim and Middle Eastern communities. In order for the S-6 visa to become a useful tool for the FBI without compromising civil liberties, the S-6 visa must be more readily available, easier to grant, and carefully tailored. The low numbers of S-6 visas used by law enforcement agencies may indicate several potential problems with the program. It may seem paradoxical to suggest that the available number of S-6 visas is too low when congressional reports reveal no S-6 visas were issued between 1994 and 2006. n255 However, these low numbers likely reveal more about the drawbacks of the S-6 visa program than they do about the value of immigration incentives as an intelligence tool. In particular, the inconveniences the S-6 visa application process imposes are barriers to efficient and productive use of the S-6 visa program. If FBI informants number in the thousands, as reports suggest, n256 and the FBI continues to make terrorism prevention a priority, then it seems Congress has failed to offer an appropriate number of S-6 visas for counterterrorism investigations. Whether or not the current number of informants in use is necessary for effective terrorism prevention is outside the scope of this Comment. Nevertheless, the current allotment of fifty S-6 visas per year seems low when compared to the premium the FBI places on terrorism investigation and prevention and the estimated fifteen thousand informants in use. n257 Although not all of these informants work on terrorism-related investigations, it [*272] is reasonable to assume that since terrorism prevention tops the list of FBI priorities, n258 there are more than fifty of them that do. If Congress truly intends the S-6 visa to become a viable instrument in fighting the war on terror, it must give the FBI the appropriate tools?and number of tools?to work with. In determining a useful and appropriate number of S-6 visas to allot, under this proposal Congress would also be forced to determine the number of terrorism informants in use and whether the FBI plans to reward these individuals with S-6 visas for themselves and their families. Furthermore, were a court to find that the FBI cannot bypass the S-6 visa process, and modify the eligibility requirements, the number of S-6 visas would likely rise. In sum, increasing n259 the statutory allotment of S-6 visas could ensure that there are enough S-6 visas available to cover the increased number of terrorism informants employed by the FBI. S-6 visa eligibility requirements also lack the proper tailoring to allow the FBI to make use of them while still guarding against overbroad informant recruitment and use which leads to religious and ethnic profiling. Changing the eligibility standards could better protect informants and produce more reliable intelligence for the FBI. For example, one potential change would do away with requiring informants to also be eligible for the State Department's Rewards for Justice Program established by the Act to Combat International Terrorism. n260 As previously mentioned, the Act gives the Secretary of State sole discretion to monetarily reward individuals who provide information leading to the arrest or conviction of anyone committing or conspiring to commit international terrorism against the United States. n261 Those who frustrate acts of terrorism or dismantle terrorist organizations are also covered by the Act. n262 In short, the Rewards for Justice Program eligibility requirements are quite high. Many informants may have useful terrorism intelligence that may not necessarily lead to an arrest or conviction. Furthermore, both the Attorney General and the Secretary of State approve awards on a discretionary basis not subject to judicial review. n263 Abolishing the requirement that an informant be eligible for a monetary reward under the Rewards for Justice Program would make S-6 visas available to more terrorism informants. While this would not [*273] necessarily curtail the FBI's ethnic and religious profiling, making the visa available to more informants may encourage the FBI to actually use it, thereby creating a more legitimate and transparent path to immigration rewards than that afforded by current government practices. Similarly, the S-6 visa requirement that informants be in danger of retaliation for providing critical and reliable intelligence n264 will likely not be met when immigration benefits are the impetuses for cooperation. Because informants recruited for counterterrorism investigations often have no connection to foreign terrorist organizations, n265 and are tasked with preventing "lone wolf" terrorists, they would likely not face threats from legitimate terrorist organizations if deported to their country of origin. Abolishing the "danger of retaliation" requirement would make the S-6 visa available to more informants and give them more incentive to cooperate with the FBI. It would also give the FBI greater assurance that informants' cooperation is not based on empty promises. In all, removing this requirement, along with the requirement that informants be eligible for the Rewards for Justice Program, would remove some of the barriers to receiving an S-6 visa.

2nc – Solvency / Terrorism Net Benefit

CP yields more trustworthy intelligence and limits ethnic profiling

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

Conclusion Offering S-6 visas to immigrant informants with established connections to terrorist organizations in exchange for their cooperation would be a **legitimate** way for the FBI to reward these informants. Further, informants would be able to rely on the FBI's promise and seek review should the [*276] agreement go awry. Gaining informants' trust and lessening the coercive aspect of recruitment would lead to **more trustworthy intelligence, and thereby enhance national security**. A larger but less committed

group of informants - characterized by the current underused S-6 visa program - does the country little good. Likewise, the indiscriminate and widespread surveillance of Muslims and Middle Easterners damages American communities and reifies assumptions and stereotypes about terrorists' identities and backgrounds. These assumptions may also blind law enforcement to real threats taking place in non-Muslim or non-Middle Eastern communities. Expanding and modifying the use of S-6 visas would turn a small, poorly designed program into a helpful law enforcement tool that better procures **reliable intelligence**. Furthermore, providing more oversight for FBI informant use and restricting practices that contribute to ethnic and religious profiling would improve Muslim and Middle Eastern communities' confidence in and cooperation with the government. This, in turn, would encourage communities to **effectively work with law enforcement** and report suspicious activities. Information offered from within a community is more likely to be accurate, n272 leading to more counterterrorism prosecutions that enhance national security and less waste of law enforcement resources on bogus threats. n273

2nc – Solves Profiling

Counterplan limits religious and ethnic profiling

Stabile 14 – J.D., University of California, Berkeley, School of Law, 2013 (February 2014, Emily, California Law Review, "Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa," 102 Calif. L. Rev. 235, Lexis, //11)

To **limit the religious and ethnic profiling** created through the widespread use of informants, the S-6 visa should also require that informants possess critical and reliable intelligence prior to agreeing to inform. Critical and reliable information is based on preexisting ties to terrorists or terrorist organizations rather than on ethnicity or religion. In the cases at issue in this Comment, the FBI typically recruits informants without a specific surveillance target in mind. In some cases, "FBI handlers have tasked [informants] with infiltrating mosques without a specific target or "predicate' - the term of art for the reason why someone is investigated. They were, [informants] say, directed to surveil law-abiding Americans with no indication of criminal intent." n266 Informants receiving such directions from the FBI would not meet the "critical and reliable information" requirement. Hence, requiring informants to have potentially useful information that is not based purely on ethnicity or religion, but rather on preexisting ties to terrorists or terrorist organizations, would **lessen the indiscriminate surveillance practices of the FBI** without implementing the higher standards imposed by the Rewards for Justice Program. Finally, individuals who agree to provide information in exchange for an S-6 visa should not be forced to waive their right to a deportation hearing. Currently, informants must knowingly waive their rights to any deportation hearings and appeals should deportation proceedings occur. They must also waive their rights to contest their detention pending deportation until lawful [*274] permanent resident status is obtained. n267 Strikingly, informants relinquish all access to judicial review if their applications are mishandled or forgotten and they subsequently face deportation. In the past, informants have alleged that the FBI has mismanaged and reneged on promises, including immigration promises. n268 Allowing judicial review of the S-6 visa process would help lift the veil of secrecy under which the FBI operates. Furthermore, through redaction or other methods that preserve informants' identities, judicial review could be carried out without threatening national security. n269 Another benefit of this requirement would be increased transparency in the way the FBI recruits informants. Wider use of the S-6 visa, as well as greater judicial review, would allow the government to ascertain the number of individuals enlisted by the FBI as counterterrorism informants. This may further help **curb informant mishandling**, a problem that plagues the agency. Because informants would still be required to provide critical and reliable intelligence, the FBI would be required to articulate clear predicates for recruiting individuals, such as a close relationship between an individual and a known member of a foreign terrorist organization. This, in turn, would provide due process and could vindicate informants' rights. The proposed changes to the S-6 visa program would not only force the FBI to adjust its recruitment and use of counterterrorism informants, but would also help the FBI obtain more reliable and valuable intelligence while **rebuilding relationships with Muslim and Middle Eastern communities.** Despite the FBI's limited resources and financial limitations, the FBI and Congress should focus on finding the most accurate and efficient methods of acquiring intelligence. n270 Although the FBI's budget has not suffered greatly in the financial crisis, n271 the agency does have a finite amount of resources to work with. Sending unwilling informants into mosques in search of vulnerable and receptive attendees with no ties to terrorist organizations and with no independent plans to commit terrorist

acts is not efficient. Requiring the FBI to only use a modified version of the S-6 visa would channel the FBI's pursuit of existing leads. In turn, the FBI's presence in mosques would decrease, which would assuage community fears. Lastly, requiring the FBI to seek informants [*275] who possess reliable terrorist intelligence has the potential to reduce the possibility of informant entrapment, which would help repair the FBI's relationship with Muslim and Middle Eastern communities.

2nc – Regulates FBI

Revisions to S-6 visas increase transparency and regulate FBI practices

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IV. A Possible Solution: The S-6 Visa As it currently exists, the S-6 visa may be a way of controlling the FBI-informant relationship in cases involving promised immigration benefits. The S-6 visa rewards terrorism informants with permanent residency status. However, as discussed infra, in order for the S-6 visa to effectively restrain the FBI and produce useful intelligence, the S-6 visa needs to be modified. The examples discussed supra in Part II illustrate how the **overbroad and indiscriminate use of informants**, particularly those recruited with immigration threats or rewards, harms the acquisition of useful information, fails to identify and protect against legitimate threats, chills speech, and encourages ethnic and religious profiling. Immigration law offers less protection to informants than promises of leniency in criminal matters, thus increasing the potential for informants to produce faulty intelligence. Part III, supra, demonstrates that limitations on FBI dealings with informants are practically nonexistent. This Part proposes a revision to the S-6 visa that would help diminish the harmful effects discussed in Part II by increasing transparency and providing [*268] more procedure for FBI informant recruitment via immigration law. Specifically, providing immigrant informants with better bargaining power and ways to vindicate their agreements through the S-6 visa would alleviate some of the aforementioned harms. Although there have been few reports of the FBI abandoning immigration promises in counterterrorism investigations, n223 the FBI has repeatedly broken alleged immigration and monetary n224 promises made to informants in exchange for participation in drug investigations, n225 human trafficking investigations, n226 and pre-9/11 terrorism prosecutions. n227 Providing a more straightforward and transparent way for the FBI to offer immigration benefits to informants would help decrease informants' potential vulnerability and limit the FBI's power. With modifications, the S-6 visa could help resolve these problems.

2nc – Reforms Informants

Current informants recruited with immigration measures degrade the quality and credibility of counterterrorism efforts

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While there are no detailed studies on the differences between terrorism informants and traditional informants because the FBI keeps most of this information confidential, n47 broad observations can still be made. First, the FBI's preventative stance on terrorism has significantly increased reliance on informants' intelligence. n48 After 9/11, the FBI drastically expanded the use of [*244] informants n49 from around 1,500 in 1975 n50 to an estimated 15,000 today. n51 **Informants have become the number one tool for preventing terrorist acts**. n52 Second, law enforcement dealings with terrorism informants receive greater deference from courts and other limiting actors because terrorism is considered a national security matter instead of simply a domestic law enforcement matter. n53 The executive branch has greater control over national security and foreign intelligence matters than over domestic law enforcement, an area traditionally reserved to the states. n54 Thus, the post-9/11 characterization of terrorism as a national security matter results in courts affording more leeway to

terrorism investigations than domestic criminal investigations. n55 In other words, the federal government is afforded more secrecy in matters of national security. n56 Hence, because the government can invoke national security concerns to keep information about the informant and handler privileged, there is less regulation governing the recruitment and handling of terrorism informants than traditional criminal informants. n57 [*245] Third, while false and inaccurate intelligence has generally been a problem with informants, n58 recent terrorism investigations raise the question of **whether the alleged terrorist crimes would have occurred without law enforcement instigating the terrorist activities**. n59 Informants in these cases aggressively instigated the defendants' participation in the plot. n60 Recruiting informants who lack ties to terrorist organizations may be at the root of this problem, because they lack predetermined targets known to be involved in terrorist groups. n61 Without these targets, informants under pressure to avoid deportation or other immigration consequences, for example, are **more likely to produce false information**. n62 Further complicating this issue, the government has suffered from credibility problems in terrorism investigations for not always fulfilling the promises made to informants. n63 One FBI informant, a Yemeni citizen named Mohamed Alanssi, set himself on fire in front of the White House after alleging that the FBI had broken numerous promises to him. n64 **Governmental credibility is critical to maintaining a relationship of trust between law enforcement and informants**, and thereby facilitates the gathering of credible intelligence. Due to the vast number of terrorism informants today, the secrecy underlying the investigations, n65 and the potential for false intelligence, the recruitment and use of informants in terrorism investigations present unique problems to the FBI. Because of increased confidentiality surrounding national security issues, the government has the means and incentives to shield the true extent of its recruitment and use of terrorism informants from courts and the public. n66 To increase accountability and lessen the risk of abuse, more oversight over the FBI's dealings with terrorism informants is needed. Notably, some limits on the FBI's use of informants do exist. However, given the secrecy [*246] surrounding national security concerns, whether these limits apply in terrorism investigations remains unclear.

The presence of informants creates an unwarranted distrust and chilling effect - undermines counterterrorism cooperation

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II. Problems with Recruiting Informants Based on Immigrant Status The FBI's use of immigration rewards and threats to recruit informants undermines civil liberties and cooperation with Muslim, Middle Eastern, and other immigrant communities. n67 In general, the presence of informants in mosques and the surrounding community creates suspicion and distrust of law enforcement efforts, chilling free speech. That is, when community members know that informants are potentially monitoring their speech, community members are less likely to cooperate with law enforcement efforts. Furthermore, by sending informants into Muslim and Middle Eastern communities **without specific targets to surveil**, the FBI encourages ethnic and religious profiling and helps conflate Islam and terrorism in the public eye. Because informants recruited via immigration law possess less bargaining power and face potentially more serious consequences than those recruited via criminal law incentives, there is greater incentive for these informants to supply false information and accuse innocent individuals. Ethnic and religious profiling, combined with the indiscriminate surveillance carried out by informants, can entrap individuals who do not pose a threat. **Entrapment wastes government resources and undermines public confidence** in the justice system and law enforcement. Although the FBI's problematic surveillance of Muslim and Middle Eastern communities stems from the use of all types of informants and not merely those recruited with immigration promises, a modification to the use of immigration law in rewarding or coercing terrorism informants would provide a step toward producing more useful intelligence and reducing the risk of harm to innocent individuals. A. Mosque Surveillance Chills Free Speech In 2002, Attorney General John Ashcroft updated the Attorney General's FBI Guidelines, n68 and did away with restrictions on entering mosques and other places of worship. n69 The Guidelines read in pertinent part: "For the purpose of [*247] detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally." n70 Thus, FBI agents can now enter any mosque

or attend any religious gathering **without probable cause.** Under the previous Guidelines, issued in 1979 by Attorney General Benjamin Civiletti, an agent could only conduct an investigation where "the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering the political or social goals ... through activities that involve force or violence and a violation of the criminal laws of the United States." n71

The presence of current immigrant informants chills freedom of speech

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The very knowledge of potential surveillance may caution people against discussing their political and religious viewpoints for fear of being targeted by informants like Monteilh. Consequently, mosque attendance falls n85 and community cohesion suffers, **thwarting the First Amendment's protection of free expression**. Even those not harboring extreme viewpoints may be [*249] dissuaded from political speech for fear of misinterpretation. For example, after revelations of potential FBI surveillance surfaced at the Islamic Center of Irvine, congregant Omar Turbi attested, "It gives you a little bit of apprehension about who you trust ... . Makes you think twice about what you say; what if people misunderstand you?" n86 Similarly, the executive director of the Council on American-Islamic Relations in Anaheim stated, "Some average Muslims interested only in praying are avoiding mosques for fear of somehow being monitored or profiled ... . Everybody is afraid, and it is leading to an infringement of the free practice of our religion." n87 Although some states like Indiana, Pennsylvania, and Oregon have enacted laws prohibiting the surveillance of religious sites without reasonable suspicion, n88 it should not be necessary to rely on state laws to protect the integrity and values of the First Amendment.

AT: CP Not Sufficient

Counterplan creates a more transparent system, increases quality of intelligence, and regulates the FBI's surveilling power

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Changing the S-6 visa program and focusing on the FBI's use of immigration incentives to recruit informants may seem too narrow to appreciably influence national security and community relations. However, the point of this Comment is a narrow one: to showcase one problematic aspect in the way the FBI handles human intelligence. The recommendations here would not fully solve the problems of privacy violations, ethnic and religious profiling, and informant misuse. The use of immigration law and status to leverage informants is not the only way that the FBI recruits informants, and the S-6 visa program would likely remain relatively small even if expanded. However, as previously explained, the proposed changes to the S-6 visa would generate a **more transparent system** and **more fruitful intelligence**, and would help **ensure the FBI operates within the scope of its power**. Individuals pressured to provide intelligence information would have a legitimate chance to receive an S-6 visa, and the FBI would have a greater incentive to stop its overtly coercive recruitment tactics such as deportation threats. Due to the popularity and longstanding use of informants, it is unrealistic to think that the FBI will stop using immigration law as a way to leverage cooperation. In the past, informants have aided national security by providing useful intelligence, and so they are highly valued as a source of intelligence. Hence, **no matter how narrow in scope** the proposed changes are, changes to the S-6 visa would greatly benefit the FBI, informants, and Muslim and Middle Eastern communities. Better intelligence may mean the difference between wasting government resources on empty threats and preventing the loss of life in future terrorist attacks. While narrow, the proposed changes to the S-6 visa provide a **promising way** for expending law enforcement resources where needed, preventing manipulative informant recruitment tactics, and adding transparency to informant dealings with the FBI. Congress has the power

to increase the allotment of S-6 visas and to explicitly restrict the FBI from promising immigration benefits outside of this program. The FBI should be forced to use the S-6 visa program when using immigration status as an incentive. The proposed changes would allow the FBI to use the S-6 visa as an incentive, while inhibiting its use of unnecessarily forceful tactics that lead to faulty intelligence, entrapment, and religious and ethnic profiling.

Negotiated Agreements CP

1nc Negotiated Agreement CP (Long Version)

CP Text: Local Law Enforcement within the United States should engage in informal negotiations with Muslim communities with regards to the use of informants

The CP solves the case and avoids politics / courts disads

Harris, 10 --- Professor of Law, University of Pittsburgh School of Law (David, New York University Review of Law & Social Change, "LAW ENFORCEMENT AND INTELLIGENCE GATHERING IN MUSLIM AND IMMIGRANT COMMUNITIES AFTER 9/11," 34 N.Y.U. Rev. L. & Soc. Change 123, Lexis)//Jmoney

B. An Attainable Alternative: The Negotiated Approach

If change with respect to the use of informants seems unlikely to happen via either judicial or legislative action, there is still another way in which change in how law enforcement uses informants in mosques might yet occur. This solution depends not on raw political power or legal reasoning but on something else: the recognition of how the interests of law enforcement and the community overlap. n234 Viewed correctly, these [*176] mutual interests can serve as the springboard for the negotiation of a set of agreed-upon local practices for using informants. Such negotiation could get law enforcement what it most needs: good (or at least workable) relations with Muslim communities, a continued flow of information from these same communities, and an ability to use informants when a real need exists for them. This process could also get Muslim communities at least some of what they need: a formal recognition of their opposition to the use of informants, as well as protection from some of the most egregious (as they may see it) uses of informants against them. Law enforcement would give up the right to use informants with total freedom, and the community would find itself protected, to a degree, from the possibility that police would place informants into mosques or other religious settings without a solid, fact-based reason. n235 The path would be difficult, fraught with obstacles, and, in certain respects, downright unsatisfactory. But it represents the most promising - and perhaps the only - way forward for both law enforcement and Muslim communities.

1. What the Negotiated Approach Is and What It Might Strive to Attain

a) Description of the Process

What might such a negotiated approach look like? To start, **such arrangements would be both local and informal.** Any given mosque or Muslim organization would work toward agreement on the use of informants with its local FBI field office, local agents of the Department of Homeland Security, and the local police department (if the local [*177] department involves itself in this type of informant-based investigation). n236 A negotiation between locals on both sides of the issue stands the best chance of succeeding, because those involved in the negotiations may know each other from efforts already made to build bridges and connections. The negotiations themselves can serve as trust-building measures, enhancing and strengthening relationships that already exist, or helping to create new relationships. These efforts would be informal in the sense that they would strive not for the imposition of a strict set of legal standards - for example, a free-standing system for procuring "informant warrants" - but rather for a set of

agreed-upon practices that the parties would then follow. If one of the **parties came to feel that the agreed-upon practices no longer work, the parties could, together, agree to adjust them**. Best and most importantly**, these practices could be tailored to fit local facts and circumstances** - the specific realities that both the community and law enforcement agencies face daily.

Why would any law enforcement agency agree to negotiate away any of its power to use informants as part of an arrangement with precisely the people whom it may want to spy on? The fact that some police agencies already use internal guidelines to - or at least attempt to - limit some of the ways in which they use informants, highlights the idea that limiting agency power to something less than what the Fourth Amendment would allow can in fact represent the best available practice. n237 Given that the FBI, NYPD, and other law enforcement groups want something from the Muslim communities - continued and increased cooperation, especially intelligence on suspicious activities - and given that use of informants in an unregulated fashion puts those very benefits in jeopardy by undermining connections with the community, law enforcement may prove more willing than one might initially assume to engage in such a negotiation.

b) What Might Negotiations Strive to Attain?

What exactly might the Muslim community and the police try to agree upon? Both the interests of the parties and the contours of different types of anti-terror investigations suggest some initial goals.

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i) Passive Versus Active Informants and the Standards for Using Them

First, we must examine the methods by which, and the circumstances within which, law enforcement might use informants. For the sake of simplicity, let us break the methods of using informants - that is, the types of informants - into two categories: passive informants and active informants. In passive informant activity, the informant attends or participates in any activity - goes to a political rally, takes part in a worship service, listens to a speech or a sermon, or the like - to the same extent that any private citizen might. The passive informant observes and reports to the police what she sees and hears. In other words, the passive informant acts as a walking camera and audio recorder, n238 absorbing everything around her and reporting what she sees. The passive informant cannot target any particular individual, and she cannot do anything more than observe. She might interact with other individuals who are present at the scene of the observation, but only in ways that prove necessary to deflect suspicion.

An active informant, on the other hand, would target a particular person or specific group for observation and interaction. She would seek to actively connect with these individuals in an effort to gather evidence of wrongdoing, plotting, or other behavior. An active informant might "work" a targeted individual closely, perhaps befriending the target and her family, as long as the informant did not in any way press the target toward illegal conduct. n239

[*179] The critical distinction between passive and active informants could serve as the basis for negotiating the circumstances under which law enforcement could use informants. The parties could pledge to have informants work only in a strictly passive way, unless and until some proof of activity indicating possible terrorist or criminal behavior emerged during passive observation -

exactly as the FBI's rules used to dictate under the Levi Guidelines. n240 The idea would be an informant who would blend in completely and act no differently from any other person present.

Given that we cannot exclude the possibility that religious groups might (knowingly or unknowingly) harbor small groups or individuals bent on terrorism, law enforcement should retain the ability to use informants in these settings, but only passively, as a way to check leads or find out if any activity exists which deserves some greater degree of attention. A negotiated agreement would allow law enforcement to have the presence it sometimes needs, and to have it without any proof of wrongdoing; in other words, they could use passive informants at their discretion, as they may now under existing law. At the same time, law enforcement would agree to exercise this power only passively, so as to minimize intrusion and interference. This arrangement seems like a good idea from both the point of view of law enforcementsuccess, because it allows police and security agencies to look and listen for any indicators of real trouble, and from the point of view of the communities, because they would have assurance that the worship and fellowship that form the core of activities at religious institutions would not encounter government interference or disruption, unless absolutely necessary. n241

[*180] Something more would be required for law enforcement to make use of active informants under a negotiated agreement. In particular, the use of active informants would require some evidence. Law enforcement could use active informants only if some reasonable, fact-based suspicion existed to link a particular suspect or suspects to engagement in terrorist activity or other criminal conduct. That is, the police would agree not to use an active informant just to make sure nothing is happening. Rather, the use of active informants would require some minimal evidence - **something more than a hunch, feeling, or intuition -** indicating that illegal activity has been, is, or will be taking place. Police officers involved in any investigation should have little difficulty understanding this reasonable, fact-based suspicion rule because it comes from Terry v. Ohio, under which courts have used the same standard to test police officers' decisions to stop and frisk suspects for almost forty years. n242 A system regulating informant use according to whether the facts would support a passive or active informant operation would allow the government to use relatively unintrusive passive informants without seeking permission; more intrusive (i.e., active) informant activity would require fact-based suspicion that terrorist or other criminal activity might be afoot. This bifurcation would give the government the flexibility it needs to gather information or investigate leads, but it would also require some evidence to conduct active informant investigations and limit these investigations to situations potentially posing danger.

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ii) The "Entrapment" Problem: No Encouragement

Second, communities and police departments could use negotiated agreements to address the issue of entrapment. As earlier discussion makes clear, neither the entrapment defense nor its cousin, the claim of outrageous government conduct, does much to safeguard targets of police informants against government or informant overreaching. n243 At worst, entrapment actually permits the government to create crimes as long as the defendant has the appropriate "predispostion." n244

The lack of protection these defenses provide targeted individuals in practice begins to rankle when viewed with an eye more lay than legal. For example, in Hamid Hayat's case in Lodi,

California, the jury convicted Hayat of providing material support or resources to terrorists, even though an informant deliberately and purposely pushed and goaded Hayat to attend a terrorist training camp. n245 Even the U.S. Attorney whose office charged and convicted Hayat stated that he wished that "other things had occurred" during the course of conversations between the informant and Hayat. n246

Cases like these may not constitute entrapment in the legal sense, but they leave the impression that law enforcement may not play fair in pursuit of a conviction. Put another way, just because the police can use informants in this aggressive way without running afoul of entrapment law, does not mean that law enforcement should do just that. All Americans want law enforcement to apprehend dangerous terrorists and halt their plans. However, the government's use of overly aggressive and possibly unfair tactics to pursue individuals who seem to pose no real threat to our national security undermines the public's confidence in anti-terror work. Whether right or wrong, these perceptions that the government has not played fair do damage to law enforcement's ability to obtain cooperation from the public.

Thus, as an element of their negotiations, police and Muslim communities could agree that **informants would not act in any way to encourage or shape the behavior of those under surveillance, either through incitement or agitation.** In some instances, it might be difficult to [*182] tell the difference between encouragement and providing an opportunity for criminal conduct, but an agreed-upon rule against pushing or goading targets would, in most cases, not prove difficult to apply. For example, a rule of this nature would not allow the type of behavior reflected in the testimony in the Hayat case, in which the informant threatened the target and belittled him for failing to go to a terrorist camp. n247

iii) Use of Informants as a Last (or at Least Latter) Option

When it becomes known or suspected, the placement of informants in religious institutions like mosques does considerable damage. The presence of informants, either real or imagined, can undermine religious custom and practices, undercut the ability of believers to trust each other, and pull apart the social fabric that binds co-religionists together. n248 Given the explicit First Amendment protections provided for the free exercise of religion in the United States n249 and the chilling effect that even the possibility of informant use may have, the use of informants in mosques and other religious settings ought not to occur regularly.

As part of an agreement, communities and local police or the FBI might agree that, because the insertion of informants into religious institutions carries with it significant First Amendment implications and the potential for damage both to individuals and to the whole religious community spied on, **the use of informants in religious settings will not be a routine practice**. The agreements can establish that law enforcement can use informants in these settings only when other, less intrusive methods either have not worked or could not work, and where use of an informant will most likely produce evidence. Both law enforcement and Muslim communities gain if the use of informants becomes a tactic of last resort (or nearly so) and not a method employed regularly. For many Muslim communities, the use of informants only when other methods will not work will reassure them that they need not fear the presence of informants at every point and that the government will exercise some restraint in using this tactic. It should also maximize the chances that informants will catch those who pose a real danger and minimize the chances that informants [*183] will snare only those most susceptible to persuasion.

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The CP solves the aff and avoids link to politics

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The possibility of terrorists on American soil, particularly the prospect of homegrown terrorists, means that we should expect law enforcement to use every legal tool at its disposal to gather intelligence necessary to thwart attacks. Given the law as it now stands, these tools include the almost complete discretion for police to plant and use informants. Thus, we [*190] should expect to see informants do almost anything to succeed in producing cases against targets.

Every person living in this country, whether she is an American citizen or not, has a strong interest in securing the nation against terrorist attacks. However, **just because the law says that police can use informants at almost any time, in any setting, does not mean that they should do so**. And the particular contours of the struggle in which we now find ourselves illuminates this can/should distinction as few others have. As the law enforcement officials and intelligence officers in charge of our safety and security know better than almost anyone, our ability to track potential terrorists and stop them before they act depends wholly on the availability of intelligence. Because the best, if not the only, source of crucial intelligence on potential extremists with Islamic backgrounds will continue to be American Muslim communities, **we must have solid, well-grounded relationships with these communities, both native and foreign-born.**

These relationships are not just a matter of public relations, political correctness, or appeasement. Rather, these communities must feel that they can regard law enforcement as trusted partners, because such relationships create the avenues and opportunities for the passing of critical information from the communities on the ground to law enforcement. The widespread use of informants in Muslim institutions, particularly mosques, will corrode these important relationships by sowing distrust. By causing Muslims to think that the FBI or any other police agency regards them not as trusted partners but as potential suspects, fear displaces trust. Moreover, fear will cause members of the Muslim community to become less likely to come forward with information - just as the members of any community would, given this type of scrutiny. On the one hand, we simply cannot afford for this to happen, but, on the other hand, we know that there will be cases - indeed, from the government's point of view, there already have been cases - in which the use of informants can play a crucial role.

Given these tensions, as well as the mutual interests of law enforcement and Muslim communities in the United States, the situation presents an **ideal context in which to try regulating the government's use of informants through local, negotiated agreements on acceptable practices**. In at least the four ways identified here, law enforcement and Muslim communities

could agree to limit the use of informants, without either ruling out their use or allowing their unrestricted use. Both sides would benefit. While the approach proposed here would certainly face substantial obstacles, it represents a chance to recalibrate an important aspect of the government's power to investigate, while at the same time preserving the sanctity of the community's institutions of worship to the greatest extent possible.

2nc Solvency

Mutual Education solves-Muslims can educate local police on culture while the police can education Muslim communities about suspicious activities and how to identify plots effectively

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iv) Education Across the Divide
Fourth, the parties might agree on a process of mutual education. For its part, law enforcement might educate Muslim groups and congregations so that they could recognize actual suspicious behavior, as opposed to simply relying on hunches about people who have unusual opinions. It has become common for police departments and the FBI to appeal to Muslim communities to report anything suspicious, much as FBI Director Mueller did in the speech quoted at the beginning of this article. n250 While there is no reason to doubt the sincerity of Mueller's exhortation, it was also quite general. It is all very well to ask community members to report their suspicions, and even such a general request may produce leads for law enforcement. It is true that not all leads may actually help law enforcement; this is true even when all the leads in an investigation originate from law enforcement professionals. It seems likely that an untrained member of the public, if asked to provide information to the police about something as unusual as possible terrorist activity, would, in good faith, inevitably produce mostly (if not wholly) useless leads, which officers and agents must then spend their valuable time pursuing. Without some concrete indication of what "suspicious action" means, most lay people would stand little chance of spotting the real thing.

Training communities regarding the types of information that law enforcement agencies want is one way to improve the amount of useful information law enforcement receives. Moreover, the FBI, the Department of Homeland Security, and even local police are in a good position to provide such training. For their part, Muslim communities could educate law enforcement about social and religious customs, particularly habits of language. Considerable amounts of such cultural and religious training regarding the customs and mores of Islam, by Muslims for police and FBI agents, already takes place. n251 Many police chiefs and law enforcement administrators at all levels have expressed enthusiastic support for these efforts and stated that this type of training has greatly enhanced their agencies' capabilities, as well as relationships with the Muslim communities. n252

Language is a special area of concern that these trainings should [*184] specifically address. Arabic speakers may sometimes express opinions in Arabic in stronger, more vehement ways than one might hear in English; these kinds of comments can hit Western ears as angry, radical, or extremist - even when speakers intend nothing of the sort. n253 While it is true that law enforcement must react vigorously to any words expressing an intention to take some illegal or dangerous action, they must also exercise caution, because linguistic, stylistic, and idiomatic differences can give a listener a misleading impression.

A couple of recent examples help illustrate just how important linguistic understanding - or misunderstanding - can be. In Hamid Hayat's trial for, among other things, providing material support for a transnational terrorist act, prosecutors needed to prove that Hayat intended to commit terrorism. n254 To do so, they offered into evidence what became known as "the throat note," n255 a fragment of paper with Arabic writing on it that police had found in Hayat's wallet when they arrested him. n256 The prosecution first translated the words as "Lord, let us be at their throats, and we ask you to give us refuge from their evil." n257 After the defense protested, the prosecution amended the translation to "Oh Allah, we place you at their throats, and we seek refuge in you from their evil." n258 According to authoritative sources, the defense had been right to object because the passage contained a traditional prayer "reported to have been said by the Prophet [Mohammad] when he feared harm from a group of people." n259 Still, the prosecution told the jury that the note proved that Hayat had the "requisite jihadist intent." n260 In the end, Hayat's intent became the central question in jury deliberations, and the note played a crucial role in persuading the jury to convict him. n261

[*185] In the case of accused terrorist Jose Padilla, similar questions about language arose. The government's case against Padilla and two co-defendants relied heavily on hours of wiretapped phone calls, and a government witness testified that Padilla's co-defendants had used "code words" to speak about jihad. n262 An expert witness, an Arabic translator, disagreed; he said that the men were simply speaking indirectly - something common in the Arab world - and not in code. n263

Police need education so that they can tell the difference between an opinion - even a strongly expressed, non-mainstream, anti-American one - and clues to acts of terrorism. Having such opinions does not necessarily make people dangerous, and American citizens (if not all people living in America) have a right to hold and express such views. A person who says she approves of the actions of Osama Bin Laden, or who expresses her wish that the President of the United States were dead, or who says that America deserved what it got on 9/11, may strike us as intemperate, wrongheaded, or repugnant. But those statements make the person only a holder of repellent and terribly misinformed opinions, not a terrorist. Expressing opinions, even objectionable ones, remains an American right; doing so in a fashion that seems harsh or even aggressive has to do with style and custom of speech, and it does not necessarily make it likely that these opinions will ripen into action.

The CP allows law enforcement and Muslim communities to tailor policies to the local needs

Harris, 10 --- Professor of Law, University of Pittsburgh School of Law (David, New York University Review of Law & Social Change, “LAW ENFORCEMENT AND INTELLIGENCE GATHERING IN MUSLIM AND IMMIGRANT COMMUNITIES AFTER 9/11,” 34 N.Y.U. Rev. L. & Soc. Change 123, Lexis)//Jmoney

These four suggestions - distinguishing between active and passive informant activity and regulating accordingly, prohibiting encouragement, using informants only as a last resort, and instituting mutual education - just scratch the surface of what police agencies and the members of American Muslim communities could agree to. Given the local focus of the negotiations, many concerns particular to the jurisdiction might also surface. These focused elements would constitute a major advantage for this process, because **the better tailored the process is to its own context, the better its chances for success.** The local negotiation of a set of practices acceptable to both sides in the debate presents a workable alternative, and one that takes advantage of mutually reinforcing needs of law enforcement and the Muslim communities in our country, as well as the common need to protect ourselves from terrorism.

The negotiation process works-empirics

Harris, 10 --- Professor of Law, University of Pittsburgh School of Law (David, New York University Review of Law & Social Change, "LAW ENFORCEMENT AND INTELLIGENCE GATHERING IN MUSLIM AND IMMIGRANT COMMUNITIES AFTER 9/11," 34 N.Y.U. Rev. L. & Soc. Change 123, Lexis)//Jmoney

Given these obstacles, the outlook for local control of policy on informant use is decidedly mixed, but it is not hopeless. In the recent past, locally-generated ideas have proven very helpful to the FBI in some sensitive anti-terrorism efforts. For example, after the Department of Justice ordered the FBI to conduct 5000 "voluntary" interviews with young Arab and Muslim men not suspected of terrorism in late 2001, n271 many in law enforcement expressed doubts about this plan. n272 More important, many thought that the FBI would endanger the budding relationships it had built with the Arab and Muslim communities after 9/11. n273 **When FBI agents and others in Detroit came up with an alternative plan - sending letters to potential interviewees** - the Department of Justice showed flexibility and allowed them to try this.n274 **The alternative plan was unmistakably successful;** the Detroit field office had the highest rate of successfully completed interviews of any office in the nation. n275 Thus, it is certainly possible that the FBI and its governmental parent could negotiate localized solutions to intelligence gathering.

International Language CP

1nc Reframe Terrorism Language CP

Text: the United States Federal Government should reframe terrorism as a violation of international law.

The counterplan distances terrorism from religion and garners broader support for counterterrorism efforts

Corman, Trethewey, and Goodall 08 – *Corman: Professor and director of the Consortium for Strategic Communication in the Hugh Downs School of Human Communication at Arizona State University, consultant to the Department of Defense and Department of State on issues of strategic communication; *Trethewey: Associate Professor and Associate Director in the Hugh Downs School of Human Communication at Arizona State University, co-author of *Organizational Communication: Balancing Creativity and Constraing, 5th ed.*; *Goodall: Professor and Director of the Hugh Downs School of Communication at Arizona State University, serves as a U.S. Department of State International Speaker on countering ideological support for countering terrorism and improving public diplomacy (Steven R. Trethewey, Angela Trethewey, and H.L. Goodall Jr., "Weapons of Mass Persuasion: Strategic Communication to Combat Violent Extremism", Peter Lang Publishers, Frontiers in Political Communication Vol. 15, p.135-138, //11)

Policy Recommendations We propose that the United States Federal Government should adopt a new vocabulary in reference to what is now called the Global War on Terrorism. In discussing the debate over the language of war, Walid Phares calls for a clear alternative to present language, and alternative that presents the conflict as both ideological and global. We answer that call by providing a framework that **confers international legitimacy to counterterrorism efforts** as well as belittling the motivations for violent acts by groups such as al-Qaeda. Phares warns that to re-label the war would to embolden terrorist groups by not recognizing that they are "one ideology, a focused identity, [with] a global strategy," but we do not agree that any re-labeling would have this effect. On the contrary re-labeling it as a different kind of threat – as an organized criminal enterprise rather than a military struggle – can help **resist terrorists' religious legitimation** efforts, better **mobilize domestic Muslim support**, and could revitalize non-Muslim domestic attitudes at a time when support for the war frame is waning. The focus on criminal activity is a natural one given the strong connection between criminal activity and terrorism. Focusing on terrorism as a violation of international law accomplishes several purposes. Framing Terrorism as a Violation of International Law Makes it Possible to Communicate Success Americans understand that crime cannot be eliminated but that it can be **contained**. This means that when the coalition undertakes a successful operation it will be judged as to whether or not it decreased criminal activity, not whether or not it was a "total victory." Having attainable goals means that Americans are more likely to sustain support for the effort. Framing Terrorism as a Violation of International Law Increases Awareness of the Problem as a Global One This language reframes the discussion of terrorism against the backdrop of international standards. Hence, when the United States takes action against terrorism, we take action on behalf of the laws of the international community. This framing increases the opportunities for cooperation with other international actors who seek a more just world based on rule of law. Framing Terrorism as a Violation of International Means that Terrorists are Reduced to the Level of Criminals Positioning the conflict as a "war" confers a certain amount of legitimacy on terrorists, as a force defending a large collective interest. Reducing terrorists to criminals who seek money and power detracts from the allure of terrorism to possible recruits. **Framing Terrorism as a Violation of International Law Removes Any Connection of the Language to Religion**

Referring to terrorists as criminals rather than "jihadis" completely separates them from the Muslim faith. Distancing the conflicts from religion means that we are more likely to win moderate Muslim cooperation because we will implicitly acknowledge the disconnection between terrorist activity and Islam. Conversely, the current policy runs the constant risk of conflating "terrorist" with "Muslim." We cannot sustain this policy if we expect to win friends within the Muslim community. The new language of terrorism will require development, refinement, and contributions from a variety of sources. However, within the same framework we utilized in the analysis of presidential speeches, we have devised the basis for a vocabulary of terrorism that distinguishes the current situation from traditional warfare (Table 2). From our newly established vocabulary, we have rewritten one of Bush's speeches from his campaign during the anniversary of 9/11 (see appendix). In our modification, we have left much of the President's words intact, but have changed the instances where the traditional war frame appears. We are confident that readers who give this a fair reading will find that the language equally as tough, determined, and unfavorable to the terrorists. Conclusion With increasing doubts toward the Bush administration's policies in the War on Terror, new frameworks and vocabularies are necessary to revitalize public support. The War on Terror provides a new type of battle on an ambiguous front where victory will not be realized through peace treaties and flags atop hills. We have offered a new vocabulary, that of international crime, to reframe the War on Terror. This strategic new vocabulary paints terrorism as a persistent international problem and undermines the religious justification commonly asserted by Al Qaeda and other extremists. Removing the religious connotation of the War on Terror will **help mobilize moderate Muslims in support of efforts that reduce international crime**. Finally, reframing the War on Terror as an international crime problem allows international bodies to enforce existing law systems which already govern criminal acts.

2nc Solvency

The CP's change in language solves – helps build support domestically and globally to solve terrorism

Corman, Trethewey, and Goodall 08 – *Corman: Professor and director of the Consortium for Strategic Communication in the Hugh Downs School of Human Communication at Arizona State University, consultant to the Department of Defense and Department of State on issues of strategic communication; *Trethewey: Associate Professor and Associate Director in the Hugh Downs School of Human Communication at Arizona State University, co-author of *Organizational Communication: Balancing Creativity and Constraing, 5th ed.*; *Goodall: Professor and Director of the Hugh Downs School of Communication at Arizona State University, serves as a U.S. Department of State International Speaker on countering ideological support for countering terrorism and improving public diplomacy (Steven R. Trethewey, Angela Trethewey, and H.L. Goodall Jr., "Weapons of Mass Persuasion: Strategic Communication to Combat Violent Extremism", Peter Lang Publishers, Frontiers in Political Communication Vol. 15, p.129-130, //11)

As the fight against terrorism continues, language plays a pivotal role. In current policies, the language of war continues to dominate. Based on analysis of President Bush's September 11th anniversary campaign speeches, we propose that war metaphors and language, such as victory, enemies, and allies, occlude the reality of counterterrorism efforts. It is difficult to pinpoint victory in this conflict, a requisite of the vocabulary of war familiar to lay audiences.

We call for a new language to illustrate the nature of our present conflict, a new vocabulary of international crime as an effective replacement for discussions of counterterrorism. There are four main benefits of this new language. First, domestic audiences are accustomed to the persistence of crime; it is **a manageable social ill**. Second, the labeling of terrorist organizations as "criminal" decreases the perceived legitimacy of their acts by potential recruits. Third, international crime is **a global**

problem, not a war perpetrated by the United States. Global problems require global solutions, and such a language will help **garner support from the global community**. Finally, crime language separates the religious connotation associated with labels of terrorism or "jihadism." This **allows moderate Muslims to reframe their faith away from extremist and violent acts**.

State Legislatures CP

1nc State Legislation CP

Text: The fifty states and all relevant United States' territories should pass legislation that requires law enforcement to:

-differentiate between observational comparison and indiscriminate data collection

-abide by data integrity, access, privacy restrictions, and establish and publicly announce a formalized policy on data retention

-limit the retention, identification, access, and sharing of data

-have a legitimate law enforcement purpose in identifying the person associated with any data retained by community surveillance technologies

-establish a formal internal policy documenting each time a police employee accesses community surveillance databases, departments shall not allow anyone except authorized and trained police employees to access and search these databases

-share information contained in community surveillance databases with other government agencies, as long as all participating departments honor the minimum requirements established in this statute.

-all evidence acquired by law enforcement in violation of this statute shall be inadmissible in state criminal courts

-the Attorney General of this state shall have a civil right of action against any police department that engages in a pattern or practice of violating this statute

-the Attorney General of this state shall have the authority to periodically audit departmental policies to ensure compliance with this statute. The Attorney General will publicly post the results of this audit to bring attention to noncompliant departments

Counterplan solves the case

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[*51] C. Model Statute to Regulate Police Surveillance The presently available statutes and model guidelines suggest a key set of concerns that any future state legislative body must consider. They demonstrate five common regulatory needs: data retention, identification, access, sharing, and training. The model statutory language I offer includes a possible solution for each of these areas. In doing so, I also try to honor the foundational principles for the regulation of police surveillance identified above. The model statute provides a clear standard that law enforcement agencies can implement. It attempts to give departments some latitude to alter their own policies to meet local needs. But the law also includes specific and detailed regulations in hopes of preventing organizational mediation. The proposed statute also includes multiple enforcement mechanisms to ensure compliance. The model excludes from criminal court any evidence obtained in violation of this statute, thus removing the incentive for police departments to violate the policy. Of

course, evidentiary exclusion is "limited as a means for promoting institutional change" because it is filled with exceptions and is narrower than the scope of police misconduct. n330 Thus, I propose two additional enforcement mechanisms. First, the model statute gives the state attorney general authority to initiate litigation against departments that fail to comply with these mandates. Other statutes regulating police misconduct, like 42 U.S.C. § 14141, have used a similar mechanism. n331 Second, the model mandates periodic state audits of departmental policies and data records to ensure compliance. Overall, the proposed law broadly addresses many of the problems implicit in the digitally efficient state and establishes a number of enforcement mechanisms to ensure organizational compliance. 1. Applicability, Definitions, and Scope The first part of the proposed statute defines the scope of the legislation, including the technologies regulated by the statute. In this section of the statute, I tried to reflect the foundational principle of regulating police surveillance technologies by creating a tightly defined scope of presently available technologies that fall under the statute's regulatory purview. This might make the statute under-inclusive at some point in [*52] the future, but works to the benefit of avoiding over-inclusivity that can stifle the development of new technologies. n332 § 1 Applicability, Definitions, and Scope This statute applies to all community surveillance technologies used by law enforcement that collect personally identifiable, locational data. "Community surveillance technology" means any device intended to observe, compare, record, or ascertain information about individuals in public through the recording of personally identifiable information. This includes, but is not limited to, surveillance collected with automatic license plate readers, surveillance cameras, and surveillance cameras with biometric recognition. This scope provision specifically addresses community surveillance devices, such as ALPR and surveillance cameras, as distinguished from traditional surveillance tools like GPS devices and wiretaps. As I have previously argued, "networked community surveillance technologies like ALPR surveil an entire community as opposed to a specific individual." n333 While the use of a GPS device to monitor the movements of one criminal suspect over a long period of time might be constitutionally problematic, such a practice raises an entirely different set of public policy questions. At minimum, the kind of tracking at issue in Jones was narrowly tailored to only affect one criminal suspect. The digitally efficient investigative state uses community surveillance technologies like ALPR and surveillance cameras that can potentially track the movements of all individuals within an entire community regardless of whether there is any suspicion of criminal wrongdoing. Hence, this statute is carefully limited to a small subset of technologies that pose similar risks and thus require similar regulation. 2. Differential Treatment of Observational Comparison and Indiscriminate Data Collection Next, I propose that state laws should differentiate between observational comparison and indiscriminate data collection. n334 The model law permits the use of community [*53] surveillance technologies for observational comparison. When a department uses these technologies for observational comparison, the device is "an incredibly efficient law enforcement tool that is reasonably tailored to only flag the suspicious." n335 § 2 Observational Comparison and Indiscriminate Data Collection Police departments may use community surveillance technologies as needed for observational comparison. But police departments using community surveillance technologies for indiscriminate data retention must abide by data integrity, access, and privacy restrictions outlined in § 3 through § 6. "Observational comparison" is defined as the retention of locational or identifying data after an instantaneous cross-reference with a law enforcement database reveals reasonable suspicion of criminal wrongdoing. "Indiscriminate data collection" is defined as the retention of locational or identifying data without any suspicion of criminal wrongdoing. This distinction strikes a reasonable balance by facilitating law enforcement efficiency in identifying lawbreakers, but also avoiding the unlimited and unregulated collection of data. When applied to ALPR, this statute would mean that police could use that technology to flag passing license plates that match lists of stolen cars or active warrants. But they could not retain locational data on license plates that do not raise any concerns of criminal activity without abiding by the regulations that follow. 3. Data Integrity, Access, and Privacy I recommend that the indiscriminate collection of data be subject to four separate requirements that limit the retention, identification, access, and sharing of data. The statutory language below was designed to give law enforcement some leeway to create workable internal policies that meet organizational and community needs. As a result, the policy simply serves as a minimum floor of regulation, above which departments could adopt their own regulations. [*54] § 3 Data Retention Police departments using community surveillance technologies for indiscriminate data collection must establish and publicly announce a formalized policy on data retention. Departments may not retain and store data for more than one calendar year unless the data is connected to a specific and ongoing criminal investigation. The one-year retention period is the most significant regulation this statute would place on indiscriminate data collection. Even the IACP acknowledges that the "indefinite retention of law enforcement information makes a vast amount of data available for potential misuse or accidental disclosure." n336 Without limits on retention, police surveillance can develop into "a form of undesirable social control" that can actually "prevent people from engaging in activities that further their own self-development, and inhibit individuals from associating with others, which is sometimes critical for the promotion of free expression." n337 At the same time, law enforcement often claim that information that seems irrelevant today may someday have significance to a future investigation. n338 Without regulation, there is a cogent argument to be made that police would have every incentive to keep as much data as possible. n339 Thus, I recommend that data retention be capped at one year. This would prevent the potential harms of the digitally efficient investigative state that come from long-term data aggregation. The one-year time window represents a reasonable compromise. The median law enforcement department today retains data for around six months or less. n340 But before accepting this retention limit, state legislatures should critically assess their own state needs to determine whether there is a legitimate and verifiable need for retention beyond this point. The next section of the statute addresses identification of stored data. [*55] § 4 Data Identification Police employees must have a legitimate law enforcement purpose in identifying the person associated with any data retained by community surveillance technologies. The limit on data identification is somewhat different than most current statutory arrangements. This measure would, potentially, limit the ability of law enforcement to use the stored data for secondary uses. A

secondary use is the use of data collected for one purpose for an unrelated, additional purpose. n341 This kind of secondary use can generate[] fear and uncertainty over how one's information will be used in the future." n342 By limiting the identification of the data, the statute attempts to prevent such secondary use. Another way to avoid secondary use is to limit access to data and external sharing, as I attempt to do in the next portions of the statute. § 5 Internal Access to Stored Data Departments must establish a formal internal policy documenting each time a police employee accesses community surveillance databases. Departments shall not allow anyone except authorized and trained police employees to access and search these databases. § 6 External Data Sharing Police departments may share information contained in community surveillance databases with other government agencies, as long as all participating departments honor the minimum requirements established in this statute. I propose that police limit access to data even among police employees. And each time a police employee accesses data, I require that the department document this event. This achieves two results. First, it creates a record of previous access points that the attorney general or state criminal courts can, theoretically, use to hold police accountable for improper data access. Secondly, and relatedly, this formalized documentation process may prevent nefarious secondary uses of the information. Because some evidence suggests that police retain community surveillance data in databases accessible to [*56] private companies and civilians, n343 this would place the impetus on police departments to take responsibility for internal data management. And while the model statute does not limit the sharing of digitally efficient data, it does require that all departments with access to data abide by the statutory limits. This would promote the sharing of data across jurisdictional lines to facilitate efficient investigations, while providing a consistent level of minimum privacy protection in the state. 4. Enforcement Mechanisms To ensure that departments abide by these minimal regulations, I propose a combination of enforcement mechanisms. The judicial and legislative branches have previously used these three enforcement mechanisms in other contexts to regulate police misconduct. By permitting a wide range of enforcement mechanisms, the statute attempts to avoid the traditional problems associated with police and organizational regulation. The first enforcement mechanism involves evidentiary exclusion. § 7 Evidentiary Exclusion All evidence acquired by law enforcement in violation of this statute shall be inadmissible in state criminal courts. The judiciary generally excludes evidence obtained in violation of the constitution. This mechanism is "by far the most commonly used means of discouraging police misconduct and perhaps the most successful." n344 Empirical evidence suggests that evidentiary exclusion can change law enforcement behavior and incentivize compliance with the law. n345 But the exclusionary rule suffers from several limitations. As Rachel Harmon has explained, the exclusionary rule is "riddled with exceptions and limitations, many of which are inconsistent with using the exclusionary rule as an [*57] effective deterrent of police misconduct." n346 Thus, if the misconduct happens to fall into one of these many exceptions, the exclusionary rule may not be an effective deterrent. But perhaps more importantly, as Harmon explains, "the scope of the exclusionary rule is inevitably much narrower than the scope of illegal police misconduct." n347 After all, the exclusionary rule would only work as a mechanism for preventing police misuse of digitally efficient databases if the police intended to use the resulting evidence in a criminal trial. But much of the misconduct I discuss in this article and previous work involves police utilizing retained data for undetermined secondary purposes. The exclusionary rule may do little to prevent this type of misconduct. To remedy this problem, I propose two other enforcement mechanisms. § 8 Attorney General Right of Action The Attorney General of this state shall have a civil right of action against any police department that engages in a pattern or practice of violating this statute. § 9 State Audit of Departmental Policy The Attorney General of this state shall have the authority to periodically audit departmental policies to ensure compliance with this statute. The Attorney General will publicly post the results of this audit to bring attention to noncompliant departments. Two of the statutes currently in operation only classify the violation of data retention and access policies as a minor criminal act. n348 In theory, these laws could result in the prosecution of a police officer who fails to abide by their parameters. But as Harmon concludes, "prosecutions against police officers are too rare to deter misconduct." n349 This is because juries tend to sympathize with defendant police officers, and the criminal prosecution of minor misconduct is rarely among the top priorities for over-worked prosecutors. n350 Consequently, I avoid establishing criminal liability for officers who violate this statute. Instead, I suggest that the state [*58] attorney general office should take on a proactive role in ensuring compliance through suing noncompliant agencies and occasionally auditing departmental policies. The first alternative enforcement mechanism gives the state attorney general statutory authority to bring suit against departments that engage in a pattern of practice of violating this statute. This is similar to the statutory mandate given to the Department of Justice (DOJ) by 42 U.S.C. § 14141. n351 Police scholar Barbara Armacost has called § 14141 "perhaps the most promising mechanism" for addressing organizational misconduct. n352 The late Bill Stuntz even believed that § 14141 may be "more significant, in the long run, than Mapp v. Ohio . . . which mandated the exclusion of evidence obtained in violation of the Fourth Amendment." n353 Pattern and practice litigation, as authorized in § 14141, is unique because it permits the DOJ to bring federal suit against police departments that engage in systematic misconduct; in practice, the DOJ successfully ensured the appointment of judicial monitors in targeted cities to oversee organizational and policy reform. n354 Although there is only a small amount of empirical research on the effectiveness of § 14141 in reducing police misconduct, the available evidence suggests it is one of the most effective means of bringing about organizational change. n355 One of the only potential pitfalls of this form of regulation is that the state attorney general may have limited resources. n356 If resource constraints make lawsuits unlikely for noncompliant departments, a police agency might rationally calculate that the benefits of noncompliance outweigh the potential costs of litigation. n357 To remedy the concern over resource limitations, I propose that the state attorney general have statutory [*59] authority to audit police departments. This would expand the regulatory reach of the statute while also harnessing the power of public opinion to force police compliance. This would also guarantee regular interaction between the attorney general and local departments, allowing the attorney general to check up on data practices. Rather than facing only the remote possibility of a pattern or practice lawsuit, departments would be faced with regular, random audits of their data policies. Because the results of this regular audit system would be posted online, the departments would also be publicly accountable if they fail to abide by the statute. This could incentivize administrators to follow state law for fear of public embarrassment that could threaten their job security. Rachel Harmon has suggested the DOJ utilize a similar policy to overcome resource limits and expand the potential impact of § 14141. n358 In sum, these regulations attempt to holistically regulate the digitally efficient investigative state by limiting data retention and ensuring stored data are handled in a way that protects individual privacy, while still leaving ample room for legitimate law enforcement purposes. The enforcement mechanisms are sufficiently varied to ensure widespread compliance. And the statute as a whole follows the

foundational principles of police surveillance regulations. The regulations are clear enough to avoid organizational mediation. They allow for individual variation. And they define the scope narrowly to only include a small subset of technologies like ALPR and surveillance cameras that pose a similar social risk. CONCLUSION The digitally efficient investigative state is here to stay. The empirical evidence clearly demonstrates that extremely efficient community surveillance technologies are an increasingly important part of American law enforcement. The language in Jones suggests that the judiciary may somehow limit public surveillance technologies in the future. To do so, the Court will have to confront the jurisprudential assumptions of police surveillance. That is no easy task. Much of the Court's previous treatment of police surveillance has rested on the belief that individuals have no expectation of privacy in public places, and [*60] that surveillance technologies that merely improve the efficiency of police investigations comport with the Fourth Amendment. At present, it remains unclear how and when the Court will begin to alter these important assumptions. The language in Jones offers little guidance. But even when the Court does eventually broach this subject, the judiciary's institutional limitations will prevent it from crafting the type of expansive solution necessary to protect against the harms of the digitally efficient investigative state. In the absence of regulation, police departments across the country have developed dramatically different policies on the use of public surveillance technologies. **Legislative bodies must take the lead and proactively limit the retention, identification, access, and sharing of personal data acquired by digitally efficient public surveillance technologies.** The model state statute proposed in this Article would be **a substantial step in reigning in the "unregulated efficiency of emerging investigative and surveillance technologies."**

State Legislation Solvency

State legislation solves – they have the requisite mechanisms and oversight to end digitally efficient investigation

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III. THE LEGISLATIVE RESPONSE Any future judicial response must be coupled with state legislation. Even if the judiciary eventually accepts some version of the mosaic theory in interpreting the Fourth Amendment, we should not expect the Court to hand down detailed regulations for the use of these technologies. Justice Alito's concurrence in Jones is telling. His proposal to regulate the efficiency of surveillance technologies would only control data retention. n261 And the amount of data that a police department could reasonably retain without a warrant would vary from one situation to the next based upon the relative seriousness of the possible crime at issue. n262 This barely scratches the surface of broader problems posed by the digitally efficient state. Under what conditions should we permit extensive data retention? When should we limit this kind of retention? Is data aggregation more acceptable as long as the data is not cross-referenced with other databases, thereby personally identifying individuals? Should we regulate law enforcement's access to this personal data? And where should this data be stored? Even my original proposal for judicial regulation of mass police surveillance only addressed a handful of these questions. I recommended that courts require police to develop clear data retention policies that are tailored to only retain data as long as necessary to serve a legitimate law enforcement [*42] purpose. n263 Like Alito's proposal, such a standard would vary according to the seriousness of the crime under investigation and the individual circumstance. I also argued that in cases where police retain surveillance data without a warrant through electronic means, they should have a legitimate law enforcement purpose before cross-referencing that data with other databases for the purposes of identifying individuals. n264 Both the Jones concurrence and my previous proposal would establish a broad judicial principle mandating that police regulate data retention according to the seriousness of the crime under investigation and the legitimate need for such retention. This type of judicial response is limited in nature. Legislative bodies would likely need to step in to provide more detailed standards. The legislative branch has several advantages over the judiciary that make it appropriate for this type of detailed policy building. **The legislature has a wider range of enforcement mechanisms than the judiciary.** The legislature can mandate in-depth and regular oversight. And it has the resources and tools to develop extensive, complex regulations. As a result, **the legislature is the best-positioned**

branch to address some of the critical issues raised by the digitally efficient investigative state, such as data storage, access, and sharing policies. In this Part, I offer guidelines for a legislative response to mass police surveillance. I first detail some of the foundational principles that legislative bodies ought to recognize in regulating police use of technology. Next, I give a brief overview of how a handful of states have attempted to regulate these technologies. I conclude by offering and defending my statutory recommendations. A. Foundational Principles for Regulating Police Surveillance Technology In making this legislative recommendation, I rely on three foundational principles about legislative regulation of law enforcement technologies. First, any regulation must provide clear and articulable standards that law enforcement can and will easily enforce. n265 Courts and legislators have often agreed [*43] that police regulations should be easy to apply across many different factual circumstances. n266 **If a regulation is unclear, there is a higher probability that law enforcement will, even in good faith, misapply the standard.** For example, in Atwater v. City of Lago Vista, Texas state law permitted officers to arrest offenders who violated traffic laws for failure to wear a seatbelt, even though the final punishment for such a violation was a mere fine. n267 In upholding an officer's decision to arrest a woman for failure to buckle her seatbelt, the Court stressed that police need rules that emphasize "clarity and simplicity." n268 Earlier regulations have encountered resistance from law enforcement because they were not easily administrable standards. For example, in Arizona v. Gant, the Court upended a longstanding doctrine that said police could search an automobile incident to an arrest of a person in that vehicle. n269 The new standard said that police "may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." n270 Justice Alito found this new standard undesirable compared to the previous standard. In Alito's mind, the Court should strive for "a test that would be relatively easy for police officers and judges to apply." n271 While some commentators disagree about the relative importance of clear and simple rules, n272 most judges and policymakers agree that any policymaker should consider the administrability of a mandate. Clear and simple rules also have another advantage over ambiguous mandates--these kinds of clear directives are less susceptible to organizational mediation. n273 If a state regulation of a policing organization is "vague or ambiguous," the police organization may "mediate the implementation and impact the law." n274 Lauren Edelman had demonstrated this [*44] type of mediation in the case of equal employment and affirmative action laws that are intended to change the behavior of private organizations. n275 These initial laws only established broad regulatory goals without offering clear and explicit procedural limitations. n276 This type of ambiguous mandate gave private companies room to interpret the laws and construct the meaning of compliance, thereby mediating "the impact of the law on society." n277 In the past, the police have been guilty of organizational mediation of a variety of legal mandates. The general police response to Miranda is particularly demonstrative of this phenomenon. Scholars like Richard Leo and Charles Weisselberg have carefully shown how police have navigated around the limitations of the original Miranda decision to nonetheless engage in seemingly coercive interrogation techniques aimed at acquiring information. n278 The original Miranda opinion provided some limitations on interrogations, but the decision and subsequent holdings may have been ambiguous, thereby allowing for departments to navigate around them without technically violating the law. Thus, in crafting rules for police, both the Court and legislatures should aim to create easily administrable law enforcement rules if at all possible, but also laws that are specific enough to avoid organizational mediation. Second, communities differ in their need for public surveillance. For example, New York City and Washington, D.C. have previously been targets for international terrorism. Given their plethora of high value targets and landmarks, these two cities may have a legitimate need for more public surveillance than other communities. n279 In arguing for a malleable standard for local departments, the IACP has suggested that some locations--namely bridges, critical infrastructure, and other high value targets--demand more surveillance and data retention to ensure public safety. n280 As an example, the IACP cites the fact that locations targeted on September 11, 2001 were part of a terrorist attack that took many years to plan and execute. n281 [*45] Thus, certain communities may legitimately need and prefer longer retention periods around certain important targets. Conversely, a medium-sized suburb with low crime that places a higher value on privacy might prefer a bar on the retention of surveillance data all together. While any state statute should establish minimally acceptable requirements on data retention, the law must be sufficiently broad to permit necessary variation at the local level. A one-size-fits-all approach may not be workable, given the unique law enforcement needs of each city. Third, any regulation must clearly articulate the narrow scope of technologies and devices that fall under its regulatory purview. Because technology changes rapidly, this ensures that the law will not be misapplied to future, emerging technologies. Kerr has previously argued that regulations of technology ought to proceed cautiously until the technology has stabilized. n282 Technology may have unforeseen uses that will take time to develop and understand. For example, in 1988, Congress passed the Video Privacy Protection Act. n283 This law protected the privacy of videotape rental information. n284 Congress passed the law after Judge Robert Bork's video rental history became public during his Supreme Court nomination process. n285 But in crafting this limitation on video rentals, Congress defined the term "video tape service provider" expansively as "any person, engaged in the business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual material."

n286 On one hand, this expansive definition of a videotape service provider is useful because it is broad enough to avoid antiquation. As videotape technology waned in popularity and DVDs became the chosen medium for most movie rental providers, the law maintained its statutory force. But the vague language used by the original drafters of the law left online streaming content providers like Netflix wondering whether the law actually applied to their services. n287 It was also unclear what kind of approval Netflix and other providers had [*46] to obtain to allow users to share their viewing history on social media platforms like Facebook. n288 After years of ambiguity, Congress recently amended the law to permit users to share content watching habits on streaming sites like Netflix after they have given one-time approval. n289 Before the law change, Netflix complained that the law's language was confusing, making them hesitant to adopt social media integration. n290 Similarly, when regulating police technology use, legislative bodies should adopt language that is sufficiently broad to avoid immediate antiquation. They should also be careful not to select language that is so overly broad as to limit the use of new, potentially important technological tools.

State regulations can be reformed to ensure less discriminatory surveillance

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The legislative recommendation I make in this Part attempts to follow these three guiding principles: it attempts to (1) clearly define the limited scope of the applicable technologies, (2) be clear and simple for law enforcement to administer, and (3) permit some level of local variation to meet the needs of unique municipalities. My starting point for crafting this model was to analyze the small number of statutes already passed by state legislators. The next section looks at these statutes to demonstrate common trends B. Current State Regulations A handful of states have laid out regulations of the digitally efficient investigative state. These state laws operate by either regulating ALPR and surveillance cameras specifically, or by establishing broad standards for data retention. For example, states like Virginia have passed relatively broad laws that regulate the retention of data by the government in all forms. n291 In other states, like New Jersey, the state attorney general has used state constitutional authority to hand down directives regulating the use of ALPR and establishing limitations on data collection. n292 States like Maine, Arkansas, New Hampshire, Vermont, and Utah have regulated ALPR through legislative measures. n293 Some states, like New York, have also handed down suggested model guidelines to inform [*47] internal policymakers. n294 In this section, I demonstrate that most of these early efforts to regulate the digitally efficient surveillance technologies share a handful of common concerns. They limit the identification of personal data, the length of data retention, the sharing of information with other departments, and law enforcement access to stored data. These early models also rely on a bevy of enforcement mechanisms. Thus, any model legislation aimed at holistically managing the digitally efficient investigative state should consider the possible solutions offered by existing laws. First, the laws generally limit the length of data retention in some way. Maine's law on ALPR limits retention to 21 days. n295 New Hampshire also puts a strict limit on the collection of law enforcement data, barring "retention of surveillance data except for a few, specific situations." n296 By stark contrast, the New Jersey Attorney General has ordered that data be retained for no more than five years. n297 Model guidelines like those offered by the State of New York do not establish a maximum length of data retention, n298 but the New York recommendations do encourage departments to establish a clear policy on the length of data retention. n299 Arkansas limits retention to 150 days, n300 Utah allows retention by government agents for nine months, n301 and Vermont permits retention for up to 18 months. n302 Each of these statutes reaches a different conclusion on the appropriate length of data retention. The disparity between the New Jersey data retention limit of five years and relatively strict retention limits in states like Maine and New Hampshire is striking. But the Maine law might not be as restrictive as it initially appears. Although it does limit retention in most cases to 21 days, it also makes an exception for cases where law enforcement is engaged in an ongoing investigation or intelligence operation. n303 Overall, state legislatures have reached dramatically different conclusions on the relative threat posed by long-term data retention. [*48] Second, a few of the available laws demonstrate a concern for the identification of personal data collected by the state. The New Jersey Attorney General Directive intends in part to limit the "disclos[ure] [of] personal identifying information about an individual unless there is a legitimate and documented law enforcement reason for disclosing such personal information to a law enforcement officer or civilian crime analyst." n304 In New York, the model guidelines would also require that officers attempting to query stored data for identifying matches have a legitimate law enforcement purpose for doing so, and that they record their identification procedure. n305 Neither Maine nor New Hampshire has a substantial policy on the identification of data, likely due in large part to their strict limitations on retention. n306 The longer a state legislature permits data retention, the more legitimately concerned it may be about the possibility of this data becoming personally identified. After all, the combination of long-scale retention and data identification procedures may allow law enforcement to create "digital dossiers" on innocent people that reveal private information about their habits, preferences, and daily movements. n307 Third, the available laws and recommended models tend to put restrictions on the sharing of information with other agencies. The New Jersey directive permits the sharing of ALPR data among police departments in the state, provided that the departments keep records of the data being shared and all departments involved abide by the New Jersey rules. n308 Nonetheless, New Jersey uses regulations on sharing as a way to encourage the development of a consistent and organized state database. n309 The Utah law permits sharing and disclosure only under narrow circumstances. n310 Arkansas, by contrast, strictly prohibits sharing of collected data. n311 Other states, like New York, have been relatively hands-off when it comes to data sharing. They simply urge departments to build procedures for sharing data that are consistent with their overall recommendations on data protection. n312 We may expect states [*49] to want to encourage departments to share whatever

data they can legally retain. By doing so, departments can have access to significantly more information on the potential whereabouts of criminal suspects who travel outside jurisdictional lines. n313 Fourth, available and model rules document and limit access to stored data. New Jersey's regulation requires departments to record all user access to stored ALPR data, including the name of the user accessing the data, the time and date of the access, whether the person used automated software to analyze the data, and the name of the supervisor who authorized the access. n314 New York's model guidelines also suggest that departments document when officers search and analyze stored data. n315 Officers should also only analyze data if they have a legitimate law enforcement purpose for doing so. n316 Additionally, the Maine provision stresses the importance of confidentiality in stored data. n317 That law restricts access to law enforcement officers. n318 And in Vermont, the law explicitly states that access to stored data should be limited to specified or previously designated personnel. n319 Thus, the current array of statutes acknowledges the need for limited access to available data and confidentiality of stored information. Fifth, some of the model regulations require departments to train employees in the proper procedures for handling data. They also discipline employees who fail to follow policy parameters. The New York suggested guidelines recommend that departments establish a list of designated personnel who are authorized to access ALPR data, n320 and encourage departments to establish a training program to teach officers about the proper use of ALPR technology. n321 The New Jersey directive also requires that departments "designate all authorized users, and that no officer or civilian employee will be authorized to operate an ALPR, or to access or use ALPR stored data, unless the officer or civilian employee has received training by the department on the proper operation of these devices." n322 Once more, the New Jersey directive mandates that "any sworn officer or civilian employee of the [*50] agency who knowingly violates the agency's policy, or these Guidelines, shall be subject to discipline." n323 Conversely, neither the Maine nor New Hampshire laws touch on officers' training in data retention. n324 But this is likely because they do not permit significant data accumulation, thereby making training in data management less imperative. On the whole, those states and entities that do permit large-scale data collection also encourage officer training as a safeguard against abuse. Sixth, the current array of regulations uses a wide range of enforcement mechanisms. In New Jersey, as a penalty for non-compliance, the Attorney General maintains the authority to temporarily or permanently revoke a department's right to use ALPR devices. n325 Arkansas provides for civil remedies for individuals when a violation of the law causes them actual harm. n326 Utah, by contrast, simply makes violation of the statute a criminal misdemeanor. n327 Both the New Hampshire and the Maine laws have made the violation of ALPR regulations a criminal act in the state. n328 Although New York's regulations are non-mandatory, they still recommend that departments begin creating records in case the state someday begins to audit data access and retention records. n329 In sum, current state statutes and recommended guidelines address a number of concerns related to the digitally efficient state. It is worth noting again that these laws go far beyond anything the judiciary would likely implement. The Supreme Court is institutionally limited in its capacity to develop a response to the digitally efficient investigative state. The variation on the mosaic theory adopted by Alito in his Jones concurrence would only establish a broad principle that long-term data retention by efficient public surveillance technologies may eventually violate a person's reasonable expectation of privacy. Such a rule is ambiguous and does not touch on data storage, access, and identification. State legislation offers the possibility of establishing detailed and definitive standards.

Legislation solves best

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In this article, I present a model statute that a state could enact to regulate the digitally efficient investigative state. This statute adheres to three major principles about the regulation of police surveillance. First, any regulation must provide clear standards that law enforcement can easily understand and apply. n23 Second, as communities differ substantially in their need for public surveillance, any legislation must provide local municipalities with some ability to vary standards to meet their legitimate law enforcement needs. Third, any regulation must articulate the narrow scope of technologies and devices that fall under its regulatory purview. Because technology changes rapidly, this ensures that the law will not be misapplied to future, emerging technologies. The model statute I offer in this article honors these three important principles. The statute regulates the indiscriminate collection and retention of data by law enforcement surveillance technologies, while also permitting the use of technological surveillance for mere observational comparison. The statute [*5] establishes a maximum length of time for data retention. It also limits the sharing of personally identifiable information, and requires

that law enforcement demonstrate a legitimate investigative purpose for identifying and accessing data. To enforce these broad regulations, the statute gives the state attorney general the authority to bring lawsuits against police departments that fail to abide by these regulations and excludes from criminal court any locational evidence obtained in violation of the statute. This statute would not address all of the concerns of the digitally efficient investigative state. After all, no statute can fully predict and control the development of new and emerging technologies. Nevertheless, it would be a major step toward coherency. This legislation would give a police department discretion to craft unique data policies tailored to its community's specific needs, while also encouraging some level of statewide consistency. To date, only a small handful of law review articles have addressed the unique issues raised by digitally efficient community surveillance technology, such as automatic license plate readers (ALPR). n24 Furthermore, none of this work has offered a comprehensive legislative response that could guide future regulation. Thus, this article fills a void in the available legal scholarship.

Police departments have expanded advanced surveillance technologies and the Supreme Court can't stop it without State legislatures

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Over the last two decades, police departments have dramatically expanded the use of advanced surveillance technologies. In 1997, around 20% of American police departments reported using some type of technological surveillance. n1 By 2007, that number had risen to over 70%. n2 And no longer do police rely exclusively on basic surveillance technologies. The increasingly efficient and technologically advanced law enforcement of the twenty-first century utilizes a wide range of surveillance devices including automatic license plate readers (ALPR), n3 surveillance cameras, n4 red light cameras, n5 speed cameras, n6 and biometric technology like facial recognition. n7 [*2] I have previously called this radical shift in policing the beginning of the digitally efficient investigative state. n8 By this, I mean that police today utilize technological replacements for traditional investigations that dramatically improve the efficiency of surveillance. These digitally efficient technologies do not give police any unique extrasensory ability. n9 They merely improve the efficiency of public surveillance. Furthermore, these technologies only collect information on public movements and behaviors. They do not intrude on any constitutionally protected or private space. n10 However, these tools have developed into a form of widespread community surveillance, which presents privacy concerns for many members of the community. In addressing public surveillance under the Fourth Amendment, the Supreme Court has previously operated under two important presumptions. I call these two general rules the jurisprudential assumptions of police surveillance. First, individuals have no reasonable expectation of privacy in any activities they make in public that may be visible to law enforcement. n11 So while officers need probable cause or a warrant to enter a home or automobile, they do not need any [*3] authorization to investigate or record a person's activities in public. Second, while technologies that give the state an extrasensory ability may violate an individual's reasonable expectation of privacy, technologies that merely improve the efficiency of otherwise permissible investigation techniques are presumptively permissible. n12 Thus, while officers must obtain a warrant before using some extrasensory technologies, the Court generally does not regulate efficiency-enhancing technologies. These jurisprudential assumptions of police surveillance have been workable in the past because of the limited use and capability of efficiency-enhancing technologies. I have previously argued, however, that in the age of the digitally efficient investigative state, efficiency-enhancing technologies have become sufficiently intrusive as to demand a new doctrinal path. n13 In United States v. Jones, the Supreme Court considered one such efficiency-enhancing surveillance technology--global positioning systems (GPS). n14 There, law enforcement officers installed a GPS device on a suspect's car without a valid warrant. n15 The government argued that the police did not need a warrant to install the GPS device because it was merely an efficient replacement for an otherwise legal police investigation tactic--public surveillance. n16 But Antoine Jones claimed that he had a reasonable expectation that all of his movements over the course of a month would not be recorded in great detail by the state, even if they were executed in public. n17 The Jones case presented the perfect opportunity for the Court to amend one or both of the jurisprudential assumptions of police surveillance, but the Court punted the issue. The majority merely found that the installation

of a GPS device violated the Fourth Amendment because of the device's physical installation on the automobile. n18 Post-Jones, many academics criticized the Court for not addressing the privacy issues raised by police surveillance technologies. n19 I believe the Court will eventually regulate the digitally efficient investigative state in some manner. Indeed, dicta in the concurrences by Justices Sotomayor and Alito [*4] suggest that the Court will be receptive to broader regulation of efficiency-enhancing surveillance technology in the near future. n20 Nevertheless, history dictates that any judicial regulation will be limited and likely rely on the often-ineffective exclusionary rule for enforcement. n21 As a result, Congress and state legislators must play a significant role in any future regulation of police surveillance. Given that law enforcement in the United States is highly decentralized, n22 **much of this regulation will have to come from state legislatures.**

Counterplans vs State Secrets Privilege / Judicial Independence Advs

1nc CP Executive

CP Text: The executive branch should:

-conduct an across-the-board review of pending litigation where the state secrets privilege was invoked

-issue an executive order that sets out substantive legal standards regarding use of the privilege

-create a durable and extensive review process within the executive branch for deciding when to assert the privilege in future cases

-institute a formal process for invoking the privilege, by setting out a list of offices or officials who must sign off on the decision

-institute a system to automatically refer evidence that it asserts is privileged to an Office of the Inspector General

-encourage the Congress to enact the State Secrets Protection Act

CP solves

Frost '09 --- American University Washington College of Law (Amanda, "Reforming the State Secrets Privilege," American University College of Law, 4/1/2009, http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1001&context=fac_works_pubs)// Mnush

The next administration should consider implementing the following measures upon taking office. These proposals could be adopted individually, or grouped together as a comprehensive package. The list below is not intended to be exhaustive, but rather to suggest useful avenues for the new administration to pursue. First, the new administration should conduct an across-the-board review of all pending litigation in which the government—either as a party or an intervenor—has invoked the state secrets privilege. Just because the Bush Administration invoked the privilege in a particular case does not mean the new administration should consider itself bound by its predecessor's litigation approach. This across-the-board review should be carried out by a joint group of career employees and political appointees of the new administration, and should include officials from both the Justice Department and the intelligence and national security communities. It should cover not only cases that are pending in district courts, but also those in which the state secrets privilege is at issue on appeal. Second, the next president should issue an executive order, binding on all federal agencies, that sets out substantive legal standards regarding use of the privilege. This order might include a new definition of what constitutes a state secret and what evidence the government believes is appropriately subject to the privilege, based either on the current classification system,80 or the definitions of "state secrets" in proposed legislation that is currently pending before Congress. An important element of an executive order on the privilege would be creating a standard for when the government may seek outright dismissal of a case, at the pleadings stage, on the basis of the privilege. For example, an effective order could emphasize that this approach is supported by precedent only in cases involving secret espionage agreements, such as those at issue in Totten v. United States and Tenet v. Doe, and may not be appropriate in cases relating to other subjects. The executive order should take into account the harm to litigants and the public of invoking the privilege either to prevent introduction of evidence or seek dismissal of the case. **The president's constitutional responsibilities include not only protecting the nation's security, but also taking care that**

the laws are properly enforced.81 If important evidence is kept out of court, or entire cases are dismissed on the pleadings, the law cannot be optimally followed and enforced. Accordingly, the executive branch should adopt a substantive standard that requires it to evaluate the harm that will result when invoking the state secrets privilege. Third, either as part of an executive order or through a formal memorandum issued by the new attorney general, the administration should create a durable and extensive review process within the executive branch for deciding when to assert the privilege in future cases. Internal procedural requirements within the bureaucracy can create a strong layer of checks and balances, taking advantage of the benefits of multiple viewpoints and the experience and judgment of career civil servants.82 When just a few executive branch officials make decisions without broader consultation and input, the results can be severely flawed. This is especially the case with complex legal analysis, as demonstrated by the failures resulting from the Bush Administration's refusal to seek input from different officials within the administration.83 As Professor Goldsmith testified before the Senate Judiciary Committee, "[c]lose-looped decisionmaking by like-minded lawyers resulted in legal and political errors that would be very costly to the administration down the road. Many of these errors were unnecessary and would have been avoided with wider deliberation and consultation." Judicial doctrine provides that the state secrets privilege may only be "lodged by the head of the department which has control over the matter"—not a low-level official.85 That official must give "actual personal consideration" to the issue, and attest to this in a formal declaration.86 Recent practice suggests, however, that these doctrinal procedural requirements are insufficient in light of the significant impact of invocation of the privilege. And although officials from the Bush Justice Department have asserted that attorneys from the Department, in addition to counsel from the relevant agency, are involved in determining when to invoke the privilege, they have not indicated the existence of any formal review process within the Justice Department. The new administration or Justice Department should institute a formal process for invoking the privilege, by setting out a list of offices or officials who must sign off on the decision. To begin, a senior official within the Department, perhaps the deputy attorney general, should be required to personally approve all invocations of the privilege. This will provide accountability for secrecy at the highest levels of the administration. Moreover, a new review process might include a referral to the Department's Professional Responsibility Advisory Office (PRAO) to ensure that the privilege is not being invoked out of a conflict of interest.88 Further, the Justice Department should consider establishing a litigant's ombudsman who could serve as an advocate for the members of the public who would be harmed by invocation of the privilege.89 By requiring that these offices approve the government's exercise of the privilege, the new administration would bring more viewpoints into its deliberations and reduce the likelihood of error or unnecessary harm to the interests of justice. Fourth, the administration should institute a system to automatically refer evidence that it asserts is privileged to an Office of the Inspector General (OIG). Even if the privilege is invoked appropriately and narrowly by the administration, and subjected to careful review by the courts, the state secrets privilege will prevent the introduction of some important evidence in court. This is the very purpose of the privilege, and it may sometimes be necessary to prevent the disclosure of secret information that would harm the nation's security—even when that evidence demonstrates illegal activity. Because even proper use of the privilege can disrupt the usual system of checks and balances and limit oversight of the executive branch, it is important that an independent body within the executive branch review the evidence and take action to prevent or ameliorate violations of the law that cannot be disclosed in court. By mandating referral of assertedly privileged evidence to an OIG, the new administration can ensure that any evidence of abuse or wrongdoing—even if properly covered by the privilege—will be addressed and corrected. The Justice Department's OIG has demonstrated extraordinary integrity and independence in recent years, and thus would be the appropriate office to conduct the review. However, if the administration believes it appropriate, the privileged evidence could be referred to the relevant department or agency OIG, for example that within the Department of Defense or the CIA. The OIG could then serve as a partial substitute for the courts by investigating and providing accountability for any wrongdoing revealed by the privileged evidence. Finally, the new administration should encourage the next Congress to enact the State Secrets Protection Act, discussed below, or similar legislation. Rather than work with Congress to craft state secrets legislation, the Bush Administration has attempted to undermine the proposed legislation by making specious attacks on its constitutionality and vowing to veto any bill passed by Congress.90 The new administration should work with members of the House and Senate Judiciary Committees to pass and sign into law the State Secrets Protection Act. At a minimum, it should cooperate with the Judiciary Committees to modify these bills to address its concerns. The next section discusses the legislation and its benefits in more detail. Adopting these measures would enable the new administration to restore a proper balance between the branches of government, fulfill its constitutional responsibilities to enforce the rule of law, and protect both national security and the interests of justice.

Congress Solvency

Congress can pass legislation changing how state secrets are evaluated --- boosts judicial independence

Fisher 08' --- specialist in Constitutional Law (Louis, "Reform of the State Secrets Privilege," House Committee on the Judiciary , 1/29/2008, http://www.loc.gov/law/help/usconlaw/pdf/Fisher_statement_12508.pdf)//Mnush

There should be little doubt that Congress has constitutional authority to provide new guidelines for the courts. It has full authority to adopt rules of evidence and assure private parties that they have a reasonable opportunity to bring claims in court. What is at stake is more than the claim or assertion by the executive branch regarding state secrets. Congress needs to protect the vitality of a political system that is based on separation of powers, checks and balances, and safeguards to individual rights. In the past-half century, Congress has repeatedly passed legislation to fortify judicial independence in cases involving national security and classified information. Federal judges now gain access to and make judgments about highly sensitive documents. Congressional action with the FOIA amendments of 1974, the FISA statute of 1978, and the CIPA statute of 1980 were conscious decisions by Congress to empower federal judges to review and evaluate highly classified information. Congress now has an opportunity to pass effective state secrets legislation.

Congress solves --- can regulate the process through which the privilege is asserted

Chesney '08 --- Wake Forest Law School (Robert M, "Legislative Reform of the State Secrets Privilege," Roger Williams University Law Review, spring 2008, http://docs.rwu.edu/cgi/viewcontent.cgi?article=1389&context=rwu_LR)//Mnush

In any event, let us assume for the sake of argument that the state secrets privilege serves constitutionally-protected values relating to the executive branch's national security and diplomatic functions. Would it follow that Congress is disabled from regulating in this area? It is not obvious that it would. Indeed, some forms of regulation would seem clearly to remain within the control of Congress in the exercise of the authorities mentioned above, even if other forms of legislation might prove more controversial. The key is to distinguish between legislation regulating the process by which privilege assertions are to be adjudicated, and legislation that functions to override or waive the privilege itself. At a minimum, Congress should have authority to regulate the process through which assertions of the privilege are adjudicated. This would include, for example, the power to codify prerequisites to the assertion of the privilege (such as the Reynolds requirement that the privilege be invoked by the head of the relevant department based on personal consideration of the matter)34 or to require particular procedures to be followed by the court in the course of resolving the government's invocation. Whether Congress should be able to override the privilege once it attaches-for example, by compelling the executive branch to choose between conceding liability in civil litigation and disclosure of privileged information in a public setting-is far less clear. That question may be academic, however, at least so far as the SSPA is concerned. A close review of the bill suggests that most if not all of its provisions are best viewed as process regulations. It does not follow, of course, that all the changes contemplated in the SSPA are wise. On the contrary, there are at least a few elements in the bill that go too far in seeking to ameliorate the impact of the privilege. Congress may have the authority to adopt these measures notwithstanding the competing constitutional values involved, but it is advisable to emphasize less-intrusive reform options whenever possible.

Subjecting the states secrets privilege to a procedural framework solves

Chesney '08 --- Wake Forest Law School (Robert M, "Legislative Reform of the State Secrets Privilege," Roger Williams University Law Review, spring 2008, http://docs.rwu.edu/cgi/viewcontent.cgi?article=1389&context=rwu_LR)//Mnush

Note* SSPA = State Secret's Privilege Act

IV: Conclusion The SSPA will not entirely please either critics or supporters of the state secrets status quo. By subjecting the privilege to a more rigorous procedural framework, the SSPA may reduce the range of cases in which the privilege is found to apply, and in some respects it may cause marginal increases in the risk that sensitive information will be disclosed (though with the amendments proposed above such risks would be significantly diminished). On the other hand, even under the SSPA, the privilege will continue to have a harsh impact on litigants who bring claims that implicate protected information: discovery will still be denied, complaints will still be dismissed, and summary judgment will still be granted. Such tradeoffs are inevitable, however, **in crafting legislation designed to reconcile such important public values as national security, access to justice, and democratic accountability. The SSPA has its flaws, to be sure, but subject to the caveats noted above it marks an important step forward in the ongoing evolution of the state secrets privilege.**

CPs vs Religious Freedom Adv

1nc Religious Diplomacy CP

CP: The United States federal Government should mandate that all State Department Diplomats receive courses in religious literacy

Allows the US to utilize effective religious diplomacy

Mandaville and Silvestri, 15 – *Peter, Professor in Government & International Affairs at George Mason U and ** Sara, Senior Lecturer in Religion and International Politics at City University London and Director of Research at U of Cambridge ("Integrating Religious Engagement into Diplomacy: Challenges & Opportunities" 1/29/15, Brookings Institution, http://www.brookings.edu/~/media/research/files/papers/2015/01/29-religious-engagement-diplomacy-mandaville-silvestri/issuesingovstudiesmandavillesilvestriefinal.pdf,//BR/)

<In recent years, diplomatic training schools in the United States and some European countries have begun to offer courses and seminars on religious engagement. The State Department's Foreign Service Institute (FSI) now regularly offers a week-long seminar on religion and foreign policy. This course, however, is offered on an ad hoc, elective (i.e. non-mandatory) basis and tends to be taken by Foreign Service officers who are already comfortable with and committed to religious engagement. This means the capacity of such courses to significantly widen the ranks of those equipped to do such work is limited.10 Similar efforts run by the British government also operate on an exclusively voluntary basis. The topics covered in such classes also tend to reinforce existing paradigms for religion in foreign policy—such as international religious freedom and interfaith work—and as such do not serve to broaden the aperture or take in sectors and issue areas less commonly associated with religion. The training on religion offered by EU member states and EU institutions for their respective officials tends to be even more ad hoc than in the United States. For instance, training on Islamism—which generally takes the form of guest lectures by outside speakers—has been regularly provided to EU officials since Islamic radicalization became a major issue in the mid-2000s. Yet there is a risk that for lack of experience or bandwidth, European countries end up uncritically adopting initiatives and approaches created in Washington D.C. or London, without re-adapting them to different cultural and social system and, simultaneously, importing the many oversimplifications and blind spots that characterize government approaches to the quite distinct issues of countering violent extremism (CVE) and Islamist engagement. For training and professional development efforts around religion to truly make a lasting difference, they would need to be baked into the mandatory preparation that all diplomats receive. The US State Department has tentatively started a process to explore ways that this can be achieved via the A-100 Class, the basic training platform for all Foreign Service officers regardless of eventual postings or career specializations. Providing "religious literacy" as a fundamental diplomatic competency is a complex and fraught undertaking. What are the appropriate approaches and modalities for teaching these issues given the legal sensitivities and institutional culture concerns raised above? What, precisely, is to be taught? It is unrealistic and inappropriate to think that purpose of such training would be to teach foreign services officers to think and talk like theologians, or to use religious reasoning to justify foreign policy or national security interests. Rather, a "religious literacy" paradigm for training diplomats would have three core components: 1. World religions and global religious demography – A basic overview of major world religions including history, core beliefs, and key contemporary institutions/leaders. Introduction to major trends in religious demography 2. Religion and the advancement of foreign policy interests – A module to introduce diplomats to the varying roles that religions play in different societies and to develop

analytic capacity to better understand where religion is (and, conversely, is not) relevant to various issues and topics in diplomatic practice. This should also include coverage of policy areas not previously or conventionally associated with religion. 3. Religious engagement in diplomacy – An introduction to the practical aspects of engaging with religious leaders, faith-based organizations, and other religious actors. In addition to protocol issues and questions of cultural sensitivity to faith requirements for example, this module would also help diplomats develop a capacity to engage the subject matter of their work in terms that relate to values, culture, and philosophy. The pedagogy here would be informed more by the sorts of questions and debates typical of the humanities—meaning, morality, and purpose—than by theology, per se. At a time when higher and professional education place an increasing premium on science, technology, engineering, and math (STEM) subject areas, the clear centrality of religion to international affairs reminds us that the fields comprising the humanities—philosophy, history, literature, the arts—continue to be of vital importance for the advancement of foreign policy and national security interests. The introduction of such a curriculum as a core aspect of diplomatic training faces numerous challenges, not least of all the likelihood of certain objections being raised on principle. Given time pressures and scarcity of resources, any new subject area competing to enter the fray of a major governmental training system has to compete with other new priority areas as well as well-established topics that already feel they get short shrift. Such training will also have maximum impact in the shortest amount of time if accompanied by aspects of mid-career training and professional development tailored for middle managers and senior officials. The more those in positions of authority are able to appreciate the importance of religion and religious engagement to fulfilling the mission of the units they lead, the more likely they are to help those who serve under them to feel incentivized and "safe" in taking some of the risks associated with religious outreach and engagement. >

1nc Democracy Adv CP

Text: The United States Federal Government should integrate an agenda of International Religious Freedom into its foreign democracy programs.

Secures the efficacy of democratization

Farr, 9 - Thomas F., Professor of Religion and International Affairs – Georgetown's Edmund A. Walsh School of Foreign Service and Director – Berkley Center for Religion, Peace, and World Affairs ("The Future of U.S. International Religious Freedom Policy", Research Gate,//BR/)

Successfully integrating religious freedom promotion into U .S. policy on democratization and civil society will require understanding the significant obstacles that exist, both abroad and at home, to doing so. Of all the tasks of democratic consolidation, embracing religious liberty is, for many cultures, the most difficult. Many majority religious communities (e .g., Russian Orthodox, Afghan Sunnis, Indian Hindu nationalists) see religious freedom in general, and U .S . Religious freedom policy in particular, as a threat to communal identity or an attack on religious tradition. These communities often seek to maintain a national monopoly over belief and practice by reliance on civil law and policy as a means of keeping competing religious groups at a disadvantage and retaining their own adherents. The result is public policies that are incompatible with and destructive of stable democracy, such as anti-apostasy, blasphemy, conversion, and defamation laws. Moreover, there is a widespread perception in Muslim-majority societies and elsewhere that America's democracy promotion policy is fundamentally anti-religious because it seeks a strict separation of religion from public life and the marginalization of religious ideas and actors in matters of public policy. That perception extends to U.S. IRF policy, which is often seen as designed to pave the way for American missionary efforts. When it comes to encouraging religious communities to consider themselves as elements of a broader civil society, U .S. democracy programs are key. It will be important for those programs not only to target religious communities but also to fund civil society institutions, religious and secular, that advance religious freedom. Unfortunately, the United States does not now do this in any systematic way. None of its direct or indirect grant making—e .g. the

U .S. Agency for International Development (USAID), the State Department, the National Endowment for Democracy, the National Democratic Institute, the International Republican Institute—see religious freedom as critical to the rooting of democracy. While each pays rhetorical tribute to religious freedom, and each has important individual programs that engage religious actors or communities, none has a comprehensive strategy that integrates religious freedom into its operational planning or programs.